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JOURNAL

AND

DEBATES OF THE FEDERAL CONVENTION,

Held at Philadelphia, from May 14, to September 17, 1787.

WITH THE

CONSTITUTION

OF THE

UNITED STATES,

ILLUSTRATED BY THE OPINIONS OF TWENTY SUCCESSIVE CONGRESSES,

AND A

Digest of Decisions in the Courts of the Union,

INVOLVING CONSTITUTIONAL PRINCIPLES:

THUS SHEWING

THE RISE, PROGRESS, PRESENT CONDITION, AND PRACTICE OF THE CONSTITUTION,

IN THE

National Legislature and Legal Tribunals of the Republic.

WITH

FULL INDEXES ON ALL SUBJECTS EMBRACED IN THE WORK.

BY JONATHAN ELLIOT.

18133
1214

VOLUME IV.

[*Supplementary to the* STATE CONVENTIONS, *in 3 Vols. on adopting the Federal Constitution*]

Washington,

PRINTED AND SOLD BY THE EDITOR,

ON THE PENNSYLVANIA AVENUE.

1830.

PREFATORY.

On the subject of the Constitution, this volume contains a great variety of matter, USEFUL *for an exposition of the motives of the framers of that instrument, and* VALUABLE *for reference, as affording the best lights to guide the judgment in searching for a sound interpretation of its text.*

The Journal and Debates, with an examination of the letters of Luther Martin, Governor Randolph, Robert Yeates, and J. Lansing, furnish the most ample and authentic constitutional history yet disclosed to the public; and may, it is hoped, be found highly important, as an expositor, and a great rule for the political guidance of statesmen, legislators, or jurists.

In compiling the opinions, on constitutional questions, delivered in congress, by some of the most enlightened Senators and Representatives, the files of the New York and Philadelphia newspapers, from 1789, to 1800, had to be relied on: from the latter period, to the present, the National Intelligencer is the authority consulted for the desired information. A glance at this portion of the work, will show the reader, that only CERTAIN POINTS *of the argument of a speech could be recorded, in order to bring the selection of* OPINIONS, *into a reasonable number of pages. This method, it is hoped, will meet the approbation of the public.*

For the favor to copy the "Decisions," involving constitutional principles, into this volume, I beg leave to return my best thanks to R. S. Coxe, Esquire, the learned editor of a highly useful and valuable "Digest" of legal decisions.

To add to the facility of reference, the congressional opinions are arranged CHRONOLOGICALLY, *under separate* HEADS, *with full Indexes: and, in order that any particular subject, may be read,* IN CONNECTION, *those heads are again repeated, with references to the* PAGES *where they may be found: forming, thus, a* DOUBLE INDEX *to all the topics, embraced in that part of the work.*

J. E.

City of Washington, May 26, 1830.

1843

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[In Congress, *Friday, June* 7, 1776.—The delegates from Virginia moved, in obedience to instructions from their constituents, that the congress should declare that these united colonies are, and of right ought to be, free and independent states, that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; that measures should be immediately taken for procuring the assistance of foreign powers, and a confederation be formed to bind the colonies more closely together.

The house being obliged to attend at that time to some other business, the proposition was referred to the next day, when the members were ordered to attend punctually at ten o'clock.

Saturday, June 8.—They proceeded to take it into consideration, and referred it to a committee of the whole, into which they immediately resolved themselves, and passed that day and Monday the 10th in debating on the subject.

It was argued by *Wilson, Robert R. Livingston, E. Rutledge, Dickinson* and others:

That, though they were friends to the measures themselves, and saw the impossibility that we should ever again be united with Great Britain, yet they were against adopting them at this time:

That the conduct we had formerly observed was wise and proper now, of deferring to take any capital step till the voice of the people drove us into it:

That they were our power, and without them our declarations could not be carried into effect:

That the people of the middle colonies (Maryland, Delaware, Pennsylvania, the Jerseys and New York) were not yet ripe for bidding adieu to British connection, but that they were fast ripening, and, in a short time, would join in the general voice of America:

That the resolution, entered into by this house on the 15th of May, for suppressing the exercise of all powers derived from the crown, had shewn, by the ferment into which it had thrown these middle colonies, that they had not yet accommodated their minds to a separation from the mother country:

That some of them had expressly forbidden their delegates to consent to such a declaration, and others had given no instructions, and consequently no powers to give such consent:

That if the delegates of any particular colony had no power to declare such colony independent, certain they were, the others could not declare it for them; the colonies being as yet perfectly independent of each other:

That the assembly of Pennsylvania was now sitting above stairs, their convention would sit within a few days, the convention of New York was now sitting, and those of the Jerseys and Delaware counties would meet on the Monday following, and it was probable these bodies would take up the question of independence, and would declare to their delegates the voice of their state:

That if such a declaration should now be agreed to, these delegates must retire, and possibly their colonies might secede from the union:

That such a secession would weaken us more than could be compensated by any foreign alliance:

That in the event of such a division, foreign powers would either refuse to join themselves to our fortunes, or, having us so much in their power as that desperate declaration would place us, they would insist on terms proportionably more hard and prejudicial:

That we had little reason to expect an alliance with those to whom alone, as yet, we had cast our eyes:

That France and Spain had reason to be jealous of that rising power, which would one day certainly strip them of all their American possessions:

That it was more likely they should form a connection with the British court, who, if they should find themselves unable otherwise to extricate themselves from their difficulties, would agree to a partition of our territories, restoring Canada to France, and the Floridas to Spain, to accomplish for themselves a recovery of these colonies:

That it would not be long before we should receive certain information of the disposition of the French court, from the agent whom we had sent to Paris for that purpose:

That if this disposition should be favorable, by waiting the event of the present campaign, which we all hoped would be successful, we should have reason to expect an alliance on better terms:

That this would in fact work no delay of any effectual aid from such ally, as, from the advance of the season and distance of our situation, it was impossible we could receive any assistance during this campaign:

That it was prudent to fix among ourselves the terms on which we would form alliance before we declared we would form one at all events:

And that if these were agreed on, and our declaration of independence ready by the time our ambassador should be prepared to sail, it would be as well, as to go into that declaration at this day.

On the other side, it was urged by *J. Adams, Lee, Wythe* and others, that no gentleman had argued against the policy or the right of separation from Britain, nor had supposed it possible we should ever renew our connection; that they had only opposed its being now declared:

That the question was not whether, by a declaration of independence, we should make ourselves what we are not; but whether we should declare a fact which already exists:

That, as to the people or parliament of England, we had always been independent of them, their restraints on our trade deriving efficacy from our acquiescence only, and not from any rights they possessed of imposing them, and that so far, our connection had been federal only, and was now dissolved by the commencement of hostilities:

That, as to the king, we had been bound to him by allegiance, but that this bond was now dissolved by his assent to the late act of parliament, by which he declares us out of his protection, and by his levying war on us, a fact which had long ago proved us out of his protection; it being a certain position in law, that allegiance and protection are reciprocal, the one ceasing when the other is withdrawn:

That James the II. never declared the people of England out of his protection, yet his actions proved it and the parliament declared it:

No delegates then can be denied, or ever want, a power of declaring an existent truth:

That the delegates from the Delaware counties having declared their constituents ready to join, there are only two colonies, Pennsylvania and Maryland, whose delegates are absolutely tied up, and that these had, by their instructions, only reserved a right of confirming or rejecting the measure:

That the instructions from Pennsylvania might be accounted for from the times in which they were drawn, near a twelvemonth ago, since which the face of affairs has totally changed:

That within that time, it had become apparent that Britain was determined to accept nothing less than a *carte-blanche*, and that the king's answer to the lord mayor, aldermen and common council of London, which had come to hand four days ago, must have satisfied every one of this point:

That the people wait for us to lead the way?

That *they* are in favor of the measure, though the instructions given by some of their *representatives* are not:

That the voice of the representatives is not always consonant with the voice of the people, and that this is remarkably the case in these middle colonies:

That the effect of the resolution of the 15th of May has proved this, which, raising the murmurs of some in the colonies of Pennsylvania and Maryland, called forth the opposing voice of the freer part of the people, and proved them to be the majority even in these colonies:

That the backwardness of these two colonies might be ascribed, partly to the influence of proprietary power and connections, and partly, to their having not yet been attacked by the enemy:

That these causes were not likely to be soon removed, as there seemed no probability that the enemy would make either of these the seat of this summer's war:

That it would be vain to wait either weeks or months for perfect unanimity, since it was impossible that all men should ever become of one sentiment on any question:

That the conduct of some colonies, from the beginning of this contest, had given reason to suspect it was their settled policy to keep in the rear of the confederacy, that their particular prospect might be better, even in the worst event:

That, therefore, it was necessary for those colonies who had thrown themselves forward and hazarded all from the beginning, to come forward now also, and put all again to their own hazard:

That the history of the Dutch revolution, of whom three states only confederated at first, proved that a secession of some colonies, would not be so dangerous as some apprehended:

That a declaration of independence alone could render it consistent with European delicacy, for European powers to treat with us, or even to receive an ambassador from us:

That till this, they would not receive our vessels into their ports, nor acknowledge the adjudications of our courts of admiralty to be legitimate, in cases of capture of British vessels:

That though France and Spain may be jealous of our rising power, they must think it will be much more formidable with the addition of Great Britain; and will therefore see it their interest to prevent a coalition; but should they refuse, we shall be but where we are; whereas without trying, we shall never know whether they will aid us, or not:

That the present campaign may be unsuccessful, and therefore we had better propose an alliance while our affairs wear a hopeful aspect:

That to await the event of this campaign will certainly work delay, because, during this summer, France may assist us effectually, by cutting off those supplies of provisions from England and Ireland, on which the enemy's armies here are to depend; or by setting in motion the great power they have collected in the West Indies, and calling our enemy to the defence of the possessions they have there:

That it would be idle to lose time in settling the terms of alliance, till we had first determined we would enter into alliance:

That it is necessary to lose no time in opening a trade for our people, who will want clothes, and will want money too, for the payment of taxes:

And that the only misfortune is, that we did not enter into alliance with France six

months sooner, as, besides opening her ports for the vent of our last year's produce, she might have marched an army into Germany, and prevented the petty princes there, from selling their unhappy subjects to subdue us.

It appearing in the course of these debates, that the colonies of New York, New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina were not yet matured for falling from the parent stem, but that they were fast advancing to that state, it was thought most prudent to wait a while for them, and to postpone the final decision to July 1st; but, that this might occasion as little delay as possible, a committee was appointed to prepare a declaration of independence.

The committee were *John Adams*, *Dr. Franklin*, *Roger Sherman*, *Robert R. Livingston* and *myself*. Committees were also appointed, at the same time, to prepare a plan of confederation for the colonies, and to state the terms proper to be proposed for foreign alliance. The committee for drawing the declaration of independence, desired me to do it. It was accordingly done, and being approved by them, I reported it to the house on *Friday* the *28th* of *June*, when it was read and ordered to lie on the table.

On *Monday* the 1*st* of *July*, the house resolved itself into a committee of the whole, and resumed the consideration of the original motion made by the delegates of Virginia, which, being again debated through the day, was carried in the affirmative by the votes of New Hampshire, Connecticut, Massachusetts, Rhode Island, New Jersey, Maryland, Virginia, North Carolina and Georgia. South Carolina and Pennsylvania voted against it. Delaware had but two members present, and they were divided. The delegates from New York declared they were for it themselves, and were assured their constituents were for it; but that their instructions having been drawn near a twelvemonth before, when reconciliation was still the general object, they were enjoined by them to do nothing which would impede that object. They therefore thought themselves not justifiable in voting on either side, and asked leave to withdraw from the question; which was given them. The committee rose and reported their resolution to the house.

Mr. *Edward Rutledge*, of South Carolina, then requested the determination might be put off to the next day, as he believed his colleagues, though they disapproved of the resolution, would then join in it for the sake of unanimity. The ultimate question, whether the house would agree to the resolution of the committee, was accordingly postponed to the next day, when it was again moved, and South Carolina concurred in voting for it. In the mean time a third member had come post from the Delaware counties, and turned the vote of that colony in favor of the resolution. Members of a different sentiment attending that morning from Pennsylvania also, her vote was changed, so that the whole twelve colonies who were authorised to vote at all, gave their voices for it; and, within a few days, [July 9,] the convention of New York approved of it, and thus supplied the void occasioned by the withdrawing of her delegates from the vote.

Congress proceeded the same day to consider the declaration of independence, which had been reported and laid on the table the Friday preceding, and on Monday referred to a committee of the whole. The pusillanimous idea that we had friends in England worth keeping terms with, still haunted the minds of many. For this reason, those passages which conveyed censures on the people of England were struck out, lest they should give them offence. The clause too, reprobating the enslaving the inhabitants of Africa, was struck out in complaisance to South Carolina and Georgia, who had never attempted to restrain the importation of slaves, and who, on the contrary, still wished to continue it. Our northern brethren also, I believe, felt a little tender under those censures; for though their people had very few slaves themselves, yet they had been pretty considerable carriers of them to others. The debates having taken up the greater parts of the 2nd, 3d, and 4th days of July, were on the evening of the last, closed; the declaration was reported by the committee, agreed to by the house, and signed by every member present, *except Mr. Dickinson*]—*Jefferson's Memoirs.*

In Congress, July 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation:

We hold these truths to be self-evident—that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the

same object, evinces a design to reduce them under absolute despotism, it is their right it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain, is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise, the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethern, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethern. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable

jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connexions and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connexion between them and the state of Great Britain, is, and ought to be, totally dissolved; and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of congress, engrossed, and signed by the following members:

JOHN HANCOCK,

NEW HAMPSHIRE.
Josiah Bartlett,
William Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.
Samuel Adams,
John Adams,
Robert Treat Paine,
Elbridge Gerry.

RHODE ISLAND, &c.
Stephen Hopkins,
William Ellery.

CONNECTICUT.
Roger Sherman,
Samuel Huntington,
William Williams,
Oliver Wolcott.

NEW YORK.
William Floyd,
Philip Livingston,
Francis Lewis,
Lewis Morris.

NEW JERSEY.
Richard Stockton,
John Witherspoon,
Francis Hopkinson,
John Hart,
Abraham Clark.

PENNSYLVANIA.
Robert Morris,
Benjamin Rush,
Benjamin Franklin,
John Morton,
George Clymer,
James Smith,
George Taylor,
James Wilson,
George Ross.

DELAWARE.
Cesar Rodney,
George Read,
Thomas M'Kean.

MARYLAND.
Samuel Chase,
William Paca,
Thomas Stone,
C. Carroll, of Carrollton.

VIRGINIA.
George Wythe,
Richard Henry Lee,
Thomas Jefferson,
Benjamin Harrison,
Thomas Nelson, jr.
Francis Lightfoot Lee
Carter Braxton.

NORTH CAROLINA.
William Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA.
Edward Rutledge,
Thomas Heyward, jr.
Thomas Lynch, jr.
Arthur Middleton.

GEORGIA.
Button Gwinnett,
Lyman Hall,
George Walton.

DEBATE ON ARTICLES OF CONFEDERATION.

[On *Friday, July* 12, the committee appointed to draw *the articles of confederation* reported them, and, on the 22nd, the house resolved themselves into a committee to take them into consideration. On the 30th and 31st of that month, and 1st of the ensuing, those articles were debated which determined the proportion, or quota, of money which each state should furnish to the common treasury, and the manner of voting in congress. The first of these articles was expressed in the original draught in these words. "Art. XI. All charges of war and all other expences that shall be incurred for the common defence, or general welfare, and allowed by the United States assembled, shall be defrayed out of a common treasury, which shall be supplied by the several colonies in proportion to the number of inhabitants of every age, sex and quality, except Indians not paying taxes, in each colony, a true account of which, distinguishing the white inhabitants shall be triennially taken and transmitted to the assembly of the U. States"

Mr. *Chase* moved that the quotas should be fixed, not by the number of inhabitants of every condition, but by that of the 'white inhabitants.' He admitted that taxation should be always in proportion to property, that this was, in theory, the true rule; but that, from a variety of difficulties, it was a rule which could never be adopted in practice.— The value of the property in every state, could never be estimated justly and equally. Some other measure for the wealth of the state must therefore be devised, some standard referred to, which would be more simple. He considered the number of inhabitants as a tolerably good criterion of property, and that this might always be obtained. He therefore thought it the best mode which we could adopt, with one exception only: he observed that negroes are property, and as such, cannot be distinguished from the lands or personalities held in those states where there are few slaves; that the surplus of profit which a northern farmer is able to lay by, he invests in cattle, horses, &c., whereas a southern farmer lays out the same surplus in slaves. There is no more reason therefore for taxing the southern states on the farmer's head, and on his slave's head, than the northern ones on their farmer's heads and the heads of their cattle; that the method proposed would, therefore, tax the southern states according to their numbers and their wealth conjunctly, while the northern would be taxed on numbers only; that negroes, in fact, should not be considered as members of the state, more than cattle, and that they have no more interest in it.

Mr. *John Adams* observed, that the numbers of people were taken by this article, as an index of the wealth of the state, and not as subjects of taxation; that, as to this mat-

ter, it was of no consequence by what name you called your people, whether by that of freemen or of slaves; that in some countries the laboring poor were called freemen, in others they were called slaves; but the difference as to the state was imaginary only. What matters it whether a landlord employing ten laborers on his farm, gives them annually as much money as will buy them the necessaries of life, or gives them those necessaries at short hand? The ten laborers add as much wealth annually to the state, increase its exports as much, in one case, as the other. Certainly five hundred freemen produce no more profits, no greater surplus for the payment of taxes, than five hundred slaves. Therefore the state in which are the laborers called freemen, should be taxed no more than that in which are those called slaves. Suppose, by an extraordinary operation of nature or of law, one half the laborers of a state could, in the course of one night, be transformed into slaves; would the state be made the poorer or the less able to pay taxes? That the condition of the laboring poor in most countries, that of the fishermen particularly of the northern states, is as abject as that of slaves. It is the number of laborers which produces the surplus for taxation, and numbers, therefore, indiscriminately, are the fair index of wealth; that it is the use of the word 'property' here, and its application to some of the people of the state, which produces the fallacy. How does the southern farmer procure slaves? Either by importation or by purchase from his neighbor. If he imports a slave, he adds one to the number of laborers in his country, and proportionably to its profits and abilities to pay taxes; if he buys from his neighbor it is only a transfer of a laborer from one farm to another, which does not change the annual produce of the state, and therefore should not change its tax; that if a northern farmer works ten laborers on his farm, he can, it is true, invest the surplus of ten men's labor in cattle; but so may the southern farmer, working ten slaves; that a state of one hundred thousand freemen can maintain no more cattle, than one of one hundred thousand slaves. Therefore, they have no more of that kind of property; that a slave may, indeed, from the custom of speech, be more properly called the wealth of his master, than the free laborer might be called the wealth of his employer; but as to the state, both were equally its wealth, and should therefore equally add to the quota of its tax.

Mr. *Harrison* proposed, as a compromise, that two slaves should be counted as one freeman. He affirmed that slaves did not do as much work as freemen, and doubted if two effected more than one; that this was proved by the price of labor; the hire of a laborer in the southern colonies being from [illegible] to 12, while in the northern it was £24.

Mr. *Wilson* said, that if this amendment should take place, the southern colonies would have all the benefit of slaves, while the northern ones would bear the burthen—that slaves increase the profits of a state, which the southern states mean to take to themselves; that they also increase the burthen of defence, which would of course fall so much the heavier on the northern; that slaves occupy the places of freemen and eat their food. Dismiss your slaves and freemen will take their places. It it our duty to lay every discouragement on the importation of slaves; but this amendment would give the *jus trium liberorum* to him who would import slaves: that other kinds of property were pretty equally distributed through all the colonies: there were as many cattle, horses and sheep, in the north as the south, and south as the north; but not so as to slaves: that experience has shown that those colonies have been always able to pay most, which have the most inhabitants, whether they be black or white: and the practice of the southern colonies has always been to make every farmer pay poll taxes upon all his laborers, whether they be black or white. He acknowledges indeed, that freemen work the most; but they consume the most also. They do not produce a greater surplus for taxation. The slave is neither fed nor clothed so expensively as a freeman. Again, white women are exempted from labor generally, but negro women are not. In this then the southern states have an advantage as the article now stands. It has sometimes been said that slavery is necessary, because the commodities they raise would be too dear for market if cultivated by freemen: but now it is said that the labor of the slave is the dearest. Mr. *Payne* urged the original resolution of congress, to proportion the quotas of the states to the number of souls.

Dr. *Witherspoon* was of opinion, that the value of lands and houses was the best estimate of the wealth of a nation, and that it was practicable to obtain such a valuation. This is the true barometer of wealth. The one now proposed is imperfect in itself, and unequal between the states. It has been objected that negroes eat the food of freemen, and therefore should be taxed; horses also eat the food of freemen; therefore they also should be taxed. It has been said too, that in carrying slaves into the estimate of the taxes the state is to pay, we do no more than those states themselves do, who always take slaves into the estimate of the taxes the individual is to pay. But the cases are not parallel. In the southern colonies slaves pervade the whole colony; but they do not pervade the whole continent. That as to the original resolution of congress, to proportion the quotas according to the souls, it was temporary only, and related to the monies heretofore emitted: whereas we are now entering into a new compact, and therefore stand on original ground.

August 1. The question being put, the amendment proposed was rejected by the votes of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, against those of Delaware, Maryland, Virginia, North and South Carolina. Georgia was divided.

The other article was in these words. 'Art. XVII. In determining questions, each colony shall have one vote.'

July 30, 31, *August* 1. Present forty-one members. Mr. *Chase* observed that this article was the most likely to divide us, of any one proposed in the draught then under consideration: that the larger colonies had threatened they would not confederate at all, if their weight in congress should not be equal to the numbers of people they added to the confederacy; while the smaller ones declared against a union, if they did not retain an equal vote for the protection of their rights. That it was of the utmost consequence to bring the parties together, as should we sever from each other, either no foreign power will ally with us at all, or the different states will form different alliances, and thus increase the horrors of those scenes of civil war and bloodshed, which in such a state of separation and independence, would render us a miserable people. That our importance, our interests, our peace required that we should confederate, and that mutual sacrifices should be made to effect a compromise of this difficult question. He was of opinion, the smaller colonies would loose their rights, if they were not in some instances allowed an equal vote; and, therefore, that a discrimination should take place among the questions which would come before congress. That the smaller states should be secured in all questions concerning life or liberty, and the greater ones, in all respecting property. He therefore proposed, that in votes relating to money, the voice of each colony should be proportioned to the number of its inhabitants.

Dr. *Franklin* thought, that the votes should be so proportioned in all cases. He took notice that the Delaware counties had bound up their delegates to disagree to this article. He thought it a very extraordinary language to be held by any state, that they would not confederate with us, unless we would let them dispose of our money. Certainly, if we vote equally, we ought to pay equally; but the smaller states will hardly purchase the privilege at this price. That had he lived in a state where the representation, originally equal, had become unequal by time and accident, he might have submitted rather than disturb government: but that we should be very wrong to set out in this practice, when it is in our power to establish what is righ. That at the time of the union between England and Scotland, the latter had made the objection which the smaller states now do; but experience had proved that no unfairness had ever been shewn them; that their advocates had prognosticated that it would again happen, as in times of old, that the whale would swallow Jonas, but he thought the prediction reversed in that event, and that Jonas had swallowed the whale; for the Scotch had in fact got possession of the government and gave law to the English. He reprobated the original agreement of congress to vote by colonies, and, therefore, was for their voting, in all cases, according to the number of taxables.

Dr. *Witherspoon* opposed every alteration of the article. All men admit that a confederacy is necessary. Should the idea get abroad that there is likely to be no union among us, it will damp the minds of the people, diminish the glory of our struggle, and lessen its importance; because it will open to our view future prospects of war and dissension among ourselves. If an equal vote be refused, the smaller states will become vassals to the larger; and all experience has shown that the vassals and subjects of free states are the most enslaved. He instanced the Helots of Sparta and the provinces of Rome. He observed that foreign powers, discovering this blemish, would make it a handle for disengaging the smaller states from so unequal a confederacy. That the colonies should in fact be considered as individuals and that, as such, in all disputes, they should have an equal vote; that they are now collected as individuals making a bargain with each other, and, of course, had a right to vote as individuals. That in the East India company they voted by persons, and not by their proportion of stock. That the Belgic confederacy voted by provinces. That in questions of war, the smaller states were as much interested as the larger, and, therefore, should vote equally; and indeed, that the larger states were more likely to bring war on the confederacy, in proportion as their frontier was more extensive. He admitted that equality of representation was an excellent principle, but then it must be of things which are co-ordinate; that is, of things similar, and of the same nature: that nothing relating to individuals could ever come before congress; nothing but what would respect colonies. He distinguished between an incorporating and a federal union. The union of England was an incorporating one; yet Scotland had suffered by that union; for that its inhabitants were drawn from it by the hopes of places and employments—nor was it an instance of equality of representation; because, while Scotland was allowed nearly a thirteenth of representation, they were to pay only one fortieth of the land tax. He expressed his hopes, that in the present enlightened state of men's minds, we might expect a lasting confederacy, if it was founded on fair principles.

John Adams advocated the voting in proportion to numbers. He said that we stand here as the representatives of the people—that in some states the people are many, in others they are few; that therefore, their vote here should be proportioned to the numbers from whom it comes. Reason, justice and equity never had weight enough on the face of the earth, to govern the councils of men. It is interest alone which does it, and it is interest alone which can be trusted—that therefore the interests, within doors, should be the mathematical representatives of the interests without doors—that the in-

dividuality of the colonies is a mere sound. Does the individuality of a colony increase its wealth or numbers? If it does, pay equally. If it does not add weight in the scale of the confederacy, it cannot add to their rights, nor weigh in argument. A. has £50, B. £500, C. £1000, in partnership. Is it just they should equally dispose of the monies of the partnership? It has been said, we are independent individuals making a bargain together. The question is not what we are now, but what we ought to be when our bargain shall be made. The confederacy is to make us one individual only; it is to form us like separate parcels of metal, into one common mass. We shall no longer retain our separate individuality, but become a single individual as to all questions submitted to the confederacy. Therefore all those reasons which prove the justice and expediency of equal representation in other assemblies, hold good here. It has been objected that a proportional vote will endanger the smaller states. We answer that an equal vote will endanger the larger. Virginia, Pennsylvania, and Massachusetts, are the three greater colonies. Consider their distance, their difference of produce, of interests, and of manners, and it is apparent they can never have an interest or inclination to combine for the oppression of the smaller—that the smaller will naturally divide on all questions with the larger. Rhode Island, from its relation, similarity and intercourse, will generally pursue the same objects with Massachusetts; Jersey, Delaware, and Maryland, with Pennsylvania.

Dr. *Rush* took notice, that the decay of the liberties of the Dutch republic proceeded from three causes. 1 The perfect unanimity requisite on all occasions. 2. Their obligation to consult their constituents. 3. Their voting by provinces. This last destroyed the equality of representation, and the liberties of Great Britain also, are sinking from the same defect. That a part of our rights is deposited in the hands of our legislatures. There, it was admitted, there should be an equality of representation. Another part of our rights is deposited in the hands of congress—why is it not equally necessary there should be an equal representation there? Were it possible to collect the whole body of the people together, they would determine the questions submitted to them by their majority. Why should not the same majority decide when voting here, by their representatives? The larger colonies are so providentially divided in situation, as to render every fear of their combining visionary. Their interests are different, and their circumstances dissimilar. It is more probable they will become rivals, and leave it in the power of the smaller states to give preponderance to any scale they please. The voting by the number of free inhabitants, will have one excellent effect, that of inducing the colonies to discourage slavery, and to encourage the increase of their free inhabitants.

Mr. *Hopkins* observed, there were four larger, four smaller, and four middle sized colonies. That the four largest would contain more than half the inhabitants of the confederating states, and therefore would govern the others as they should please. That history affords no instance of such a thing as an equal representation. The Germanic body votes by states. The Helvetic body does the same; and so does the Belgic confederacy. That too little is known of the ancient confederations, to say what was their practice.

Mr. *Wilson* thought, that taxation should be in proportion to wealth, but that representation should accord with the number of freemen. That government is a collection or result of the wills of all: that if any government could speak the will of all, it would be perfect; and that, so far as it depart from this, it becomes imperfect. It has been said that congress is a representation of states, not of individuals. I say, that the objects of its care are all the individuals of the states. It is strange that annexing the name of 'state' to ten thousand men, should give them an equal right with forty thousand. This must be the effect of magic, not of reason. As to those matters which are referred to congress, we are not so many states; we are one large state. We lay aside our individuality, whenever we come here. The Germanic body is a burlesque on government: and their practice, on any point, is a sufficient authority and proof that it is wrong. The greatest imperfection in the constitution of the Belgic confederacy, is their voting by provinces. The interest of the whole is constantly sacrificed to that of the small states. The history of the war in the reign of Queen Anne, sufficiently proves this. It is asked, shall nine colonies put it into the power of four, to govern them as they please? I invert the question, and ask, shall two million of people put it in the power of one million, to govern them as they please? It is pretended, too, that the smaller colonies will be in danger from the greater. Speak in honest language and say, the minority will be in danger from the majority. And is there an assembly on earth, where this danger may not be equally pretended? The truth is that our proceedings will then be consentaneous with the interests of the majority, and so they ought to be. The probability is much greater, that the larger states will disagree, than that they will combine. I defy the wit of man to invent a possible case, or to suggest any one thing on earth, which shall be for the interests of Virginia, Pennsylvania and Massachusetts, and which will not also be for the interest of the other states.

These articles, reported July 12, '76, were debated from day to day, and time to time, for two years, were ratified July 9, '78, by ten states, by New-Jersey on the 26th of November of the same year, and by Delaware on the 23rd of February following. Maryland alone held off two years more, acceding to them March 1, '81, and thus closing the obligation.]—*Jefferson's Memoirs.*

[NOTE.]

THE ORIGINAL ARTICLES OF CONFEDERATION.

TO ALL TO WHOM THESE PRESENTS SHALL COME,

We, the undersigned delegates of the states affixed to our names, send greeting.

Whereas, the delegates of the United States of America, in Congress assembled did, on the fifteenth day of November, in the year of our Lord one thousand seven hundred and seventy-seven, and in the second year of the independence of America, agree to certain articles of confederation and perpetual union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the words following, viz:

Articles of confederation and perpetual union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

ART. I. The style of this confederacy shall be " The United States of America."

ART. II. Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in congress assembled.

ART. III. The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare; binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

ART. IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the owner is an inhabitant; provided also that no imposition, duties, or restriction shall be laid by any state, on the property of the United States, or either of them.

If any person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from justice, and be found in any of the United States, he shall, upon demand of the government or executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

ART. V. For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the legislature of each state shall direct, to meet in congress on the first Monday in November in every year; with a power reserved to each state, to recall its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the year.

No state shall be represented in congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the United States, in congress assembled, each state shall have one vote.

Freedom of speech and debate in congress shall not be impeached or questioned in any court, or place out of congress, and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to, and from, and attendance on congress, except for treason, felony, or breach of the peace.

ART. VI. No state, without the consent of the United States in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States in congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation, or alliance whatever

between them, without the consent of the United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the United States in congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the United States in congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the United States, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state: but every state shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp-equipage.

No state shall engage in any war without the consent of the United States in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the United States in congress assembled can be consulted: nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled; unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States in congress assembled shall determine otherwise.

Art. VII. When land forces are raised by any state for the common defence, all officers of, or under the rank of colonel, shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct; and all vacancies shall be filled up by the state which first made the appointment.

Art. VIII. All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any person as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in congress assembled shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states, within the time agreed upon by the United States in congress assembled.

Art. IX. The United States in congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made, whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas—and establishing courts for receiving and determining finally, appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

The United States in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise between two or more states, concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority, or lawful agent of any state in controversy with another, shall present a petition to congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear

the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive; the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress, for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "*well and truly to hear and determine the matter in question, according to the best of* "*his judgment, without favour, affection, or hope of reward:*" provided also that no state shall be deprived of territory for the benefit of the United States.

All controversies concerning the private right of soil, claimed under different grants of two or more states, whose jurisdictions, as they may respect such lands, and the states which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the congress of the United States, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The United States in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the United States—regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated establishing and regulating post-offices from one state to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office—appointing all officers of the land forces, in the service of the United States, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The United States in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "a committee of the states," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses—to borrow money, or emit bills on the credit of the United States, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisitions shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped, shall march to the place appointed, and within the time agreed on by the United States in congress assembled: but if the United States in congress assembled shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped, shall march to the place appointed and within the time agreed on by the United States in congress assembled.

The United States in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in congress assembled.

The congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the journal of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states.

ART. X. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the United States in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the United States assembled is requisite.

ART. XI. Canada acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

ART. XII. All bills of credit emitted, moneys borrowed, and debts contracted by, or under the authority of congress, before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof, the said United States, and the public faith are hereby solemnly pledged.

ART. XIII. Every state shall abide by the determinations of the United States in congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to by a congress of the United States, and be afterwards confirmed by the legislatures of every state.

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union: KNOW YE, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: and we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in congress assembled, on all questions, which by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual.

In witness whereof, we have hereunto set our hands in congress. Done at Philadelphia in the state of Pennsylvania the 9th day of July in the year our Lord 1778, and in the 3d year of the independence of America.

On the part and behalf of the state of *New Hampshire.*
Josiah Bartlett,
J. Wentworth, jr. Aug. 8, 1778.

On the part and behalf of the state of *Massachusetts Bay.*
John Hancock,
Samuel Adams,
Elbridge Gerry,
Francis Dana,
James Lovell,
Samuel Holten.

On the part and behalf of the state of *Rhode Island* and Providence Plantations.
William Ellery,
Henry Marchant,
John Collins.

On the part and behalf of the state of *Connecticut.*
Roger Sherman,
Samuel Huntington,
Oliver Wolcott,
Titus Hosmer,
Andrew Adams.

On the part and behalf of the state of *New York.*
Jas. Duane,
Fra. Lewis,
Wm. Duer,
Gouv. Morris.

On the part and behalf of the state of *New Jersey.*
J. Witherspoon, Nov. 26, 1778,
Nath. Scudder, do.

On the part and behalf of the state of *Pennsylvania.*
Robt. Morris,
Daniel Roberdeau,
Jona. Bayard Smith,
William Clingan,
Jos. Reed, 22d July, 1778.

On the part and behalf of the state of *Delaware.*
Thos. M'Kean, Feb. 13, 1779,
John Dickinson, May 5, 1779,
Nicholas Van Dyke.

On the part and behalf of the state of *Maryland.*
John Hanson, March 1, 1781,
Daniel Carroll, do.

On the part and behalf of the state of *Virginia.*
Richard Henry Lee,
John Banister,
Thomas Adams,
Jno. Harvie,
Francis Lightfoot Lee.

On the part and behalf of the state of *North Carolina.*
John Penn, July 21st, 1778,
Corns. Harnett,
Jno. Williams.

On the part and behalf of the state of *South Carolina.*
Henry Laurens,
William Henry Drayton,
Jno. Matthews,
Richard Hutson,
Thomas Heyward, jun.

On the part and behalf of the state of *Georgia.*
Jno. Walton, 24th July, 1778,
Edwd. Telfair,
Edw. Langworthy.

ADVERTISEMENT.

The first volume of the late edition of the laws of the United States, [1815] compiled under the direction of the late Secretary of State and Attorney General, contains a succinct historical review of the successive public measures, which led to the present organization of the North American Union, from the assembling of the Congress of the colonies on the 5th of September, 1774, to the adoption of the constitution of the United States, and of the subsequent amendments to it, now in force.

The following resolution of the old Congress, adopted on the 21st of February, 1787, contains the authority by which the convention, which formed the constitution, was convoked:

"Whereas there is provision in the articles of confederation and "perpetual union, for making alterations therein, by the assent "of a Congress of the United States, and of the legislatures of "the several states; and whereas experience hath evinced, that "there are defects in the present confederation, as a mean to "remedy which, several of the states, and particularly the state of "New York, by express instructions to their delegates in Congress, "have suggested a convention for the purposes expressed in the "following resolutions; and such convention appearing to be the "most probable mean of establishing in these states a firm nation-"al government—

"*Resolved*, That in the opinion of Congress, it is expedient, "that on the second Monday in May next, a convention of dele-"gates, who shall have been appointed by the several states, be "held at Philadelphia, for the sole and express purpose of revising "the Articles of Confederation, and reporting to Congress and "the several legislatures, such alterations and provisions therein, "as shall, when agreed to in Congress, and confirmed by the states, "render the federal constitution adequate to the exigencies of "government, and the preservation of the union."

The day appointed by this resolution for the meeting of the convention, was *the 2nd Monday in May*, [1787;] but the 25th of that month was the first day upon which a sufficient number of members appeared to constitute a representation of a majority of the states. They then elected George Washington their President, and proceeded to business.

On the 29th of May, Mr. Edmund Randolph presented to the convention 15 resolutions, and Mr. C. Pinckney laid before them the draft of a federal government, which were referred to a committee of the whole; which debated the resolutions, from day to day, until the 13th of June, when the committee of the whole reported to the convention a series of nineteen resolutions, founded upon those which had been proposed by Mr. Randolph.

On the 15th of June, Mr. Patterson submitted to the convention his resolutions, which were referred to a committee of the whole, to whom were also recommitted the resolutions reported by them on the 13th.

On the 19th of June, the committee of the whole reported, that they did not agree to Mr. Patterson's propositions, but reported again the resolutions which had been reported before.

The convention never afterwards went into committee of the whole; but from the 19th of June till the 23d of July were employed in debating the nineteen resolutions reported by the committee of the whole on the 13th of June; some of which were occasionally referred to *grand* committees, of one member from each state, or to select committees of five members.

After passing upon the nineteen resolutions, it was *on the 23d of July*, resolved, "That the proceedings of "the convention for the establishment of a national "government, except what respects the supreme Ex-"ecutive, be referred to a committee for the purpose "of reporting a constitution conformably to the pro-"ceedings aforesaid."

This committee, consisting of five members, and called in the journal "the committee of detail," was appointed *on the 24th of July*; and with the proceedings of the convention, the propositions submitted to the convention, by Mr. Charles Pinckney, on the 29th of May, and by Mr. Patterson, on the 15th of June, were referred to them.

On the 26th of July, a resolution respecting the Executive and two others, offered for the consideration of the convention, were referred to the committee of detail; and the convention adjourned till Monday, the 6th of August, when the committee reported a constitution for the establishment of a national government. This draft formed the general text of debate, from that time till the 8th of September; many additional resolutions, being in the course of the deliberations, proposed, and referred to and reported upon by the same committee of detail, or other committees of eleven, (a member from each state) or of five.

On the 8th of September a committee of five was appointed "to revise the style of and arrange the articles "agreed to by the house."

On the 12th of September, this committee reported the constitution as revised and arranged, and the draft of a letter to Congress. It was ordered that printed copies of the reported constitution should be furnished to the members, and they were brought in the next day.

On the seventeenth day of September, 1787, the convention dissolved itself, by an adjournment without day, after transmitting the plan of constitution which they had prepared to Congress, to be laid before conventions, delegated by the people of the several states, for their assent and ratification.

The last act of the convention, was a resolution that their journal and other papers should be deposited with their president, to be retained by him subject to the order of the Congress, if ever formed under the constitution.

On the 19th of March, 1796, President Washington deposited in the Department of State, three manuscript volumes; one containing in 153 pages, the journal of the federal convention of 1787; one the journal of the proceedings of the same convention, while in committee of the whole, in 28 pages; and one, three pages of lists of yeas and nays, on various questions debated in the

convention; and after an interval of eight blank pages, five other pages of like yeas and nays. There were also two loose sheets, and one half sheet of similar yeas and nays; a printed draft of the constitution as reported on the 6th of August, 1787, with erasures and written interlineations of amendments afterwards adopted; two sheets containing copies of the series of resolutions offered to the convention by Mr. Edmund Randolph, in different stages of amendment, as reported by the committee of the whole; and seven other papers of no importance in relation to the proceedings of the convention.

The volume containing the journal of the convention, was in an incomplete state. The journal of Friday, September 14, and a commencement of that of Saturday, September 15, filled three-fourths of the 153rd page; then terminating abruptly, and were, with the exception of five lines, crossed out with a pen. President Madison, to whom application for that purpose was made, has furnished, from his own minutes, the means of completing the journal, as now published.

The yeas and nays were not inserted in the journals, but were entered partly in a separate volume, and partly on loose sheets of paper. They were taken, not individually, but by states. Instead of publishing them, as they appear in the manuscript, they are now given immediately after each question upon which they were taken.

Gen. Joseph Bloomfield, executor of David Brearley, one of the members of the convention, transmitted to the Department of State, several additional papers, which are included in this publication.

The paper, purporting to be Col. Hamilton's plan of a constitution, is not noticed in the journals. It was not offered by him for discussion, but was read by him, as part of a speech, observing that he did not mean it as a proposition, but only to give a more correct view of his ideas.

The return of the members in the several states, appears to have been an estimate used for the purpose of apportioning the number of members to be admitted from each of the states to the house of representatives.

In order to follow with clear understanding, the course of proceedings of the convention, particular attention is required to the following papers, which, except the third, successively formed the general text of their debates.

1. *May* 29, 1787. *The fifteen resolutions* offered by Mr. Edmund Randolph to the convention, and by them referred to a committee of the whole.
2. *June* 13. *Nineteen resolutions* reported by this committee of the whole, on the 13th, and again on the 19th of June, to the convention.
3. *July* 26. *Twenty-three resolutions,* adopted and elaborated by the convention, in debate upon the above nineteen, reported from the committee of the whole; and on the 23d and 26th of July, referred, together with the plan of Mr. C. Pinckney, and the propositions of Mr. Patterson, to a committee of five, to report a draft of a constitution.
4. *August* 6. *The draft of a plan of constitution* reported by this committee to the convention; and debated from that time till the 12th of September.
5. *September* 13. *Plan of constitution,* brought in by a committee of revision, appointed on the 8th of September, consisting of five members, to revise the style and arrange the articles agreed to by the convention.

The second and fourth of these papers, are among those, deposited by President Washington, at the Department of State.

The first, fourth and fifth, are among those transmitted by General Bloomfield.

The third, is collected from the proceedings of the convention, as they are spread over the journal from June 19th to July 26th.

This paper, together with the plan of Mr. C. Pinckney, a copy of which has been furnished by him, and the propositions of Mr. Patterson, included among the papers forwarded by General Bloomfield, comprise the materials, upon which the first draft was made of the

constitution, as reported by the committee of detail, on the 6th of August.

To the Journal, Acts and Proceedings of the Convention, are added in this publication, the subsequent proceedings of the Congress of the confederation, upon the constitution, reported as the result of their labours; and the acts of ratification by the convention of the several states of the union, by virtue of which it became the supreme law of the land; and also the amendments to it, which have been since adopted and form a part of the constitution. It was thought that this supplement would be, if not essential, at least well adapted to carry into full effect the intentions of Congress in directing the publication; by presenting at one view, the rise, progress, and present condition of the Constitution of the United States.

Department of State, October, 1819.

LIST of the Members of the Federal Convention, which formed the Constitution of the United States.

From			*Attended.*
NEW HAMPSHIRE.	1.	John Langdon,	July 23, 1787
		John Pickering,	
	2.	Nicholas Gilman,	July 23,
		Benjamin West.	
MASSACHUSETTS..		*Francis Dana,*	
		Elbridge Gerry,	May 29,
	3.	Nathaniel Gorham,	May 28,
	4.	Rufus King,	May 25,
		Caleb Strong,	May 28,
RHODE ISLAND.....		[No appointment.]	
CONNECTICUT......	5.	Wm. Sam. Johnson,	June 2,
	6.	Roger Sherman,	May 30,
		Oliver Elsworth,	May 29,
NEW YORK,..........		Robert Yates,	May 25,
	7.	Alexander Hamilton,	do
		John Lansing,	June 2,
NEW JERSEY........	8.	William Livingston,	June 5,
	9.	David Brearley,	May 25,
		William C. Houston,	do
	10.	William Patterson,	do
		John Neilson,	
		Abraham Clark,	
	11.	Jonathan Dayton,	June 21,

State	No.	Name	Date
PENNSYLVANIA	12.	Benjamin Franklin,	May 28, 1787
	13.	Thomas Mifflin,	do
	14.	Robert Morris,	May 25,
	15.	George Clymer,	May 28,
	16.	Thomas Fitzsimons,	May 25,
	17.	Jared Ingersoll,	May 28,
	18.	James Wilson,	May 25,
	19.	Gouverneur Morris,	do
DELAWARE	20.	George Read,	do
	21.	Gunning Bedford, jr.	May 28,
	22.	John Dickinson,	do
	23.	Richard Basset,	May 25,
	24.	Jacob Broom,	do
MARYLAND	25.	James M'Henry,	May 29,
	26.	Dan. of St. Th. Jenifer,	June 2,
	27.	Daniel Carroll,	July 9,
		John Francis Mercer,	Aug. 6,
		Luther Martin,	June 9,
VIRGINIA	28.	George Washington,	May 25,
		Patrick Henry,	(declined.)
		Edmund Randolph,	May 25,
	29.	John Blair,	do
	30.	James Madison, jr.	do
		George Mason,	do
		George Wythe,	do
		James M'Clurg (room of P. Henry)	do
NORTH CAROLINA.		*Richard Caswell,*	(resigned.)
		Alexander Martin,	May 25,
		William R. Davie,	do
	31.	Wm. Blount (room of R. Caswell)	June 20
		Willie Jones,	(declined.)
	32.	Richard D. Spaight,	May 25,
	33.	Hugh Williamson, (in room of W. Jones)	May 25,
SOUTH CAROLINA	34.	John Rutledge,	do
	35.	Charles C. Pinckney,	do
	36.	Charles Pinckney,	do
	37.	Pierce Butler,	do
GEORGIA	38.	William Few,	do
	39.	Abraham Baldwin,	June 11,
		William Pierce,	May 31,
		George Walton,	
		William Houstoun,	June 1,
		Nathaniel Pendleton.	

Those, with numbers before their names, signed the constitution	39
Those, in *Italicks*, never attended,	10
Members who attended, but did not sign the constitution,	16
	65

CREDENTIALS

OF THE MEMBERS OF THE FEDERAL CONVENTION.

State of New Hampshire.—In the year of our Lord 1787.

An Act for appointing deputies from this State to the Convention, proposed to be holden in the city of Philadelphia, in May, 1787, for the purpose of revising the Federal Constitution.

Whereas in the formation of the federal compact, which frames the bond of union of the American states, it was not possible in the infant state of our republic to devise a system which, in the course of time and experience, would not manifest imperfections, that it would be necessary to reform.

And whereas the limited powers, which by the articles of confederation, are vested in the congress of the United States, have been found far inadequate to the enlarged purposes which they were intended to produce. And whereas Congress hath, by repeated and most urgent representations, endeavored to awaken this, and other states of the union, to a sense of the truly critical and alarming situation in which they may inevitably be involved, unless timely measures be taken to enlarge the powers of Congress, that they may be thereby enabled to avert the dangers which threaten our existence as a free and independent people. And whereas this state hath been ever desirous to act upon the liberal system of the general good of the United States, without circumscribing its views to the narrow and selfish objects of partial convenience; and has been at all times ready to make every concession to the safety and happiness of the whole, which justice and sound policy could vindicate

Be it therefore enacted, by the senate and house of representatives, in general court convened, that John Langdon, John Pickering, Nicholas Gilman, and Benjamin West, esquires, be, and hereby are appointed commissioners; they, or any two of them, are hereby authorised and empowered, as deputies from this state, to meet at Philadelphia said convention, or any other place to which the convention may be adjourned, for the purposes aforesaid, there to confer with such deputies as are, or may be appointed by the other states for similar purposes, and with them to discuss and decide upon the most effectual means to remedy the defects of our federal union, and to procure, and secure the enlarged purposes which it was intended to effect, and to report such an act, to the United States in congress, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same.

State of New Hampshire.—In the house of representatives, June 27, 1787. The foregoing bill having been read a third time: voted that it pass to be enacted. Sent up for concurrence. JOHN SPARHAWK, Speaker.

In senate, the same day. This bill having been read a third time: voted that the same be enacted. JOHN SULLIVAN, President.

Copy examined, per JOSEPH PEARSON, Secretary. [L. S.]

Commonwealth of Massachusetts.

By his excellency James Bowdoin, esq., governor of the Commonwealth of Massachusetts.

[L. S.]

To the honorable Francis Dana, Elbridge Gerry, Nathaniel Gorham, Rufus King, and Caleb Strong, esquires, greeting.

Whereas congress did, on the 21st day of February, A. D. 1787, resolve, "That "in the opinion of Congress it is expedient that on the second Monday in May next, "a convention of delegates, who shall have been appointed by the several states, be "held at Philadelphia, for the sole and express purpose of revising the articles of "confederation, and reporting to congress and the several legislatures, such altera- "tions and provisions therein, as shall, when agreed to in congress, and confirmed "by the states, render the federal constitution adequate to the exigencies of gov- "ernment and the preservation of the union." And whereas the general court have constituted and appointed you their delegates to attend and represent this commonwealth in the said proposed convention, and have, by a resolution of theirs of the 10th of March last, requested me to commission you for that purpose.

Now therefore know ye, that in pursuance of the resolutions aforesaid, I do, by these presents, commission you the said Francis Dana, Elbridge Gerry, Nathaniel Gorham, Rufus King and Caleb Strong, esquires, or any three of you, to meet such delegates as may be appointed by the other or any of the other states in the union, to meet in convention at Philadelphia, at the time and for the purposes aforesaid.

In testimony whereof, I have caused the public seal of the commonwealth aforesaid to be hereunto affixed.

Given at the council chamber, in Boston, the ninth day of April, A. D. 1787, and in the 11th year of the independence of the United States of America.

JAMES BOWDOIN.

By his excellency's command.—JOHN AVERY, Jun. Sec'ry.

State of Connecticut.

At a General Assembly of the State of Connecticut, in America, holden at Hartford, [L. S.] on the second Thursday of May, A. D. 1787

An act for appointing delegates to meet in a convention of the states, to be held at Philadelphia, on the second Monday of May, instant.

Whereas the congress of the United States, by their act of the 21st February, 1787, have recommended, that on the second Monday of May inst. a convention of delegates, who shall have been appointed by the several states, be held at Philadelphia, for the sole and express purpose of revising the articles of confederation.

Be it enacted by the governor, council and representatives, in general court assembled, and by the authority of the same, That the honorable William Samuel Johnson, Roger Sherman and Oliver Ellsworth, esquires, be, and they hereby are appointed delegates to attend the said convention, and are requested to proceed to the city of Philadelphia, for that purpose, without delay; and the said delegates, and in case of sickness or accident, such one or more of them as shall attend the said convention, is, and are hereby authorized and empowered to represent this state therein, and to confer with such delegates appointed by the several states, for the purposes mentioned in the said act of congress, that may be present and duly empowered to set in said convention, and to discuss upon such alterations and provisions, agreeable to the general principles of republican government, as they shall think proper to render the federal constitution adequate to the exigencies of government and the preservation of the union; and they are further directed, pursuant to the said act of congress, to report such alterations and provisions as may be agreed to by a majority of the United States represented in convention, to the Congress of the United States, and to the general assembly of this state.

A true copy of record: Examined by

GEORGE WYLLYS, Secretary.

State of New York.

By his excellency George Clinton, Governor of the state of New York, General [L. S.] and commander in chief of all the militia, and admiral of the navy of the same: To all to whom these presents shall come.

It is by these presents certified, that John M'Kesson, who has subscribed the annexed copies of resolutions, is clerk of the assembly of this state.

In testimony whereof, I have caused the privy seal of the said state to be hereunto affixed, this ninth day of May, in the eleventh year of the independence of the said state.

GEO. CLINTON.

State of New York.—In Assembly, February 28, 1787.—A copy of a resolution of the honorable the senate, delivered by Mr. Williams, was read, and is in the words following, viz.

Resolved, If the honorable the assembly concur therein, that three delegates be appointed, on the part of this state, to meet such delegates as may be appointed, on the part of the other states, respectively, on the second Monday in May next, at Philadelphia, for the sole and express purpose of revising the articles of confederation, and reporting to Congress, and to the several legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the several states, render the federal constitution adequate to the exigencies of government, and the preservation of the union; and that in case of such concurrence, the two houses of the legislature will, on Tuesday next, proceed to nominate and appoint the said delegates, in like manner as is directed by the constitution of this state, for nominating and appointing delegates to congress.

Resolved, That this house do concur with the honorable the senate in the said resolution.

In Assembly, March 6, 1787.—Resolved, That the honorable Robert Yates, esq. and Alexander Hamilton and John Lansing, jun. esquires, be, and they are hereby nominated by this house, delegates on the part of this state, to meet such delegates as may be appointed, on the part of the other states, respectively, on the second Monday in May next, at Philadelphia, pursuant to concurrent resolutions of both houses of the legislature, on the 28th ultimo.

Ordered, That Mr. N. Smith deliver a copy of the last preceding resolution to the honorable the senate.

A copy of a resolution of the honorable the senate was delivered by Mr. Vanderbilt, that the senate will immediately meet this house in the assembly chamber, to compare the lists of persons nominated by the senate and assembly, respectively, as delegates, pursuant to the resolutions before mentioned.

The honorable the senate accordingly attended in the assembly chamber, to compare the lists of persons nominated for delegates, as above mentioned.

The list of persons nominated by the honorable the senate, were the honorable Robert Yates, esq. and John Lansing, jun. and Alexander Hamilton, esqrs. and on comparing the lists of the persons nominated by the senate and assembly respectively, it appeared that the same persons were nominated in both lists; thereupon Resolved, that the honorable Robert Yates, John Lansing jun. and Alexander Hamiltons esqrs. be, and they are hereby declared duly nominated and appointed delegates, on the part of this state, to meet such delegates as may be appointed on the part of the other states respectively, on the second Monday in May next, at Philadelphia, for the sole and express purpose of revising the articles of confederation, and reporting to Congress, and to the several legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the several states, render the federal constitution adequate to the exigencies of government, and the preservation of the union.

True extracts from the journals of the assembly.

JOHN M'KESSON, Clerk.

State of New Jersey.

To the hon. David Brearly, William Churchill Houston, William Patterson and John Neilson, esqrs. Greeting.

The council and assembly reposing especial trust and confidence in your integrity, prudence and ability, have, at a joint meeting, appointed you the said David Brearly, William Churchill Houston, William Patterson and John Neilson, esqrs. or any three of you, commissioners, to meet such commissioners, as have been or may be appointed by the other states in the union, at the city of Philadelphia, in the commonwealth of Pennsylvania, on the second Monday in May next, for the purpose of taking into consideration the state of the union, as to trade and other important objects, and of devising such other provisions as shall appear to be necessary to render the constitution of the federal government adequate to the exigencies thereof.

In testimony whereof the great seal of the state is hereunto affixed. Witness, William Livingston, esq. governor, captain-general and commander in chief in and over the state of New Jersey, and territories thereunto belonging, chancellor and ordinary in the same, at Trenton, the 23d day of November, in the year of our Lord 1786, and of our sovereignty and independence the eleventh.

WILLIAM LIVINGSTON.

By his excellency's command, Bowes Reed, Secretary.

The State of New Jersey.

To his excellency William Livingston, and the honorable Abraham Clark, esquires, [L. S.] Greeting:

The council and assembly reposing especial trust and confidence in your integrity, prudence and ability, have, at a joint meeting, appointed you the said William Livingston and Abraham Clark, esqrs. in conjunction with the honorable David Brearly, William Churchill Houston and William Patterson, esqrs., or any three of you, commissioners, to meet such commissioners as have been appointed by the other states in the union, at the city of Philadelphia, in the commonwealth of Pennsylvania, on the second Monday of this present month, for the purpose of taking into consideration the state of the union, as to trade and other important objects, and

of devising such other provisions as shall appear to be necessary, to render the constitution of the federal government adequate to the exigencies thereof.

In testimony whereof the great seal of the state is hereunto affixed. Witness, William Livingston, esq. governor, captain-general and commander in chief in and over the state of New Jersey, and territories thereunto belonging, chancellor and ordinary in the same, at Burlington, the 18th day of May, in the year of our Lord 1787, and of our sovereignty and independence the eleventh.

WIL. LIVINGSTON.

By his excellency's command, Bowes Reed, Secretary.

State of New Jersey.

To the honorable Jonathan Dayton, Esq.

The council and assembly, reposing especial trust and confidence in your integrity, prudence and ability, have, at a joint meeting, appointed you, the said Jonathan Dayton, esq. in conjunction with his excellency William Livingston, the honorable David Brearly, William Churchill Houston, William Patterson and Abraham Clark esqrs. or any three of you, commissioners, to meet such commissioners as have been appointed by the other states in the union, at the city of Philadelphia, in the commonwealth of Pennsylvania, for the purpose of taking into consideration the state of the union, as to trade and other important objects, and of devising such other provisions as shall appear to be necessary to render the constitution of the federal government adequate to the exigencies thereof.

In testimony whereof the great seal of the state is hereunto affixed. Witness, Robert Lettice Hooper, esq. vice-president, captain-general and commander in chief in and over the state of New Jersey, and territories thereunto belonging, chancellor and ordinary in the same, at Burlington, the fifth day of June, in the year of our Lord 1787, and of our sovereignty and independence the eleventh.

ROBERT L. HOOPER.

By his honor's command, Bowes Reed, Secretary.

Commonwealth of Pennsylvania.

An Act appointing Deputies to the convention intended to be held in the city of Philadelphia, for the purpose of revising the Federal Constitution.

Sec. 1. Whereas the general assembly of this commonwealth, taking into their serious consideration the representations heretofore made to the legislatures of the several states in the union, by the United States in Congress assembled, and also weighing the difficulties under which the confederated states now labor, are fully convinced of the necessity of revising the federal constitution, for the purpose of making such alterations and amendments as the exigencies of our public affairs require. And whereas the legislature of the state of Virginia have already passed an act of that commonwealth, empowering certain commissioners to meet at the city of Philadelphia, in May next, a convention of commissioners or deputies from the different states; and the legislature of this state are fully sensible of the important advantages which may be derived to the United States, and every of them, from co-operating with the commonwealth of Virginia, and the other states to the confederation, in the said design.

Sec. 2. Be it enacted, and it is hereby enacted by the representatives of the freemen of the commonwealth of Pennsylvania in general assembly met, and by the authority of the same, That Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimons, James Wilson and Gouverneur Morris, esqrs. are hereby appointed deputies from this state, to meet in the convention of the deputies of the respective states of North America, to be held at the city of Philadelphia, on the 2d day of the month of May next; and the said Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimons, James Wilson and Gouverneur Morris, esqrs. or any four of them, are hereby constituted and appointed deputies from this state, with powers to meet such deputies as may be appointed and authorized by the other states, to assemble in the said convention, at the city aforesaid, and join with them in devising, deliberating on and discussing all such alterations, and further provisions, as may be necessary to render the federal constitution fully adequate to the exigencies of the union, and in reporting such act or acts, for that purpose, to the United States in Congress assembled, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same.

Sec. 3. And be it further enacted by the authority aforesaid, That in case any of the said deputies hereby nominated, shall happen to die, or to resign his or their said appointment or appointments, the supreme executive council shall be, and hereby are empowered and required, to nominate and appoint other person or persons, in lieu of him or them so deceased, or who has or have so resigned, which person or persons, from and after such nomination and appointment, shall be, and hereby are declared to be vested with the same powers respectively, as any of the deputies nominated and appointed by this act, is vested with by the same: Provided always, that the council are not hereby authorized, nor shall they make any such nomination or appointment, except in vacation and during the recess of the general assembly of this state. Signed by order of the house.

[L. S.] THOMAS MIFFLIN, Speaker.

Enacted into a law at Philadelphia, on Saturday, December 30th, in the year of our Lord 1786. PETER ZACHARY LLOYD,
Clerk of the General Assembly

I Matthew Irwine, esq. master of the rolls for the state of Pennsylvania, do certify the preceding writing to be a true copy (or exemplification) of a certain act of assembly lodged in my office.

In witness whereof, I have hereunto set my hand and seal of office, the 15th May,
[L. S.] A. D. 1787. MATTHEW IRWINE, M. R.

A supplement to the act entitled "An act appointing deputies to the convention intended to be held in the city of Philadelphia, for the purpose of revising the federal constitution."

Sec. 1st. Whereas by the act to which this act is a supplement, certain persons were appointed as deputies from this state to sit in the said convention. And whereas it is the desire of the general assembly, that his excellency Benjamin Franklin, esq, president of this state, should also sit in the said convention, as deputy from this state; therefore,

Sec. 2d Be it enacted, and it is hereby enacted by the representatives of the freemen of the commonwealth of Pennsylvania, in general assembly met, and by the authority of the same, that his excellency Benjamin Franklin, esq. be, and he is, hereby appointed and authorized to sit in the said convention as a deputy from this state, in addition to the persons heretofore appointed; and that he be, and he hereby is invested with like powers and authorities as are invested in the said deputies or any of them. Signed by order of the house,

THOMAS MIFFLIN, Speaker.

Enacted into a law at Philadelphia, on Wednesday the 28th day of March, in the year of our Lord 1787. PETER ZACHARY LLOYD,
Clerk of the General Assembly.

I Matthew Irwine, esq. master of the rolls for the state of Pennsylvania, do certify the above to be a true copy (or exemplification) of a supplement to a certain act of assembly, which supplement is lodged in my office.

In witness whereof, I have hereunto set my hand and seal of office, the 15th May
[L. S.] A. D. 1787. MATTHEW IRWINE, M. R.

Delaware.

His excellency Thomas Collins, esq. president, captain-general and commander in chief of the Delaware state: To all to whom these presents shall come,
[L. S.] Greeting: Know ye, that among the laws of the said state, passed by the general assembly of the same, on the 3d day of February, in the year of our Lord 1787, it is thus enrolled:

In the eleventh year of the independence of the Delaware State:

An act appointing deputies from this state to the convention proposed to be held in the city of Philadelphia, for the purpose of revising the federal constitution.

Whereas the general assembly of this state are fully convinced of the necessity of revising the federal constitution, and adding thereto such further provisions, as may render the same more adequate to the exigencies of the union: And whereas the legislature of Virginia have already passed an act of that commonwealth, appointing and authorizing certain commissioners to meet at the city of Philadelphia, in May next, a convention of commissioners or deputies from the different states: and this state being willing and desirous of co-operating with the commonwealth of Virginia and the other states in the confederation, in so useful a design.

Be it therefore enacted by the general assembly of Delaware, That George Read, Gunning Bedford, John Dickinson, Richard Basset and Jacob Broom, esqrs. are hereby appointed deputies from this state to meet in the convention of the deputies of other states, to be held at the city of Philadelphia, on the 2d day of May next: And the said George Read, Gunning Bedford, John Dickinson, Richard Basset and Jacob Broom, esqrs. or any three of them, are hereby constituted and appointed deputies from this state, with powers to meet such deputies as may be appointed and authorized by the other states to assemble in the said convention at the city aforesaid, and to join with them in devising, deliberating on, and discussing such alterations and further provisions as may be necessary to render the federal constitution adequate to the exigencies of the union; and in reporting such act or acts for that purpose to the United States in Congress assembled, as when agreed to by them, and duly confirmed by the several states, may effectually provide for the same. So always and provided, that such alterations or further provisions, or any of them, do not extend to that part of the 5th article of the confederation of the said states, finally ratified on the first day of March, in the year 1781, which declares that, "In "determining questions in the United States in congress assembled, each state shall "have one vote."

And be it enacted, That in case any of the said deputies hereby nominated, shall happen to die, or to resign his or their appointment, the president or commander in chief, with the advice of the privy council, in the recess of the general assembly, is hereby authorized to supply such vacancies.

Signed by order of the house of assembly.
JOHN COOK, Speaker.
Signed by order of the council.
GEO. CRAGHED, Speaker.

Passed at Dover, February 3, 1787.

All and singular which premises by the tenour of these presents, I have caused to be exemplified. In testimony whereof, I have hereunto subscribed my name, and caused the great seal of the said state to be affixed to these presents, at New Castle, the 2d day of April, in the year of our Lord 1787, and in the 11th year of the independence of the United States of America. THOMAS COLLINS.

Attest—James Booth, Secretary.

State of Maryland.

An act for the appointment of, and conferring powers in deputies from this state to the federal convention.

Be it enacted by the general assembly of Maryland, That the honorable James M'Henry, Daniel of Saint Thomas Jenifer, Daniel Carroll, John Francis Mercer, and Luther Martin, esqrs. be appointed and authorized on behalf of this state, to meet such deputies as may be appointed and authorized by any other of the United States, to assemble in convention at Philadelphia, for the purpose of revising the federal system, and to join with them in considering such alterations and further provisions as may be necessary to render the federal constitution adequate to the exigencies of the union; and in reporting such an act for that purpose, to the United States in Congress assembled, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same; and the said deputies, or such of them as shall attend the said convention, shall have full power to represent this state for the purposes aforesaid; and the said deputies are hereby directed to report the proceedings of the said convention, and any act agreed to therein, to the next session of the general assembly of this state.

By the house of delegates, May 26, 1787. Read and assented to.
By order, **WM. HARWOOD, Clerk.**
True copy from the original. **WM. HARWOOD, Clerk H. D.**

By the senate, May 26, 1787. Read and assented to.
By order, **J. DORSEY, Clerk.**
True copy from the original. **J. DORSEY, Clerk Senate.**

W. SMALLWOOD.

Commonwealth of Virginia.

General Assembly begun and held at the public buildings in the city of Richmond, on Monday the 16th day of October, in the year of our Lord 1786.

An act for appointing deputies from this commonwealth to a convention proposed to be held in the city of Philadelphia, in May next, for the purpose of revising the federal constitution.

Whereas the commissioners who assembled at Annapolis, on the 14th day of September last, for the purpose of devising and reporting the means of enabling Congress to provide effectually for the commercial interests of the United States, have represented the necessity of extending the revision of the federal system to all its defects, and have recommended that deputies for that purpose be appointed by the several legislatures, to meet in convention, in the city of Philadelphia, on the 2d day of May next, a provision which was preferable to a discussion of the subject in Congress, where it might be too much interrupted by the ordinary business before them, and where it would besides be deprived of the valuable counsels of sundry individuals who are disqualified by the constitution or laws of particular states, or restrained by peculiar circumstances from a seat in that assembly: And whereas the general assembly of this commonwealth taking into view the actual situation of the confederacy, as well as reflecting on the alarming representations made, from time to time, by the United States in Congress, particularly in their act of the 15th day of February last, can no longer doubt that the crisis is arrived at which the good people of America are to decide the solemn question, whether they will by wise and magnanimous efforts, reap the just fruits of that independence which they have so gloriously acquired, and of that union which they have cemented with so much of their common blood, or whether by giving way to unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the revolution, and furnish to its enemies an eventful triumph over those by whose virtue and valor it has been accomplished: and whereas the same noble and extended policy, and the same fraternal and affectionate sentiments which originally determined the citizens of this commonwealth to unite with their brethern of the other states in establishing a federal government, cannot but be felt with equal force now as motives to lay aside every inferior consideration, and to concur in such farther concessions and provisions as may be necessary to secure the great objects for which that government was instituted, and to render the United States as happy in peace as they have been glorious in war.

Be it therefore enacted by the general assembly of the commonwealth of Virginia, That seven commissioners be appointed by joint ballot of both houses of assembly, who, or any three of them, are hereby authorized as deputies from this commonwealth, to meet such deputies as may be appointed and authorized by other states, to assemble in convention at Philadelphia as above recommended, and to join with them in devising and discussing all such alterations and farther provisions as may be necessary to render the federal constitution adequate to the exigencies of the union; and in reporting such an act for that purpose to the United States in Congress, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same.

And be it further enacted, That in case of the death of any of the said deputies, or of their declining their appointments, the executive are hereby authorized to supply such vacancies. And the governor is requested to transmit forthwith a copy of this act to the United States in Congress, and to the executives of each of the states in the union. (Signed)

JOHN JONES, Speaker of the Senate.
JOSEPH PRENTIS, speaker of the House of Delegates.

A true copy from the enrolment.—John Beckley, clerk H. D.

In the House of Delegates.

Monday, the 4th of December, 1786.

The house, according to the order of the day, proceeded, by joint ballot with the senate, to the appointment of seven deputies, from this commonwealth, to a convention proposed to be held in the city of Philadelphia, in May next, for the purpose of revising the federal constitution; and the members having prepared tickets with the names of the persons to be appointed, and deposited the same in the ballot boxes, Mr. Corbin, Mr. Matthews, Mr. David Stuart, Mr. George Nicholas, Mr. Richard Lee, Mr. Wills, Mr. Thomas Smith, Mr. Goodall, and Mr. Turberville,

were nominated a committee to meet a committee from the senate, in the conference chamber, and jointly with them to examine the ballot boxes, and report to the house on whom the majority of the votes should fall. The committee then withdrew, and after some time returned into the house, and reported that the committee had, according to order, met a committee from the senate, in the conference chamber, and jointly with them examined the ballot boxes, and found a majority of votes in favor of George Washington, Patrick Henry, Edmund Randolph, John Blair, James Madison, George Mason and George Wythe, esqrs.

Extract from the journal. JOHN BECKLEY, clerk house Delegates.
Attest.—John Beckley, clerk H. D.

In the House of Senators.
Monday, the 4th of December, 1786.

The senate, according to the order of the day, proceeded, by joint ballot with the house of delegates, to the appointment of seven deputies, from this commonwealth, to a convention proposed to be held in the city of Philadelphia, in May next for the purpose of revising the federal constitution; and the members having prepared tickets, with the names of the persons to be appointed, and deposited the same in the ballot-boxes, Mr. Anderson, Mr. Nelson and Mr. Lee, were nominated a committee to meet a committee from the house of delegates, in the conference chamber, and jointly with them to examine the ballot-boxes, and report to the house on whom the majority of votes should fall. The committee then withdrew, and after some time returned into the house and reported, that the committee had, according to order, met a committee from the house of delegates, in the conference chamber, and jointly with them examined the ballot-boxes, and found a majority of votes in favor of George Washington, Patrick Henry, Edmund Randolph, John Blair, James Madison, George Mason and George Wythe, esqrs.

Extract from the journal. JOHN BECKLEY, clerk H. D.
Attest—H. Brook, clerk S.

[L. S.] *Virginia to wit.*

I do hereby certify and make known, to all whom it may concern, That John Beckley, Esq. is clerk of the house of delegates, for this commonwealth, and the proper officer for attesting the proceedings of the general assembly of the said commonwealth, and that full faith and credit ought to be given to all things attested by the said John Beckley, Esq. by virtue of his office aforesaid.

Given under my hand, as governor of the commonwealth of Virginia, and under the seal thereof, at Richmond, this fourth day of May, 1787.

EDM. RANDOLPH.

[L. S.] *Virginia, to wit.*

I do hereby certify, that Patrick Henry, Esq. one of the seven commissioners, appointed by joint ballot of both houses of assembly of the commonwealth of Virginia, authorized as a deputy therefrom, to meet such deputies as might be appointed and authorized by other states, to assemble in Philadelphia, and to join with them in devising and discussing all such alterations and further provisions, as might be necessary to render the federal constitution adequate to the exigencies of the union, and in reporting such an act for that purpose to the United States in Congress, as when agreed to by them, and duly confirmed by the several states, might effectually provide for the same, did decline his appointment aforesaid; and thereupon in pursuance of an act of the general assembly of the said commonwealth, entitled, "An act for appointing deputies from this commonwealth, to a convention proposed to be held in the city of Philadelphia, in May next, for the purpose of revising the federal constitution," I do hereby with the advice of the council of state, supply the said vacancy by nominating James M'Clurg, Esq. a deputy for the purposes aforesaid.

Given under my hand, as governor of the said commonwealth, and under the seal thereof, this second day of May, in the year of our Lord 1787.

EDM. RANDOLPH.

The State of North Carolina.

To the Honorable Alexander Martin, Esq. Greeting.

Whereas our general assembly, in their late session, holden at Fayette-Ville, by adjournment, in the month of January last, did by joint ballot of the senate and house of commons, elect Richard Caswell, Alexander Martin, William Richardson Davie, Richard Dobbs Spaight and Willie Jones, Esqrs. deputies to attend a convention of delegates from the several United States of America, proposed to be held at the city of Philadelphia, in May next, for the purpose of revising the federal constitution.

We do therefore, by these presents, nominate, commissionate and appoint you the said Alexander Martin, one of the deputies for and in behalf, to meet with our other deputies at Philadelphia, on the first day of May next, and with them, or any two of them, to confer with such deputies as may have been, or shall be appointed by the other states, for the purpose aforesaid: To hold, exercise and enjoy the appointment aforesaid, with all powers, authorities and emoluments to the same belonging, or in any wise appertaining, you conforming, in every instance, to the act of our said assembly under which you are appointed.

Witness, Richard Caswell, Esq. our governour, captain-general and commander in chief, under his hand and our seal, at Kinston, the 24th day of February, in the eleventh year of our independence, A. D. RICH. CASWELL.

By His Excellency's command. Winston Caswell, P. Sec'ry. [L. S.]

The State of North Carolina.

To the Honorable William Richardson Davie, Esq. Greeting.

Whereas our general assembly in their late session, holden at Fayette-Ville, by adjournment, in the month of January last, did by joint ballot of the senate and house of commons, elect Richard Caswell, Alexander Martin, William Richardson Davie, Richard Dobbs Spaight and Willie Jones, Esqrs deputies to attend a convention of delegates from the several United States of America, proposed to be held in the city of Philadelphia, in May next, for the purpose of revising the federal constitution.

We do therefore, by these presents, nominate, commissionate and appoint you the said William Richardson Davie, one of the deputies for and in our behalf, to meet with other deputies at Philadelphia, on the first day of May next, and with them, or any two of them, to confer with such deputies as may have been, or shall be appointed by the other states, for the purpose aforesaid: To hold, exercise and enjoy the said appointment, with all powers, authorities and emoluments to the same belonging, or in any wise appertaining, you conforming, in every instance, to the act of our said assembly under which you are appointed.

Witness, Richard Caswell, Esq. our governor, captain-general and commander in chief, under his hand and our great seal, at Kinston, the 24th day of February, in the eleventh year of our independence, Anno dom. 1787.

RICH. CASWELL.

By His Excellency's command. Winston Caswell, P. Sec'ry. [L. S.]

The State of North Carolina.

To the Honorable Richard Dobbs Spaight, Esq. Greeting.

Whereas our general assembly in their late session, holden at Fayette-Ville, by adjournment, in the month of January last, did by joint ballot of the senate and house of commons, elect Richard Caswell, Alexander Martin, William Richardson Davie, Richard Dobbs Spaight and Willie Jones, Esqrs. deputies to attend a convention of delegates from the several United States of America, proposed to be held in the city of Philadelphia, in May next, for the purpose of revising the federal constitution.

We do therefore, by these presents, nominate, commissionate and appoint you the said Richard Dobbs Spaight, one of the deputies for and in behalf of us, to meet with our other deputies at Philadelphia, on the first day of May next, and with them, or any two of them, to confer with such deputies as may have been, or shall be appointed by the other states, for the purposes aforesaid: To hold, exercise and enjoy the said appointment, with all powers, authorities and emoluments to the same incident and belonging, or in any wise appertaining, you con-

forming, in every instance, to the act of our said assembly under which you are appointed.

Witness, Richard Caswell, Esq. our governour, captain-general and commander in chief, under his hand and our great seal, at Kinston, the 14th day of April, in the eleventh year of our independence, Anno Dom. 1827.

RICH. CASWELL.

By His Excellency's command. Winston Caswell. P. Sec'ry. [L. S.]

State of North Carolina.

His Excellency Richard Caswell, Esq. Governour, Captain-General and Commander in Chief in and over the State aforesaid.

To all to whom these presents shall come, Greeting.

Whereas by an act of the general assembly of the said state, passed the 6th day of January last, entitled, "An act for appointing deputies from this state to a con-"vention proposed to be held in the city of Piladelphia, in May next, for the pur-"pose of revising the federal constitution," among other things it is enacted, "That five commissioners be appointed by joint ballot of both houses of assembly, "who, or any three of them, are hereby authorized as deputies from this state, to "meet at Philadelphia, on the 1st day of May next, then and there to meet and "confer with such deputies as may be appointed by the other states for similar pur-"poses, and with them to discuss and decide upon the most effectual means to re-"move the defects of our federal union, and to procure the enlarged purposes "which it was intended to effect; and that they report such an act to the general "assembly of this state, as, when agreed to by them, will effectually provide for "the same:" And it is by the said act further enacted, "That in case of the "death or resignation of any of the deputies, or of their declining their appoint-"ments, his excellency the governour, for the time being, is hereby authorized to "supply such vacancies." And whereas in consequence of the said act, Richard Caswell, Alexander Martin, William Richardson Davie, Richard Dobbs Spaight and Willie Jones, Esqrs. were by joint ballot of the two houses of assembly, elected deputies for the purposes aforesaid: And Whereas the said Richard Caswell hath resigned his said appointment as one of the deputies aforesaid;

Now know ye, That I have appoin ed, and by these presents do appoint the honorable William Blount, Esq. one of the deputies to represent this state in the convention aforesaid, in the room and stead of the aforesaid Richard Caswell, hereby giving and granting to the said William Blount, the same powers, privileges and emoluments which the said Richard Caswell would have been vested with or entitled to, had he continued in the appointment aforesaid.

Given under my hand and the great seal of the state, at Kinston, the 23d day of April, Anno Dom. 1787, and in the eleventh year of American independence.

RICH. CASWELL.

By His Excellency's command. Winston Caswell, P. Sec'ry. [L. S.]

State of North Carolina.

His Excellency Richard Caswell, Esq. Governour, Captain-General and Commander in Chief in and over the State aforesaid.

To all to whom these presents shall come, Greeting.

Whereas by an act of the general assembly of the said state, passed the 6th day of January last, entitled, "An act for appointing deputies from this state to a con-"vention proposed to be held in the city of Phiadelphia, in May next, for the "purpose of revising the federal constitution," among other things it is enacted, "That five commissioners be appointed by joint ballot of both houses of assembly, "who, or any three of them, are hereby authorized as deputies from this state, to "meet at Philadelphia, on the first day of May next, then and there to meet and "confer with such deputies as may be appointed by the other states for similar "purposes, and with them to discuss and decide upon the most effectual means to "remove the defects of our federal union, and to procure the enlarged purposes "which it was intended to effect, and that they report such an act to the general "assembly of this state, as, when agreed to by them, will effectually provide for "the same." And it is by the said act further enacted, "That in case of the death "or resignation of any of the deputies, or their declining their appointments, his "excellency the governour, for the time being, is hereby authorized to supply such "vacancies."

And whereas in consequence of the said act, Richard Caswell, Alexander Martin, William Richardson Davie, Richard Dobbs Spaight, and Willie Jones, Esqrs. were by joint ballot of the two houses of assembly elected deputies for the purpose aforesaid. And whereas the said Willie Jones hath declined his appointment as one of the deputies aforesaid.

Now know ye, That I have appointed, and by these presents do appoint the honourable Hugh Williamson, Esq. one of the deputies to represent this state in the convention aforesaid, in the room and stead of the aforesaid Willie Jones, hereby giving and granting to the said Hugh Williamson the same powers, privileges and emoluments which the said Willie Jones would have been vested with and entitled to, had he acted under the appointment aforesaid.

Given under my hand and the great seal of the state, at Kinston, the 3d day of April, Anno Dom. 1787, and in the eleventh year of American independence.

RICH. CASWELL.

By His Excellency's command. Dallam Caswell, Pro. Sec'ry.

State of South Carolina.

By His Excellency Thomas Pinckney, Esq. Governor and Commander in Chief, in and over the State aforesaid.

To the Honourable John Rutledge, Esq. Greeting.

By virtue of the power and authority in me vested by the legislature of this state, in their act passed the 8th day of March last, I do hereby commission you the said John Rutledge, as one of the deputies appointed from this state, to meet such deputies or commissioners as may be appointed and authorized by other of the United States to assemble in convention, at the city of Philadelphia, in the month of May next, or as soon thereafter as may be, and to join with such deputies or commissioners, (they being duly authorized and empowered) in devising and discussing all such alterations, clauses, articles and provisions, as may be thought necessary to render the federal constitution entirely adequate to the actual situation and future good government of the confederated states; and that you, together with the said deputies or commissioners, or a majority of them who shall be present, (provided the state be not represented by less than two) do join in reporting such an act to the United States in Congress assembled, as when approved and agreed to by them, and duly ratified and confirmed by the several states, will effectually provide for the exigencies of the union.

Given under my hand and the great seal of the state, in the city of Charleston, this 10th day of April, in the year of our Lord 1787, and of the sovereignty and independence of the United States of America the eleventh.

THOMAS PINCKNEY.

By His Excellency's command. Peter Freneau, Sec'ry. [L. S.]

State of South Carolina,

By His Excellency Thomas Pinckney, Esq. Governor and Commander in Chief, in and over the State aforesaid.

To the Honourable Charles Pinckney, Esq. Greeting.

By virtue of power and authority in me vested by the legislature of this state, in their act passed the 8th day of March last, I do hereby commission you the said Charles Pinckney, as one of the deputies appointed from this state, to meet such deputies or commissioners as may be appointed and authorized by other of the United States, to assemble in convention at the city of Philadelphia, in the month of May next, or as soon thereafter as may be, and to join with such deputies or commissioners, (they being duly authorized and empowered) in devising and discussing all such alterations, clauses, articles and provisions, as may be thought necessary to render the federal constitution entirely adequate to the actual situation and future good government of the confederated states; and that you, together with the said deputies or commissioners, or a majority of them who shall be present, (provided the state be not represented by less than two) do join in reporting such an act to the United States in Congress assembled, as when approved and agreed to by them, and duly ratified and confirmed by the several states, will effectually provide for the exigencies of the union.

Given under my hand, and the great seal of the state, in the city of Charleston, this 10th day of April, in the year of our Lord 1787, and of the sovereignty and independence of the United States of America the eleventh.

THOMAS PINCKNEY.

By His Excellency's command. Peter Freneau, Sec'ry. [L. S.]

State of South Carolina.

By His Excellency Thomas Pinckney, Esq. Governor and Commander in Chief, in and over the State aforesaid.

To the Honourable Charles Cotesworth Pinckney, Esq. Greeting.

By virtue of the power and authority in me vested by the legislature of this state, in their act passed the 8th day of March last, I do hereby commission you the said Charles Cotesworth Pinckney, as one of the deputies appointed from this state, to meet such deputies or commissioners as may be appointed and authorized by other of the United States, to assemble in convention at the city of Philadelphia, in the month of May next, or as soon thereafter as may be, and to join with such deputies or commissioners, (they being duly authorized and empowered) in devising and discussing all such alterations, clauses, articles and provisions, as may be thought necessary to render the federal constitution entirely adequate to the actual situation and future good government of the confederated states; together with the said deputies or commissioners, or a majority of them who shall be present, (provided the state be not represented by less than two) do join in reporting such an act to the United States in Congress assembled, as when approved and agreed to by them; and duly ratified and confirmed by the several states, will effectually provide for the exigencies of the union.

Given under my hand, and the great seal of the state, in the city of Charleston, this 10th day of April, in the year of our Lord 1787, and of the sovereignty and independence of the United States of America the eleventh.

THOMAS PINCKNEY.

By His Excellency's command. Peter Freneau, Sec'ry. [L. S.]

State of South Carolina.

By His Excellency Thomas Pinckney, Esq. Governor and Commander in Chief, in over the State aforesaid.

To the Honourable Pierce Butler, Esq. Greeting.

By virtue of the power and authority in me vested by the legislature of this state, in their act passed the 8th day of March last, I do hereby commission you the said Pierce Butler, as one of the deputies appointed from this state to meet such deputies or commissioners as may be appointed or authorized by other of the United States, to assemble in convention at the city of Philadelphia, in the month of may next, or as soon thereafter as may be, and to join with such deputies or commissioners, (they being duly authorized and empowered) in devising and discussing all such alterations, clauses, articles and provisions, as may be thought necessary to render the federal constitution entirely adequate to the actual situation and future good government of the confederated states; and that you, together with the said deputies or commissioners, or a majority of them who shall be present, (provided the state be not represented by less than two) do join in reporting such an act to the United States in Congress assembled, as when approved and agreed to by them, and duly ratified and confirmed by the several states, will effectually provide for the exigencies of the union.

Given under my hand, and the great seal of the state, in the city of Charleston, this 10th day of April, in the year of our Lord 1787, and of the sovereignty and independence of the United States of America the eleventh.

THOMAS PINCKNEY.

By His Excellency's command. Peter Freneau, Sec'ry. [L. S.]

Georgia.

By the honorable George Mathews, esq. captain-general, governor and commander in chief, in and over the state aforesaid.

To all to whom these presents shall come, Greeting.

Know ye, That John Milton, esq. who hath certified the annexed copy of an ordinance, entitled "An ordinance for the appointment of deputies from this state, for the purpose of revising the federal constitution," is secretary of the said state, in whose office the archives of the same are deposited: Therefore, all due faith, credit and authority, are and ought to be had and given the same.

GEO. MATHEWS [L. S.]

In testimony whereof, I have hereunto set my hand, and caused the great seal of the said state to be put and affixed; at Augusta, this 24th day of April, in the year of our Lord 1787, and of our sovereignty and independence the eleventh.

By his honor's command.—J. Milton.

An ordinance for the appointment of deputies from this state, for the purpose of revising the federal constitution.

Be it ordained, by the representatives of the freemen of the state of Georgia, in general assembly met, and by authority of the same, that William Few, Abraham Baldwin, William Pierce, George Walton, William Houstoun, and Nathaniel Pendleton, esqrs. be, and they are hereby appointed commissioners, who, or any two or more of them, are hereby authorized as deputies from this state, to meet such deputies as may be appointed and authorized by other states, to assemble in convention at Philadelphia, and to join with them in devising and discussing all such alterations and farther provisions as may be necessary to render the federal constitution adequate to the exigencies of the union, and in reporting such an act for that purpose to the United States in Congress assembled, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same. In case of the death of any of the said deputies, or of their declining their appointments, the executive are hereby authorized to supply such vacancies.

By order of the house.

(Signed) WM. GIBBONS, Speaker.

Augusta, the 10th February, 1787.

GEORGIA. Secretary's Office.

The above is a true copy from the original ordinance deposited in my office.

Augusta, 24th April, 1787. J. MILTON, Secretary.

The state of Georgia, by the grace of God, free, sovereign and independent.

To the honorable William Few, esq.

Whereas you the said William Few, are in and by an ordinance of the general assembly of our said state, nominated and appointed a deputy to represent the same in a convention of the United States, to be assembled at Philadelphia, for the purposes of devising and discussing all such alterations and farther provisions as may be necessary to render the federal constitution adequate to the exigencies of the union.

Geo. Mathews. [L. S.]

You are therefore hereby commissioned to proceed on the duties required of you in virtue of the said ordinance.

Witness our trusty and well beloved George Mathews, esq our captain general, governor and commander in chief, under his hand and our great seal, this 17th day of April, in the year of our Lord 1787, and of our sovereignty and independence the eleventh.

By his honor's command. J. MILTON, Secretary.

The state of Georgia, by the grace of God, free, sovereign and independent.

To the honorable William Pierce, esq.

G. Mathews. [L. S.]

Whereas you the said William Pierce, are in and by an ordinance of the the general assembly of our said state, nominated and appointed a deputy to represent the same in a convention of the United States, to be assembled at Philadelphia, for the purpose of devising and discussing all such alterations and further provisions as may be necessary to render the federal constitution, adequate to the exigencies of the union.

You are therefore hereby commissioned to proceed on the duties required of you n virtue of the said ordinance.

Witness our trusty and well beloved George Mathews, esq. our captain-general governor and commander in chief, under his hand and our great seal, at Augusta, this 17th day of April, in the year of our Lord 1787, and of our sovereignty and independence the eleventh.

By his honor's command, J. MILTON, Secretary.

The state of Georgia, by the grace of God, free, sovereign and independent.

To the honorable William Houstoun, esq.

G. Mathews. [L. S.]

Whereas you the said William Houstoun, are in and by an ordinance of the general assembly of our said state, nominated and appointed a delegate to represent the same in a convention of the United States, to be assembled at Philadelphia, for the purposes of devising and discussing all such alterations and farther provisions as may be necessary to render the federal constitution adequate to the exigencies of the union.

You are therefore hereby commissioned to proceed on the duties required of you in virtue of the said ordinance.

Witness our trusty and well beloved George Mathews, esq. our captain-general governor and commander in chief, under his hand and our great seal at Augusta, this 17th day of April, in the year of our Lord 1787, and of our sovereignty and independence the eleventh.

By his honor's command J. MILTON, Secretary.

JOURNAL OF THE FEDERAL CONVENTION.

On Monday, the 14th of May, A. D. 1787, and in the eleventh year of the independence of the United States of America, at the state house in the city of *Philadelphia*, in virtue of appointments from their respective states, sundry deputies to the federal convention appeared; but a majority of the states not being represented, the members present adjourned, from day to day, until Friday, the 25th of the said month, when, in virtue of the said appointments, appeared from the states of

Massachusetts,
The Honorable Rufus King, Esq.

New York,
The Hon. Robert Yates, and
Alexander Hamilton, Esqrs.

New Jersey,
The Hon. David Brearley,
William Churchill Houston, and
William Patterson, Esqrs.

Pennsylvania,
The Hon. Robert Morris,
Thomas Fitzsimons,
James Wilson, and
Gouverneur Morris, Esqrs.

Delaware,
The Hon. George Read,
Richard Basset, and
Jacob Broom, Esqrs.

Virginia,
His Excell'y G. Washington, Esq
His Excell'y E. Randolph, Esq.
The Honorable John Blair,
James Madison,
George Mason,
George Wythe, and
James M'Clurg, Esqrs.

North Carolina,
The Hon. Alexander Martin,
William Richardson Davie,
Richard Dobbs Spaight, and
Hugh Williamson, Esqrs.

South Carolina,
The Hon. John Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney, and
Pierce Butler, Esqrs.

Georgia,
The Hon. William Few, Esq.

It was moved by the Honorable Robert Morris, Esq. one of the deputies from Pennsylvania, that a president be elected by ballot, which was agreed to; and thereupon he nominated, on the part of the said state, His Excellency George Washington, Esq.

The members then proceeded to ballot on behalf of their respective states; and the ballots being taken, it appeared that the said George Washington was unanimously elected; and he was conducted to the chair by the hon. Robert Morris, and John Rutledge, Esqrs.

The president then proposed to the house that they should proceed to the election of a secretary; and the ballot being taken, it appeared that, William Jackson, Esq. was elected.

The following credentials were produced and read. [pp. 24—36.]

The house then appointed Nicholas Weaver, messenger, and Joseph Frye, doorkeeper.

On motion of Mr. C. Pinckney, *ordered*, That a committe be appointed to draw up rules to be observed as the standing orders of the convention; and to report the same to the house.

A committee, by ballot, was appointed of Mr. Wythe, Mr. Hamilton, and Mr. C. Pinckney.

And then the house adjourned till Monday next, at 10 o'clock.

In the FEDERAL CONVENTION, MONDAY, MAY 28, 1787.

The convention met agreeably to adjournment.

The honorable Nathaniel Gorham, and Caleb Strong, Esqrs. deputies from the state of Massachusetts: the honorable Oliver Ellsworth, Esq. a deputy from the state of Connecticut; the honorable Gunning Bedford, Esq. a deputy from the state of Delaware, and the honorable James M'Henry, Esq. a deputy from the state of Maryland—attended and took their seats.

The following credentials were produced and read. [See pp. 24, 25, 28, 29.]

His excellency Benjamin Franklin, Esq. and the honorable George Clymer, Thomas Mifflin, and Jared Ingersoll, Esqrs. four of the deputies of the state of Pennsylvania, attended and took their seats.

Mr. Wythe reported from the committee, (to whom the drawing up rules proper, in their opinion, to be observed by the convention in their proceedings, as standing orders, was referred) that the committee had drawn up the rules accordingly, and had directed him to report them to the house. And he read the report in his place, and afterwards delivered it in at the secretary's table, where the said rules were once read throughout, and then a second time one by one; and upon the question severally put thereupon, two of them were disagreed to; and the rest, with amendments to some of them, were agreed to by the house; which rules, so agreed to, are as follow:

RULES to be observed as the Standing Orders of the Convention.

A house, to do business, shall consist of the deputies of not less than seven states; and all questions shall be decided by the greater number of these which shall be fully represented. But a less number than seven may adjourn from day to day.

Immediately after the president shall have taken the chair, and the members their seats, the minutes of the preceeding day shall be read by the secretary.

Every member, rising to speak, shall address the president; and, whilst he shall be speaking, none shall pass between them, or hold discourse with another, or read a book, pamphlet, or paper, printed or manuscript.

And of two members rising at the same time, the president shall name him who shall be first heard.

A member shall not speak oftener than twice, without special leave, upon the same question; and not the second time, before every other, who had been silent, shall have been heard, if he choose to speak upon the subject.

A motion made and seconded, shall be repeated, and if written, as it shall be when any member shall so require, read aloud, by the secretary, before it shall be debated; and may be withdrawn at any time before the vote upon it shall have been declared.

Orders of the day shall be read next after the minutes; and either discussed or postponed before any other business shall be introduced.

When a debate shall arise upon a question, no motion, other than to amend the question, to commit it, or to postpone the debate, shall be received.

A question, which is complicated, shall, at the request of any member, be divided, and put separately upon the propositions of which it is compounded.

The determination of a question, although fully debated, shall be postponed, if the deputies of any state desire it, until the next day.

A writing which contains any matter brought on to be considered, shall be read once throughout, for information; then by paragraphs, to be debated; and again, with the amendments, if any, made on the second reading; and afterwards the question shall be put upon the whole, amended, or approved in its original form, as the case shall be.

That committees shall be appointed by ballot; and that the members, who have the greatest number of ballots, although not a majority of the votes present, be the committee. When two or more members have an equal number of votes, the member standing first on the list in the order of taking down the ballots shall be preferred.

A member may be called to order by any other member, as well as by the president; and may be allowed to explain his conduct, or expressions, supposed to be reprehensible. And all questions of order shall be decided by the president, without appeal or debate.

Upon a question to adjourn, for the day, which may be made at any time, if it be seconded, the question shall be put without a debate.

When the house shall adjourn, every member shall stand in his place until the president pass him.

Resolved, That the said rules be observed as standing orders of the house.

A letter from sundry persons of the state of Rhode Island, addressed to the honorable the Chairman of the General Convention, was presented to the chair by Mr. G. Morris; and, being read,—*Ordered*, That the said letter do lie upon the table for farther consideration.

A motion was made by Mr. Butler, one of the deputies of South Carolina, that the house provide against interruption of business by absence of members, and against licentious publication of their proceedings.

Also, a motion was made by Mr. Spaight, one of the deputies of North Carolina, to provide, that, on the one hand, the house may not be precluded, by a vote upon any question, from revising the subject matter of it, when they see cause, nor, on the other hand, be led too hastily to rescind a decision, which was the result of mature discussion.

Ordered, That the said motions be referred to the consideration of the committee appointed on Friday last, to draw up rules to be observed as the standing orders of the convention; and that they do examine the matters thereof, and report thereupon to the house.

Adjourned till to-morrow at 10 o'clock, A. M.

TUESDAY, MAY 29, 1787.

Mr. Wythe reported from the committee to whom the motions made by Mr. Butler, and Mr. Spaight were referred, that the committee had examined the matters of the said motions, and had come to the following resolutions thereupon:

Resolved, That it is the opinion of this committee that provision be made for the purposes mentioned in the said motions; and to that end, the committee beg leave to propose, that the rules written under their resolution be added to the standing orders of the house.

And the said rules were once read throughout, and then, a second time, one by one; and on the question severally put thereupon, were, with amendments to some of them, agreed to by the house; which rules so agreed to are as follow:

RULES.

That no member be absent from the house, so as to interrupt the representation of the state, without leave.

That committees do not sit whilst the house shall, be or ought to be, sitting.

That no copy be taken of any entry on the journal during the sitting of the house, without the leave of the house.

That members only be permitted to inspect the journal.

That nothing spoken in the house be printed, or otherwise published, or communicated without leave.

That a motion to reconsider a matter which had been determined by a majority, may be made, with leave unanimously given, on the same day in which the vote passed; but otherwise, not without one day's previous notice; in which last case, if the house agree to the reconsideration, some future day shall be assigned for that purpose.

Resolved, That the said rules be added to the standing orders of the house.

The honorable John Dickinson, Esq. a deputy of the state of Delaware, and the honorable Elbridge Gerry, Esq. a deputy from the state of Massachusetts, attended and took their seats.

Mr. RANDOLPH, one of the deputies of Virginia, laid before the house, for their consideration, sundry propositions, in writing, concerning the American confederation, and the establishment of a national government.

RESOLUTIONS offered by Mr. Edmund Randolph to the Convention, May 29, 1787.

1. *Resolved*, That the articles of the confederation ought to be so corrected and enlarged, as to accomplish the objects proposed by their institution, namely, common defence, security of liberty, and general welfare.

2. *Resolved*, Therefore, that the right of suffrage, in the national legislature, ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other may seem best, in different cases.

3. *Resolved*, That the national legislature ought to consist of two branches.

4. *Resolved*, That the members of the first branch of the national legislature ought to be elected by the people of the several states, every for the term of to be of the age of years at least; to receive liberal stipends, by which they may be compensated for the devotion of their time to public service; to be ineligible to any office established by a particular state, or under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service and for the space of after its expiration; to be incapable of reelection for the space of after the expiration of their term of service; and to be subject to recal.

5. *Resolved*, That the members of the second branch of the national legislature ought to be elected by those of the first, out of a proper number of persons nominated by the individual legislatures, to be of the age of years, at least; to hold their offices for a term sufficient to ensure their independency; to receive liberal stipends, by which they may be compensated for the devotion of their time to the public service; and to be ineligible to any office established by a particular state, or under the authority of the United States, (except those peculiarly belonging to the functions of the second branch,) during the term of service; and for the space of after the expiration thereof.

6. *Resolved*, That each branch ought to possess the right of originating acts; that the national legislature ought to be empowered to enjoy the legislative right vested in congress, by the confederation; and moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United

States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states, contravening, in the opinion of the national legislature, the articles of union, or any treaty subsisting under the authority of the union; and to call forth the force of the union against any member of the union failing to fulfil its duty under the articles thereof.

7. *Resolved*, That a national executive be instituted, to be chosen by the national legislature for the term of years, to receive punctually, at stated times, a fixed compensation for the services rendered, in which no increase or diminution shall be made, so as to affect the magistracy existing at the time of the increase or diminution; to be ineligible a second time; and that, besides a general authority to execute the national laws, it ought to enjoy the executive rights vested in congress by the confederation.

8. *Resolved*, That the executive, and a convenient number of the national judiciary, ought to compose a council of revision, with authority to examine every act of the national legislature, before it shall operate, and every act of a particular legislature before a negative thereon shall be final; and that the dissent of the said council shall amount to a rejection, unless the act of the national legislature be again passed, or that of a particular legislature be again negatived by of the members of each branch.

9. *Resolved*, That a national judiciary be established to hold their offices during good behaviour, and to receive punctually, at stated times, fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution. That the jurisdiction of the inferior tribunals, shall be to hear and determine, in the first instance, and of the supreme tribunal to hear and determine, in the dernier resort, all piracies and felonies on the seas; captures from an enemy; cases in which foreigners, or citizens of other states, applying to such jurisdictions, may be interested, or which respect the collection of the national revenue; impeachments of any national officer; and questions which involve the national peace or harmony.

10. *Resolved*, That provision ought to be made for the admission of states, lawfully arising within the limits of the United States, whether from a voluntary junction of government or territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

11. *Resolved*, That a republican government, and the territory of each state (except in the instance of a voluntary junction of government and territory) ought to be guaranteed by the United States to each state.

12. *Resolved*, That provision ought to be made for the continuance of a congress, and their authorities and privileges, until a given day, after the reform of the articles of union shall be adopted, and for the completion of all their engagements

13. That provision ought to be made for the amendment of the articles of union, whensoever it shall seem necessary; and that the assent of the national legislature ought not to be required thereto.

14. *Resolved*, That the legislative, executive, and judiciary powers within the several states ought to be bound by oath to support the articles of union.

15. *Resolved*, That the amendments, which shall be offered to the confederation by the convention, ought, at a proper time or times, after the approbation of congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.

Resolved, That the house will to-morrow resolve itself into a committee of the whole house to consider of the state of the American union.

Ordered, That the propositions this day laid before the house, for their consideration, by Mr. Randolph, be referred to the said committee.

Mr. Charles Pinckney, one of the deputies of South Carolina, laid before the house, for their consideration, the draft of a federal government to be agreed upon between the free and independent states of America.

Mr. Charles Pinckney's Draft of a Federal Government.

[Paper furnished by Mr. Pinckney.]

We the people of the states of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare, and establish the following constitution for the government of ourselves and posterity:

Art. I. The style of this government shall be the United States of America, and the government shall consist of supreme legislative, executive and judicial powers.

Art. II. The legislative power shall be vested in a congress, to consist of two separate houses; one to be called the house of delegates, and the other the senate, who shall meet on the day of in every year.

Art. III. The members of the house of delegates shall be chosen every year by the people of the several states; and the qualification of the electors shall be the same as those of the electors in the several states for their legislatures. Each member shall have been a citizen of the United States for years; shall be of years of age, and a resident in the state he is chosen for until a census of the people shall be taken in the manner herein mentioned. The house of delegates shall consist of to be chosen from the different states in the following proportions: for New Hamp-

shire, for Massachusetts, for Rhode Island, for Connecticut, for New York, for New Jersey, for Pennsylvania, for Delaware, for Maryland, for Virginia, for North Carolina, for South Carolina, for Georgia, and the legislature shall hereafter regulate the number of delegates by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every thousand. All money bills of every kind shall originate in the house of delegates, and shall not be altered by the senate. The house of delegates shall exclusively possess the power of impeachment, and shall choose its own officers; and vacancies therein shall be supplied by the executive authority of the state in the representation from which they shall happen.

Art. IV. The senate shall be elected and chosen by the house of delegates, which house, immediately after their meeting, shall choose by ballot senators from among the citizens and residents of New Hampshire, from among those of Massachusetts, from among those of Rhode Island, from among those of Connecticut, from among those of New York, from among those of New Jersey, from among those of Pennsyvania, from among those of Delaware, from among those of Maryland, from among those of Virginia, from among those of North Carolina, from among those of South Carolina, and from among those of Georgia. The senators chosen from New Hampshire, Massachusetts, Rhode Island, and Connecticut, shall form one class; those from New York, New Jersey, Pennsylvania and Delaware, one class; and those from Maryland, Virginia, North Carolina, South Carolina and Georgia, one class. The house of delegates shall number these classes one, two, and three; and fix the times of their service by lot. The first class shall serve for years, the second for years, and the third for years. As their times of service expire, the house of delegates shall fill them up by elections for years; and they shall fill all vacancies that arise from death, or resignation, for the time of service remaining of the members so dying or resigning. Each senator shall be years of age at least; shall have been a citizen of the United four years before his election; and shall be a resident of the state he is chosen from. The senate shall choose its own officers.

Art. V. Each state shall prescribe the time and manner of holding elections by the people for the house of delegates; and the house of delegates shall be the judges of the elections, returns and qualifications of their members.

In each house a majority shall constitute a quorum to do business. Freedom of speech and debate in the legislature shall not be impeached, or questioned, in any place out of it; and the members of both houses shall in all cases, except for treason, felony, or breach of the peace, be free from arrest during their attendance on congress, and in going to, and returning from it. Both houses

shall keep journals of their proceedings, and publish them, except on secret occasions; and the yeas and nays may be entered thereon at the desire of one of the members present. Neither house, without the consent of the other, shall adjourn for more than days, nor to any place but where they are sitting.

The members of each house shall not be eligible to, or capable of holding any office under the union, during the time for which they have been respectively elected, nor the members of the senate for one year after. The members of each house shall be paid for their services by the states which they represent. Every bill which shall have passed the legislature, shall be presented to the president of the United States for his revision; if he approves it he shall sign it; but if he does not approve it, he shall return it with his objections, to the house it originated in; which house, if two-thirds of the members present, notwithstanding the president's objections, agree to pass it, shall send it to the other house, with the president's objections; where, if two thirds of the members present also agree to pass it, the same shall become a law; and all bills sent to the president, and not returned by him within days, shall be laws, unless the legislature, by their adjournment, prevent their return, in which case they shall not be laws.

Art. VI. The legislature of the United States shall have the power to lay and collect taxes, duties, imposts and excises;

To regulate commerce with all nations, and among the several states;

To borrow money and emit bills of credit;

To establish post offices;

To raise armies;

To build and equip fleets;

To pass laws for arming, organizing, and disciplining the militia of the United States;

To subdue a rebellion in any state, on application of its legislature;

To coin money, and to regulate the value of all coins, and fix the standard of weights and measures;

To provide such dock yards and arsenals, and erect such fortifications as may be necessary for the United States, and to exercise exclusive jurisdiction therein;

To appoint a treasurer, by ballot;

To constitute tribunals inferior to the supreme court;

To establish post and military roads;

To establish and provide for a national university at the seat of the government of the United States;

To establish uniform rules of naturalization;

To provide for the establishment of a seat of government for the United States, not exceeding miles square, in which they shall have exclusive jurisdiction;

To make rules concerning captures from an enemy;

To declare the law and punishment of piracies and felonies at sea, and of counterfeiting coin, and of all offences against the laws of nations;

To call forth the aid of the militia to execute the laws of the union, enforce treaties, suppress insurrections, and repel invasions;

And to make all laws for carrying the foregoing powers into execution.

The legislature of the United States shall have the power to declare the punishment of treason, which shall consist only in levying war against the United States, or any of them, or in adhering to their enemies. No person shall be convicted of treason but by the testimony of two witnesses.

The proportion of direct taxation shall be regulated by the whole number of inhabitants of every description; which number shall, within years after the first meeting of the legislature, and within the term of every year, be taken in the manner to be prescribed by the legislature.

No tax shall be laid on articles exported from the states; nor capitation tax, but in proportion to the census before directed.

All laws regulating commerce shall require the assent of two-thirds of the members present in each house. The United States shall not grant any title of nobility. The legislature of the United States shall pass no law on the subject of religion, nor touching or abridging the liberty of the press; nor shall the privilege of the writ of habeas corpus ever be suspended, except in case of rebellion or invasion.

All acts made by the legislature of the United States, pursuant to this constitution, and all treaties made under the authority of the United States, shall be the supreme law of the land; and all judges shall be bound to consider them as such in their decisions.

Art. VII. The senate shall have the sole and exclusive power to declare war; and to make treaties; and to appoint ambassadors and other ministers, to foreign nations, and judges of the supreme court.

They shall have the exclusive power to regulate the manner of deciding all disputes and controversies now subsisting, or which may arise, between the states, respecting jurisdiction or territory.

Art. VIII. The executive power of the United States shall be vested in a president of the United States of America, which shall be his style; and his title shall be his excellency. He shall be elected for years; and shall be re-eligible.

He shall, from time to time, give information to the legislature, of the state of the Union, and recommend to their consideration the measures he may think necessary. He shall take care that the laws of the United States be duly executed. He shall commission all the officers of the United States; and, except as to ambassadors, other ministers, and judges of the supreme court, he shall nominate, and, with the consent of the senate, appoint all

other officers of the United States. He shall receive public ministers from foreign nations; and may correspond with the executives of the different states. He shall have power to grant pardons and reprieves, except in impeachments. He shall be commander in chief of the army and navy of the United States, and of the militia of the several states; and shall receive a compensation which shall not be increased or diminished during his continuance in office. At entering on the duties of his office, he shall take an oath faithfully to execute the duties of a president of the United States. He shall be removed from his office on impeachment by the house of delegates, and conviction in the supreme court, of treason, bribery or corruption. In case of his removal, death, resignation, or disability, the president of the senate shall exercise the duties of his office until another president be chosen. And in case of the death of the president of the senate, the speaker of the house of delegates shall do so.

Art. IX. The legislature of the United States shall have the power, and it shall be their duty, to establish such courts of law, equity, and admiralty, as shall be necessary.

The judges of the courts shall hold their offices during good behavior; and receive a compensation, which shall not be increased or diminished during their continuance in office. One of these cuurts shall be termed the supreme court, whose jurisdiction shall extend to all cases arising under the laws of the United States, or affecting ambassadors, other public ministers and consuls; to the trial of impeachment of officers of the United States; to all cases of admiralty and maritime jurisdiction. In cases of impeachment affecting ambassadors, and other public ministers, this jurisdiction shall be original: and in all the other cases appellate.

All cirminal offences, (except in cases of impeachment,) shall be tried in the state where they shall be committed. The trials shall be open and public, and be by jury.

Art. X. Immediately after the first census of the people of the United States, the house of delegates shall apportion the senate by electing for each state, out of the citizens resident therein, one senator for every   members such state shall have in the house of delegates. Each state shall be entitled to have at least one member in the senate.

Art. XI. No state shall grant letters of marque and reprisal, or enter into treaty, or alliance, or confederation; nor grant any title of nobility; nor, without the consent of thelegislature of the Uniied States, lay any impost on imports; nor keep troops or ships of war in time of peace; nor enter into compacts with other states or foreign powers, or emit bills of credit, or make any thing but gold, silver, or copper, a tender in payment of debts; nor engage in war, except for self defence when actually invaded, or the danger of invasion is so great as not to admit of a delay until the government of the United States can be in-

formed thereof. And to render these prohibitions effectual, the legislature of the United States shall have the power to revise the laws of the several states that may be supposed to infringe the powers exclusively delegated by this constitution to congress, and to negative and annul such as do.

Art. XII. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. Any person, charged with crimes in any state, fleeing from justice to another, shall, on demand of the executive of the state from which he fled, be delivered up, and removed to the state having jurisdiction of the offence.

Art. XIII Full faith shall be given, in each state, to the acts of the legislature and to the records and judicial proceedings of the courts and magistrates of every state.

Art. XIV. The legislature shall have power to admit new states into the union on the same terms with the original states; provided two-thirds of the members present in both houses agree.

Art. XV. On the application of the legislature of a state, the United States shall protect it against domestic insurrection.

Art. XVI. If two-thirds of the legislatures of the states apply for the same, the legislature of the United States shall call a convention for the purpose of amending the constitution: Or, should congress, with the consent of two-thirds of each house, propose to the states amendments to the same, the agreement of the two-thirds of the legislatures of the states shall be sufficient to make the said amendments parts of the constitution.

The ratification of the conventions of states shall be sufficient for organizing this constitution.

Ordered, That the said draft be referred to the committee of the whole house appointed to consider of the state of the American union.

And then the house adjourned till to-morrow morning at 10 o'clock.

WEDNESDAY, MAY 30, 1787.

The honorable Roger Sherman, Esq. a deputy of the state of Connecticut, attended and took his seat. The order of the day being read, the house resolved itself into a committee of the whole house to cousider of the state of the American union. The President left the chair.

In a committee of the whole house—Mr. Gorham, chosen by ballot, took the chair of the committee.

The propositions offered yesterday to the consideration of the house, by Mr. Randolph, were read; and on motion of Mr. Randolph, seconded by Mr. G. Morris, "That the consideration of the 'first resolutioncontained in the said propositions be postponed," it was passed in the affirmative.

It was then moved by Mr. Randolph, and seconded by Mr. G. Morris, to substitute the following resolution in the place of the first resolution.

Resolved, That an union of the states, merely federal, will not accomplish the objects proposed by the articles of confederation, namely, "common defence, security of liberty, and general wel-"fare."

It was moved by Mr. Butler, seconded by Mr. Randolph, to postpone the consideration of the said resolution, in order to take up the following resolution, submitted by Mr. Randolph, viz:

Resolved, That a national government ought to be established, consisting of a supreme legislative, judiciary, and executive.

It was moved by Mr. Read, seconded by Mr. C. C. Pinckney, to postpone the consideration of the last resolution, in order to take up the following:

Resolved, That in order to carry into execution the design of the states, in forming this convention, and to accomplish the objects proposed by the confederation, "a more effective govern-"ment, consisting of a legislative, judiciary, and executive, ought "to be established."

On the question to postpone, in order to take up the last resolution, the question was lost.

Yeas, Massachusetts, Connecticut, Delaware, South Carolina, 4. *Nays,* New York, Pennsylvania, Virginia, North Carolina, 4.

On motion to agree to the said resolution moved by Mr. Butler, it passed in the affirmative; and the resolution as agreed to, is as follows:

Resolved, That it is the opinion of this committee that a national government ought to be established, consisting of a supreme legislative, judiciary, and executive.

Yeas, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, 6. *Nay,* Connecticut 1. *Divided,* New York, 1.

The following resolution was then moved by Mr. Randolph:

Resolved, That the rights of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

It was moved by Mr. Hamilton, seconded by Mr. Spaight, that the resolution be altered so as to read,

Resolved, That the rights of suffrage in the national legislature ought to be proportioned to the number of free inhabitants.

It was moved and seconded, that the resolution be postponed;—and on the question to postpone,—It passed in the affirmative.

The following resolution was moved by Mr. Randolph, seconded by Mr. Madison:

Resolved, That the rights of suffrage in the national legislature ought to be proportioned.

It was moved and seconded to add the words, "and not according to the present system."

On the question to agree to the amendment,—It passed in the affirmative.

It was then moved and seconded so to alter the resolution that it should read,

Resolved, That the rights of suffrage in the national legislature ought not to be according

It was then moved and seconded to postpone the consideration of the last resolution.

And on the question to postpone,—It passed unanimously in the affirmative.

The following resolution was then moved by Mr. Madison, seconded by Mr. G. Morris:

Resolved, That the equality of suffrage, established by the articles of confederation, ought not to prevail in the national legislature; and that an equitable ratio of representation ought to be substituted.

It was moved and seconded to postpone the consideration of the last resolution.

And on the question to postpone,—It passed in the affirmative.

It was moved and seconded that the committee do now rise.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported from the committee,—That the committee had made a progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That this house will to-morrow again resolve itself into a committee of the whole house to consider of the state of the American union.

And then the house adjourned till to-morrow at 10 o'clock. A. M.

THURSDAY, MAY 31, 1787.

The honorable William Pierce, Esq. a deputy of the state of Georgia, attended and took his seat.

The following credentials were produced and read. [See p. 36.]

The order of the day being read—The house resolved itself into a committee of the whole house to consider of the state of the American union. Mr. President in the chair.

In Committee of the whole house.—Mr. Gorham in the chair.

It was moved and seconded that the committee proceed to the consideration of the following resolution, submitted by Mr. Randolph:

"*Resolved,* That the national legislature ought to consist of two "branches."

And on the question to agree to the said resolution,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, Delaware, Virginia, North Carolina, So. Carolina, 7. *Nay*, Pennsylvania, 1.

It was then moved and seconded to proceed to the consideration of the following clause of the fourth resolution, submitted by Mr. Randolph:

"*Resolved*, That the members of the first branch of the national legislature ought to be elected by the people of the several states."

And on the question to agree to the said clause of the fourth resolution,—It passed in the affirmative.

Yeas, Massachusetts, New York, Pennsylvania, Virginia, North Carolina, Georgia, 6. *Nays*, New Jersey, South Carolina, 2. *Divided*, Connecticut, Delaware, 2.

It was then moved and seconded to postpone the consideration of the remaining clauses in the said fourth resolution.

And on the question to postpone the remaining clauses of the said fourth resolution,—It passed in the affirmative.

It was then moved and seconded to proceed to the consideration of the following resolution, being the fifth submitted by Mr. Randolph:

"*Resolved*, That the members of the second branch of the na- "tional legislature ought to be elected by those of the first out of," &c.

And on the question to agree to the said fifth resolution,—It passed in the negative.

Yeas, None. *Nays*, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 9. *Divided*, Delaware, 1.

It was then moved and seconded to proceed to the consideration of the following resolution, being the sixth submitted by Mr. Randolph:

"*Resolved*, That each branch ought to possess the right of ori- "ginating acts:—That the national legislature ought to be empow- "ered to enjoy the legislative rights vested in congress by the "confederation—And moreover, to legislate in all cases, to which "the separate states are incompetent, or in which the harmony of "the United States may be interrupted, by the exercise of indivi- "dual legislation:—To negative all laws, passed by the several "states, contravening, in the opinion of the national legislature, "the articles of the union"—(the following words were added to this clause on motion of Mr. Franklin)—"or any treaties subsist- "ing under the authority of the union."

Questions being taken separately on the foregoing clauses of the sixth resolution, they were agreed to.

It was then moved and seconded to postpone the consideration of the last clause of the sixth resolution, namely:

"To call forth the force of the union against any member of "the union, failing to fulfil its duty under the articles thereof."

On the question to postpone the consideration of said clause,—It passed in the affirmative.

In the house—Mr. President resumed the Chair.

Mr. Gorham reported from the committee,—That the committee had made a further progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That this house will to morrow again resolve itself into a committee of the whole house, to consider of the state of the American union.

And then the house adjourned till to-morrow at 10 o'clock, A. M.

FRIDAY, JUNE 1, 1787.

The honorable William Houstoun, Esq. a deputy of the state of Georgia, attended and took his seat.

The following credential was produced and read; [See p. 36.]

The order of the day being read,—The house resolved itself into a committee of the whole house to consider of the state of the American union. Mr. President in the chair.

In committee of the whole house—Mr. Gorham in the chair.

It was moved and seconded to proceed to the consideration of the seventh resolution submitted by Mr. Randolph, namely:

"*Resolved*, That a national executive be instituted, to be chosen "by the national legislature, for the term of years; to receive "punctually, at stated times, a fixed compensation for the servi- "ces rendered, in which no increase or diminution shall be made, "so as to affect the magistracy existing at the time of such increase "or diminution; and to be ineligible a second time; and that, be- "sides a general authority to execute the national laws, it ought "to enjoy the executive rights vested in congress by the confede- "ration."

On motion of Mr. Wilson, seconded by Mr. C. Pinckney, to amend the first clause of the resolution, by adding, after the word "instituted," the words "to consist of a single person," so as to read,

"*Resolved*, That a national executive to consist of a single "person be instituted," It was moved and seconded to postpone the consideration of the amendment.

And, on the question to postpone,—It passed in the affirmative.

It was then moved and seconded to agree to the first clause of the resolution, namely:

"*Resolved*, That a national executive be instituted."

And on the question to agree to the said clause,—It passed in the affirmative.

It was then moved by Mr. Madison, seconded by Mr. Wilson, after the word "instituted," to add the words "with power to car- "ry into execution the national laws; to appoint to offices in cases "not otherwise provided for; and to execute such other powers, "not legislative or judiciary in their nature, as may from time to "time be delegated by the national legislature."

And on a division of the amendment the following clauses were agreed to, namely:

"With power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for."

Yeas, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 9. *Divided*, Connecticut, 1.

On the motion to continue the last clause of the amendment, namely:

"And to execute such other powers, not legislative or judiciary in their nature, as may from time to time be delegated by the national legislature,"--It passed in the negative.

Yeas, Massachusetts, Virginia, South Carolina, 3. *Nays*, Connecticut, New York, New Jersey, Pennsylvania, Delaware, North Corolina, Georgia, 7.

It was then moved and seconded to fill up the blank with the word "seven," so as to read—"for the term of seven years."

And on the question to fill up the blank with the word "seven," It passed in the affirmative.

Yeas, New York, New Jersey, Pennsylvania, Delaware, Virginia, 5. *Nays*, Connecticut, North Carolina, South Carolina, Georgia, 4. *Divided*, Massachusetts, 1.

It was then moved and seconded to postpone the consideration of the following words, namely: "To be chosen by the national legislature."

And on the question to postpone,—It passed in the affirmative.

It was then moved and seconded, that the committee do now rise, and report a further progress. The committee then rose.

In the house—Mr. President resumed the chair.

Mr. Gorham reported from the committee,—That the committee had made a further progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That this house will to-morrow again resolve itself into a committe of the whole house to consider of the state of the American union.

And then the house adjourned till to-morrow at 10 o'clock, A. M.

SATURDAY, JUNE 2, 1787.

The honorable William Samuel Johnson, Esq. a deputy of the state of Connecticut, and the honorable Daniel of St. Thomas Jenifer, a deputy of the state of Maryland, and the honorable John Lansing, jun. a deputy from the state of New York, attended and took their seats.

The following credentials were produced and read. [See pp. 25, 29.]

The order of the day being read, the house resolved itself into a committee of the whole house to consider of the state of the American union. Mr. President left the chair.

In committee of the whole house. Mr. Gorham in the chair.

It was moved and seconded to postpone the further consideration of the resolution submitted by Mr. Randolph, which respects the executive, in order to take up the consideration of the resolution respecting the second branch of the legislature.

And on the question to postpone, it passed in the negative.

Yeas, New York, Pennsylvania, Maryland, 3. *Nays*, Massachusetts, Connecticut, Delaware, Virginia, North Carolina, South Carolina, Georgia, 7.

It was then moved and seconded to postpone the consideration of these words, namely,

"To be chosen by the national legislature," in order to take up the following resolution submitted by Mr. Wilson, namely, *Resolved*, That the executive magistracy shall be elected in manner following:

"That the states be divided into districts; and that the persons qualified to vote in each district elect members for their respective districts to be electors of the executive magistracy.

"That the electors of the executive magistracy meet; and they or any of them shall elect by ballot, but not out of their own body, person in whom the executive authority of the national government shall be vested.

And on the question to postpone, it passed in the negative.

Yeas, Pennsylvania, Maryland, 2. *Nays*, Massachusetts Connecticut, Delaware, Virginia, North Carolina, South Carolina, Georgia, 7. *Divided*, New York, 1.

It was then moved and seconded to agree to the words in the resolution, submitted by Mr. Randolph, so as to read, "to be chosen by the national legislature for the term of seven years."

And on the question to agree to these words, it passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, Delaware, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Pennsylvania, Maryland, 2.

It was then moved and seconded, to postpone the consideration of that part of the resolution, as submitted by Mr. Randolph, which respects the stipend of the executive, in order to introduce the following motion made by Dr. Franklin, namely,

"Whose necessary expenses shall be defrayed, but who shall receive no salary, stipend, fee, or reward whatsoever, for their services."

And on the question to postpone, it passed in the affirmative.

It was then moved and seconded to postpone the consideration of the said motion offered by Dr. Franklin.

And on the question to postpone, it passed in the affirmative.

It was then moved by Mr. Dickinson, and seconded by Mr. Bedford, to amend the resolution before the committee, by adding, after the words "to be chosen by the national legislature for the term of seven years," the following words:

"To be removable by the national legislature upon request by a "majority of the legislatures of the individual states."

It was moved and seconded to strike out the words "upon re-"quest by a majority of the legislatures of the individual states."

On the question to strike out, it passed in the negative.

Yeas, Connecticut, South Carolina, Georgia, 3. *Nays*, Massachusetts, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 7.

The question being taken to agree to the amendment offered by Mr. Dickinson, it passed in the negative.

Yea, Delaware, 1. *Nays*, Massashusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.

The question being then taken on the words contained in the resolution submitted by Mr. Randolph, namely, "To be ineligible a second time," it passed in the affirmative.

Yeas, Massachusetts, New York, Delaware, Maryland, Virginia, North Carolina, South Carolinia, Georgia, 8. *Nay*, Connecticut, 1. *Divided*, Pennsylvania, 1.

In was then moved by Mr. Williamson, seconded by Mr. Davie, to add the following words to the last clause of the resolution respecting the executive, namely, "And to be removable on im-"peachment and conviction of mal practice, or neglect of duty."

On the motion to add the words, it passed in the affirmative.

It was then moved by Mr. Rutledge, seconded by Mr. C. Pinckney, to fill up the blank after the words "executive to consist of" with the words "one person."

It was then moved and seconded, to postpone the consideration of the last motion.

And on the question to postpone, it passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, North Carolina, South Carolina, Georgia, 6. *Nays*, Pennsylvania, Delaware, Maryland Virginia, 4.

It was then moved and seconded, that the committee do now rise, report a further progress, and request leave to sit again. The committee then rose.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported, from the committee,—That the committee had made a further progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That this house will, on Monday again, resolve itself into a committee of the whole house to consider of the state of the American union.

And then the house adjourned till Monday next at 11 o'clock.

MONDAY, JUNE, 4, 1787.

The order of the day being read,—The house resolved itself into

a committee of the whole house to consider of the state of the American union. Mr. President left the chair.

In committee of the whole house.—Mr. Gorham in the chair.

It was moved and seconded to proceed to the further consideration of the propositions submitted to the committee by Mr. Randolph,—When, on motion of Mr. C. Pinckney, seconded by Mr. Wilson, to fill up the blank after the words "that a national executive be instituted to consist of," with the words, "a single person."

On the question to fill up the blank with the words, "a single person,"—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Virginia, N. Carolina, South Carolina, Georgia, 7. *Nays*, New York, Delaware, Maryland, 3.

It was then moved and seconded, to take into consideration the first clause of the eighth resolution submitted by Mr. Randolph, namely:

"*Resolved*, That the national executive and a convenient number of the national judiciary ought to compose a council of revision."

It was then moved and seconded to postpone the consideration of the said clause, in order to introduce the following resolution, submitted by Mr. Gerry, namely:

"*Resolved*, That the national executive shall have a right to negative any legislative act, which shall not be afterwards passed, unless by parts of each branch of the national legislature."

And on the question to postpone,—It passed in the affirmative.

Yeas, Massachusetts, New York, Pensylvania, North Carolina, South Carolina, Georgia, 6. *Nays*, Connecticut, Delaware, Maryland, Virginia, 4.

It was then moved by Mr. Wilson, seconded by Mr. Hamilton, to strike out the words, "shall not be afterwards passed but by parts of each branch of the national legislature."

And on the question to strike out the words, it passed unanimously in the negative.

It was moved by Mr. Butler, seconded by Dr. Franklin, that the resolution be altered so as to read,

"*Resolved*, That the national executive have a power to suspend any legislative act for"

And on the question to agree to the alteration, it passed unanimously in the negative.

A question was then taken on the resolution submitted by Mr. Gerry, namely,

"*Resolved*, That the national executive shall have a right to negative any legislative act, which shall not be afterwards passed, unless by two-third parts of each branch of the national legislature."

And on the question to agree to the same, it passed in the affirmative.

Yeas, Massachusetts, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Connecticut, Maryland, 2.

It was then moved by Mr. Wilson, and seconded by Mr. Madison, that the following amendment be made to the last resolution, after the words "national executive," to add the words, "a conveni-" "ent number of the national judiciary."

An objection of order being taken, by Mr. Hamilton, to the introduction of the last amendment at this time—notice was given by Mr. Wilson, seconded by Mr. Madison, that the same would be moved to-morrow. Wednesday assigned to reconsider.

It was then moved and seconded to proceed to the consideration of the ninth resolution submitted by Mr. Randolph:—when, on motion to agree to the first clause, namely,

"*Resolved*, That a *national judiciary* be established,"—It passed in the affirmative.

It was then moved and seconded to add these words to the first clause of the ninth resolution, namely,

"To consist of one supreme tribunal, and one or more inferior tribunals."

And on the question to agree to the same,—It passed in the affirmative.

It was then moved and seconded, that the committee do now rise, and report a further progress, and request leave to sit again. The committee then rose.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported, from the committee,—That the committee had made a further progress in the matter to them referred; and directed him to move that they may have leave to sit again.

Resolved, That this house will to-morrow again resolve itself into a committee of the whole house to consider of the state of the American union.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

TUESDAY, JUNE 5, 1787.

His excellency William Livingston, Esq. a deputy of the state of New Jersey, attended and took his seat.

The following credentials were then produced and read. [See p. 26.]

The order of the day being read,—The house resolved itself into a committee of the whole house to consider of the state of the American union. Mr. President left the chair.

In committee of the whole house.—Mr. Gorham in the chair.

It was moved and seconded to proceed to the further consideration of the ninth resolution submitted by Mr. Randolph.

It was then moved and seconded to amend the last clause by striking ot the words "once more," so as to read, "and of inferior tribunals."

And on the question to strike out,—It passed in the affirmative.

It was then moved and seconded to strike out the words "the national legislature," so as to read, "to be appointed by."

On the question to strike out,—It passed in the affirmative.

Notice was given by Mr. Wilson, that he should, at a future day, move for a reconsideration of that clause which respects "inferior tribunals."

Mr. C. Pinckney gave notice, that when the clause which respects the appointment of the judiciary came before the committee, he should move to restore the words "the national legislature."

It was then moved and seconded to agree to the following part of the ninth resolution, namely:

"To hold their offices during good behaviour; and to receive "punctually, at stated times, a fixed compensation for their ser- "vices, in which no increase or diminution shall be made, so as "to affect the persons actually in office, at the time of such in- "crease or diminution."

And on the question to agree to the same,—It passed in the affirmative.

It was then moved and seconded to postpone the remaining clause of the ninth resolution.

And on the question to postpone,—It passed in the affirmative.

On the question to agree to the tenth resolution, as submitted by Mr. Randolph, namely:

"*Resolved*, That provision ought to be made for the admission "of states lawfully arising within the limits of the United States, "whether from a voluntary junction of government and territory, "or otherwise, with the consent of a number of voices in the na- "tional legislature less than the whole,"—It passed in the affirmative.

It was moved and seconded to postpone the consideration of the eleventh resolution submitted by Mr. Randolph.

And on the question to postpone,—It passed in the affirmative.

Yeas, Massachusetts, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 8. *Nays*, Connecticut, South Carolina, 2.

On the question to agree to the twelfth resolution submitted by Randolph, namely:

"*Resolved*, That provision ought to be made for the continu- "ance of a congress, and their authorities and privileges, until a "given day, after the reform of the articles of union shall be "adopted, and for the completion of all their engagements,"—It passed in the affirmative.

Yeas, Massachusetts, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Connecticut, Delaware, 2.

It was then moved and seconded to postpone the consideration of the thirteenth resolution submitted by Mr. Randolph.

And on the question to postpone,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, North Carolina, 7. *Nays*, Virginia, South Carolina, Georgia, 3.

It was moved and seconded to postpone the consideration of the fourteenth resolution submitted by Mr. Randolph.

And on the question to postpone,—It passed in the affirmative.

Yeas, Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia, 6. *Nays*, New York, Pennsylvania, Delaware, North Carolina, 4. *Divided*—Massachusetts, 1.

It was moved and seconded to postpone the consideration of the fifteenth resolution submitted by Mr. Randolph.

And on the question to postpone,—It passed in the affirmative.

It was moved by Mr. C. Pinckney, seconded by Mr. Rutledge, that to-morrow be assigned to reconsider that clause of the fourth resolution, which respects the election of the first branch of the national legislature.

And on the question to reconsider the same to-morrow,—It passed in the affirmative.

Yeas, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, 6. *Nays*, Massachusetts, New Jersey, North Carolina, South Carolina, Georgia, 5.

It was moved by Mr. Rutledge, seconded by Mr. Sherman, to strike out the following words in the ninth resolution submitted by Mr. Randolph, namely:

"And of inferior tribunals."

And on the question to strike out,—It passed in the affirmative.

Yeas, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, 5. *Nays*, Pennsylvania, Delaware, Maryland, Virginia, 4. *Divided*, Massachusetts, New York, 2.

It was then moved and seconded. that the following clause be added to the ninth resolution, namely:

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

And on the question to agree to the same,—It passed in the affirmative.

Yeas, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 7. *Nays*, Connecticut, New Jersey, South Carolina, 3. *Divided*, New York, 1.

It was then moved and seconded that the committee do now rise, report a further progress, and request leave to sit again. The committee then rose.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported from the committee,—That the committee had made a further progress in the matter to them referred;

and had directed him to move that they may have leave to sit again.

Resolved, That this house will to-morrow again resolve itself into a committee of the whole house to consider of the state of the American union.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

WEDNESDAY, JUNE 6, 1787.

The order of the day being read, the house resolved itself into a committee of the whole house, to consider of the state of the American union.—Mr. President left the chair.

In committee of the whole house.—Mr. Gorham in the chair.

It was moved by Mr. C. Pinckney, seconded by Mr. Rutledge, to strike the word "people" out of the fourth resolution submitted by Mr. Randolph, and to insert in its place the word "legislatures," so as to read—

"*Resolved*, That the members of the first branch of the national "legislature ought to be elected by the legislatures of the seve- "ral states."

And on the question to strike out—It passed in the negative.

Yeas, Connecticut, New Jersey, South Carolina, 3. *Nays*, Massachusetts, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 8.

On motion of Mr. Wilson, seconded by Mr. Madison, to amend the eighth resolution, which respects the negative to be vested in the national executive, by adding after the words "national executive," the words "with a convenient number of the national judiciary."

On the question to agree to the addition of these words—It passed in the negative.

Yeas, Connecticut, New York, Virginia, 3. *Nays*, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 8.

Mr. C. Pinckney gave notice, that to-morrow he should move for the reconsideration of that clause in the resolution, adopted by the committee, which vests a negative in the national legislature on the laws of the several states. Friday assigned to reconsider.

It was then moved and seconded, that the committee do now rise, report a further progress, and request leave to sit again.—The committee then rose.

In the house.—Mr. President in the chair.

Mr. Gorham reported from the committee,—That the committee had made a further progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That this house will to-morrow again resolve itself into a committee of the whole house, to consider of the state of the American union.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported from the committee,—That the committee had made a further progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That this house will to-morrow again resolve itself into a committee of the whole house, to consider of the state of the American union.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

THURSDAY, JUNE 7, 1787.

The order of the day being read, the house resolved itself into a committee of the whole house to consider of the state of the American union. Mr. President left the chair.

In committee of the whole house.—Mr. Gorham in the chair.

The following resolution was submitted by Mr. Dickinson, seconded by Mr. Sherman, viz:

Resolved, That the members of the second branch of the national legislature ought to be chosen by the individual legislatures."

It was moved and seconded, to postpone the last resolution, in order to introduce the following, submitted by Mr. Wilson, seconded by Mr. Morris, viz:

"*Resolved*, That the second branch of the national legislature "be elected by the people in districts, to be formed for that pur-"pose."

And on the question to postpone,—It passed in the negative.

Yea, Pennsylvania, 1. *Nays*, Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10.

A question was then taken on the resolution submitted by Mr. Dickinson, viz:

"*Resolved*, That the members of the second branch of the na-"tional legislature ought to be chosen by the individual legisla-"tures."

And on the question to agree to the same,—It passed unanimously in the affirmative

Mr. Gerry gave notice, that he would to-morrow move for the reconsideration of the resolution, which respects the appointment of the national executive—when he should offer to substitute the following mode of appointing the national executive, viz:

"By the executives of the several states."

The committee then rose.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported from the committee,—That the committee had made a further progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That this house will to-morrow again resolve itself into a committee of the whole house, to consider of the state of the American union.

And then the house adjourned till to-morrow at 10 o'clock, A. M.

FRIDAY, JUNE 8, 1787.

The order of the day being read, the house resolved itself into a committee of the whole house to consider of the state of the American union. Mr. President left the chair.

In the committee of the whole house.—Mr. Gorham in the chair.

It was moved by Mr. Pinckney, seconded by Mr. Madison, to strike out the following words in the sixth resolution adopted by the committee, viz.:

"To negative all laws passed by the several states contravening, "in the opinion of the national legislature, the articles of union, "or any treaties subsisting under the authority of the union." And to insert the following words in their place, viz:

"To negative all laws which to them shall appear improper."

And on the question to strike out,—It passed in the negative.

Yeas, Massachusetts, Pennsylvania, Virginia, 3. *Nays*, Connecticut, New York, New Jersey, Maryland, North Carolina, South Carolina, Georgia, 7. *Divided*, Delaware, 1.

It was moved by Mr. Gerry, seconded by Mr. King, to reconsider that clause of the seventh resolution adopted by the committee, which respects the appointment of the national executive

On the question to reconsider,—It passed in the affirmative.

Yeas, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia. *Nays*, Connecticut, North Carolina, 2.

And to-morrow was assigned for the reconsideration.

It was then moved by Mr. C. Pinckney, seconded by Mr. Rutledge, that the following resolution be added after the fourth resolution adopted by the committee, viz:

"*Resolved* That the states be divided into three classes; the "first class to have three members, the second two, and the third "one member each; that an estimate be taken of the compara-"tive importance of each state, at fixed periods, so as to ascer-"tain the number of members they may from time to time be en-"titled to."

Before any debate was had, or determination taken on Mr. Pinckney's proposition, it was moved and seconded, that the com-

mittee do now rise, report a further progress, and request leave to sit again.

The committee then rose.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported from the committee,—That the committee had made a further progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That this house will to-morrow again resolve itself into a committee of the whole house to consider of the state of the American union.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

SATURDAY, JUNE 9, 1787.

The honorable Luther Martin, Esq. one of the Deputies of the State of Maryland, attended and took his seat.

The order of the day being read,—The house resolved itself into a committee of the whole house, to consider of the state of the American union. Mr. President left the chair.

In committee of the whole house.—Mr. Gorham in the chair.

A question being taken on Mr. Gerry's motion to strike out the following words, in that clause of the seventh resolution, adopted by the committee, which respects the appointment of the national executive, viz:

"To be chosen by the national legislature;" and to insert, "to be chosen by the executives of the individual states."—It passed in the negative.

Yeas, none. *Nays*, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia 10. *Divided*, Delaware, 1.

It was moved by Mr. Patterson, seconded by Mr. Brearly, to enter on the consideration of the resolution submitted by Mr. Randolph.

After sometime passed in debate,—It was moved and seconded, that the committee do now rise, report a further progress, and request leave to sit again. The committee then rose.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported from the committee,—That the committee had made a further progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That this house will, on Monday next, again resolve itself into a committee of the whole house on the state of the American union.

And then the house adjourned till monday next at 11 o'clock, A. M.

MONDAY, JUNE 11, 1787.

The honorable Abraham Baldwin, Esq. one of the deputies of the state of Georgia, attended and took his seat.

The order of the day being read,—The house resolved itself into a committee of the whole house to consider of the state of the American union Mr. President left the chair.

In committee of the whole house.—Mr. Gorham in the chair.

It was moved by Mr. King, seconded by Mr. Rutledge, to agree to the following resolution, viz:

" *Resolved*, That the right of suffrage in the first branch of the "national legislature ought not to be according to the rule estab- "lished in the articles of confederation, but according to some "equitable ratio of representation."

And on the question to agree to the same,—It was passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, New York, New Jersey, Delaware, 3. *Divided*. Maryland, 1.

It was then moved by Mr. Rutledge, seconded by Mr. Butler, to add the following words to the last resolution, viz: "According to the quotas of contribution."

It was moved by Mr. Wilson, seconded by Mr. C. Pinckney, to postpone the consideration of the last motion, in order to introduce the following words after the words "equitable ratio of representation, viz:

"In proportion to the whole number of white and other free "citizens and inhabitants of every age, sex, and condition, in- "cluding those bound to servitude for a term of years, and three- "fifths of all other persons not comprehended in the foregoing "description, except Indians, not paying taxes, in each state."

On the question to postpone,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Delaware, 1.

On the question to agree to Mr. Wilson's motion,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, New Jersey, Delaware, 2.

It was moved by Mr. Sherman, seconded by Mr. Ellsworth, "that in the second branch of the national legislature each state "have a vote."

On the question to agree to the same,—It passed in the negative.

Yeas, Connecticut, New York, New Jersey, Delaware, Maryland, 5. *Nays*, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6.

It was then moved by Mr. Wilson, seconded by Mr. Hamilton, to adopt the following resolution, viz:

"*Resolved*, That the right of suffrage in the second branch of the "national legislature, ought to be according to the rule established "for the first."

On the question to agree to the same—It passed in the affirmative.

Yeas, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6. *Nays* Connecticut, New York, New Jersey, Delaware, Maryland 5.

It was moved and seconded to amend the eleventh resolution submitted by Mr. Randolph, by adding the words "voluntary junction, or partition." Passed in the affirmative.

Yeas. Massachusetts, New York, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, Connecticut, New Jersey, Delaware, Maryland, 4.

It was moved and seconded, to amend the resolution, by adding the words "national government" after the words

Yeas, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, New York, New Jersey, Delaware, Maryland, 4.

It was moved and seconded, to agree to the eleventh resolution submitted by Mr. Randolph; and amended to read as follows:

"*Resolved*, That a republican constitution, and its existing "laws, ought to be guarantied to each state, by the United States."

And on the question to agree to the same, it passed unanimously in the affirmative.

It was then moved and seconded, to agree to the following resolution:

"*Resolved*, That provision ought to be made for the amendment "of the articles of union, whensoever it shall seem necessary."

On the question to agree to the same,—Passed in the affirmative.

It was agreed to postpone the following clause in the thirteenth resolution submitted by Mr. Randolph, namely,

"And that the assent of the national legislature ought not to be "required thereto."

It was then moved and seconded, to agree to the fourteenth resolution submitted by Mr. Randolph, namely,

"*Resolved*, That the legislative, executive, and judiciary powers "within the several states, ought to be bound by oath to support "the articles of union."

It was then moved by Mr. Martin, seconded by to strike out the words, "within the several states."

And on the question to strike out,—It passed in the negative.

Yeas, Connecticut, New Jersey, Delaware, Maryland, 4. *Nays*, Massachusetts, New York, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 7.

It was then moved and seconded to agree to the fourteenth resolution as submitted by Mr. Randolph.

And on the question to agree to the same,—It passed in the affirmative.

Yeas, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6. *Nays*, Connecticut, New York, New Jersey, Delaware, Maryland, 5.

It was moved and seconded to agree to the fifteenth resolution submitted by Mr. Randolph.

And on the question to agree to the same,—It passed in the affirmative.

Yeas, Massachusetts, Virginia, North Carolina, South Carolina, Georgia, 5. *Nays*, Connecticut, New York, New Jersey, 3. *Divided*, Delaware, Maryland, 2.

It was then moved and seconded, that the committee do now rise, report a further progress, and request leave to sit again. The committee then rose.

In the House.—Mr. President resumed the Chair.

Mr. Gorham reported from the committee,—That the committee had made a further progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That this house will to-morrow again resolve itself into a committee of the whole house to consider the state of the American union.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

TUESDAY, JUNE 12, 1787.

The order of the day being read,—The house resolved itself into a committee of the whole house to consider the state of the American union. Mr. President left the chair.

In committee of the whole house.—Mr. Gorham in the chair.

It was moved and seconded to fill up the blank in the fourth resolution, respecting the term for which the members of the first branch of the national legislature should be chosen with the words "three years."

On the motion to fill up with "three years,"—It passed in the affirmative.

Yeas, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, 7. *Nays*, Massachusetts, Connecticut, North Carolina, South Carolina, 4.

It was moved and seconded to stike out the following words in the fourth resolution, namely,

"To be of years at least."

And on the question to strike out,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Maryland, 1.

It was moved and seconded, to add the words "and fixed," after

the word "liberal," in that clause of the fourth resolution which respects the stipend of the first branch. Passed in the affirmative.

Yeas, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 8. *Nays*, Massachusetts, Connecticut, South Carolina, 3.

It was then moved and seconded, to add the words "to be paid out of the public treasury." Agreed to.

Yeas, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 8. *Nays*, Connecticut, New York, South Carolina, 3.

A question being taken on the clause respecting the salary of the first branch,—It passed in the affirmative.

Yeas, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 8. *Nays*, Connecticut, New York, South Carolina, 3.

It was moved and seconded, to strike out the words, "by a particular state." Passed in the negative.

Yeas, Connecticut, New York, North Carolina, South Carolina, 4. *Nays*, New Jersey, Pennsylvania, Delaware, Virginia, Georgia, 5. *Divided*, Massachusetts, Maryland, 2.

A question being taken on the clause which respects the ineligibility of the members of the first branch,—It passed in the affirmative.

Yeas, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Connecticut, 1.

It was moved and seconded to amend the fourth resolution by inserting the words, "and under the national government for the space of three years after its expiration."—Passed in the negative.

Yea, Maryland, 1. *Nays*, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 10.

Moved and seconded to fill up the blank with "one year."—Passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, 8, *Nays*, New York Georgia, 2, *Divided*, Maryland, 1.

It was moved and seconded to strike out the following words, viz: "To be incapable of re-election for the space of after the "expiration of their term of service, and to be subject to recal."

On the question to strike out,—Passed in the affirmative.

It was moved and seconded, to strike out the words "to be of years at least," from the fifth resolution.—Passed in the negative.

Yeas, Connecticut, New Jersey, Pennsylvania, 3. *Nays*, Massachusetts, New York, Delaware, Maryland, Virginia, South Carolina, 6, *Divided*, North Carolina, Georgia, 2.

Moved to fill up the blank with "thirty." Passed in the affirmative.

Yeas, Massachusetts, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, 7. *Nays*, Connecticut, New Jersey, Delaware, Georgia, 4.

Moved and seconded to fill up the blank after the words "sufficient to ensure their independency," with "seven years."—Passed in the affirmative.

Yeas, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nay*, Connecticut, 1. *Divided*, Massachusetts, New York, 2.

It was moved by Mr. Rutledge, seconded by Mr. Butler, to strike out the clause which respects stipends to be allowed to the second branch.

On the question to strike out,—Passed in the negative.

Yeas, Connecticut, Delaware, South Carolina, 3. *Nays*, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, 7. *Divided*, Massachusetts 1.

It was then moved and seconded that the clause which respects the stipends to be given to the second branch, be the same as the first. Passed in the affirmative.

It was moved and seconded, that the ineligibility of the second branch to office be the same as the first.—Passed in the affirmative.

Yeas, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Connecticut, 1.

It was moved and seconded, to alter the resolution submitted by Mr. Randolph, so as to read as follows, namely,—"That the jurisdiction of the supreme tribunal shall be to hear and determine "in the dernier resort all piracies, felonies," &c.

It was moved and seconded to postpone the whole of the last clause generally.

It was then moved and seconded to strike out the words "all piracies and felonies on the high seas."—Passed in the affirmative.

It was moved and seconded to strike out the words "all captures from an enemy." Passed in the affirmative.

It was moved and seconded to strike out the words "other states," and to insert the words "two distinct states in the union." Passed in the affirmative.

It was moved and seconded to postpone the consideration of the resolution which respects the judiciary. Passed in the affirmative.

It was then moved and seconded that the committee do now rise, report a further progress, and request leave to sit again.—The committee then rose.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported from the committee,—That the committee had made a further progress in the matter to them referred, and had directed him to move that they may have leave to sit again.

Resolved, That this house will to-morrow again resolve itself in-

to a committee of the whole house to consider the state of the American union.

And then the house adjourned till to-morrow, at 11 o'clock, A. M.

WEDNESDAY, JUNE 13, 1787.

The order of the day being read,—The house resolved itself into a committee of the whole house, to consider the state of the American union. Mr. President left the chair.

In committee of the whole house.—Mr. Gorham in the chair.

It was moved by Mr. Randolph, seconded by Mr. Madison, to adopt the following resolution respecting the national judiciary, namely,

"That the jurisdiction of the national judiciary shall extend to "cases which respect the collection of the national revenue, im- "peachments of any national officers, and questions which involve "the national peace and harmony."—Passed in the affirmative.

It was moved by Mr. Pinckney, seconded by Mr. Sherman, to insert after the words "one supreme tribunal,"—"the judges of "which to be appointed by the second branch of the national legis- "lature."—Passed in the affirmative.

It was moved by Mr. Gerry, seconded by Mr. Pinckney, to add the following words to the fifth resolution adopted by the committee, namely,

"Excepting money bills which shall originate in the first branch "of the national legislature."—Passed in the negative.

Yeas, New York, Delaware, Virginia, 3. *Nays*, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina, Georgia, 8.

It was then moved and seconded, that the committee do rise, and report the proceedings to the house.—The committee then rose.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported from the committee,—That the committee, having considered and gone through the propositions offered to the house by the honorable Mr. Randolph, and to them referred, were prepared to report thereon; and had directed him to submit the report to the consideration of the house.

The report was then delivered in at the secretary's table, and having been once read,—It was moved by Mr. Randolph, seconded by Mr. Martin, to postpose the further consideration of the report till to-morrow.

And on the question to postpone,—It passed in the affirmative.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

THURSDAY, JUNE 14, 1787.

It was moved by Mr. Patterson, seconded by Mr. Randolph, that the further consideration of the report from the committee of

the whole house be postponed till to-morrow; and before the question for postponement was taken,—It was moved by Mr. Randolph, seconded by Mr. Patterson, that the house adjourn.

And then the house adjourned till to-morrow, at 11 o'clock.

FRIDAY, JUNE 15, 1787.

Mr. Patterson submitted several resolutions to the consideration of the house, which he read in his place, and afterwards delivered in at the Secretary's table. They were then read.

PROPOSITIONS

Offered to the convention by the honorable Mr. Patterson, June 15, 1787.

[Paper furnished by General Bloomfield.]

1. *Resolved,* That the articles of confederation ought to be so revised, corrected, and enlarged, as to render the federal constitution adequate to the exigencies of government, and the preservation of the union.

2. *Resolved,* That in addition to the powers vested in the United States in congress, by the present existing articles of confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods and merchandize of foreign growth or manufacture, imported into any part of the U. States—by stamps on paper, vellum, or parchment, and by a postage on all letters and packages passing through the general post office—to be applied to such federal purposes as they shall deem proper and expedient; to make rules and regulations for the collection thereof; and the same from time to time to alter and amend, in such manner as they shall think proper. To pass acts for the regulation of trade and commerce, as well with foreign nations as with each other; provided, that all punishments, fines, forfeitures, and penalties, to be incurred for contravening such rules and regulations, shall be adjudged by the comon law judiciary of the states in which any offence contrary to the true intent and meaning of such rules and regulations shall be committed or perpetrated; with liberty of commencing, in the first instance, all suits or prosecutions for that purpose, in the superior common law judiciary of such state; subject, nevertheless, to an appeal for the correction of all errors, both in law and fact; in rendering judgment, to the judiciary of the United States.

3. *Resolved,* That whenever requisitions shall be necessary, instead of the present rule, the United States in Congress be authorized to make such requisitions in proportion to the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that if such requisitions be not complied with in the time to be

specified therein, to direct the collection thereof in the non-complying states; and for that purpose to devise and pass acts directing and authorizing the same; provided, that none of the powers hereby vested in the United States in Congress, shall be exercised without the consent of at least states; and in that proportion, if the number of confederated states should be hereafter increased or diminished.

4. *Resolved*, That the United States in Congress be authorized to elect a federal executive to consist of persons, to continue in office for the term of years; to receive punctually, at stated times, a fixed compensation for the services by them rendered, in which no increase or diminution shall be made, so as to affect the persons composing the executive at the time of such increase or diminution; to be paid out of the federal treasury; to be incapable of holding any other office or appointment during their time of service, and for years thereafter; to be ineligible a second time, and removable on impeachment and conviction for malpractices or neglect of duty, by Congress, on application by a majority of the executives of the several states. That the executive, besides a general authority to execute the federal acts, ought to appoint all federal officers not otherwise provided for, and to direct all military operations; provided, that none of the persons composing the federal executive shall, on any occasion, take command of any troops, so as personally to conduct any military enterprise as general or in any other capacity.

5. *Resolved*, That a federal judiciary be established, to consist of a supreme tribunal, the judges of which to be appointed by the executive, and to hold their offices during good behaviour; to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of of such increase or diminution. That the judiciary, so established, shall have authority to hear and determine, in the first instance, on all impeachments of federal officers; and by way of appeal, in the dernier resort, in all cases touching the rights and privileges of ambassadors; in all cases of captures from an enemy; in all cases of piracies and felonies on the high seas; in all cases in which foreigners may be interested, in the construction of any treaty or treaties, or which may arise on any act or ordinance of Congress for the regulation of trade, or the collection of the federal revenue. That none of the judiciary officers shall, during the time they remain in office, be capable of receiving or holding any other office or appointment during their term of service, or for thereafter.

6. *Resolved*, That the legislative, executive, and judiciary powers within the several states, ought to be bound, by oath, to support the articles of union.

7. *Resolved*, That all acts of the United States in Congress assembled, made by virtue and in pursuance of the powers hereby vested in them, and by the articles of the confederation, and all

treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual states to the contrary notwithstanding.

And if any state, or any body of men in any state, shall oppose or prevent the carrying into execution such acts or treaties, the federal executive shall be authorized to call forth the powers of the confederated states, or so much thereof as may be necessary, to enforce and compel an obedience to such acts, or an observance of such treaties.

8. *Resolved*, That provision ought to be made for the admission of new states into the union.

9. *Resolved*, That provision ought to be made for hearing and deciding upon all disputes arising between the United States and an individual state, respecting territory.

10. *Resolved*, That the rule for naturalization ought to be the same in every state.

11. *Resolved*, That a citizen of one state, committing an offence in an other state, shall be deemed guilty of the same offence as if it had been committed by a citizen of the state in which the offence was committed.

It was moved by Mr. Madison, seconded by Mr. Sherman, to refer the resolutions, offered by Mr. Patterson, to a committee of the whole house. Which passed in the affirmative.

It was moved by Mr. Rutledge, seconded by Mr. Hamilton, to recommit the resolutions reported from a committee of the whole house. Which passed in the affirmative.

Resolved, That this house will to-morrow resolve itself into a committee of the whole house to consider of the state of the union.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

SATURDAY, JUNE 16, 1787.

The order of the day being read,—The house resolved itself into a committee of the whole house to consider of the state of the American union. Mr. President left the chair.

In committee of the whole house.—Mr. Gorham in the chair.

After some time passed in debate on the propositions offered by the honorable Mr. Patterson,

It was moved and seconded, that the committee do now rise, report a further progress, and request leave to sit again. The committee then rose.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported from the committee,—That the committee had made a progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That this house will, on Monday next, again resolve itself into a committee of the whole house, to consider of the state of the American union.

And then the house adjourned till Monday next, at 11 o'clock.

MONDAY, JUNE 18, 1787.

The order of the day being read,—The house resolved itself into a committee of the whole house to consider of the state of the American union. Mr. President left the chair.

In committee of the whole house.—Mr. Gorham in the chair.

It was moved by Mr. Dickinson, seconded by to postpone the consideration of the first resolution submitted by Mr. Patterson, in order to introduce the following, namely:

" *Resolved,* That the articles of confederation ought to be re- "vised and amended, so as to render the government of the "United States adequate to the exigencies, the preservation, and " the prosperity of the union."

And on the question to agree to the same,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Divided,* Pennsylvania, 1.

[See Col. Hamilton's plan below.]

It was then moved and seconded, that the committee do now rise, report a further progress, and request leave to sit again. The committee then rose.

In the house.—Mr. President resumed the chair.

Mr. Gorham reported from the committee,

That the committee had made a further progress in the matter to them referred; and had directed him to move that they may have leave to sit again.

Resolved, That the house will to-morrow again resolve itself into a committee of the whole house to consider of the state of the American union.

COL. HAMILTON'S PLAN OF GOVERNMENT.

The following paper was read by col. Hamilton, as containing his ideas of a suitable plan of government for the United States, in a speech upon the foregoing motion of Mr. Dickinson.

Paper furnished by General Bloomfield.

1. The supreme legislative power of the United States of America to be vested in two distinct bodies of men, the one to be called the assembly, the other the senate, who, together, shall form the legislature of the United States, with power to pass all laws whatsoever, subject to the negative hereafter mentioned.

2. The assembly to consist of persons elected by the people, to serve for three years.

3. The senate to consist of persons elected to serve during good behaviour; their election to be made by electors chosen for that purpose by the people. In order to this, the states to be divided into election districts. On the death, removal, or resignation of any senator, his place to be filled out of the district from which he came.

4. The Supreme executive authority of the United States to be vested in a governor, to be elected to serve during good behaviour. His election to be made by electors, chosen by electors, chosen by the people in the election districts aforesaid. His authorities and functions to be as follows :—

To have a negative upon all laws about to be passed, and the execution of all laws passed; to have the entire direction of war, when authorized, or begun; to have, with the advice and approbation of the senate, the power of making all treaties; to have the sole appointment of the heads or chief officers of the departments of finance, war, and foreign affairs; to have the nomination of all other officers, (ambassadors of foreign nations included) subject to the approbation or rejection of the senate; to have the power of pardoning all offences, except treason, which he shall not pardon without the approbation of the senate.

5. On the death, resignation, or removal of the governor, his authorities to be exercised by the president of the senate, until a successor be appointed.

6. The senate to have the sole power of declaring war; the power of advising and approving all treaties; the power of approving or rejecting all appointments of officers, except the heads or chiefs of the departments of finance, war, and foreign affairs.

7. The supreme judicial authority of the United States to be vested in judges, to hold their offices during good behavior, with adequate and permanent salaries. This court to have original jurisdiction in all causes of capture; and an appellative jurisdiction in all causes, in which the revenues of the general government, or the citizens of foreign nations, are concerned.

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

9. The governors, senators, and all officers of the U. States to be liable to impeachment for mal and corrupt conduct; and, upon conviction, to be removed from office, and disqualified for holding any place of trust or profit. All impeachments te be tried by a court to consist of the chief, or senior judge of the superior court of law in each state; provided, that such judge hold his place during good behavior, and have a permanent salary.

10. All laws of the particular states, contrary to the constitution or laws of the United States, to be utterly void. And the

better to prevent such laws being passed, the governor or president of each state shall be appointed by the general government, and shall have a negative upon the laws about to be passed in the state of which he is governor, or president.

11. No state to have any forces, land or naval; and the militia of all the states to be under the sole and exclusive direction of the United States; the officers of which to be appointed and commissioned by them.

TUESDAY, JUNE 19, 1787.

The order of the day being read,—The house resolved itself into a committee of the whole house to consider of the state of the American union. Mr. President left the chair.

In committee of the whole house—Mr. Gorham in the chair.

On the question to adopt Mr. Dickinson's motion, moved yesterday,—It passed in the negative.

Yeas, Connecticut, New York, New Jersey, Delaware, 4. *Nays*, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6. *Divided*, Maryland, 1.

It was then moved and seconded to postpone the consideration of the first proposition offered by Mr. Patterson. It passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, New York, New Jersey, 2.

It was then moved and seconded, that the committee do now rise; and report to the house that they do not agree to the propositions offered by the honorable Mr. Patterson; and that they report the resolutions offered by the honorable Mr. Randolph, heretofore reported from a committee of the whole house. Passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, New York, New Jersey, Delaware, 3. *Divided*, Maryland, 1.

The committee then rose.

In the house—Mr. President resumed the chair.

Mr. Gorham reported from the committee,—That the committee, having spent some time in the consideration of the propoositions submitted to the house by the honorable Mr. Patterson, and of the resolutions heretofore reported from a committee of the whole house, both of which had been to them referred, were prepared to report thereon; and had directed him to report to the house,—That the committee do not agree to the propositions offered by the honorable Mr. Patterson; and that they again submit the resolutions, formerly reported, to the consideration of the house.

STATE OF THE RESOLUTIONS

Submitted to the consideration of the house by the honorable Mr. Randolph, as altered, amended, and agreed to, in committee of the whole house.

[Paper deposited by President Washington in the Department of State.]

1. *Resolved*, That it is the opinion of this committee that a national government ought to be established consisting of a supreme legislative, judiciary, and executive.

2. *Resolved*, That the national legislature ought to consist of two branches.

3. *Resolved*, That the members of the first branch of the national legislature ought to be elected by the people of the several states for the term of three years; to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury; to be ineligible to any office established by a particular state, or under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service, and under the national government, for the space of one year after its expiration.

4. *Resolved*, That the members of the second branch of the national legislature ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for a term sufficient to insure their independency, namely, seven years; to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury; to be ineligible to any office, established by a particular state, or under the authority of the United States, (except those peculiarly belonging to the functions of the second branch) during the term of service, and under the national government, for the space of one year after its expiration.

5. *Resolved*, That each branch ought to possess the right of originating acts.

6. *Resolved*, That the national legislature ought to be empowered to enjoy the legislative rights vested in congress by the confederation; and, moreover, to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states contravening, in the opinion of the national legislature, the articles of union, or any treaties subsisting under the authority of the union.

7. *Resolved*, That the right of suffrage in the first branch of the national legislature ought not to be according to the rule established in the articles of confederation, but according to some equitable ratio of representation, namely: in proportion to the whole number of white and other free citizens, and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes in each state.

8. *Resolved*, That the rights of suffrage in the second branch of the national legislature ought to be according to the rule established for the first.

9. *Resolved*, That a national executive be instituted to consist of a single person; to be chosen by the national legislature, for the term of seven years; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be ineligible a second time; and to be removable on impeachment, and conviction of mal practice, or neglect of duty; to receive a fixed stipend, by which he may be compensated for the devotion of his time to public service, to be paid out of the national treasury.

10. *Resolved*, That the national executive shall have a right to negative any legislative act, which shall not be afterwards passed, unless by two third parts of each branch of the national legislature.

11. *Resolved*, That a national judiciary be established to consist of one supreme tribunal; the judges of which to be apppointed by the second branch of the national legistature; to hold their offices during good behaviour; to receive punctually, at stated times, a fixed compensation for their servies, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

12. *Resolved*, That the national legislature be empowered to appoint inferior tribunals.

13. *Resolved*, That the jurisdiction of the national judiciary shall extend to cases which respect the collection of the national revenue; impeachment of any national officers; and questions which involve the national peace and harmony.

14. *Resolved*, That provision ought to be made for the admission of states, lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

15. *Resolved*, That provision ought to be made for the continance of congress and their authorities, until a given day after the reform of the articles of union shall be adopted; and for the completion of all their engagements.

16. *Resolved*, That a republican constitution, and its existing laws, ought to be guaranteed to each state by the United States.

17. *Resolved*, That provision ought to be made for the amendment of the articles of union, whensoever it shall seem necessary.

18. *Resolved*, That the legislative, executive, and judiciary powers, within the several sates, ought to be bound, by oath, to support the articles of union.

19. *Resolved*, That the amendments which shall be offered to the confederation by the convention, ought, at a proper time, or times, after the approbation of congress, to be submitted to an as-

sembly or assemblies, of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.

It was then moved and seconded, to postpone the consideration of the first resolution reported from the committee till to-morrow.

And on the question to postpone,—It passed in the affimative.

And then the house adjourned till to-morrow, at 11 o'clock, A. M.

WEDNESDAY, JUNE 20. 1787.

The honorable William Blount, Esq. a deputy from the state of North Carolina, attended and took his seat.

The following credentials were then produced and read. [See p. 33.]

It was moved by Mr. Ellsworth, seconded by Mr. Gorham, to amend the first resolution reported from the committee of the whole house, so as to read as follows, namely:

"*Resolved*, That the government of the United States ought "to consist of a supreme legislative, judiciary, and executive."

On the question to agree to the amendment,—It passed unanimously in the affirmative.

It was moved by Mr. Lansing, seconded by Mr. Sherman, to postpone the consideration of the second resolution, reported from the committee, in order to take up the following, namely:

"*Resolved*, That the powers of legislation be vested in the "United States in congress."

And on the question to postpone,—It passed in the negative.

Yeas, Connecticut, New York, New Jersey, Delaware, 4.
Nays, Massachusetts, Pennsylvania, Virginia, North Carolina, S. Carolina, Georgia, 6. *Divided*, Maryland, 1.

It was moved and seconded to adjourn—Which passed in the negative.

Yeas, New York, New Jersey, Delaware, Maryland, 4.
Nays, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 7.

On motion of the deputies of the state of Delaware, the determination of the house on the second resolution reported from the committee was postponed until to-morrow.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

THURSDAY, JUNE 21, 1787.

The honorable Jonathan Dayton, Esq. a deputy of the state of New Jersey, attended and took his seat.

The following credentials were produced and read. [See p. 32.]

It was moved and seconded, to agree to the second resolution reported from the committee, namely:

"*Resolved*, That the legislature consist of two branches"—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Virginia,

North Carolina, South Carolina, Georgia, 7. *Nays*, New York, New Jersey, Delaware, 3. *Divided*, Maryland, 1.

It was moved by General C. C. Pinckey, and seconded, to amend the first clause of the third resolution reported from the committee, so as to read,

"*Resolved*, That the members of the first branch of the legisla-"ture ought to be appointed in such manner as the legislature of "each state shall direct."

On the question to agree to the amendment,—It passed in the negative.

Yeas, Connecticut, New Jersey, Delaware, South Carolina, 4. *Nays*, Massachusetts, New York, Pennsylvania, Virginia, North Carolina, Georgia, 6. *Divided*, Maryland, 1.

It was then moved and seconded to agree to the first clause of the third resolution, as reported from the committee, namely:

"*Resolved*, That the members of the first branch of the legisla-"ture ought to be elected by the people of the several states"—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 9. *Nay*, New Jersey, 1. *Divided*, Maryland, 1.

It was moved and seconded to erase the word "three," from the second clause of the third resolution, reported from the committee—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsyvania, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, New York, Delaware, Maryland, 3. *Divided*, New Jersey, 1.

It was moved and seconded to insert the word "two," in the second clause of the third resolution, reported from the committee —Which passed unanimously in the affirmative.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

FRIDAY, JUNE 22, 1787.

It was moved and seconded to strike out the third clause in the third resolution, reported from the committee, namely:

"To receive fixed stipends, by which they may be compensated "for the devotion of their time to public service:"

And to substitute,—"Their stipends to be ascertained by the "legislature, to be paid out of the public treasury."

On the question being put,—It passed in the negative.

Yeas, New Jersey, Pennsylvania, 2. *Nays*, Massachusetts, Connecticut, Delaware, Maryland, Virginia, North Carolina, S. Carolina, 7. *Divided*, New York Georgia, 2.

It was moved and seconded to strike the following words out of the fourth clause in the third resolution, reported from the committee, namely: "To be paid out of the public treasury."

On the question to strike out the words,—It passed in the negative.

Yeas, Massachusetts, Connecticut, North Carolina, South Carolina, 4. *Nays*, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, 5. *Divided*, New York, Georgia, 2.

It was moved and seconded to strike the following words out of the third resolution, reported from the committee, namely:

"To receive fixed stipends by which they may be compensated "for the devotion of their time to public service:"—And to substitute the following clause, namely: "To receive an adequate compensation for their services."

On the question, to agree to the amendment,—It passed unanimously in the affirmative.

It was then moved and seconded to take the vote of the house on the whole proposition, namely:

"To receive an adequate compensation for their services, to be paid out of the public treasury."

An objection of order being taken to this motion, it was submitted to the house.

And on the question, is the motion in order? it passed in the affirmative.

Yeas, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, 6. *Nays*, New York, Pennsylvania, Virginia, Georgia, 4. *Divided*, Massachusetts, 1.

The determination of the house on the whole proposition was, on motion of the deputies of the state of South Carolina, postponed till to-morrow.

It was moved and seconded to add the following clause to the third resolution:

"To be of the age of twenty-five years at least"—Which passed in the affirmative.

Yeas, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, 7. *Nays*, Massachusetts, Pennsylvania, Georgia, 3. *Divided*, New York, 1.

It was moved and seconded to strike out the following words in the last clause of the third resolution:

"And under the national government for the space of one year "after its expiration."

On the question to strike out the words, it passed in the negative.

Yeas, Massachusetts, New Jersey, North Carolina, Georgia, 4. *Nays*, Connecticut. Maryland, Virginia, South Carolina, 4. *Divided*, New York, Pennsylvania, Delaware, 3.

And then the house adjourned till to-morrow, at 11 o'clock, A. M.

SATURDAY, JUNE 23, 1787.

It was moved and seconded to agree to the proposition, which was postponed yesterday, on motion of the deputies of the state of South Carolina, namely:

"To receive an adequate compensation for their services, to be "paid out of the public treasury."

On the question to agree to the proposition, it passed in the negative.

Yeas, Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, 5. *Nays*, Connecticut, New York, Delaware, North Carolina, South Carolina, 5. *Divided*, Georgia, 1.

It was moved and seconded to strike out the following words in the third resolution reported from the committee, namely: "By "a particular state."

On the question to strike out the words, it passed in the affirmative.

Yeas, Connecticut, New York, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Massachusetts, Pennsylvania, Delaware, 3.

It was moved by Mr. Madison, and seconded, to amend the third resolution by striking out the following words, namely:

"Or under the authority of the United States, during the term "of service, and under the national government for the space of "one year after its expiration;" and inserting the following clause, after the word "established," namely:

"Or the emoluments whereof shall have been augmented by the "legislature of the United States during the time of their being "members thereof, and until they shall have ceased to be mem"bers for the space of one year."

On the question to agree to the amendment, it passed in the negative.

Yeas, Connecticut, New Jersey, 2. *Nays*, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Divided*, Massachusetts, 1.

It was moved and seconded to add after the words "ineligible "to," the words "and incapable of holding"—Which passed in the affirmative.

It was moved and seconded to strike the words "national go"vernment," out of the third resolution—Which passed in the affirmative.

Yeas, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, 8. *Nays*, Pennsylvania, Georgia, 2. *Divided*, Massachusetts, 1.

It was moved and seconded to strike the word "established," out of the third resolution—Which passed in the affirmative.

It was moved and seconded to add after the word "service," in the third resolution, the words, "of the first branch"—Which passed in the affirmative.

It was then moved and seconded to agree to the words, "And "for the space of one year after its expiration."

On the question to agree to these words, it passed in the negative.

Yeas, New York, Delaware, Maryland, South Carolina, 4.—*Nays*, Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, Georgia, 6. *Divided*, Pennsylvania, 1.

And then the house adjourned till Monday next, at 11 o'clock.

MONDAY, JUNE 25, 1787.

It was moved and seconded to erase the word "national," and to substitute the words "United States," in the fourth resolution—Which passed in the affirmative.

It was moved and seconded to postpone the consideration of the first clause of the fourth resolution, in order to take up the eighth resolution reported from the committee.

On the question to postpone, it passed in the negative.

Yeas, New York, Virginia, South Carolina, Georgia, 4. *Nays*, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Corolina, 7.

It was moved and seconded to postpone the consideration of the fourth, in order to take up the seventh resolution.

On the question to postpone, it passed in the negative.

Yeas, Maryland, Virginia, North Carolina, South Carolina, Georgia, 5. *Nays*, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, 6.

It was moved and seconded to agree to the first clause of the fourth resolution, namely:

"*Resolved*, That the members of the second branch of the legislature of the United States ought to be chosen by the individual legislatures."

On the question to agree,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, 9. *Nays*, Pennsylvania, Virginia, 2.

It was moved and seconded to agree to the second clause of the fourth resolution, namely:

"To be of the age of thirty years at least"—Which passed unanimously in the affirmative.

It was moved and seconded to erase the words, "sufficient to insure their independency," from the third clause of the fourth resolution—Which passed in the affirmative.

Yeas, Connecticut, New York, New Jersey, Pennsylvania, Delaware, South Carolina, Georgia, 7. *Nays*, Massachusetts, Maryland, Virginia, North Carolina, 4.

It was moved and seconded to add, after the words "seven years," in the fourth resolution, the words, "to go out in fixed proportions."

It was moved and seconded to insert the word "six," instead of "seven."

It was moved and seconded to amend the clause so as to read, "for four years, one fourth to go out annually."

No determination being taken on the three last motions, it was moved and seconded to erase the word "seven," from the third clause of the fourth resolution—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, 7. *Nays*, Pennsylvania, Delaware, Virginia, 3. *Divided*, Maryland, 1.

It was moved and seconded to fill up the blank in the third clause of the fourth resolution with the word "six"—Which passed in the negative.

Yeas, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, 5. *Nays*, Massachusetts, New York, New Jersey, South Carolina, Georgia, 5. *Divided*, Maryland, 1.

It was moved and seconded to adjourn. Passed in the negative.

Yeas, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, 5. *Nays*, Massachusetts, New York, North Carolina, South Carolina, Georgia, 5. *Divided*, Maryland, 1.

It was then moved and seconded to fill up the blank in the third clause of the fourth resolution with the word "five"—Which passin the negative.

Yeas, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, 5. *Nays*, Massachusetts, New York, New Jersey, South Carolina, Georgia, 5. *Divided*, Maryland, 1.

It was moved and seconded to adjourn—Passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 7. *Nays*, New York, New Jersey, South Carolina, Georgia, 4.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

TUESDAY, JUNE 26, 1787.

It was moved and seconded to amend the third clause of the fourth resolution, reported from the committee, so as to read as follows, namely:

"For nine years, one third to go out triennially"—Which passed in the negative.

Yeas, Pennsylvania, Delaware, Virginia, 3. *Nays*, Massachusetts, Connecticut, New York, New Jersey, Maryland, North Carolina, South Carolina, Georgia, 8.

It was then moved and seconded to amend the third clause of the fourth resolution so as to read, "For six years, one third to go out biennially."

On the question to agree to the amendment,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 7. *Nays*, New York, New Jersey, South Carolina, Georgia, 4.

It was moved and seconded to strike the following clause out of the fourth resolution: "To receive fixed stipends by which they "may be compensated for the devotion of their time to public ser-"vice."—The question to strike out. passed in the negative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Maryland, South Carolina, 5. *Nays*, New York, New Jersey, Delaware, Virginia, North Carolina, Georgia, 6.

It was then moved and seconded to amend the fourth clause of the fourth resolution, so as to read, "To receive a compensation "for the devotion of their time to the public service"—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, N. Carolina, Georgia, 10. *Nay*, South Carolina, 1.

It was moved and seconded to erase the following words from the fourth resolution, namely: "Out of the national treasury;"—And to substitute the following, namely,—"By their respective states,"—Which passed in the negative.

Yeas, Connecticut, New York, New Jersey, South Carolina, Georgia, 5. *Nays*, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 6.

It was moved and seconded to agree to the following clause in the fourth resolution, namely: "To be be paid out of the public treasury"—Which passed in the negative.

Yeas, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, 5. *Nays*, Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, 6.

It was moved and seconded to postpone the consideration of the last clause in the fourth resolution, as reported from the committee, in order to take up the following proposition, offered by Mr. Williamson, as a substitute, namely:

"To be ineligible to, and incapable of holding any office, under "the authority of the United States, except those peculiarly be-"longing to the functions of the second branch, during the term "for which they are elected."

On the question to postpone,—It passed in the affirmative.

Yeas, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 6. *Nays*, Massachusetts, New York, New Jersey, South Carolina, Georgia. 5.

It was then moved and seconded to add after the word "elected," the words, "and for one year thereafter"—Which passed in the affirmative.

Yeas. Connecticut, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina, 7. *Nays*, Massachusetts, New Jersey, Pennsylvania, Georgia, 4.

It was then moved and seconded to agree to the proposition as amended, namely:

"To be ineligible to, and incapable of holding any office under "the authority of the United States, except those peculiarly be-"longing to the functions of the second branch, during the term "for which they are elected, and for one year thereafter"—Which passed unanimously in the affirmative.

It was moved and seconded to add the following clause to the fourth resolution, namely: "And to be ineligible and incapable of holding any office under a particular state"—Which passed in the negative.

Yeas, Massachusetts, Pennsylvania, Virginia, 3. *Nays*, Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, 8.

It was moved and seconded to agree to the fifth resolution reported from the committee, namely:

"*Resolved*, That each branch ought to possess the right of originating acts"—Which passed unanimously in the affirmative.

And then the house adjourned till to-morrow, at 11 o'clock, A. M.

WEDNESDAY, JUNE 27, 1787.

It was moved and seconded to postpone the consideration of the sixth resolution reported from the committee, in order to take up the seventh and eighth resolutions.

On the question to postpone,—It passed in the affirmative.

It was moved and seconded to agree to the first clause of the seventh resolution, namely:

"*Resolved*, That the right of suffrage in the first branch of the "national legislature ought not to be according to the rule estab-"lished in the articles of confederation."

Before a determination was taken on the clause, the house adjourned till to-morrow, at 11 oclock, A. M.

THURSDAY, JUNE 28, 1787.

It was moved and seconded to amend the seventh resolution reported from the committee, so as to read as follows, viz:

" *Resolved*, That the right of suffrage in the first branch of the " legislature of the United States ought to be in proportion to the " whole number of white and other free citizens and inhabitants " of every age, sex, and condition, including those bound to ser-" vitude for a term of years, and three-fifths of all other persons " not comprehended in the foregoing description, except Indians, " not paying taxes in each state."

It was moved and seconded to erase the word "not," from the first clause of the seventh resolution, so as to read—

" *Resolved*, That the right of suffrage in the second branch of " the legislature of the United States ought to be according to the " rule established in the articles of confederation."

The determination of the house on the motion for erasing the word "not," from the first clause of the seventh resolution, was postponed, at the request of the deputies of the state of New York, till to-morrow.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

FRIDAY, JUNE 29, 1787.

It was moved and seconded to strike the word "not," out of the first clause of the seventh resolution reported from the committee.

On the question to strike out,—It passed in the negative.

Yeas, Connecticut, New York, New Jersey, Delaware, 4.

Nays, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6. *Divided*, Maryland, 1.

It was moved and seconded to agree to the first clause of the seventh resolution, as reported from the committee, viz:

"*Resolved*, That the right of suffrage in the first branch of the "legislature of the United States ought not to be according to the "rule established in the articles of confederation, but according "to some equitable ratio of representation."

On the question to agree,—It passed in the affirmative.

Yeas, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6. *Nays*, Connecticut, New York, New Jersey, Delaware, 4. *Divided*, Maryland, 1.

It was moved and seconded to postpone the further consideration of the seventh, in order to take up the eighth resolution—Which passed in the affirmative.

Yeas, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, Massachusetts, Delaware, 2.

It was moved and seconded to amend the eighth resolution resolution reported from the committee, so as to read as follows, viz:

"*Resolved*, That in the second branch of the legislature of "the United States, each state shall have an equal vote."

Before the determination of the house was taken on the last motion, the house adjourned till to-morrow at 11 o'clock, A. M.

SATURDAY, JUNE 30, 1787.

The following resolution was moved and seconded, viz:

"*Resolved*, That the president be requested to write to the su- "preme executive of the state of New Hampshire, and inform him "that the business before the convention is of such a nature as to "require the immediate attendance of the gentlemen appointed by "that state to this convention."

On the question to agree to this resolution,—It passed in the negative.

Yeas, New York, New Jersey, 2. *Nays*, Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, 5. *Divided*, Maryland, 1.

It was then moved and seconded to take up the resolution submitted to the consideration of the house yesterday, viz:

"*Resolved*, That in the second branch of the legislature of the "United States, each state will have an equal vote."

After sometime passed in debate, the house voted unanimously to adjourn till Monday next at 11 A. M.

MONDAY, JULY 2, 1787.

It was moved and seconded to agree to the following resolution, viz:

"*Resolved*, That in the second branch of the Legislature of the

United States, each state shall have an equal vote"—Which passed in the negative.

Yeas, Connecticut, New York, New Jersey, Delaware, Maryland, 5. *Nays*, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, 5. *Divided*, Georgia, 1.

It was moved and seconded to appoint a committee, to whom the eighth resolution, and so much of the seventh resolution, reported from the committee of the whole house, as has not been decided upon, should be referred.

On the question to agree to this motion,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, New Jersey, Delaware, 2.

It was moved and seconded that the committee consist of a member from each state. It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Pennsylvania, 1.

And a committee by ballot, was appointed, of Mr. Gerry, Mr. Ellsworth, Mr. Yates, Mr. Patterson, Mr. Franklin, Mr. Bedford, Mr. L. Martin, Mr. Mason, Mr. Davie, Mr. Rutledge, and Mr. Baldwin.

And then the house adjourned till Thursday next, at 11 o'clock.

THURSDAY, JULY 5, 1787.

The honorable Mr. Gerry reported from the committee, to whom were referred the *eighth* resolution, and such part of the *seventh* resolution as had not already been decided on by the house, that the committee had directed him to submit the following report to the consideration of the house; and the same being delivered in at the secretary's table, was read once throughout, and then by paragraphs, and is as follows, viz:

THE committee to whom were referred the eighth resolution reported from the committee of the whole house, and so much of the seventh as hath not been decided on, submit the following report:

That the subsequent propositions be recommended to the convention, on condition that both shall be generally adopted.

"1. That in the first branch of the legislature, each of the states
" now in the union be allowed one member for every forty thou-
" inhabitants of the description reported in the seventh resolution
" of the committee of the whole house—that each state not con-
" taining that number shall be allowed one member—that all bills
" for raising or appropriating money, and for fixing the salaries of
" the officers of the government of the United States, shall origin-
" ate in the first branch of the legislature, and shall not be alter-
" ed, or amended, by the second branch—and, that no money
" shall be drawn from the public treasury, but in pursuance of ap-
" propriations to be originated by the first branch.

"2. That in the second branch of the legislature, each state "shall have an equal vote."

It was moved and seconded to postpone the consideration of the first proposition contained in the report, in order to take up the second.

On the question to postpone,—It passed in the negative.

Yeas, New York, South Carolina, 2. *Nays*, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia North Carolina. Georgia, 8.

It was then moved by Mr. Rutledge, and seconded, to postpone the first clause of the report, in order to take up the following, viz:

"That the suffrages of the several states be regulated and pro- "portioned according to the sums to be paid towards the general "revenue by the inhabitants of each state, respectively—that an "apportionment of suffrages, according to the ratio aforesaid, shall "be made and regulated at the end of years from the first "meeting of the legislature of the United States, and so from time "to time, at the end of every years thereafter; but that for "the present, and until the period first above mentioned, "shall have one suffrage," &c.*

And on the question to postpone,—It passed in the negative.

Yeas, South Carolina, 1. *Nays*, Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina. 8.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

FRIDAY, JULY 6, 1787.

It was moved and seconded to refer the first clause of the first proposition reported from the grand committee to a special committee—Which passed in the affirmative.

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* The two following statements are among the papers of Mr. Brearly, furnished by Gen. Bloomfield. They have apparently, reference to this resolution:

States.	No. Whites.	No. Blacks.	States.	No. Whites.	No. Blacks.
New Hampshire	82,000	102,000	Pennsylvania	341,000	
Massachusetts Bay	352,000		Delaware	37,000	
Rhode Island	58,000		Maryland	174,000	80,000
Connecticut	202,000		Virginia	300,000	300,000
New York	238,000		North Carolina	181,000	
New Jersey	138,000	145,000	South Carolina	93,000	
			Georgia	27,000	

The following quotas of taxation are extracted from the printed journals of the old Congress. September 27, 1785:

	Qnotas of taxes.	Delegates.		Quotas of taxes.	Delegates.
Virginia	512,974	16	South Carolina	192,366	6
Massachusetts Bay	448,854	14	New Jersey	166,716	5
Pennsylvania	410,178	12¾	New Hampshire	105,416	3¼
Maryland	283,034	8¾	Rhode Island	64,636	2
Connecticut	264,182	8	Delaware	44,886	1¼
New York	256,486	8	Georgia	32,060	1
North Carolina	218,012	6¾		3,000,000	90

Yeas, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, New York, New Jersey, Delaware, 3. *Divided*, Maryland, 1.

It was moved and seconded that the committee consist of five members—Which was unanimously agreed to,

And a committee was appointed by ballot, of Mr G. Morris, Mr. Gorham, Mr. Randolph, Mr. Rutledge, and Mr. King.

It was moved and seconded to postpone the remainder of the first proposition, in order to take up the second—Which passed in the affirmative.

Yeas, New York, New Jersey, Pennsylvania, Delaware Maryland, Virginia, South Carolina, Georgia, 8. *Nays*, Massachusetts, Connecticut, North Carolina, 3.

It was moved and seconded to postpone the consideration of the second proposition—Which passed in the affirmative.

Yeas, Connecticut, New Jersey, Delaware, Maryland, Virginia, Georgia, 6. *Nays*, Pennsylvania, North Carolina, South Carolina, 3. *Divided*, Massachusetts, New York, 2.

It was moved and seconded to resume to consideration of the second clause of the first proposition, which had been postponed in order to take up the second proposition—Which passed in the affirmative.

On the question, shall the following clause stand as a part of the report, namely:

"3. That all bills for raising or appropriating money, and for "fixing the salaries of the officers of the government of the United "States, shall originate in the first branch of the legislature, and "shall not be altered or amended by the second branch; and that "no money shall be drawn from the public treasury but in pursu-"ance of appropriations to be originated by the first branch"— It passed in the affirmative. The votes stood thus:

Yeas, Connecticut, New Jersey, Delaware, Maryland, North Carolina, 5. *Nays*, Pennsylvania, Virginia, South Carolina, 3. *Divided*, Massachusetts, New York, Georgia, 3.

And on a question moved and seconded, whether the vote so standing was determined in the affirmative—It was decided as follows, that it was.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, 9. *Nays*, New York, Virginia, 2.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

SATURDAY, JULY 7, 1787.

A letter from W. Rawle, secretary to the library company of Philadelphia, addressed to his excellency the president of the convention, enclosing a resolve of that company, granting the use of their books to the members of the convention—being read,

On motion, *Resolved*, That the secretary, by letter, present the thanks of the convention to the directors of the library company for their polite attention.

It was moved and seconded, that the second proposition reported from the grand committee stand part of the report, namely:

"That in the second branch of the legislature each state shall have an equal vote"—Which passed in the affirmative.

Yeas, Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, 6. *Nays*, Pennsylvania, Virginia, South Carolina, 3. *Divided*, Massachusetts, Georgia, 2.

It was then moved and seconded to postpone the consideration of the report from the grand committee until the special committee report—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, 6. *Nays*, New York, Virginia, North Carolina, South Carolina, Georgia, 5.

And then the house adjourned till Monday next, at 11 o'clock.

MONDAY, JULY 9, 1787.

The honorable Daniel Carroll, esq. one of the deputies from the state of Maryland, attended and took his seat.

The honorable Mr. G. Morris, from the committee to whom was referred the first clause of the first proposition, reported from the grand committee, informed the house, that the committee were prepared to report. He then read the report in his place; and the same being delivered in at the secretary's table, was read once throughout, and then by paragraphs; and is as follows, namely:

The committee to whom was referred the first clause of the first proposition reported from the grand committee, beg leave to report:

"1. That in the first meeting of the legislature of the United "States the first branch thereof consist of fifty-six members, of "which number

"New Hampshire shall have		2	Delaware	shall have	1
"Massachusetts	....	7	Maryland	....	4
"Rhode Island	....	1	Virginia	....	9
"Connecticut	....	4	North Carolina	...	5
"New York	....	5	South Carolina	....	5
"New Jersey	....	3	Georgia,	....	2
"Pennsylvania	....	8			

"2. But as the present situation of the states may probably al- "ter as well in point of wealth, as in the number of their inhabi- "tants—that the legislature be authorized from time to time to "augment the number of representatives. And in case any of the "states shall hereafter be divided, or any two or more states uni- "ted, or any new state created within the limits of the United "States, the legislature shall possess authority to regulate the num- "ber of representatives in any of the foregoing cases upon the "principles of their wealth and number of inhabitants."

It was moved and seconded to postpone the consideration of the first paragraph of the report, in order to take up the second—Which passed in the affirmative.

On the question to agree to the second paragraph of the report—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.—*Nays*, New York, New Jersey, 2.

It was moved and seconded to refer the first paragraph of the report to a committee of one member from each state—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 9. *Nays*, New York, South Carolina, 2.

And a committee was appointed, by ballot, of the honorable Mr. King, Mr. Sherman, Mr. Yates, Mr. Brearly, Mr. G. Morris, Mr. Read, Mr. Carroll, Mr. Madison, Mr. Williamson, Mr. Rutledge, and Mr. Houston.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

TUESDAY, JULY 10, 1787.

The honorable Mr. King, from the grand committee to whom was referred the first paragraph of the report of a committee consisting of Mr. G. Morris, Mr. Gorham, Mr. Randolph, Mr. Rutledge, and Mr. King, informed the house that the committee were prepared to report. He then read the report in his place; and the same being delivered in, at the secretary's table, was again read, and is as follows, namely,

"That in the original formation of the legislature of the United "States, the first branch thereof shall consist of sixty-five mem-"bers, of which number

"New Hampshire	shall send	3	Delaware	shall send	1
"Massachusetts	....	8	Maryland	....	6
"Rhode Island	....	1	Virginia	....	10
"Connecticut	...	5	North Carolina	....	5
"New York	....	6	South Carolina	....	5
"New Jersey	....	4	Georgia	....	3."
"Pennsylvania	....	8			

It was moved and seconded to amend the report by striking out the word "three," in the apportionment of representation to New Hampshire, and inserting the word "two"—Which passed in the negative.

Yeas, South Carolina, Georgia, 2. *Nays*, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 9.

It was moved and seconded to amend the report by striking out the word "five," in the apportionment of representation to North Carolina, and inserting the word "six"—Which passed in the negative.

Yeas, North Carolina, S. Carolina, Georgia, 3, *Nays*, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, 8.

It was moved and seconded to amend the report by striking out the word "five," in the apportionment of representation to South Carolina, and inserting the word "six"—Which passed in the negative.

Yeas, Delaware, North Carolina, South Carolina, Georgia, 4.—*Nays*, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, 7.

It was moved and seconded to amend the report by striking out the word "three," in the apportionment of representation to Georgia, and inserting the word "four,"—Which passed in the negative.

Yeas, Virginia, North Carolina, South Carolina, Georgia, 4.—*Nays*, Massachusetts, Connecticut, New York, N. Jersey, Pennsylvania, Delaware, Maryland, 7.

It was moved and seconded to double the number of representatives, in the first branch of the legislature of the United States, apportioned by the report of the grand committee to each state—Which passed in the negative.

Yeas, Delaware, Virginia, 2. *Nays*, Massachusetts, Connecticut, New York, N. Jersey, Pennsylvania, Maryland, North Carolina, South Carolina, Georgia, 9.

On the question to agree to the report of the grand committee,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New York, N. Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 9. *Nays*, South Carolina, Georgia, 2.

It was moved and seconded to add the following amendments after the second paragraph of the report from the committee consisting of Mr. Morris, Mr. Gorham, Mr. Randolph, Mr. Rutledge, and Mr. King—

"That, in order to ascertain alterations in the population and "wealth of the states, the legislature of the United States be re"quired to cause a proper census and estimate to be taken once "in every term of years."

It was moved and seconded to postpone the consideration of the last motion, in order to take up the following, namely,

"That the committee of eleven, to whom was referred the report "of the committee of five on the subject of representation, be re"quested to furnish the convention with principles on which they "grounded the report"—Which passed in the negative.

Yea, South Carolina, 1. *Nays*, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 10.

And then the house adjourned till to-morrow at 11 o'clock, A. M

WEDNESDAY, JULY 11, 1787.

The amendment offered to the second paragraph of the report from the committee, consisting of Mr. G. Morris, Mr. Gorham, Mr. Randolph, Mr. Rutledge, and Mr. King, being withdrawn—It was moved by Mr. Williamson, and seconded, to substitute the following resolution, namely,

"*Resolved*, That in order to ascertain the alterations that may "happen in the population and wealth of the several states, a cen- "sus shall be taken of the free inhabitants of each state and three "fifths of the inhabitants of other description, on the first year "after this form of government shall have been adopted. And "afterwards on every term of years; and the legislature shall "alter or augment the representation accordingly."

It was moved and seconded to strike out the words "three-fifths of"—Which passed in the negative.

Yeas, Delaware, South Carolina, Georgia, 3. *Nays*, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, 7.

It was moved by Mr. Rutledge, and seconded, to postpone the consideration of the resolution proposed, in order to take up the following, namely:

"Resolved, That the end of years from the meeting of "the legislature of the United States, and at the expiration of ev- "ery years thereafter, the legislature of the United States "be required to apportion the representation of the several states, "according to the principles of their wealth and population."

On the question to postpone,—It passed in the negative.

Yeas, Massachusetts, Pennsylvania, Delaware, South Carolina, Georgia, 5. *Nays*, Connecticut, New Jersey, Maryland, Virinia, North Carolina, 5.

It was moved and seconded to agree to the first clause of the resolution, namely:

"That in order to ascertain the alterations that may happen in the "population and wealth of the several states, a census shall be "taken of the free inhabitants of each state"—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, 6. *Nays*, Delaware, Maryland, South Carolina, Georgia, 4.

It was moved and seconded to adjourn.—Passed in the negative.

Yea, Pennsylvania, 1. *Nays*, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.

It was moved and seconded to agree to the following clause of the resolution, namely:

"And three fifths of the inhabitants of other description"—Which passed in the negative.

Yeas, Connecticut, Virginia, North Carolina, Georgia, 4. *Nays*,

Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, 6.

It was moved and seconded to agree to the following clause of the resolution, namely:

"On the first year after this form of government shall have "been adopted"—Which passed in the affirmative.

Yeas, Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, 7. *Nays*, Connecticut, Maryland, Georgia, 3.

It was moved and seconded to fill up the blank with the word "fifteen"—Which passed unanimously in the affirmative.

It was moved and seconded to add after the words "fifteen years," the words "at least"—Which passed in the negative.

Yeas, Massachusetts, Virginia, North Carolina, South Carolina, Georgia, 5. *Nays*, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, 5.

It was moved and seconded to agree to the following clause of the resolution namely:—"And the legislature shal. alter or augment the "representation accordingly"—Which passed unanimously in the affirmative.

On the question to agree to the resolution as amended,—It passed unanimously in the negative.

And then the house adjourned till to-morrow, at 11 o'clock. A. M.

THURSDAY, JULY 12, 1787.

It was moved and seconded to add the following clause to the last resolution agreed to by the house, respecting the representation in the first branch of the legislature of the United States, namely:

"Provided always, That direct taxation, ought to "be proportioned according to representation"—Which passed unanimously in the affirmative.

It was moved and seconded to postpone the consideration of the first clause in the report from the first grand committee—Which passed in the affirmative.

It was moved and seconded to add the following amendment to the last clause adopted by the house, namely:

"And that the rule of contribution by direct taxation, for the "support of the government of the United States, shall be the "number of white inhabitants, and three fifths of every other des-"cription in the several states, until some other rule that shall more "curately ascertain the wealth of the several states can be de-"vised and adopted by the legislature."

The last amendment being withdrawn,—It was moved and seconded to substitute the following namely: "And in order to ascertain the alteration in the "representation which may be re-"quired, from time to time, by the changes in the relative circum-"stances of the states—

"*Resolved*, That a census be taken within two years from the "first meeting of the legislature of the United States, and once "within the term of every   years afterwards, of all the inhabitants of United States, in the manner and according to the ratio "recommended by Congress in their resolution of   and that "the legislature of the United States shall arrange the representation accordingly."

It was moved and seconded so to alter the last clause adopted by the house, that, together with the amendment proposed, the whole should read as follows, namely:

"*Provided always*, That representation ought to be proportioned according to direct taxation. And, in order to ascertain the "alterations in the direct taxation which may be required, from "time to time, by the changes in the relative circumstances of the "states—

"*Resolved*, That a census be taken within two years from the "first meeting of the legislature of the United States, and once "within the term of every   years afterwards, of all the inhabitants of the United States, in the manner, and according "to the ratio, recommended by Congress in their resolution of "April 18, 1783; and that the legislature of the United States "shall proportion the direct taxation accordingly."

It was moved and seconded to strike out the word "two," and insert the word "six"—Which passed in the affirmative.

Yeas, Connecticut, New Jersey, Pennsylvania, Maryland, South Carolina, 5. *Nays*, Massachusetts, Virginia, North Carolina, Georgia, 4. *Divided*, Delaware, 1.

It was moved and seconded to fill up the blank with the number "twenty."—Passed in the ngative.

Yeas, Connecticut, New Jersey, Pennsylvania, 3. *Nays*, Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 7.

It was moved and seconded to fill up the blank with the word "ten"—Which passed in the affirmative.

Yeas, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Connecticut, New Jersey, 2.

It was moved and seconded to strike out the words "in the "manner and according to the ratio recommended by Congress in "their recommendation of April 18, 1783;" and to substitute the following, namely: "of every description and condition"—Which passed in the negative.

Yeas, South Carolina, Georgia, 2. *Nays*, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 8.

The question being about to be put upon the clause as amended, the previous question was called for, and passed in the negative.

Yea, New Jersey, 1. *Nays*, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Divided*, Delaware, 1.

On the question to agreee to the clause as amended namely :

"*Provided always*, That representation ought to be proportion-"ed according to direct taxation. And in order to ascertain the "alteration in the direct taxation which may be required, from "time to time, by the changes in the relative circumstances of the "states--

"*Resolved*, That a census be taken within six years from the "first meeting of the legislature of the United States, and once with-"in the term of every ten years afterwards, of all the inhab-"itants of the United States, in the manner and according to the "ratio recommended by congress in their resolution of April 18, "1783; and that the legislature of the United States shall pro-"portion the direct tax accordingly."--It passed in the affirmative.

Yeas, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, 6. *Nays*, New Jersey, Delaware, 2. *Divided*, Massachusetts, South Carolina, 2.

And then the house adjourned uutil to-morrow, at 11 o'clock, A. M.

FRIDAY, JULY 13, 1787.

It was moved and seconded to postpone the consideration of that clause in the report of the grand committee, which respects the originating of money bills in the first branch, in order to take up the following, namely : "That in the second branch of the "legislature of the United States, each state shall have an equal vote."

It was moved and seconded to add the following amendment to the last clause agreed to by the house, namely:

"That from the first meeting of the legislature of the United "States, until a census shall be taken, all moneys to be raised for "supplying the public treasury by direct taxation, shall be assess-"ed on the inhabitants of the several states according to the num-"ber of their representatives, respectively, in the first branch."

It was moved and seconded to postpone the consideration of the amendment--Which passed in the negative.

Yeas, Connecticut, New Jersey, Delaware, Maryland, 4. *Nays*, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6.

On the question to agree to the amendment,--It passed in the negative.

Yeas, Massachusetts, Pennsylvania, North Carolina, South Carolina, Georgia, 5. *Nays*, Connecticut, New Jersey, Delaware, Maryland, Virginia, 5.

It was moved and seconded to agree to the following amendment, namely:

"That from the first meeting of the legislature of the United "States until a census shall be taken, all moneys for supplying the "public treasury, by direct taxation, shall be raised from the seve- "ral states according to the number of their representatives, res- "pectively, in the first branch"—Which passed in the affirmative.

Yeas, Massachusetts, Virginia, North Carolina, South Carolina, Georgia, 5. *Nays*, Connecticut, New Jersey, Delaware, Maryland, 4. *Divided*, Pennsylvania, 1.

It was moved and seconded to re-consider the second clause of the report from the committee of five, entered on the journal of the 9th instant—Which was unanimously agreed to.

It was moved and seconded to alter the second clause reported from the committee of five, entered on the journal, of the 9th instant, so as to read as follows, namely:

"But as the present situation of the states may probably alter "in the number of their inhabitants, that the legislature of the "United States be authorized, from time to time, to apportion the "number of representatives. And in case any of the states shall "hereafter be divided, or any two or more states united, or any "new states created within the limits of the United States, the "legislature of the United States shall possess authority to regu- "late the number of representatives in any of the foregoing cases, "upon the principle of their number of inhabitants, according to "the provisions hereafter mentioned."

On the question to agree to the clause as amended,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Divided*, Delaware, 1.

It was moved and seconded to add, after the word "divided," the following words, namely, "or enlarged by addition of territory"—Which passed unanimously in the affirmative.

It was moved and seconded to adjourn.—Passed in the affirmative.

Yeas, Massachusetts, Connecticut, Delaware, Maryland, North Carolina, South Carolina, 6. *Nays*, New Jersey, Pennsylvania, Virginia, Georgia, 4.

And then the house adjourned until to-morrow, at 11 o'clock, A. M.

SATURDAY, JULY 14, 1787.

It was moved and seconded to agree to the following proposition, namely:

"That to secure the liberties of the states already confederated, "the number of representatives, in the first branch, from the states "which shall hereafter be established, shall never exceed the re- "presentations from such of the thirteen United States as shall ac- "cede to this confederation."

On the question to agree to the proposition,—It passed in the negative.

Yeas, Massachusetts, Connecticut, Delaware, Maryland, 4. *Nays*, New Jersey, Virginia, North Carolina, South Carolina, Georgia, 5. *Divided*, Pennsylvania, 1.

It was moved and seconded to reconsider the two propositions reported from the grand committee, and agreed by the house to stand part of the report entered on the journal of the 6th instant.

It was moved by Mr. Pinckney, and seconded, to postpone the second clause of the report from the grand committee, entered on the journals of the 6th instant, in order to take up the following, namely:

"That the second branch of the legislature shall have thirty-six members, of which number

"New Hampshire shall have		2	Delaware shall have		1
"Massachusetts	....	4	Maryland	....	3
"Rhode Island	....	1	Virginia	....	5
"Connecticut	....	3	North Carolina	....	3
"New York	....	3	South Carolina	....	3
"New Jersey	....	2	Georgia	....	2."
"Pennsylvania	....	4			

On the question to postpone,—It passed in the negative.

Yeas, Pennsylvania, Maryland, Virginia, South Carolina, 4. *Nays*, Massachusetts, Connecticut, New Jersey, Delaware, North Carolina, Georgia, 6.

And then the house adjourned till Monday.

MONDAY, JULY 16, 1787.

The question being taken on the whole of the report from the grand committee, as amended,—It passed in the affirmative, and is as follows namely:

"*Resolved*, That in the original formation of the legislature of "the United States, the first branch thereof shall consist of sixty-"five members, of which number

"New Hampshire shall send		3	Delaware shall send		1
"Massachusetts	...	8	Maryland	....	6
"Rhode Island	....	1	Virginia	....	10
"Connecticut	....	5	North Carolina	....	5
"New York	...	6	South Carolina	....	5
"New Jersey	....	4	Georgia	....	3
"Pennsylvania	....	8			

"But as the present situation of the states may probably alter "in the number of their inhabitants, the legislature of the United "States shall be authorized, from time to time, to apportion the "number of representatives. And in case any of the states shall "hereafter be divided, or enlarged by addition of territory, or any "two or more states united, or any new states created within the "limits of the United States, the legislature of the United States

"shall possess authority to regulate the number of representatives "in any of the foregoing cases, upon the principle of their number "of inhabitants, according to the provisions hereafter mentioned, "namely:

"*Provided always*, That representation ought to be proportioned according to direct taxation. And in order to ascertain the "alteration in the direct taxation, which may be required, from "time to time, by the changes in the relative circumstances of the "states—

"*Resolved*, That a census be taken within six years from the "first meeting of the legislature of the United States, and once "within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner, and according to the "ratio recommended by congress, in their resolution of April 18, "1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

"*Resolved*, That all bills for raising or appropriating money, "and for fixing the salaries of the officers of the government of the "United States, shall originate in the first branch of the legislature "of the United States, and shall not be altered, or amended, by "the second branch; and that no money shall be drawn from the "public treasury, but in pursuance of appropriations to be originated by the first branch.

"*Resolved*, That in the second branch of the legislature of the "United States, each state shall have an equal vote."

Yeas, Connecticut New Jersey, Delaware, Maryland, North Carolina, 5. *Nays*, Pennsylvania, Virginia, South Carolina, Georgia, 4. *Divided*, Massachusetts, 1.

It was moved and seconded to agree to the first clause of the sixth resolution reported from the committee of the whole house, namely:

"That the national legislature ought to possess the legislative "rights vested in congress by the confederation"—Which passed unanimously in the affirmative.

It was moved and seconded to commit the second clause of the sixth resolution reported from the committee of the whole house—Which passed in the negative.

Yeas, Connecticut, Maryland, Virginia, South Carolina, Georgia, 5. *Nays*, Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina, 5.

It was moved and seconded to adjourn—Passed in the negative.

Yeas, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, 5. *Nays*, Massachusetts, Connecticut, Delaware, South Carolina, Georgia, 5.

The motion to adjourn was repeated—Passed in the affirmative.

Yeas, Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, 7. *Nays*, Connecticut, Delaware, 2. *Divided*, Georgia, 1.

And then the house adjourned till to-morrow at 11 o'clock. A. M.

TUESDAY, JULY 17, 1787.

It was moved by Mr. Sherman, and seconded, to postpone the consideration of the second clause of the sixth resolution, reported from the committee of the whole house, in order to take up the following:

"To make laws binding on the people of the United States in all cases which may concern the common interests of the union; but not to interfere with the government of the individual states in any matters of internal police, which respect the government of such states only, and wherein the general welfare of the United States is not concerned"—Which passed in the negative.

Yeas, Connecticut, Maryland, 2. *Nays*, Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 8.

It was moved by Mr. Bedford, and seconded, to alter the second clause of the sixth resolution, so as to read as follows, namely:

"And moreover to legislate in all cases for the general interests of the union; and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation"—Which passed in the affirmative.

Yeas, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, 6. *Nays*, Connecticut, Virginia, South Carolina, Georgia, 4.

It was moved and seconded, to agree to the second clause of the sixth resolution, as thus amended.—Passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 8. *Nays*, South Carolina, Georgia, 2.

On the question to agree to the following clause of the sixth resolution reported from the committee of the whole house, namely:

"To negative all laws passed by the several states contravening, "in the opinion of the national legislature, the articles of union, "or any treaties subsisting under the authority of the union"—It passed in the negative.

Yeas, Massachusetts, Virginia, North Carolina, 3. *Nays*, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 7.

It was moved and seconded to agree to the following resolution, namely:

"*Resolved*, That the legislative acts of the United States, made "by virtue and in pursuance of the articles of union, and all trea-"ties made and ratified under the authority of the United States, "shall be the supreme law of the respective states, as far as those "acts, or treaties, shall relate to the said states, or their citizens "and inhabitants:—and that the judiciaries of the several states "shall be bound thereby in their decisions—any thing in the res-"pective laws of the individual states to the contrary, notwith-"standing"—Which passed unanimously in the affirmative.

On the question to agree to the first clause of the ninth resolution reported from the committee of the whole house, namely:

"That a national executive be instituted to consist of a single "person"—It passed unanimously in the affirmative.

It was moved and seconded to strike the words "national legislature," out of the second clause of the ninth resolution reported from the committee of the whole house, and to insert the words "the citizens of the United States"—Which passed in the negative.

Yea, Pennsylvania, 1. *Nays*, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.

It was moved and seconded to alter the second clause of the ninth resolution reported from the committee of the whole house, so as to read:

"To be chosen by electors to be appointed by the several legis-"latures of the individual states"—Which passed in the negative.

Yeas, Delaware, Maryland, 2. *Nays*, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 8.

It was moved and seconded to agree to the following clause, namely: "To be chosen by the national legislature"—Which passed unanimously in the affirmative.

It was moved and seconded to postpone the consideration of the following clause: "For the term of seven years"—Which was unanimously agreed to.

On the question to agree to the following clause, namely:

"With power to carry into effect the national laws"—It passed unanimously in the affirmative.

On the question to agree to the following clause, namely:

"To appoint to offices in cases not otherwise provided for"—It passed unanimously in the affirmative.

It was moved and seconded to strike out the following words, namely:

"To be ineligible a second time,"—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Georgia. 6. *Nays*, Delaware, Virginia, North Carolina, South Carolina, 4.

It was moved and seconded to strike out the words "seven years," and insert the words "good behaviour,"—Which passed in the negative."

Yeas, New Jersey, Pennsylvania, Delaware, Virginia, 4.—*Nays*, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia, 6.

It was moved and seconded to strike out the words "seven years,"—Which passed in the negative.

Yeas, Massachusetts, Pennsylvania, Delaware, North Carolina, 4. *Nays*, Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia, 6.

It was moved and seconded to reconsider the vote to strike out the words, "to be ineligible a second time."

Passed unanimously (eight states) in the affirmative.

It was moved and seconded to reconsider immediately—Passed in the affirmative.

Yeas, Massachusetts, Connecticut, Delaware, Maryland, North Carolina, South Carolina, 6. *Nays*, Pennsylvania, Virginia, 2.

It was moved and seconded to reconsider the clause to-morrow. Passed unanimously in the affirmative.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

WEDNESDAY, JULY 18, 1787.

It was moved and seconded to postpone the consideration of the following clause in the ninth resolution, reported from the committee of the whole house, viz:

"For the term of seven years"—Which passed unanimously in the affirmative.

It was moved and seconded to postpone the consideration of the remaining clause of the ninth and the tenth resolutions, in order to take up the eleventh resolution—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, Delaware, Maryland, 4. *Nays*, Pennsylvania, Virginia, South Carolina, 3. *Divided*, North Carolina 1.

On the question to agree to the following clause of the eleventh resolution, viz:

"That a national judiciary be established"—It passed unanimously in the affirmative.

On the question to agree to the following clause of the 11th resolution, viz:—"To consist of one supreme tribunal"—It passed unanimously in the affirmative.

It was moved and seconded to strike out the words "second branch of the national legislature," and to insert the words "national executive," in the 11th resolution—Which passed in the negative.

Yeas, Massachusetts, Pennsylvania, 2. *Nays*, Connecticut. Delaware, Maryland, Virginia, North Carolina, South Carolina, 6.

It was moved and seconded to alter the third clause of the 11th resolution, so as to read as follows, viz:

"The judges of which shall be nominated and appointed by the executive, by and with the advice and consent of the second branch of the legislature of the United States; and every such nomination shall be made at least days prior to such appointment"—Which passed in the negative.

Yeas, Massachusetts, Pennsylvania, Maryland, Virginia, 4.—*Nays*, Connecticut, Delaware, North Carolina South Carolina, 4.

It was moved and seconded to alter the third clause of the 11th resolution, so as to read as follows, viz:

"that the judges shall be nominated by the executive; and such nomination shall become an appointment, if not disagreed to

within day by two-thirds of the second branch of the legislature."

It was moved and seconded to postpone the consideration of the last amendment—Which was unanimously agreed to.

On the question to agree to the following clause of the eleventh resolution, viz:—"To hold their offices during good behaviour"—It passed unanimously in the affirmative.

On the question to agree to the following clause of the eleventh resolution, viz:

"To receive, punctually, at stated times, a fixed compensation for their services"—It passed unanimously in the affirmative.

It was moved and seconded to strike the words "increase or," out of the eleventh resolution—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, South Carolina, 6. *Nays*, Virginia, North Carolina, 2.

On the question to agree to the clause as amended, viz:

"To receive, punctually, at stated times, a fixed compensation "for their services, in which no diminution shall be made so as to "affect the persons actually in office at the time of such diminu-"tion"—It passed unanimously in the affirmative.

On the question to agree to the twelfth resolution, viz:

"That the national legislature be empowered to appoint inferior tribunals"—It passed unanimously in the affirmative.

It was moved and seconded to strike the words "impeach-"ments of national officers," out of the thirteenth resolution—which passed unanimously in the affirmative.

It was moved and seconded to alter the thirteenth resolution, so as to read as follows, viz:

"That the jurisdiction of the national judiciary shall extend to "cases arising under laws passed by the general legislature, and "to such other questions as involve the national peace and har-"mony"—Which passed unanimously in the affirmative.

On the question to agree to the fourteenth resolution namely,

"*Resolved*, That provision ought to be made for the admission "of states, lawfully arising within the limits of the United States, "whether from a voluntary junction of government and territory, "or otherwise, with the consent of a number of voices in the na-"tional legislature less than the whole"—It passed unanimously in the affirmative.

On the question to agree to the first clause of the fifteenth resolution, reported from the committee of the whole house,—It passed in the negative.

Yeas, Virginia, North Carolina, 2. *Nays*, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 7.

On the question to agree to the last clause of the fifteenth resolution—It passed unanimously in the negative.

It was moved and seconded to alter the sixteenth resolution, so as to read as follows, namely,

"That a republican form of government shall be guarantied to "each state; and that each state shall be protected against foreign "and domestic violence"—Which passed unanimously in the affirmative.

And then the house adjourned till to-morrow, at 11 o'clock, A. M.

THURSDAY, JULY 19, 1787.

It was moved and seconded to reconsider the several clauses of the ninth resolution, which respect the appointment, duration and eligibility of the national executive—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 9.—— *Nay*, North Carolina, 1.

North Carolina withdrew their negative,—And it was unanimously agreed to reconsider immediately.

It was moved by Mr. Ellsworth, and seconded, to agree to the following proposition, namely,

"To be chosen by electors appointed for that purpose by the le- "gislatures of the states, in the following proportion:

"*One* person, from each state whose numbers, according to the "ratio fixed in the resolution, shall not exceed 100,000; *two*, from "each of the others, whose numbers shall not exceed 300,000; and "*three*, from each of the rest."

On the question to agree to the following clause, namely,—"To "be chosen by electors appointed for that purpose"—It passed in the affirmative.

Yeas, Connecticut, New Jersey. Pennsylvania, Delaware, Maryland, Virginia, 6. *Nays*, North Carolina, South Carolina. Georgia, 3. *Divided*, Massachusetts, 1.

On the question to agree to the following clause—

"By the legislatures of the states"—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, Georgia, 8. *Nays*, Virginia, South Carolina, 2.

It was agreed to postpone the consideration of the remainder of the proposition.

It was moved and seconded to agree to the following clause, viz: "For the term of seven years"—Which passed in the negative.

Yeas, New Jersey, South Carolina, Georgia, 3. *Nays*, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, 5. *Divided*, Massachusetts, North Carolina, 2.

On the question to agree to the following clause, viz:—"For the "term of six years"—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nay*, Delaware, 1.

On the question to restore the words, "To be ineligible a second time"—It passed in the negative.

Yeas, North Carolina, South Carolina, 2. *Nays*, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, 8.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

FRIDAY, JULY 20, 1787.

It was moved by Mr. Gerry, and seconded, to postpone the consideration of the clause respecting the number of electors, entered on the journal yesterday, in order to take up the following, viz:

" *Resolved*, That for the first election of the supreme executive, " the proportion of electors shall be as follows, namely,

" New Hampshire	1	Delaware	1
" Massachusetts,	3	Maryland	2
" Rhode Island	1	Virginia	3
" Connecticut	2	North Carolina	2
" New York	2	South Carolina	2
" New Jersey	2	Georgia	1
" Pennsylvania	3		

" In all, twenty-five electors."

On the question to postpone,—It passed in the affirmative.

Yeas, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6. *Nays*, Connecticut, New Jersey, Delaware, Maryland, 4.

It was moved and seconded to refer the last motion to a committee—Which passed in the negative.

Yeas, New Jersey, Delaware, Maryland, 3. *Nays*, Massachusetts, Connecticut, Pennsyvania, Virginia, North Carolina, South Carolina, Georgia, 7.

It was moved and seconded to add one elector to the states of New Hampshire and Georgia—Which passed in the affirmative.

Yeas, Connecticut, New Jersey, Pennsylvania, Virginia, South Carolina, Georgia, 6. *Nays*, Massachusetts, Delaware, Maryland. North Carolina, 4.

The last motion having been misunderstood, it was moved and seconded that it be put again.

And on the question to give an additional elector to each of the states of New Hampshire and Georgia—It passed in the negative.

Yeas, Connecticut, South Carolina, Georgia, 3. *Nays*, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 7.

On the question to agree to the above resolution, respecting the first election of the supreme executive,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Virginia, N. Carolina, South Carolina, 6. *Nays*, New Jersey, Delaware, Maryland, Georgia, 4.

It was moved and seconded to agree to the following resolution:

" *Resolved*, That the electors respectively shall not be members " of the national legislature, or officers of the union, or eligible to

"the office of supreme magistrate"—Which passed in the affirmative.

It was moved and seconded to agree to the following clause of the ninth resolution reported from the committee of the whole house, namely,

"To be removeable on impeachment and conviction of mal practice, or neglect of duty."

It was moved and seconded to postpone the consideration of the last motion—Which passed in the negative.

Yeas, Massachusetts, South Carolina, 2. *Nays*, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 8.

It was moved and seconded to agree to the clause—Which passed in the affirmative.

Yeas. Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 8. *Nays*, Massachusetts, South Carolina, 2.

It was moved and seconded to agree to the following clause, viz:

"To receive a fixed compensation for the devotion of his time to public service"—Which passed unanimously in the affirmative.

It was moved and seconded to agree to the following clause, viz:

"To be paid out of the national treasury"—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.—*Nay*, New Jersey, 1.

It was moved and seconded to adjourn.—Passed in the affirmative.

Yeas, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 8. *Nays*, Connecticut, North Carolina, 2.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

SATURDAY, JULY 21, 1787.

It was moved and seconded to add the following clause to the resolution respecting the electors of the supreme executive, namely:

"Who shall be paid out of the national treasury, for the devotion of their time to the pulbic service"—Which passed in the affirmative.

It was moved and seconded to add, after the words "national executive" in the tenths resolution, the words "together with the supreme national judiciary"—Which passed in the negative.

Yeas, Connecticut Maryland, Virginia, 3. *Nays*, Massachusetts, Delaware, North Carolina, South Carolina, 4. *Divided*. Pennsylvania, Georgia, 2.

It was moved and seconded to agree to the tenth resolution, as reported from the committee of the whole house, namely:

"*Resolved*, That the national executive shall have a right to negative any legislative act, which shall not be afterwards passed.

"unless by two third parts of each branch of the national legisla-"ture"—Which passed unanimously in the affirmative.

On the question to agree to the following amendment of the third clause of the eleventh resolution, namely:

"That the judges shall be nominated by the executive; and such "nomination shall become an appointment, if not disagreed to by "the second branch of the legislature"—It passed in the negative.

Yeas, Massachusetts, Pennsylvania, Virginia, 3. *Nays*, Connecticut, Delaware, Maryland, North Carolina, Georgia, 6.

On the question to agree to the following clause of the eleventh resolution, as reported from the committee of the whole house, namely:

"The judges of which shall be appointed by the second branch "of the national legislature"—It passed in affirmative.

Yeas, Connecticut, Delaware, Maryland, North Carolina; South Carolina, Georgia, 6. *Nays*, Massachusetts, Pennsylvania, Virginia, 3.

And then the house adjourned till Monday next, at 11 o'clock.

MONDAY, JULY 23, 1787.

The honorable John Langdon and Nicholas Gillman, Esquires, deputies from the state of New Hampshire, attended and took their seats.

The following credentials were produced and read. [See p. 29.

On the question to agree to the seventeenth resolution, as reported from the committee of the whole house, namely:

"That provision ought to be made for the amendment of the "articles of union, whensoever it shall seem necessary"—It passed unanimously in the affirmative.

It was moved and seconded to add after the word "states," in in the eighteenth resolution, the words "and of the national government"—Which passed in the affirmative.

On the question to agree to the eighteenth resolution, as amended, namely:

"That the legislative, executive, and judiciary powers within "the several states, and of the national government, ought to be "bound by oath to support the articles of union"—It passed unanimously in the affirmative.

It was moved and seconded to strike the following words out of the nineteenth resolution, reported from the committee of the whole house, namely:

"To an assembly or assemblies of representatives, recommended "by the several legislatures, to be expressly chosen by the people "to consider and decide thereon"—Which passed in the negative.

Yeas, Connecticut, Delaware, Maryland, 3. *Nays*, New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 7.

On the question to agree to the nineteenth resolution, as reported from the committee of the whole house, namely:

" *Resolved*, That the amendments which shall be offered to the " confederation by the convention, ought, at a proper time or times, " after the approbation of congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider " and decide thereon"—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nay*, Delaware, 1.

It was moved and seconded to agree to the following resolution, namely:

" *Resolved*, That the representation in the second branch of the " legislature of the United States consist of members from each " state, who shall vote per capita."

It was moved and seconded to fill up the blank with the word " three"—Which passed in the negative.

Yea, Pennsylvania, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.

It was moved and seconded to fill up the blank with the word 'two'—Which was unanimously agreed to.

On the question to agree to the resolution as filled up,—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 9. *Nay*, Maryland, 1.

It was moved and seconded to reconsider that clause of the resolution, respecting the appointment of the supreme executive—Which passed in the affirmative,

Yeas, New Hampshire, Massachusetts, Connecticut, Delaware, North Carolina, South Carolina, Georgia, 7. *Nays*, Pennsylvania, Maryland, Virginia, 3.

And to-morrow was assigned for the reconsideration.

Yeas, Hew Hampshire, Massachusetts, Delaware Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Connecticut, Pennsylvania, 2.

Motion to adjourn—Negatived uuanimously.

It was moved and seconded that the proceedings of the convention for the establishment of a national government, except what respects the supreme executive, be referred to a committee for the purpose of reporting a constitution, conformably to the proceedings aforesaid—Which passed unanimously in the affirmative.

On the question that the committee consist of a member from each state—It passed in the negative.

Yea, Delaware, 1. *Nays*, New Hamshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.

On the question that the committee consist of seven—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Maryland, South Carolina, 5. *Nays*, Pennsylvania, Delaware, Virginia, North Carolina, Georgia, 5.

On the question that the committee consist of five—It passed unanimously in the affirmative.—To-morrow assigned for appointing the committee.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

TUESDAY, JULY 24, 1787.

It was moved and seconded to strike the following words out of the resolution respecting the supreme executive, namely: "by electors appointed for that purpose by the legislature of the "states" and to insert the words, "by the national legislature"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia, 7. *Nays*, Connecticut, Pennsylvania, Maryland, Virginia, 4.

It was moved and seconded to strike out the word "six" and to insert the word "fifteen."

It was moved and seconded to postpone the consideraton of the resolution, respecting the executive—Which passed in the negative.

Yeas, Connecticut, Pennsylvania, Maryland, Virginia, 4. *Nays*, New Hampshire, Massachusetts, New Jersey, North Carolina, South Carolina, Georgia, 6. *Divided*, Delaware, 1.

It was moved by Mr. Wilson, and seconded, to agree to the following resolution, namely:

"*Resolved*, That the supreme executive shall be chosen every " years by electors, to be taken by lot from the "national legislature; the electors to proceed immediately to the "choice of the executive; and not to separate until it be made."

The question of order being taken on the last motion—It was determined that the motion is in order.

Yeas, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, 7. *Nays*, Connecticut, North Carolina, South Carolina, Georgia, 4.

On the question to postpone the consideration of the resolution, It passed unanimously in the affirmative.

The house then proceeded to ballot for the committee of detail, When the honorable Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr. Ellsworth, and Mr. Wilson were chosen.

It was moved and seconded to discharge the committee of the whole house from acting on the propositions submitted to the convention by the honorable Mr. C. Pinckney; and that the said propositions be referred to the committee to whom the proceedings of the convention are referred—Which passed unanimously in the affirmative.

It was moved and seconded to take the like order on the propositions submitted to the convention by the honorable Mr. Patterson, Which passed unanimously in the affirmative.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

WEDNESDAY, JULY 25, 1787.

It was moved by Mr. Ellsworth, and seconded, to agree to the following amendment to the resolution respecting the election of the supreme executive, namely,

"Except when the magistrate last chosen shall have continued in office the whole term for for which he was chosen, and be re-eligible; in which case the choice shall be by electors appointed for that purpose by the several legislatures."—Passed in the negative.

Yeas, N. Hampshire, Connecticut, Pennsylvania, Maryland, 4. *Nays*, Massachusetts, New Jersey, Delaware, Virginia, N. Carolina, South Carolina, Georgia, 7.

It was moved by Mr. Pinckney, and seconded, to agree to the following amendment of the resolution respecting the supreme executive, namely:

"*Provided*, That no person shall be capable of holding the said office for more than six years in any term of twelve."

It was moved and seconded to postpone the consideration of the last amendment—Which passed in the negative.

Yeas, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, 5. *Nays*, New Hampshire, Massachusetts, Delaware, N. Carolina, South Carolina, Georgia, 6.

On the question to agree to the amendment—It passed in the negative.

Yeas, New Hampshire, Massachusetts, North Carolina, South Carolina, Georgia, 5. *Nays*, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, 6.

It was moved and seconded that the members of the committee be furnished with copies of the proceedings—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, N. Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 10. *Nay*, South Carolina, 1.

It was moved and seconded, that members of the house take copies of the resolutions which have been agreed to.—Passed in the negative.

Yeas, Connecticut, New Jersey, Delaware, Virginia, North Carolina, 5. *Nays*, New Hampshire, Massachusetts, Pennsylvania, Maryland, South Carolina, Georgia, 6.

It was moved and seconded to refer the resolution, respecting the executive, (except that clause which provides that it consist of a single person) to the committee of detail.

Before a determination was taken on the last motion—It was moved and and seconded to adjourn.—Passed in the affirmative.

Yeas, Massachusetts, New Jersey, Pennsylvauia, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, New Hampshire, Connecticut, 2.

The House adjourned till to-morrow, at 11 o'clock, A. M.

THURSDAY, JULY 26, 1787.

It was moved and seconded to amend the third clause of the resolution respecting the national executive, so as to read as follows, namely:

"For the term of seven years, to be ineligible a second time"—Which passed in the affirmative.

Yeas, New Hampshire, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, Connecticut, Pennsylvania, Delaware, 3.

On the question to agree to the whole resolution respecting the supreme executive; namely:

"*Resolved*, That a national executive be instituted—
"To consist of a single person;
"To be chosen by the national legislature;
"For the term of seven years;
"To be ineligible a second time;
"With power to carry into execution the national laws;
"To appoint to offices in cases not otherwise provided for;
"To be removable on impeachment and conviction of mal-"practice or neglect of duty;
"To receive a fixed compensation for the devotion of his time "to public service;
"To be paid out of the public treasury"—It passed in the affirmative.

Yeas, New Hampshire, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, 6. *Nays*, Pennsylvania, Delaware, Maryland, 3. *Divided*, Virginia, 1.

It was moved and seconded to agree to the following resolution, namely:

"*Resolved*, That it be an instruction to the committee, to whom were referred the proceedings of the convention for the establishment of a national government, to receive a clause or clauses, requiring certain qualifications of landed property and citizenship in the United States, for the executive, the judiciary, and the members of both branches of the legislature of the United States; and for disqualifying all such persons as are indebted to, or have unsettled accounts with the United States from being members of either branch of the national legislature."

It was moved and seconded to strike out the word "landed."—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Maryland, 1.

On the question to agree to the clause respecting the qualification as amended—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Connecticut, Pennsylvania, Delaware, 3.

It was moved and seconded to add the words "and pensioners of the government of the United States," to the clause of disqualification—Which passed in the negative.

Yeas, Massachusetts, Maryland, Georgia, 3. *Nays*, New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, South Carolina, 7. *Divided*, North Carolina, 1.

It was moved and seconded to strike out the following words, namely:

"Or have unsettled accounts with"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, 9. *Nays*, New Jersey, Georgia, 2.

On the question to agree to the clause of disqualification as amended—It passed in the negative.

Yeas, North Carolina, Georgia, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, 9.

It was moved and seconded to agree to the following resolution, namely:

"*Resolved*, That it be an instruction to the committee to whom were referred the proceedings of the convention for the establishment of a national government, to receive a clause or clauses for preventing the seat of the national government being in the same city or town with the seat of the government of any state, longer than until the necessary public buildings can be erected."

It was moved and seconded to postpone the consideration of the last resolution.

It was moved and seconded to refer such proceedings of the convention, as have been agreed on since Monday last, to the committee of detail—Which passed unanimously in the affirmative. And then the house, by unanimous vote, *adjourned till Monday, August* 6.

RESOLUTIONS OF THE CONVENTION

Referred, on the twenty-third and twenty-sixth of July, 1787, *to a Committee of detail (Messrs. Rutledge, Randolph, Gorham, Ellsworth, and Wilson) for the purpose of reporting a Constitution.*

JOURNALS.

June 2. I. Resolved, That the government of the United States ought to consist of a supreme legislative, judiciary, and executive.

21. II. Resolved, That the legislature consist of two branches.

III. Resolved, That the members of the first branch of the legislature ought to be elected by the people of the several
22. states, for the term of two years; to be paid out of the public treasury; to receive an adequate compensation for their servi-
23. ces; to be of the age of twenty-five years at least; to be inel-

igible and incapable of holding any office under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service of the first branch.

25. IV. Resolved, That the members of the second branch of the legislature of the United States ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for six years, one third to go out biennially; to receive a compensation for the devotion of their time to the public service; to be ineligible to, and incapable of holding any office, under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter.

V. Resolved, That each branch ought to possess the right of originating acts.

Postponed. 27. Resolved, That the national legislature ought to July 16. possess the legislative rights vested in congress by the 17. confederation; and moreover, to legislate in all cases for the general interests of the union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

VII. Resolved, That the legislative acts of the United States, made by virtue, and in pursuance of the articles of union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual states to the contrary, notwithstanding.

16. VIII. Resolved, That in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members, of which number

New Hampshire shall send		3	Delaware	shall send	1
Massachusetts	....	8	Maryland	....	6
Rhode Island	....	1	Virginia	....	10
Connecticut	....	5	North Carolina	...	5
New York	....	6	South Carolina	....	5
New Jersey	....	4	Georgia,	....	3
Pennsylvania	...	8			

But as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged, by addition of territory, or any two or more states united, or any new states

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created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants according to the provisions hereafter mentioned, namely—Provided always, that representation ought to be proportioned according to direct taxation. And in order to ascertain the alteration in the direct taxation, which may be required from time to time, by the changes in the relative circumstances of the states—

IX. Resolved, That a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United states, in the manner and according to the ratio recommended by congress in their resolution of April 18, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

X. Resolved, That all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the le-
16. gislature of the United States, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated by the first branch.

XI. Resolved, That in the second branch of the legislature of the United States, each state shall have an equal vote.

26. XII. Resolved, That a national executive be instituted, to consist of a single person, to be chosen by the national legislature, for the term of seven years; to be ineligible a second time; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be removable on impeachment, and conviction of mal-practice or neglect of duty; to receive a fixed compensation for the devotion of his time to public service; to be paid out of the public treasury.

21. XIII. Resolved, That the national executive shall have a right to negative any legislative act, which shall not be afterwards passed, unless by two third parts of each branch of the national legislature.

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

XV. Resolved, That the national legislature be empowered to appoint inferior tribunals.

[July] JOURNALS.

18. XVI Resolved, That the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature; and to such other questions as involve the national peace and harmony.

XVII. Resolved, That provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

XVIII. Resolved, That a republican form of government shall be guarantied to each state; and that each state shall be protected against foreign and domestic violence.

23. XIX. Resolved, That provision ought to be made for the amendment of the articles of union, whensoever it shall seem necessary.

XX. Resolved, That the legislative, executive, and judiciary powers, within the several states, and of the national government, ought to be bound, by oath, to support the articles of union.

XXI. Resolved, That the amendments which shall be offered to the confederation by the convention ought, at a proper time or times after the approbation of congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.

XXII. Resolved, That the representation in the second branch of the legislature of the United States consist of two members from each state, who shall vote per capita.

26. XXIII. Resolved, That it be an instruction to the committee, to whom were referred the proceedings of the convention for the establishment of a national government, to receive a clause or clauses, requiring certain qualifications of property and citizenship, in the United States, for the executive, the judiciary, and the members of both branches of the legislature of the United States.

The propositions offered to the convention on the 29th of May, by Mr. C. Pinckney, and on the 15th of June, by Mr. Patterson, were referred to the committee with the above resolutions.

MONDAY, AUGUST 6, 1787.

The house met agreeably to adjournment.

The honorable John Francis Mercer, Esq. one of the deputies from the state of Maryland, attended and took his seat.

The honorable Mr. Rutledge, from the committee to whom were referred the proceedings of the convention for the purpose of reporting a constitution for the establishment of a national government, conformable to the proceedings, informed the house that the committee were prepared to report.

The report was then delivered in at the secretary's table; and being read once throughout, and copies thereof given to the members,—It was moved and seconded to adjourn till Wednesday morning—Which passed in the negative.

Yeas, Pennsylvania, Maryland, Virginia, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, North Carolina, South Carolina, 5.

The house then adjourned till to-morrow morning, at 11 o'clock.

DRAFT OF A CONSTITUTION,

Reported by the Committee of Five, August 6, 1787.

[One copy of this printed draft is among the papers deposited by President Washington, in the Department of State.—Another copy is among the papers of Mr. Brearly, furnished by General Bloomfield.]

We the people of the states of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do ordain, declare and establish the following constitution for the government of ourselves and our posterity.

Art. I. The style of this government shall be, "The United States of America."

Art. II. The government shall consist of supreme legislative, executive, and judicial powers.

Art. III. The legislative power shall be vested in a congress, to consist of two separate and distinct bodies of men, a house of representatives, and a senate; each of which shall, in all cases, have a negative on the other. The legislature shall meet on the first Monday in December every year.

Art. IV.—*Sect.* 1. The members of the house of representatives shall be chosen every second year, by the people of the several states comprehended within this union. The qualifications of the electors shall be the same, from time to time, as those of the electors in the several states of the most numerous branch of their own legislatures.

Sect. 2. Every member of the house of representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election, and shall be, at the time of his election, a resident of the state in which he shall be chosen.

Sect. 3. The house of representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described. consist of sixty-five members; of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, six in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in the different states will alter from time to time; as some of the states may hereafter be divided; as others may be enlarged by addition of territory; as two or more states may be united; as new states will be erected within the limits of the United States, the legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every forty thousand.

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the house of representatives, and shall not be altered or amended by the senate. No money shall be drawn from the public treasury, but in pursuance of appropriations that shall originate in the house of representatives.

Sect. 6. The house of representatives shall have the sole power of impeachment. It shall choose its speaker and other officers.

Sect. 7. Vacancies in the house of representatives shall be supplied by writs of election from the executive authority of the state, in the representation from which they shall happen.

Art. 5.—*Sect.* 1. The senate of the United States shall be chosen by the legislatures of the several states. Each legislature shall choose two members. Vacancies may be supplied by the executive until the next meeting of the legislature. Each member shall have one vote.

Sect. 2. The senators shall be chosen for six years; but immediately after the first election, they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth year; so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the senate shall be of the age of thirty years at least; shall have been a citizen in the United Stats for at least four years before his election; and shall be, at the time of his election, a resident of the state for which he shall be chosen.

Sect. 4. The senate shall choose its own president and other officers.

Art VI. —*Sect.* 1. The times, and places, and the manner of holding the elections of the members of each house, shall be prescribed by the legislature of each state; but their provisions concerning them may, at any time, be altered by the legislature of the United States.

Sect. 2. The legislature of the United States shall have authority to establish such uniform qualifications of the members of each house, with regard to property, as to the said legislature shall seem expedient.

Sect. 3. In each house a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Sect. 4. Each house shall be the judge of the elections, returns, and qualifications of its own members.

Sect. 5. Freedom of speech and debate in the legislature shall not be impeached or questioned in any court or place out of the legislature; and the members of each house shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Sect. 6. Each house may determine the rules of its proceedings: may punish its members for disorderly behaviour; and may expel a member.

Sect. 7. The house of representatives, and the senate, when it shall be acting in a legislative capacity, shall keep a Journal of their proceedings; and shall, from time to time, publish them: and the yeas and nays of the members of each house, on any question, shall, at the desire of one-fifth part of the members present, be entered on the journal.

Sect. 8. Neither house, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two houses are sitting. But this regulation shall not extend to the senate, when it shall exercise the powers mentioned in the article.

Sect. 9. The members of each house shall be ineligible to, and incapable of holding any office under the authority of the United States, during the time for which they shall respectively be elected; and the members of the senate shall be ineligible to, and incapable of holding any such office for one year afterwards.

Sect. 10. The members of each house shall receive a compensation for their services, to be ascertained and paid by the state in which they shall be chosen.

Sect. 11. The enacting style of the laws of the United States shall be, "Be it enacted, and it is hereby enacted by the house of representatives, and by the senate of the United States, in Congress assembled."

Sect. 12. Each house shall possess the right of originating bills, except in the cases before mentioned.

Sect. 13. Every bill, which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the President of the United States, for his revision. If, upon such revision, he approve of it, he shall signify his approbation by signing it; but if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider the bill; but if, after such reconsideration, two thirds of that house shall, notwithstanding the objections of the president, agree to pass it, it shall, together with his objections, be sent to the other house, by which it shall likewise be reconsidered; and if approved by two thirds of the other

house also, it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill shall be entered in the journal of each house respectively. If any bill shall not be returned by the president within seven days after it shall have been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return; in which case it shall not be a law.

Art. VII.—*Sect.* 1. The legislature of the United States shall have the power to lay and and collect taxes, duties, imposts and excises;

To regulate commerce with foreign nations, and among the several states;

To establish a uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish post offices;

To borrow money, and emit bills on the credit of the United States;

To appoint a treasurer by ballot;

To constitute tribunals inferior to the supreme court;

To make rules concerning captures on land and water;

To declare the law and punishment of piraces and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations;

To subdue a rebellion in any state, on the application of its legislature;

To make war;

To raise armies;

To build and equip fleets;

To call forth the aid of the militia, in order to execute the laws of the union, enforce treaties, suppress insurrections, and repel invasions; and,

To make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers, vested, by this constitution, in the government of the United States, or in any department or officer thereof.

Sect. 2. Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

Sect. 3. The proportions of direct taxation shall be regulated by

the whole number of white and other free citizens and inhabitants, of every sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes;) which number shall, within six years after the first meeting of the legislature, and within the term of every ten years afterwards, be taken in such manner as the said legislature shall direct.

Sect. 4. No tax or duty shall be laid by the legislature on articles exported from any state; nor on the migration or importation of such persons as the several states shall think proper to admit; nor shall such migration or importation be prohibited.

Sect. 5. No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken.

Sect. 6. No navigation act shall be passed without the assent of two thirds of the members present in each house.

Sect. 7. The United States shall not grant any title of nobility.

ART. VIII. The acts of the legislature of the United States made in pursuance of this constitution, and all treaties made under the authority of the United States, shall be the supreme law of the several states, and of their citizens and inhabitants; and the judges in the several states shall be bound thereby in their decisions; any thing in the constitutions or laws of the several states to the contrary, notwithstanding.

ART. IX.—*Sect.* 1. The Senate of the United States shall have power to make treaties, and appoint ambassadors, and judges of the supreme court.

Sect. 2. In all disputes and controversies now subsisting, or that may hereafter subsist, between two or more states, respecting jurisdiction or territory, the senate shall possess the following powers: Whenever the legislature, or the executive authority, or the lawful agent of any state in controversy with another, shall, by memorial to the senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given, by order of the senate, to the legislature or the executive authority of the other state in controversy. The senate shall also assign a day for the appearance of the parties, by their agents, before that house. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question.

But if the agents cannot agree, the senate shall name three persons out of each of the several states; and from the list of such persons each party shall, alternately, strike out one, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as the senate shall direct, shall in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges, who shall hear the cause,

agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or, being present, shall refuse to strike, the senate shall proceed to nominate three persons out of each state, and the clerk of the senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the president of the senate, and shall be lodged among the public records for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath, to be administered by one of the judges of the supreme or superior court of the state where the clause shall be tried, "well and truly to hear and determine the matter in question, "according to the best of his judgment, without favor, affection, "or hope of reward."

Sect. 3. All controversies concerning lands claimed under different grants of two or more states, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequent to such grants, or any of them, shall, on application to the senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different states.

Art. X.—*Sect.* 1. The executive power of the United States shall be vested in a single person. His style shall be, "The President of the United States of America;" and his title shall be "His Excellency." He shall be elected by ballot by the legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Sect. 2. He shall, from time to time, give information to the legislature of the state of the union. He may recommend to their consideration such measures as he shall judge necessary and expedient. He may convene them on extraordinary occasions. In cases of disagreement between the two houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper. He shall take care that the laws of the United States be duly and faithfully executed. He shall commission all the officers of the united states; and shall appoint officers in all cases not otherwise provided for by this constitution. He shall receive ambassadors, and may correspond with the supreme executives of the several states. He shall have power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of an impeachment. He shall be commander in chief of the army and navy of the United States, and of the militia of the several states. He shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during his continuance in office. Before he shall enter on the duties of his de-

partment, he shall take the following oath or affirmation: "I —— "solemnly swear (or affirm) that I will faithfully execute the "office of President of the United States of America." He shall be removed from his office on impeachment by the house of representatives, and conviction in the supreme court, of treason, bribery, or corruption. In case of his removal as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the president of the senate shall exercise those powers and duties until another president of the United States be chosen, or until the disability of the president be removed.

Art. XI.—*Sect.* 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as shall, when necessary, from time to time, be constituted by the legislature of the United States.

Sect. 2. The judges of the supreme court, and of the inferior courts, shall hold their offices during good behaviour. They shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Sect. 3. The jurisdiction of the supreme court shall extend to all cases arising under laws passed by the legislature of the United States; to all cases affecting ambassadors, other public ministers and consuls; to the trial of impeachments of officers of the United States; to all cases of admiralty and maritime jurisdiction; to controversies between two or more states, except such as shall regard territory or jurisdiction; between a state and citizens of another state; between citizens of different states; and between a state or the citizens thereof, and foreign states, citizens, or subjects. In cases of impeachment, cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, this jurisdiction shall be original. In all the other cases before mentioned, it shall be appellate, with such exceptions and under such regulations as the legislature shall make. The legislature may assign any part of the jurisdiction above mentioned, (except the trial of the president of the United States,) in the manner, and under the limitations, which it shall think proper, to such inferior courts as it shall constitute from time to time.

Sect. 4. The trial of all criminal offences (except in cases of impeachments) shall be in the state where they shall be committed; and shall be by jury.

Sect. 5. Judgment, in cases of impeachment, shall not extend farther than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Art. XII. No state shall coin money; nor grant letters of marque and reprisal; nor enter into any treaty, alliance, or confederation; nor grant any title of nobility.

Art. XIII. No state, without the consent of the legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts; lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another state, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of a delay until the legislature of the United States can be consulted.

Art. XIV. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Art. XV. Any person charged with treason, felony, or high misdemeanor, in any state, who shall flee from justice, and shall be found in any other state, shall, on demand of the executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of the offence.

Art. XVI. Full faith shall be given in each state to the acts of the legislatures, and to the records and judicial proceedings of the courts and magistrates of every other state.

Art. XVII. New states, lawfully constituted or established within the limits of the United States, may be admitted by the legislature into this government; but to such admission the consent of two-thirds of the members present in each house shall be necessary. If a new state shall arise within the limits of any of the present states, the consent of the legislature of such states shall be also necessary to its admission. If the admission be consented to, the new states shall be admitted on the same terms with the original states. But the legislature may make conditions with the new states concerning the public debt, which shall be then subsisting.

Art. XVIII. The United States shall guaranty to each state a republican form of government; and shall protect each state against foreign invasions; and, on the application of its legislature, against domestic violence.

Art. XIX. On the application of the legislatures of two thirds of the states in the union for an amendment of this constitution, the legislature of the United States shall call a convention for that purpose.

Art. XX. The members of the legislatures, and the executive and judicial officers of the United States, and of the several states, shall be bound by oath to support this constitution.

Art. XXI. The ratification of the conventions of states shall be sufficient for organizing this constitution.

Art. XXII. This constitution shall be laid before the United States in congress assembled, for their approbation; and it is the opinion of this convention that it should be afterwards submitted to a convention chosen in each state, under the recommendation of its legislature, in order to receive the ratification of such convention.

Art. XXIII. To introduce this government, it is the opinion of this convention, that each assenting convention should notify its assent and ratification to the United States in congress assembled; that congress, after receiving the assent and ratification of the conventions of states, should appoint and publish a day, as early as may be, and appoint a place for commencing proceedings under this constitution; that after such publication, the legislatures of the several states should elect members of the senate, and direct the election of members of the house of representatives; and that the members of the legislature should meet at the time and place assigned by congress, and should, as soon as may be, after their meeting, choose the president of the United States, and proceed to execute this constitution.

TUESDAY, AUGUST 7, 1787.

It was moved and seconded to refer the report of the committee of detail to a committee of the whole—Which passed in the affirmative.

Yeas, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, 5. *Nays*, New Hampshire, Massachusetts, Connecticut, North Carolina, 4.

Delaware being represented during the debate, a question was again taken on referring to a committee of the whole, and passed in the negative.

Yeas, Delaware, Maryland, Virginia, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, North Carolina, South Carolina, 6.

On the question to agree to the preamble to the constitution, as reported from the committee to whom were referred the proceedings of the convention,—It passed unanimously in the affirmative.

On the question to agree to the first article, as reported,—It passed in the affirmative.

On the question to agree to the second article, as reported,—It passed in the affirmative.

It was moved and seconded to alter the second clause of the third article, so as to read,

" Each of which shall, in all cases, have a negative on the legis-
" lative acts of the other"—Which passed in the negative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, North Carolina, 5. *Nays*, Delaware, Maryland, Virginia, South Carolina, Georgia, 5.

On the question to strike the following clause out of the third article, namely,—" Each of which shall, in all cases, have a negative on the other"—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, 7. *Nays*, Connecticut, Maryland, North Carolina, 3.

It was moved by Mr. Randolph, and seconded, to add the following words to the last clause of the third article, " Unless a dif-

ferent day shall be appointed by law"—Which passed in the affirmative.

Yeas, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, New Hampshire, Connecticut, 2.

It was moved and seconded to strike out the word "December," and insert the word "May," in the third article—Which passed in the negative.

Yeas, South Carolina, Georgia, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 8.

It was moved and seconded to insert after the word "senate" in the third article, the following words, namely,—"Subject to the negative hereafter mentioned"—Which passed in the negative.

Yea, Delaware, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.

It was moved and seconded to amend the last clause of the third article, so as to read as follows, namely,—"The legislature shall meet at least once in every year; and such meeting shall be on the first Monday in December, unless a different day shall be appointed by law"—Which passed in the affirmative.

It was moved and seconded to strike out the last clause in the first section of the fourth article,—Which passed in the negative,

Yea, Delaware, 1. *Nays*, New Hampshire, Massachusetts. Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, 7. *Divided*, Maryland, 1.

It was moved and seconded to adjourn—Which was passed in the negative.

Yeas, Pennsylvania, Delaware, Maryland, Virginia, 4. *Nays*, New Hampshire, Massachusetts, Connecticut, North Carolina, South Carolina, 5.

It was moved and seconded to adjourn till to-morrow morning, at 10 o'clock—Which passed in the negative.

Yeas, New Hampshire, Massachusetts, Connecticut, 3. *Nays*, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 5. *Divided*, South Carolina, 1.

The motion to adjourn renewed—Passed in the affirmative.

Yeas, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, 7. *Nays*, New Hampshire, Msssachusetts, 2.

The house then adjourned till to-morrow morning, at 11 o'clock.

WEDNESDAY, AUGUST 8, 1787.

On the question to agree to the first section of the fourth article, as reported—It passed unanimously in the affirmative.

It was moved and seconded to strike out the word "three," and to insert the word "seven," in the second section of the fourth article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Connecticut, 1.

It was moved and seconded to amend the second section of the fourth article by inserting the word "of" instead of "in" after the word "citizen," and the words "an inhabitant" instead of the words "a resident"—Which passed in the affirmative.

Yeas, New Jersey, Maryland, Virginia, South Carolina, 4. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, North Carolina, Georgia, 7.

It was moved and seconded to postpone Mr. motion in order to take up Mr. Dickinson's—Which passed in the negative.

Yeas, Maryland, South Carolina, Georgia, 3. *Nays*, Massachusetts, New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, 8.

It was moved and seconded to insert the word "three"—Which passed in the negative.

Yeas, South Carolina, Georgia, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 9.

It was moved and seconded to add one year residence before the election—Which passed in the negative.

Yeas, New Jersey, North Carolina, South Carolina, Georgia, 4. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, 6. *Divided*, Maryland, 1.

On the question to agree to the second clause of the second section,—It passed unanimously in the affirmative.

On the question to agree to the second section of the fourth article, as amended,—It passed in the affirmative.

It was moved and seconded to strike out the word "five," and to insert the word "six," before the words "in South Carolina," in the third section of the fourth article—Which passed in the negative.

Yeas, Delaware, North Carolina, South Carolina, Georgia, 4. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, 7.

On the question to agree to the third section of the fourth article, as reported,—It passed in the affirmative.

It was moved and seconded to alter the latter clause of the fourth article, so as to read as follows, namely: "According to the rule hereinafter made for direct taxation, not exceeding the rate of one for every forty thousand—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, New Jersey, Delaware, 2.

It was moved and seconded to add the following clause to the fourth section of the fourth article, namely:

"*Provided*, That every state shall have at least one representative"—Which passed in the affirmative.

It was moved and seconded to insert the word "free," before the word "inhabitants," in the fourth section of the fourth article —Which passed in the negative.

Yea, New Jersey, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10.

On the question to agree to the fourth section of the fourth article, as amended,—It passed in the affirmative.

It was moved and seconded to strike out the fifth section of the fourth article—Which passed in the affirmative.

Yeas, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 7. *Nays*, New Hampshire, Massachusetts, Connecticut, North Carolina, 4.

And then the house adjourned till to-morrow, at 11 o'clock, A. M.

THURSDAY, AUGUST 9, 1787.

On the question to agreee to the sixth section of the fourth article, as reported,—It passed in the affirmative.

On the question to agree to the seventh section of the fourth article, as reported,—It passed in the affirmative.

It was moved and seconded to insert the following words, in the third clause of the fifth article, after the word "executive," "of the state in the representation of which the vacancies shall happen"—Which passed in the affirmative.

It was moved and seconded to strike out the third clause of the first section of the fifth article—Which passed in the negative.

Yea, Pennsylvania, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia, 8. *Divided*, Maryland, 1.

It was moved and seconded to add the following words to the third clause of the first section of the fifth article, namely:—"Unless other provision shall be made by the legislature"—Which passed in the negative.

Yeas, Maryland, North Carolina, South Carolina, Georgia, 4. *Nays*, New Hampshire, Massachusetts, Connecticut New Jersey, Pennsylvania, Virginia, 6.

It was moved and seconded to alter the third clause in the first section of the fifth article, so as to read as follows, namely: "Vacancies happening by refusals to accept, resignations, or otherwise, may be supplied by the legislature of the state in the representation of which such vacancies shall happen, or by the executive thereof, until the next meeting of the legislature"—Which passed in the affirmative.

On the motion to agree to the three first clauses of the first section of the fifth article—It passed in the affirmative.

Yeas, New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, 8. *Nays*, Massachusetts, North Carolina, 2. *Divided*, South Carolina, 1

It was moved and seconded to postpone the consideration of the last clause in the first section of the fifth article—Which passed in the negative.

Yeas, Virginia, North Carolina, 2. *Nays*, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 8. *Divided*, New Hampshire, 1.

On the question to agree to the last clause in the first section of the fifth article—It passed in the affirmative.

It was moved and seconded to insert the following words after the word "after," in the second section of the fifth article, namely: "They shall be assembled in consequence of"—Which passed in the affirmative.

On the question to agree to the second section of the fifth article, as amended—It passed in the affirmative.

It was moved and seconded to strike out the word "four," and to insert the word "fourteen," in the third section of the fifth article—Which passed in the negative.

Yeas, New Hampshire, New Jersey, South Carolina, Georgia, 4. *Nays*, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 7.

It was moved and seconded to strike out the word "four," and to insert the word "thirteen," in the third section of the fifth article—Which passed in the negative.

Yeas, New Hampshire, New Jersey, South Carolina, Georgia, 4. *Nays*, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 7.

It was moved and seconded to strike out the word "four," and to insert the word "ten," in the third section of the fifth article—Which passed in the negative.

Yeas, New Hampshire, New Jersey, South Carolina, Georgia, 4. *Nays*, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 7.

It was moved and seconded to strike out the word "four," and to insert the word "nine," in the third section of the fifth article—Which passed in the affirmative.

Yeas, New Hampshire, New Jersey, Delaware, Virginia, South Carolina, Georgia, 6. *Nays*, Massachusetts, Connecticut, Pennsylvania, Maryland, 4. *Divided*, North Carolina, 1.

It was moved and seconded to amend the third section of the fifth article, by inserting the word "of," after the word "citizen;" and the words "an inhabitant," instead of the words "a resident" Which passed in the affirmative.

On the question to agree to the third section of the fifth article, as amended,—It passed in the affirmative.

On the question to agree to the fourth section of the fifth article, as reported,—It passed in the affirmative.

It was moved and seconded to strike out the words "each house," and to insert the words "the house of representatives," in the first section of the sixth article—Which passed in the negative.

Yea, New Jersey, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10.

It was moved and seconded to insert the word "respectively," after the word "state," in the first section of the sixth article—Which passed in the affirmative.

It was moved and seconded to alter the second clause in the first section of the sixth article, so as to read as follows, viz: "But "regulations in each of the foregoing cases may at any time be "made or altered by the legislature of the United States"—Which passed in the affirmative.

On the question to agree to the first section of the sixth article, as amended—It passed in the affirmative.

And then the house adjourned till to-morrow at 11 o'clock, A. M.

FRIDAY, AUGUST 10, 1787.

It was moved and seconded to strike out the second section of the sixth article, in order to introduce the following, viz: "That "the qualifications of the members of the legislature be as follow:

"The members of the house of representatives shall possess a "clear and unincumbered property of The members of the "senate "—Which passed in the negative.

It was moved and seconded to strike the following words out of the second section of the sixth article, namely: "With regard to property"—Which passed in the negative.

Yeas, Connecticut, New Jersey, Pennsylvania, Georgia, 4.—*Nays*, New Hampshire, Massachusetts, Maryland, Virginia, North Carolina, South Carolina, 6.

On the question to agree to the second section of the sixth article, as reported—It passed in the negative.

Yeas, New Hampshire, Massachusetts, Georgia, 3. *Nays*, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, 7.

It was moved and seconded to reconsider the second section of the fourth article—Which passed in the affirmative.

Yeas, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 6. *Nays*, New Hampshire, Massachusetts, New Jersey, South Carolina, Georgia, 5.

And Monday next was assigned for the reconsideration.

Yeas, New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, 9. *Nays*, Massachusetts, Georgia, 2.

It was moved by Mr. King, and seconded, to amend the third section of the sixth article to read as follows, namely: "Not less

than thirty-three members of the house of representatives, nor less than fourteen members of the senate, shall constitute a quorum to do business. A smaller number in either house may adjourn from day to day; but the number necassary to form such quorum may be increased by an act of the legislature on the addition of members in either branch"—Which passed in the negative.

Yeas, Massachusetts, Delaware, 2. *Nays*, New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.

It was moved by Mr. Randolph, and seconded, to add the following amendment to the third section of the sixth article: "And may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Divided*, Pennsylvania, 1.

On the question to agree to the third section of the sixth article, as amended—It passed in the affirmative.

On the question to agree to the fourth section of the sixth article, as reported—It passed in the affirmative.

On the question to agree to the fifth section of the sixth article, as reported—It passed in the affirmative.

It was moved and seconded to amend the last clause in the sixth section of the sixth article, by adding the following words: "With the concurrence of two thirds"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Divided*, Pennsyvania, 1.

On the question to agree to the sixth section of the sixth article, as amended—It passed in the affirmative.

It was moved by Mr. Carroll, and seconded, to strike out the words "one fifth part," and to insert the words "of every one member present," in the latter clause of the seventh section of the sixth article—Which passed in the negative.

Yeas, Maryland, Virginia, South Carolina, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, 8.

It was moved and seconded to strike out the words "each house," and to insert the words "the house of representatives," in the second clause of the seventh section of the sixth article; and to add the following words to the section, namely:

"And any member of the senate shall be at liberty to enter his "dissent"—Which passed in the negative.

It was moved and seconded to strike the following words out of the seventh section of the sixth article, namely, "when it shall be "acting in a legislative capacity" and to add the following words

to the section: "Except such parts thereof as in their judgement require secrecy"—Which passed in the affirmative.

Yeas, Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, Connecticut, New Jersey, Pennsylvania, 3. *Divided*, New Hampshire, 1.

And then the house adjourned till to-morrow, at 11 o'clock, A. M.

SATURDAY, AUGUST 11, 1787.

It was moved and seconded to amend the first clause of the seventh section of the sixth article to read as follows, namely:

"Each house shall keep a journal of its proceedings; and shall, "from time to time, publish the same, except such part of the "proceedings of the senate, when acting not in its legislative ca- "pacity, as may be judged by that house to require secrecy"—Which passed in the negative.

Yea, Virginia, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, 10.

It was moved and seconded to insert in the first clause of the seventh section of the sixth article after the word "thereof," the following words: "Relative to treaties and military operations"—Which passed in the negative.

Yeas, Massachusetts, Connecticut, 2. *Nays*, New Hampshire, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.

On the question to agree to the first clause of the seventh section of the sixth article, as reported—It passed unanimously in the affirmative.

It was moved and seconded to add at the end of the clause the words "except such parts thereof as in their judgment require secrecy"—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, Georgia, 6. *Nays*, Pennsylvania, Delaware, Maryland, South Carolina, 4. *Divided*, New Hampshire, 1.

On the question to agree to the last clause of the seventh section of the sixth article—It passed unanimously in the affirmative.

It was moved and seconded to refer the second clause of the seventh section of the sixth article to a committee—Which passed in the negative.

Yeas, Massachusetts, New Jersey, Pennsylvania, Virginia, 4.—*Nays*, New Hampshire, Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia, 7.

On the question to agree to the seventh section of the sixth article, as amended—It passed in the affirmative.

It was moved and seconded to strike out of the eighth section of the sixth article, the words, "nor to any other place than that at "which the two houses are sitting."

And on the question shall the words stand,—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, 10. *Nay*, Virginia, 1.

It was moved and seconded to alter the eighth section of the sixth article, to read as follows, namely:

"The legislature shall at their first assembling determine on a place at which their future sessions shall be held. Neither house shall afterwards, during the session of the house of representatives, without the consent of the other, adjourn for more than three days; nor shall they adjourn to any other place than such as shall have been fixed by law"—Which passed in the negative.

It was moved and seconded to prefix the following words to the eighth section of the sixth article, namely:

"During the session of the legislature," and to strike out the last clause of the section—Which passed in the affirmative.

On the question to agree to the eighth section of the sixth article, as amended,—It passed in the affirmative.

It was moved and seconded to reconsider the fifth section of the fourth article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, Georgia, 8. *Nays*, New Jersey, Maryland, 2. *Divided*, South Carolina, 1.

And Monday next was assigned for the reconsideration.

And then the house adjourned till Monday next, at 11 o'clock.

MONDAY, AUGUST 13, 1787.

It was moved and seconded to strike out the word "seven," and to insert the word "four," in the second section of the fourth article.

It was moved and seconded to strike out the word "seven," and to insert the word "nine," in the second section of the fourth article.

It was moved by Mr. Hamilton, and seconded, to strike out the words "shall have been a citizen of the United States for at least seven years before his election," and to insert between the words "an" and "inhabitant," the words "citizen and," in the second section of the fourth article—Which passed in the negative.

Yeas, Connecticut, Pennsylvania, Maryland, Virginia, 4.—*Nays*, New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia, 7.

On the question to agree to the amendment of "nine,"—It passed in the negative.

Yeas, New Hampshire, South Carolina, Georgia, 3. *Nays*, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 8.

On the question to agree to the amendment of "four,"—It passed in the negative.

Yeas, Connecticut, Maryland, Virginia, 3. *Nays*, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, 8.

It was moved by Mr. G. Morris, and seconded, to add the following clause to the second section of the fourth article, namely:

"Provided always, that the above limitation of seven years shall not be construed to affect the rights of those who are now citizens of the United States"—Which passed in the negative.

Yeas, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, 5. *Nays*, New Hampshire, Massachusetts, Delaware, North Carolina, South Carolina, 6.

It was moved and seconded to strike out the word "seven," and and to insert the word "five," in the second section of the fourth article—Which passed in the negative.

Yeas, Connecticut, Maryland, Virginia, 3. *Nays*, New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia, 7. *Divided*, Pennsylvania, 1.

On the question to agree to the second section of the fourth article, as formerly amended,—It passed in the affirmative.

On the question shall the word "nine" in the third section of the fifth article stand part of the said section,—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Connecticut, Pennsylvania, Maryland, 3.

It was moved and seconded to adjourn.—Passed in the negative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, 5. *Nays*, New Jersey, Virginia, North Carolina, South Carolina, Georgia, 5. *Divided*, New Hampshire, 1.

It was moved by Mr. Randolph, and seconded, to amend the fifth section of the fourth article to read as follows, namely:

"All bills for raising money for the purposes of revenue, or for appropriating the same, shall originate in the house of representatives; and shall not be so altered or amended by the senate as to increase or diminish the sum to be raised, or change the mode of raising, or the objects of its appropriation"—[The question was taken on the first clause of this amendment]—Which passed in negative.

Yeas, New Hampshire, Massachusetts, Virginia, North Carolina, 4. *Nays*, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 7.

On the question to agree to the fifth section of the fourth article, as reported,—It passed in the negative.

Yeas, New Hampshire, Massachusetts, North Carolina, 3.—*Nays*, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 8.

The question was taken on the last clause of the fifth section of the fourth article—Which passed in the negative.

Yea, Massachusetts, 1. *Nays*, New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10.

And then the house adjourned till to-morrow, at 11 oclock, A. M.

TUESDAY, AUGUST 14, 1787.

It was moved and seconded to postpone the consideration of the ninth section of the sixth article, in order to take up the following:

"The members of each house shall be incapable of holding any office under the United States, for which they, or any other for their benefit, receive any salary, fees, or emoluments of any kind; and the acceptance of such office shall vacate their seats respectively"—Which passed in the negative.

Yeas, New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, 5. *Nays*, Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, 5. *Divided*, Georgia, 1.

It was moved and seconded to amend the ninth section of the sixth article by adding the following clause after the words "be elected:"

"Except in the army or navy thereof; but in that case their seats shall be vacated."

Before the question was taken on the last amendment,—It was moved and seconded to postpone the consideration of the ninth section of the sixth article until the powers to be vested in the senate are ascertained—Which passed unanimously in the affirmative.

It was moved and seconded to strike out the latter clause of the tenth section of the sixth article, and to insert the following:

"To be paid out of the treasury of the United States"—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 9.—— *Nays*, Massachusetts, South Carolina, 2.

It was moved and seconded to agree to the following amendment to the tenth section of the sixth article:

"Five dollars, or the present value thereof, per diem, during their attendance, and for every thirty miles travel in going to, and returning from congress"—Which passed in the negative.

Yeas, Connecticut, Virginia, 2. *Nays*, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, 9.

It was moved and seconded to agree to the following amendment to the tenth section of the sixth article: "To be ascertained by law"—Which passed in the affirmative.

On the question to agree to the tenth section of the sixth article as amended,—It passed in the affirmative.

And then the house adjourned till to-morrow, at 11 o'clock, A. M.

WEDNESDAY, AUGUST 15, 1787.

On the question to agree to the eleventh section of the sixth article as reported,—It passed in the affirmative.

It was moved and seconded to strike out the latter part of the twelfth section of the sixth article—Which passed in the affirmative.

It was moved and seconded to amend the twelfth section of the sixth article, as follows:

"Each house shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same, and for fixing the salaries of the officers of government, which shall originate in the house of representatives; but the senate may propose or concur with amendments as in other cases."

It was moved and seconded to postpone the consideration of the last amendment—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Virginia, North Carolina, South Carolina, Georgia, 6. *Nays*, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, 5.

It was moved by Mr. Madison, and seconded, to agree to the following amendment of the thirteenth section of the sixth article:

"Every bill which shall have passed the two houses, shall, before it become a law, be severally presented to the president of the United States, and to the judges of the supreme court for the revision of each. If, upon such revision, they shall approve of it, they shall respectively signify their approbation by signing it; but if, upon such revision, it shall appear improper to either, or both, to be passed into a law, it shall be returned, with the objections against it, to that house, in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider the bill: but if, after such reconsideration, two thirds of that house, when either the president, or a majority of the judges shall object, or three fourths, where both shall object, shall agree to pass it, it shall, together with the objections, be sent to the other house, by which it shall likewise be reconsidered; and, if approved by two thirds, or three fourths of the other house, as the case may be, it shall become a law"—Which passed in the negative.

Yeas, Delaware, Maryland, Virginia, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, N. Carolina, South Carolina, Georgia, 8.

It was moved and seconded to postpone the consideration of the thirteenth section of the sixth article—Which passed in the negative.

Yeas, Delaware, Maryland, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, N. Carolina, South Carolina, Georgia, 9.

It was moved and seconded to strike out the words "two-thirds" and to insert the words "three fourths," in the thirteenth section of the sixth article—Which passed in the affirmative.

Yeas, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, 6. *Nays*, New Hampshire, Massachusetts, New Jersey, Georgia, 4. *Divided*, Pennsylvania, 1.

It was moved and seconded to amend the first clause of the thirteenth section of the sixth article, as follows: "No bill or resolve of the senate and house of representatives shall become a law, or have force, until it shall have been presented to the president of the United States for his revision"—Which passed in the negative.

Yeas, Massachusetts, Delaware, North Carolina, 3. *Nays*, New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, 8.

It was moved and seconded to add at the close of the thirteenth section of the sixth article, the following clause: "No money shall be drawn from the treasury of the United States but in consequence of appropriations by law." The motion was withdrawn.

It was moved and seconded to adjourn—Which passed in the negative.

Yeas, Delaware, Maryland, Virginia, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, 7.

It was moved and seconded to strike out the word "seven," and to inser the words "ten (Sundays excepted)" in the thirteenth section of the sixth article—Which passed in the affirmative.

Yeas, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.—*Nays*, New Hampshire, Massachusetts, 2.

On the question to agree to the thirteenth section of the sixth article, as amended,—It passed in the affirmative.

And then the house adjourned till to-morrow, at 11 o'clock.

THURSDAY, AUGUST 16, 1787.

It was moved and seconded to agree to the following, as the fourteenth section of the sixth article: "Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment, and in the cases hereinafter mentioned) shall be presented to the president for his revision; and before the same shall have force, shall be approved by him, or, being disapproved by him, shall be repassed by the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill"—Which passed in the affirmative.

It was moved and seconded to insert the following proviso after the first clause of the first section of the seventh article: "*Provided*, That no tax, duty, or imposition shall be laid by the legislature of the United States on articles exported from any state."

It was moved and seconded to postpone the consideration of the proviso—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, N. Jersey,

Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Maryland, 1.

It was moved and seconded to add the words "and post roads," after the words "post offices," in the seventh clause of the first section of the seventh article,—Which passed in the affirmative.

Yeas, Massachusetts, Delaware, Maryland, Virginia, South Carolina, Georgia, 6. *Nays*, New Hampshire, Connecticut, New Jersey, Pennsylvania, North Carolina, 5.

It was moved and seconded to strike out the words "and emit bills" out of the eighth clause of the first section of the seventh article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, New Jersey, Maryland, 2.

It was moved and seconded to adjourn—Which passed in the negative.

Yeas, New Jersey, Maryland, Virginia, North Carolina, 4.—*Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvavia, Delaware, South Carolina, Georgia, 7.

Separate questions being taken on the first, second, third, fourth, fifth, sixth, seventh, and eighth clauses of the first section of the seventh article as amended,—They passed in the affirmative.

And then the house adjourned till to-morrow, at 11 o'clock.

FRIDAY, AUGUST 17, 1787.

It was moved and seconded to insert the word "joint" before the word "ballot," in the ninth clause of the first section, seventh article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, Connecticut, New Jersey, Maryland, 3.

It was moved and seconded to strike out the ninth clause of the first section of the seventh article—Which passed in the negative.

Yeas. Pennsylvania, Delaware, Maryland, South Carolina, 4.—*Nays*, New Hampshire, Massachusetts, Connecticut, Virginia, N. Carolina, Georgia, 6.

It was moved and seconded to strike out the words "and punishment," in the eleventh [twelfth] clause of the first section of the seventh article—Which passed in the affirmative.

Yeas, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, New Hampshire, Connecticut, Maryland, 3.

It was moved and seconded to alter the first part of the twelfth clause, first section, seventh article, to read as follows: "To punish piracies and felonies committed on the high seas"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 7. *Nays*, Connecticut, Virginia, North Carolina, 3.

It was moved and seconded to insert the words "define and" between the word "to" and the word "punish" in the twelfth clause—Which passed in the affirmative.

It was moved and seconded to amend the second part of the twelfth clause, as follows: "To punish the counterfeiting of the securities and current coin of the United States and offences against the law of nations"—Which passed in the affirmative.

On the question to agree to the thirteenth clause of the first section, seventh article, amended as follows: "To subdue a rebellion in any state against the government thereof, on the application of its legislature, or without, when the legislature cannot meet"—It passed in the negative.

Yeas, New Hampshire, Connecticut, Virginia, Georgia, 4.—*Nays*, Massachusetts, Delaware, Maryland, North Carolina, South Carolina, 5.

It was moved and seconded to strike out the word "make" and to insert the word "declare," in the fourteenth clause—Which passed in the negative.

Yeas, Pennsylvania, Delaware, Virginia, North Carolina, 4.—*Nays*, New Hampshire, Connecticut, Maryland, South Carolina, Georgia, 5.

It was moved and seconded to strike out the fourteenth clause: Which passed in the negative.

The question being again taken to strike out the word "make," and to insert the word "declare," in the fourteenth clause, It passed in the affirmative.

Yeas, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nay*, New Hampshire, 1.

It was moved and seconded to add the words "and to make peace" to the fourteenth clause—Which passed unanimously in the negative.

Separate questions having been taken on the ninth, tenth, eleventh, twelfth, and fourteenth clauses of the first section, seventh article, as amended—They passed in the affirmative.

And the house adjourned till to-morrow, at 11 o'clock, A. M.

SATURDAY, AUGUST 18, 1787.

The following additional powers, proposed to be vested in the legislature of the United States, having been submitted to the consideration of the convention, It was moved and seconded to refer them to the committee to whom the proceedings of the convention were referred—Which passed in the affirmative.

The propositions are as follow: To dispose of the unappropriated lands of the United States.

To institute temporary governments for new states arising therein.

To regulate affairs with the Indians, as well within, as without the limits of the United States.

To exercise exclusively legislative authority at the seat of the general government, and over a district around the same, not exceeding square miles; the consent of the legislature of the state, or states comprising such district, being first obtained.

To grant charters of incorporation in cases where the public good may require them, and the authority of a single state may be incompetent.

To secure to literary authors their copy rights for a limited time.

To establish a university.

To encourage, by proper premiums and provisions, the advancement of useful knowledge and discoveries.

To authorize the executive to procure and hold for the use of the United States, landed property for the erection of forts, magazines, and other necessary buildings.

To fix and permanently establish the seat of government of the United States, in which they shall possess the exclusive right of soil and jurisdiction.

To establish seminaries for the promotion of literature and the arts and sciences.

To grant charters of incorporation.

To grant patents for useful inventions.

To secure to authors exclusive rights for a certain time.

To establish public institutions, rewards and immunities, for the promotion of agriculture, commerce, trades and manufactures.

That funds which shall be appropriated for payment of public creditors shall not, during the time of such appropriation, be diverted, or applied to any other purpose; and to prepare a clause, or clauses, for restraining the legislature of the United States from establishing a perpetual revenue.

To secure the payment of the public debt.

To secure all creditors, under the new constitution, from a violation of the public faith, when pledged, by the authority of the legislature.

To grant letters of marque and reprisal.

To regulate stages on the post roads.

It was moved by Mr. Rutledge, and seconded, that a committee, to consist of a member from each state, be appointed to consider the necessity and expediency of the debts of the several states being assumed by the United States—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, Georgia, 6. *Nays*, New Hampshire, New Jersey, Delaware, Maryland, 4. *Divided*, Pennsylvania, 1.

And a committee was appointed, by ballot, of the honorable Mr. Langdon, Mr. King, Mr. Sherman, Mr. Livingston, Mr. Clymer, Mr. Dickinson, Mr. M'Henry, Mr. Mason, Mr. Williamson, Mr. C. C. Pinckney, and Mr. Baldwin.

It was moved and seconded to agree to the following resolution namely:

"*Resolved*, That this convention will meet punctually at 10 o'clock, every morning, (Sundays excepted) and sit till 4 o'clock in the afternoon, at which time the president shall adjourn the convention; and that no motion for adjournment be allowed"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia. 9. *Nays*, Pennsylvania, Maryland, 2.

It was moved and seconded to insert the words "and support," between the word "raise" and the word "armies," in the fourteenth clause, first section, seventh article—Which passed in the affirmative.

It was moved and seconded to strike out the words "build and equip," and to insert the words "provide and maintain," in the fifteenth clause, first section, seventh article—Which passed in the affirmative.

It was moved and seconded to insert the following as a sixteenth clause, in the first section of the seventh article: "To make rules for the government and regulation of the land and naval forces"—Which passed in the affirmative.

It was moved and seconded to annex the following proviso to the last clause: "Provided, That in time of peace the army shall not consist of more than thousand men"—Which passed in the negative.

It was moved and seconded to insert the following as a clause in the first section of the seventh article: "To make laws for regulating and disciplining the militia of the several states, reserving to the several states the appointment of their militia officers."

It was moved and seconded to postpone the last clause, in order to take up the following: "To establish a uniformity of exercise and arms for the militia; and rules for their government, when called into service under the authority of the United States; and to establish and regulate a militia in any state where its legislature shall neglect to do it."

It was moved and seconded to refer the two last motions to a committee—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Connecticut, New Jersey, 2. *Divided*, Maryland, 1.

And they were referred to the committee of eleven.

And then the house adjourned till Monday next, at o'clock, A. M.

MONDAY, AUGUST 20, 1787.

It was moved and seconded to refer the following propositions to the committee of five—Which passed in the affirmative.

Each house shall be the judge of its own privileges, and shall have authority to punish, by imprisonment, every person violating the same; or who, in the place where the legislature may be sit-

ting, and during the time of its session, shall threaten any of its members for any thing said or done in the house; or who shall assault any of them therefor; or who shall assault or arrest any witness or other person ordered to attend either of the houses in his way going or returning; or who shall rescue any person arrested by their order.

Each branch of the legislature, as well as the supreme executive, shall have authority to require the opinions of the supreme judicial court upon important questions of law, and upon solemn occasions.

The privileges and benefit of the writ of habeas corpus shall be enjoyed in this government in the most expeditious and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding months.

The liberty of the press shall be inviolably preserved.

No troops shall be kept up in time of peace, but by consent of the legislature.

The military shall always be subordinate to the civil power, and no grants of money shall be made by the legislature for supporting military land forces for more than one year at a time.

No soldier shall be quartered in any house, in time of peace, without consent of the owner.

No person holding the office of president of the United States; a judge of their supreme court; secretary for the department of foreign affairs; of finance; of marine; of war: or of shall be capable of holding at the same time any other office of trust or emolument under the United States, or an individual state.

No religious test, or qualification, shall ever be annexed to any oath of office under the authority of the United States.

The United States shall be forever considered as one body corporate and politic in law, and entitled to all the rights, privileges, and immunities which to bodies corporate do, or ought to appertain.

The legislature of the United States shall have the power of making the great seal, which shall be kept by the president of the United States, or, in his absence, by the president of the senate, to be used by them as the occasion may require. It shall be called the great seal of the United States, and shall be affixed to all laws.

All commissions and writs shall run in the name of the United States.

The jurisdiction of the supreme court shall be extended to all controversies between the United States and an individual state, or the United States and the citizens of an individual state.

To assist the president in conducting the public affairs, there shall be a council of state composed of the following officers:

1. The chief justice of the supreme court, who shall, from time to time, recommend such alterations of, and additions to, the laws of the United States, as may in his opinion be necessary to the due administration of justice, and such as may promote useful

learning and inculcate sound morality throughout the union. He shall be the president of the council, in the absence of the president.

2. The secretary of domestic affairs, who shall be appointed by the president, and hold his office during pleasure. It shall be his duty to attend to matters of general police, the state of agriculture and manufactures, the opening of roads and navigations, and the facilitating communications through the United States; and he shall, from time to time, recommend such measures and establishments as may tend to promote those objects.

3. The secretary of commerce and finance, who shall also be appointed by the president during pleasure. It shall be his duty to superintend all matters relating to the public finances, to prepare and report plans of revenue, and for the regulation of expenditures; and also to recommend such things as may, in his judgment, promote the commercial interests of the United States.

4. The secretary of foreign affairs, who shall also be appointed by the president during pleasure. It shall be his duty to correspond with all foreign ministers, prepare plans of treaties, and consider such as may be transmitted from abroad, and generally to attend to the interests of the United States, in their connexions with foreign powers.

5. The secretary of war, who shall be appointed by the president during pleasure. It shall be his duty to superintend every thing relating to the war department, such as the raising and equipping of troops, the care of military stores, public fortifications, arsenals, and the like; also, in time of war, to prepare and recommend plans of offence and defence.

6. The secretary of the marine, who shall also be appointed by the president during pleasure. It shall be his duty to superintend every thing relating to the marine department, the public shops, dock-yards, naval stores and arsenals; also, in time of war, to prepare and recommend plans of offence and defence.

The president shall also appoint a secretary of state, to hold his office during pleasure; who shall be secretary of the council of state, and also public secretary to the president. It shall be his duty to prepare all public despatches from the president, which he shall countersign.

The president may, from time to time, submit any matter to the discussion of the council of state; and he may require the written opinions of any one or more of the members; but he shall in all cases exercise his own judgment, and either conform to such opinions, or not, as he may think proper. And every officer above mentioned shall be responsible for his opinion on the affairs relating to his particular department.

Each of the officers above mentioned, shall be liable to impeachment, and removal from office, for neglect of duty, malversation, or corruption.

That the committee be directed to report qualifications for the president of the United States; and a mode for trying the supreme judges in cases of impeachment.

It was moved and seconded to postpone the consideration of the seventeenth clause, first section, seventh article—Which passed in the affirmative.

It was moved and seconded to insert the following clause in the first section, seventh article: "To make sumptuary laws"—which passed in the negative.

Yeas, Delaware, Maryland, Georgia, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, 8.

It was moved and seconded to insert the following clause in the first section of the seventh article: "To establish all offices" —Which passed in the negative.

Yeas, Massachusetts, Maryland, 2. *Nays*, New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia North Carolina, South Carolina, Georgia, 9.

On the question to agree to the last clause of the first section, seventh article, as reported—It passed in the affirmative.

It was moved and seconded to insert the words "some overt act of," after the word "in," in the second section, seventh article; and to strike out the word "and" before the words "in adhering," and to insert the word "or"—Which passed in the affirmative.

It was moved and seconded to strike out the words "or any of them," second section, seventh article—Which passed in the affirmative.

It was moved and seconded to refer the second section of the seventh article to a committee—Which passed in the negative.

Yeas, New Jersey, Pennsylvania, Maryland, Virginia, Georgia, 5. *Nays*, New Hampshire, Massachusetts, Connecticut, Delaware, South Carolina, 5. *Divided*, North Carolina, 1.

It was moved and seconded to postpone the consideration of the second section, seventh article, in order to take up the following:

"Whereas it is essential to the preservation of liberty to define, precisely and exclusively, what shall constitute the crime of treason, it is therefore ordained, declared, and established, that if a man do levy war against the United States, within their territories, or be adherent to the enemies of the United States within the said territories, giving to them aid and comfort within their territories, or elsewhere, and thereof be probably attainted of open deed by the people of his condition, he shall be adjudged guilty of treason."

On the question to postpone—It passed in the negative.

Yeas, New Jersey, Virginia, 2. *Nays*, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, North Carolina, S. Carolina, Georgia, 8.

It was moved and seconded to strike out the words "against the United States," first line, second section, seventh article—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 8. *Nays*, Virginia, North Carolina, 2.

It was moved and seconded to insert the words "to the same overt act" after the word "witnesses," second section, seventh article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 8. *Nays*, New Jersey, Virginia, North Carolina, 3.

It was moved and seconded to strike the words "some overt act" out of the first line, second section, seventh article—Which passed in the affirmative.

It was moved and seconded to insert the words "sole and exclusive" before the word "power," in the second clause, second section, seventh article—Which passed in the negative.

Yeas, New Hampshire, Massachusetts, Pennsylvania, Delaware, South Carolina, 5. *Nays*, Connecticut, New Jersey, Maryland, Virginia, North Carolina, Georgia, 6.

It was moved and seconded to reinstate the words "against the United States," in the first line, second section, seventh article—Which passed in the affirmative.

Yeas, Connecticut, New Jersey, Maryland, Virginia, North Carolina, Georgia, 6. *Nays*, New Hampshire, Massachusetts, Pennsylvania, Delaware, South Carolina, 5.

It was moved and seconded to strike out the words "of the United States," in the third line, second section, seventh article—Which passed in the affirmative.

It was moved and seconded to amend the first clause of the second section, seventh article, to read, "treason against the United States shall consist only in levying war against them, or in adhering to their enemies"—Which passed in the affirmative.

It was moved and seconded to add the words "giving them aid and comfort," after the word "enemies," in the second section, seventh article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, 8.—*Nays*, Connecticut, Delaware, Georgia, 3.

It was moved and seconded to add, after the words "overt act," the words "or confession in open court," second section, seventh article—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, 7. *Nays*, Massachusetts, South Carolina, Georgia, 3. *Divided*, North Carolina, 1.

On the question to agree to the second section of the seventh article, as amended, It passed in the affirmative.

It was moved and seconded to strike the words "white and other" out of the third section, seventh article—Which passed in the affirmative.

It was moved and seconded to strike out the word "six," and to insert the word "three," in the third section of the seventh article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 9. *Nays*, South Carolina, Georgia, 2.

It was moved and seconded to add the following clause to the third section of the seventh article:

"That from the first meeting of the legislature of the United States, until a census shall be taken, all moneys for supplying the public treasury, by direct taxation, shall be raised from the several states according to the number of their representation respectively in the first branch."

Before a question was taken on the last motion, The house adjourned.

TUESDAY, AUGUST 21, 1787.

The honorable Mr. Livingston, from the committee of eleven, to whom were referred—A proposition respecting the debts of the several states, entered on the journal of the 18th instant, and a proposition respecting the militia, entered on the journal of the 18th instant, informed the house that the committee were prepared to report, and had directed him to submit the same to the consideration of the house.

The report was then delivered in at the secretary's table, and, being read throughout, is as follows:

"The legislature of the United States shall have power to fulfil the engagements which have been entered into by congress, and to discharge as well the debts of the United States, as the debts incurred by the several states, during the late war, for the common defence and general welfare."

"To make laws for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by the United States."

It was moved and seconded to postpone the consideration of the above report—Which passed in the affirmative.

On the question to agree to the third section of the seventh article, as amended,—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Delaware, 1.

It was moved and seconded to add the following clause to the third section of the seventh article:

"And all accounts of supplies furnished, services performed, and moneys advanced by the several states to the United States, or by the United States to the several states, shall be adjusted by the same rule."

The last motion being withdrawn,—It was moved and seconded to add the following clause to the third section of the seventh article:

"By this rule the several quotas of the states shall be determined in settling the expenses of the late war."

It was moved and seconded to postpone the consideration of the last motion—Which passed in the affirmative.

It was moved by Mr. Ellsworth, and seconded, to add the following clause to the third section of the seventh article:

"That from the first meeting of the legislature of the United States, until a census shall be taken, all moneys for supplying the public treasury, by direct taxation, shall be raised from the several states according to the number of their representatives restively in the first branch."

It was moved and seconded to annex the following amendment to the last motion:

"Subject to a final liquidation by the foregoing rule, when a census shall have been taken."

On the question to agree to the amendment,—It passed in the affirmative.

On the question to agree to the proposition and amendment,—It passed in the negative.

Yeas, Massachusetts, South Carolina, 2. *Nays*, New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, 8. *Divided*, North Carolina, 1.

On the question to take up the amendment offered to the twelfth section of the sixth article, entered on the journal of the 15th instant, and then postponed,—It passed in the negative.

Yeas, New Hampshire, Connecticut, Maryland, Virginia, North Carolina, 5. *Nays*, Massachusetts, New Jersey, Pennsylvania, Delaware, South Carolina, Georgia, 6.

It was moved by Mr. Martin, and seconded, to add the following clause to the third section, seventh article:

"And whenever the legislature of the United States shall find it necessary that revenue should be raised by direct taxation, having apportioned the same according to the above rule on the several states, requisitions shall be made of the respective states to pay into the continental treasury their respective quotas within a time in the said requisition specified; and in case of any of the states failing to comply with such requisitions, then, and then only, to devise and pass acts directing the mode and authorising the collection of the same"—Which passed in the negative.

Yea, New Jersey, 1. *Nays*, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 7.—— *Divided*, Maryland, 1.

It was moved and seconded to insert the following clause after the word "duty," in the first line, fourth section, seventh article, "for the purpose of revenue"—Which passed in the negative.

Yeas, New Jersey, Pennsylvania, Delaware, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, N. Carolina, South Carolina, Georgia, 8.

It was moved and seconded to amend the first clause of the fourth section, seventh article, by inserting the following words, "unless by consent of two thirds of the legislature"—Which passed in the negative.

Yeas, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, 5. *Nays*, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia, 6.

On the question to agree to the first clause of the fourth section of the seventh article, as reported,—It passed in the affirmative.

Yeas, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, New Hampshire, New Jersey, Pennsylvania, Delaware, 4.

It was moved and seconded to insert the word "free" before the word "persons," in the fourth section of the seventh article.

Before the question was taken on the last motion,—The house adjourned.

WEDNESDAY, AUGUST 22, 1787.

The motion made yesterday to insert the word "free" before the word "persons," in the fourth section of the seventh article, being withdrawn, it was moved and seconded to commit the two remaining clauses of the fourth section, and the fifth section of the seventh article,—Which passed in the affirmative.

Yeas, Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, New Hampshire, Pennsylvania, Delaware, 3.

It was moved and seconded to commit the sixth section of the seventh article,—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, Connecticut, New Jersey, 2.

And a committee (of a member from each state) was appointed by ballot, of the honorable Mr. Langdon, Mr. King, Mr. Johnston, Mr. Livingston, Mr. Clymer, Mr. Dickinson, Mr. L. Martin, Mr. Madison, Mr. Williamson, Mr. C. C. Pinckney, and Mr. Baldwin, to whom the clauses of the fourth, fifth, and sixth sections were referred.

The honorable Mr. Rutledge, from the committee to whom sun-

dry propositions were referred, on the 18th and 20th instant, informed the house that the committee were prepared to report.

He then read the report in his place; and the same being delivered in at the Secretary's table, was again read throughout, and is as follows:

The committee report, that in their opinion the following additions should be made to the report now before the convention, viz:

At the end of the first clause of the first section of the seventh article add, "for payment of the debts and necessary expenses of the United States; provided that no law for raising any branch of revenue, except what may be specially appropriated for the payment of interest on debts or loans, shall continue in force for more than years."

At the end of the second clause, second section, seventh article, add, "and with Indians, within the limits of any state, not subject to the laws thereof."

At the end of the sixteenth clause of the second section, seventh article, add, "and to provide, as may become necessary, from time to time, for the well managing and securing the common property and general interests and welfare of the United States in such manner as shall not interfere with the governments of individual states, in matters which respect only their internal police, or for which their individual authorities may be competent."

At the end of the first section, tenth article, add, "he shall be of the age of thirty-five years, and a citizen of the United States, and shall have been an inhabitant thereof for twenty-one years."

After the second section of the tenth article, insert the following as a third section:

"The President of the United States shall have a privy council, which shall consist of the president of the senate, the speaker of the house of representatives, the chief justice of the supreme court, and the principal officer in the respective departments of foreign affairs, domestic affairs, war, marine, and finance, as such departments of office shall from time to time be established, whose duty it shall be to advise him in matters respecting the execution of his office, which he shall think proper to lay before them: but their advice shall not conclude him, nor affect his responsibility for the measures which he shall adopt."

At the end of the second section of the eleventh article, add, "the judges of the supreme court shall be triable by the senate, on impeachment by the house of representatives."

Between the fourth and fifth lines of the third section of the eleventh article, after the word "controversies," insert "between the United States and an individual state, or the United States and an individual person."

It was moved and seconded to rescind the orders of the house respecting the hours of meeting and adjournment—Which passed in the negative.

Yeas, Massachusetts, Pennsylvania, Delaware, Maryland, 4.—*Nays*, New Hampshire, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia, 7.

It was moved and seconded to insert the following clause after the second section of the seventh article:

"The legislature shall pass no bill of attainder, nor any ex post facto laws"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Delaware, Maryland, Virginia, South Carolina, Georgia, 7. *Nays*, Connecticut, New Jersey, Pennsylvania, 3. *Divided*, North Carolina, 1.

It was moved and seconded to take up the report of the committee of five.

It was moved and seconded to postpone the consideration of the report, in order that the members may furnish themselves with copies of the report—Which passed in the affirmative.

Yeas, Massachusetts, New Jersey, Maryland, Virginia, North Carolina, Georgia, 6. *Nays*, New Hampshire, Connecticut, Pennsylvania, Delaware, South Carolina, 5.

It was moved and seconded to take up the report of the committee of eleven entered on the journal of the 21st instant—Which passed in the affirmative.

It was moved by Mr. Morris, and seconded, to amend the first clause of the report to read as follows:

"The legislature shall fulfil the engagements and discharge the debts of the United States."

It was moved and seconded to alter the amendment by striking out the words "discharge the debts," and insert the words "liquidate the claims"—Which passed in the negative.

On the question to agree to the clause as amended, namely:

"The legislature shall fulfil the engagements and discharge the debts of the United States"—It passed unanimously in the affirmative.

It was moved and seconded to strike the following words out of the second clause of the report:

"And the authority of training the militia according to the discipline prescribed by the United States."

Before the question was taken on the last motion, The house adjourned.

THURSDAY, AUGUST 23, 1787.

It was moved and seconded to postpone the consideration of the second clause of the report of the committee of eleven, in order to take up the following:

"To establish a uniform and general system of discipline for the militia of these states, and to make laws for organizing, arming, disciplining, and governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and all authority over the militia, not herein given to the general government."

On the question to postpone—It passed in the negative.

Yeas, New Jersey, Maryland, Georgia, 3. *Nays*, N. Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, 8.

It was moved by Mr. Ellsworth, and seconded, to postpone the consideration of the second clause of the report of the committee of eleven, in order to take up the following:

"To establish a uniformity of arms, exercise, and organization for the militia, and to provide for the government of them when called into the service of the United States."

On the question to postpone, It passed in the negative.

Yea, Connecticut, 1. *Nays*, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10.

It was moved and seconded to recommit the second clause of the report of the committee of eleven—Which passed in the negative.

On the question to agree to the first part of the second clause of the report, namely,

"To make laws for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States."—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, Connecticut, Maryland, 2.

It was moved and seconded to amend the next part of the second clause of the report to read "reserving to the states, respectively, the appointment of the officers under the rank of general officers." It passed in the negative.

Yeas, New Hampshire, South Carolina, 2. *Nays*, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 9.

On the question to agree to the following part of the second clause of the report, namely,

"Reserving to the states respectively the appointment of the officers"—It passed in the affirmative.

On the question to agree to the following part of the second clause of the report, namely,

"And the authority of training the militia according to the discipline prescribed by the United States"—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, North Carolina, 7. *Nays*, Delaware, Virginia, South Carolina, Georgia, 4.

It was moved and seconded to agree to the seventh section of the seventh article, as reported—Which passed unanimously in the affirmative.

It was moved and seconded to insert the following clause after the seventh section of the seventh article:

"No person holding any office of profit or trust under the United States, shall, without the consent of the legislature, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state"—Passed in the affirmative.

It was moved and seconded to amend the eighth article to read as follows:

"This constitution and the laws of the United States made in pursuance thereof, and all treaties made under the authority of the United States, shall be the supreme law of the several states and of their citizens and inhabitants; and the judges in the several states shall be bound thereby in their decisions; any thing in the constitutions or laws of the several states to the contrary notwithstanding"—Which passed in the affirmative.

On the question to agree to the eighth article as amended, It passed in the affirmative.

☞ It was moved and seconded to strike the following words out of the eighteenth clause of the first section, seventh article: "enforce treaties"—Which passed in the affirmative.

It was moved and seconded to alter the first part of the eighteenth clause of the first section, seventh article, to read,

"To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions"—Which passed in the affirmative.

On the question to agree to the eighteenth clause of the first section, seventh article, as amended, It passed in the affirmative.

It was moved and seconded to agree to the following proposition, as an additional power to be vested in the legislature of the United States:

"To negative all laws passed by the several states interfering, in the opinion of the legislature, with the general interests and harmony of the union; provided that two thirds of the members of each house assent to the same."

It was moved and seconded to commit the proposition—Which passed in the negative.

Yeas, New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, 5. *Nays*, Massachusetts, Connecticut, New Jersey, N. Carolina, South Carolina, Georgia, 6.

The proposition was then withdrawn.

It was moved and seconded to amend the first section of the seventh article, to read, "The legislature shall fulfil the engagements and discharge the debts of the United States, and shall have the power to lay and collect taxes, duties, imposts and excises"—Which passed in the affirmative.

It was moved by Mr. Morris, and seconded, to amend the first clause of the first section, ninth article, to read, "The senate shall have power to treat with foreign nations; but no treaty shall be binding on the United States, which is not ratified by a law."

It was moved and seconded to postpone the consideration of the amendment—Which passed in the negative.

Yeas, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, 5. *Nays*, Massachusetts, Connecticut, North Carolina, South Carolina, Georgia, 5.

On the question to agree to the amendment, It passed in the negative.

Yea, Pennsylvania, 1. *Nays*, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia. 8. *Divided*, North Carolina, 1.

It was moved and seconded to postpone the consideration of the first clause of the first section, ninth article—Which passed in the affirmative.

It was moved and seconded to insert the words "and other public ministers" after the word "ambassadors," in the first section, ninth article—Which passed in the affirmative.

Separate questions being taken on postponing the several clauses of the first section, ninth article—Passed in the affirmative.

It was moved and seconded to take up the first section of the ninth article, in order to its being committed—Which passed in the affirmative.

And it was referred to the committee of five.

And then the house adjourned.

FRIDAY, AUGUST 24, 1787.

The honorable Mr. Livingston, from the committee of eleven. to whom were referred the two remaining clauses of the fourth section, and the fifth and sixth sections of the seventh article, informed the house that the committee were prepared to report.

The report was then delivered in at the Secretary's table, was once read, and is as follows:

Strike out so much of the fourth section of the seventh article, as was referred to the committee, and insert "the migration or importation of such persons as the several states, now existing, shall think proper to admit, shall not be prohibited by the legislature prior to the year 1800; but a tax or duty may be imposed on such migration or importation at a rate not exceeding the average of the duties laid on imposts."

The fifth section to remain as in the report. The sixth section to be stricken out.

It was moved and seconded to reconsider the first clause, first section, seventh article—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Delaware, Virginia, South Carolina, Georgia, 7. *Nays*, New Hampshire, Maryland, 2.

And to-morrow was assigned for the reconsideration.

It was moved and seconded to postpone the consideration of the second and third sections, ninth article—Which passed in the negative.

Yeas, New Hampshire, North Carolina, Georgia, 3. *Nays*.

Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina, 7.

It was moved and seconded to strike out the second and third sections of the ninth article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina, 8. *Nays*, North Carolina, Georgia, 2.

Separate questions being taken on the first, second, and third clauses of the first section, tenth article, as reported, They passed in the affirmative.

It was moved and seconded to strike out the word "legislature" and to insert the word "people," in the first section, tenth article—Which passed in the negative.

Yeas, Pennsylvania, Delaware, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Maryland, Virginia, N. Carolina, South Carolina, Georgia, 9.

It was moved and seconded to insert the word "joint" before the word "ballot," in the first section of the tenth article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, 7. *Nays*, Connecticut, New Jersey, Maryland, Georgia, 4.

It was moved and seconded to add, after the word "legislature" in the first section, tenth article, the words "each state having one vote"—Which passed in the negative.

Yeas, Connecticut, N. Jersey, Delaware, Maryland, Georgia, 5. *Nays*, New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, 6.

It was moved and seconded to insert after the word "legislature," in the first section of the tenth article, the words "to which election a majority of the votes of the members present shall be required"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, New Jersey, 1.

On the question to agree to the following clause: "And in case the numbers for the two highest in votes should be equal, then the president of the senate shall have an additional casting voice"—It passed in the negative.

It was moved and seconded to agree to the following amendment to the first section of the tenth article: "Shall be chosen by electors to be chosen by the people of the several states"—Which passed in the negative.

Yeas, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, 5. *Nays*, New Hampshire, Massachusetts, Maryland, North Carolina, South Carolina, Georgia, 6.

It was moved and seconded to postpone the consideration of the two last clauses of the first section, tenth article—Which passed in the negative.

It was moved and seconded to refer the two last clauses of the first section of the tenth article to a committee of a member from each state—Which passed in the negative.

Yeas, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, 5. *Nays*, New Hampshire, Massachusetts, N. Carolina, South Carolina, Georgia, 5. *Divided*, Connecticut, 1.

On the question to agree to the following clause, "Shall be chosen by electors"—It passed in the negative.

Yeas, New Jersey, Pennsylvania, Delaware, Virginia, 4. *Nays*, New Hampshire, North Carolina, South Carolina, Georgia, 4.—*Divided*, Connecticut, Maryland, 2.

The consideration of the remaining clauses of the first section, tenth article, was postponed till to-morrow, on the request of the deputies, of the state of New Jersey.

On the question to transpose the word "information," and to insert it after the word "legislature," in the first clause of the second section, tenth article,—It passed in the affirmative.

It was moved and seconded to strike out the words "he may," and to insert the word "and" before the word "recommend," in the second clause of the second section, tenth article—Which passed in the affirmative.

It was moved and seconded to insert the word "and" after the word "occasions," in the second section, tenth article—Which passed in the affirmative.

It was moved and seconded to insert the word "shall" before the words "think proper," second section, tenth article—Which passed in the affirmative.

It was moved and seconded to strike out the word "officers," and to insert the words "to offices," after the word "appoint," in the second section of the tenth article—Which passed in the affirmative.

It was moved and seconded to insert the words "or by law," after the word "constitution," in the second section of the tenth article—Which passed in the negative.

Yea, Connecticut, 1. *Nays*, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 9.

It was moved by Mr. Dickinson, and seconded, to strike out the words "and shall appoint to offices in all cases not otherwise provided for by this constitution," and to insert the following: "And shall appoint to all offices established by this constitution, except in cases herein otherwise provided for, and to all offices which may hereafter be created by law"—Which passed in the affirmative.

Yeas, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, Georgia, 6. *Nays*, New Hampshire, Massachusetts, Delaware, South Carolina, 4.

It was moved and seconded to add the following clause to the last amendment:

"Except where, by law, the appointment shall be vested in the executives of the several states"—Which passed in the negative.

It was moved and seconded to agree to the following order:

"That the order respecting the adjournment at four be repealed, and that in future the house assemble at ten, and adjourn at three" —Which passed unanimously in the affirmative. The house adjourned.

SATURDAY, AUGUST 25, 1787.

It was moved by Mr. Randolph, and seconded, to postpone the first clause of the first section, seventh article, in order to take up the following amendment:

"All debts contracted and engagements entered into, by or under the authority of congress, shall be as valid against the United States under this constitution as under the confederation"—Which passed in the affirmative.

On the question to agree to the amendment,—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Pennsylvania, 1.

It was moved and seconded to add the following clause to the first clause of the first section, seventh article:

"For the payment of said debts, and for the defraying the expenses that shall be incurred for the common defence and general welfare"—Which passed in the negative.

Yea, Connecticut, 1. *Nays*, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10.

It was moved and seconded to amend the report of the committee of eleven, entered on the journal of the 24th instant, as follows:

To strike out the words "the year eighteen hundred," and to insert the words "the year eighteen hundred and eight"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia, 7.
Nays, New Jersey, Pennsylvania, Delaware, Virginia, 4.

It was moved and seconded to amend the first clause of the report to read, "The importation of slaves into such of the states as shall permit the same, shall not be prohibited by the legislature of the United States until the year 1808"—Which passed in the negative.

Yeas, Connecticut, Virginia, Georgia, 3. *Nays*, New Hampshire, Massachusetts, Pennsylvania, Delaware, North Carolina, South Carolina, 6. *Divided*, Maryland, 1.

On the question to agree to the first part of the report as amended, namely:

"The migration or importation of such persons as the several states now existing shall think proper to admit, shall not be prohibited by the legislature prior to the year 1808"—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia, 7. *Nays*, New Jersey, Pennsylvania, Delaware, Virginia, 4.

It was moved and seconded to strike out the words "average of the duties laid on imports, and to insert the words "common impost on articles not enumerated"—Which passed in the affirmative.

It was moved and seconded to amend the second clause of the report, to read, "But a tax or duty may be imposed on such importation, not exceeding ten dollars for each person"—Which passed in the affirmative.

On the question to agree to the second clause of the report, as amended,—It passed in the affirmative.

On the question to postpone the further consideration of the report,—It passed in the affirmative.

It was moved and seconded to amend the eighth article, to read, "This constitution, and the laws of the United States which shall be 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 several states, and of their citizens and inhabitants; and the judges in the several states shall be bound thereby in their decisions, any thing in the constitutions or laws of the several states to the contrary, notwithstanding"—Which passed in the affirmative.

It was moved and seconded to agree to the following propositions:

"The legislature of the United States shall not oblige vessels belonging to the citizens thereof, or to foreigners, to enter or pay duties, or imposts, in any other state than in that to which they may be bound, or to clear out in any other than the state in which their cargoes may be laden on board; nor shall any privilege or immunity be granted to any vessels, on entering, clearing out, or paying duties or imposts in one state in preference to another."

"Should it be judged expedient by the legislature of the United States, that one or more ports for collecting duties or imposts, other than those ports of entrance and clearance already established by the respective states, should be established, the legislature of the United States shall signify the same to the executive of the respective states, ascertaining the number of such ports judged necessary, to be laid by the said executives before the legislatures of the states at their next session; and the legislature of the United States shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any state, except the legislature of such state shall neglect to fix and establish the same during their first session to be held after such notification by the legislature of the United States to the executive of such state."

"All duties, imposts, and excises, prohibitions or restraints, laid or made by the legislature of the United States, shall be uniform and equal throughout the United States."

It was moved and seconded to refer the above propositions to a committee of a member from each state—Which passed in the affirmative.

And a committee was appointed, by ballot, of the honorable Mr. Langdon, Mr. Gorham, Mr. Sherman, Mr. Dayton, Mr. Fitzsimons, Mr. Read, Mr. Carroll, Mr. Mason, Mr. Williamson, Mr. Butler and Mr. Few.

"It was moved and seconded to add the words "and other public ministers" after the word "ambassadors," second section, tenth article—Which passed unanimously in the affirmative.

It was moved and seconded to strike the words "and may correspond with the supreme executives of the several states," out of the second section, tenth article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 9. *Nay*, Maryland. 1.

It was moved and seconded to insert the words "except in cases of impeachment" after the word "pardons," second section, tenth article—Which passed in the affirmative.

On the question to agree to the following clause, "but his pardon shall not be pleadable in bar"—It passed in the negative.

Yeas, New Hampshire, Maryland, North Carolina, South Carolina, 4. *Nays*, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, Georgia, 6.

The house adjourned.

MONDAY, AUGUST 27, 1787.

It was moved and seconded to insert the words "after conviction," after the words "reprieves and pardons," second section, tenth article. (Motion withdrawn.)

It was moved and seconded to amend the clause giving the command of the militia to the executive, to read: "And of the militia of the several states when called into the actual service of the United States"—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, Georgia, 6. *Nays*, Delaware, South Carolina, 2.

It was moved and seconded to postpone the consideration of the following clause, second section, tenth article:

"He shall be removed from his office, on impeachment by the house of representatives, and conviction in the supreme court, of treason, bribery, or corruption"—Which passed in the affirmative.

It was moved and seconded to postpone the last clause of the second section, tenth article—Which passed in the affirmative.

It was moved and seconded to add the following clause to the oath of office to be taken by the supreme executive: "And will

to the best of my judgment and power, preserve, protect, and defend the constitution of the United States"—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, 7. *Nay*, Delaware, 1.

It was moved and seconded to insert the words, "both in law and equity" after the words "United States," first line, first section, eleventh article—Which passed in the affirmative.

On the question to agree to the first section, eleventh article, as amended—It passed in the affirmative.

It was moved and seconded to add the following clause after the word "behaviour," second section, eleventh article:

"Provided that they may be removed by the executive, on the application by the senate and house of representatives"—Which passed in the negative.

Yea, Connecticut, 1. *Nays*, New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 7.

On the question to agree to the second section of the eleventh article, as reported—It passed in the affirmative.

Yeas, New Hampshire, Connecticut, Pennsylvania, Virginia, South Carolina, Georgia, 6. *Nays*, Delaware, Maryland, 2.

It was moved and seconded to insert the words "increased or," before the word "diminished," in the second section, eleventh article—Which passed in the negative.

Yea, Virginia, 1. *Nays*, New Hampshire, Connecticut, Pennsylvania, Delaware, South Carolina, 5. *Divided*, Maryland, 1.

It was moved and seconded to add the following words to the second section, eleventh article: "Nor increased by any act of the legislature which shall operate before the expiration of three years after the passing thereof"—Which passed in the negative.

Yeas, Maryland, Virginia, 2. *Nays*, New Hampshire, Connecticut, Pennsylvania, Delaware, South Carolina, 5.

It was moved and seconded to postpone the following clause, third section, eleventh article: "To the trial of impeachments of officers of the United States"—Which was passed in the affirmative.

It was moved and seconded to add the following words after the word "controversies," third section, eleventh article: "To which the United States shall be a party"—Which passed in the affirmative.

It was moved and seconded to insert the words "this constitution the," before the word "laws," second line, third section, eleventh article—Which passed in the affirmative.

It was moved and seconded to strike out the words "passed by the legislature," and to insert after the words "United States," the words "and treaties made, or which shall be made under their authority"—Which passed in the affirmative.

It was moved and seconded to insert the word "controversies" before the words "between two or"—Passed in the affirmative.

It was moved and seconded to postpone the following clause: "in cases of impeachment"—Which passed in the affirmative.

It was moved and seconded to insert the words "the United States or," before the words "a state shall be a party"—Which passed in the affirmative.

It was moved and seconded to agree to the following amendment:

"In all the other cases before mentioned, original jurisdiction shall be in the courts of the several states, but with appeal, both as to law and fact, to the courts of the United States, with such exceptions and under such regulations as the legislature shall make."

The last motion being withdrawn—It was moved and seconded to amend the clause, to read: "In cases of impeachment, cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, this jurisdiction shall be original. In all the other cases before mentioned, it shall be appellate, both as to law and fact, with such exceptions, and under such regulations, as the legislature shall make"—Which passed in the affirmative.

It was moved and seconded to add the following clause to the last amendment:

"But in cases in which the United States shall be a party, the jurisdiction shall be original, or appellate, as the legislature may direct."

It was moved and seconded to amend the amendment, by striking out the words "original or"—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, Maryland, Virginia, South Carolina, Georgia, 6. *Nays*, Pennsylvania, Delaware, 2.

The question was then taken on the amendment as amended—Which passed in the negative.

Yeas, New Hampshire, Pennsylvania, Delaware, 3. *Nays*, Connecticut, Maryland, Virginia, South Carolina, Georgia, 5.—

On the question to reconsider the third section, eleventh article, It passed in the affirmative.

It was moved and seconded to strike out the words "the jurisdiction shall be original," and to insert the words "the supreme court shall have original jurisdiction"—Which passed in the affirmative.

It was moved and seconded to agree to the following amendment:

"In all the other cases before mentioned, the judicial power shall be exercised in such manner as the legislature shall direct"—Which passed in the negative.

Yeas, Delaware, Virginia, 2. *Nays*, New Hampshire, Connecticut, Pennsylvania, Maryland, South Carolina, Georgia, 6.—

It was moved and seconded to strike out the last clause of the third section, eleventh article—Which passed unanimously in the affirmative.

It was moved and seconded to insert the words "both in law and equity," before the word "arising," in the first line, third section, eleventh article—Which passed in the affirmative.

It was moved and seconded to insert after the words "between citizens of different states," the words "between citizens of the same state claiming lands under grants of different states"—Which passed in the affirmative.

The house adjourned.

TUESDAY, AUGUST 28, 1787.

The honorable Mr. Sherman, from the committee to whom were referred several propositions entered on the journal of the 25th instant, informed the house that the committee were prepared to report. The report was then delivered in at the Secretary's table, was read, and is as follows:

The committee report that the following be inserted after the fourth clause of the seventh section:

"Nor shall any regulation of commerce or revenue give preference to the ports of one state over those of another, or oblige vessels bound to or from any state, to enter, or pay duties in another.

"And all tonnage, duties, imposts and excises, laid by the legislature, shall be uniform throughout the United States."

It was moved and seconded to strike out the words "it shall be appellate," and insert the words "the supreme court shall have appellate jurisdiction," third section, eleventh article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 9. *Nay*, Maryland, 1.

It was moved and seconded to amend the fourth section of the eleventh article, to read as follows:

"The trial of all crimes (except in cases of impeachment) shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, then the trial shall be at such place or places as the legislature may direct"—Which passed in the affirmative.

It was moved and seconded to add the following amendment to the fourth section, eleventh article:

"The privilege of the writ of habeas corpus shall not be suspended; unless where, in cases of rebellion or invasion, the public safety may require it"—Which passed in the affirmative.

On the question to agree to the fifth section, eleventh article, as reported—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, 7. *Nays*, North Carolina, South Carolina, Georgia, 3.

It was moved and seconded to insert the words "nor emit bills of credit," after the word "money," in the twelfth article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, 8. *Nay*, Virginia, 1. *Divided*, Maryland, 1.

It was moved and seconded to insert the following clause after the last amendment:

"Nor make any thing but gold and silver coin a tender in payment of debts,"—Which passed unanimously in the affirmative, eleven states being present:

[New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvnia, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.]

It was moved and seconded to add the following clause to the last amendment:

"Nor pass any bill of attainder, ex post facto laws"—Which passed in the affirmative.

Yeas, New Hampshire, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, 7. *Nays*, Connecticut, Maryland, Virginia, 3.

It was moved and seconded to insert after the word "reprisal," the words, "nor lay embargoes"—Which passed in the negative.

Yeas, Massachusetts, Delaware, South Carolina, 3. *Nays*, New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, 8.

It was moved and seconded to transfer the following words from the thirteenth to the twelfth article:

"Nor lay imposts, or duties, on imports"—Which passed in the negative.

Yeas, New Hampshire, New Jersey, Delaware, North Carolina, 4. *Nays*, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, 7.

Separate questions being taken on the several clauses of the twelfth article, as amended—They passed in the affirmative.

It was moved and seconded to insert after the word "imports," in the thirteenth article, the words "or exports"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina, 6. *Nays*, Connecticut, Maryland, Virginia, South Carolina, Georgia, 5.

It was moved and seconded to add, after the word "exports," in the thirteenth article, the words "nor with such consent but for the use of the treasury of the United States"—Which passed in the affirmative.

Yeas, New Hampshire, Connecicut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, Massachusetts, Maryland, 2.

The question being taken on the first clause of the thirteenth article—It passed in the affirmative.

Yeas, New Hampshire, Connecticut, New Jersey, Pennsylvania,

Delaware, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, Massachusetts, Maryland, 2.

Separate question being taken on the several clauses of the thirteenth article, as amended—They passed in the affirmative.

On the question to agree to the fourteenth article, as reported, It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 9. *Nay*, South Carolina, 1. *Divided*, Georgia, 1.

It was moved and seconded to strike out the words "high misdemeanour," and insert the words "other crime"—Which passed in the affirmative.

On the question to agree to the fifteenth article, as amended—It passed in the affirmative.

The house adjourned.

WEDNESDAY, AUGUST 29, 1787.

It was moved and seconded to commit the sixteenth article, together with the following proposition:

"To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange"—Which passed in the affirmative.

Yeas, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9.—*Nays*, New Hampshire, Massachusetts, 2.

It was moved and seconded to commit the following proposition:

"Whensoever the act of any state, whether legislative, executive, or judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed, in other states, as full proof of the existence of that act; and its operation shall be binding in every other state, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the state wherein the said act was done"—Which passed in the affirmative.

It was moved and seconded to commit the following proposition:

"Full faith ought to be given in each state to the public acts, records, and judicial proceedings of every other state; and the legislature shall, by general laws, determine the proof and effect of such acts, records, and proceedings"—Which passed in the affirmative.

And the foregoing propositions, together with the sixteenth article, were referred to the honourable Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr. Wilson, and Mr. Johnson.

It was moved and seconded to postpone the report of the committee entered on the journal on the 24th instant, to take up the following proposition:

"That no act of the legislature for the purpose of regulating the commerce of the United States with foreign powers, or among the

several states, shall be passed without the assent of two thirds of the members of each house"—Which passed in the negative.

Yeas, Maryland, Virginia, North Carolina, Georgia, 4. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina, 7.

On the question to agree to the report of the committee of eleven, entered on the journal of the 24th inst.–Passed in the affirmative.

It was moved and seconded to agree to the following proposition to be inserted after the fifteenth article:

"If any person bound to service or labour, in any of the United States, shall escape into another state, he or she shall not be discharged from such service or labour, in consequence of any regulations subsisting in the state to which they escape; but shall be delivered up to the person justly claiming their service or labour": Which passed unanimously in the affirmative.

It was moved and seconded to strike out the two last clauses in the seventeenth article--Which passed in the affirmative.

It was moved and seconded to strike out the following words out of the seventeenth article:

"But to such admission the consent of two thirds of the members present in each house shall be necessary."

And on the question being taken,—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, 9. *Nays*, Maryland, Virginia, 2.

It was moved and seconded to agree to the following proposition as a substitute for the seventeenth article:

"New states may be admitted by the legislature into the union; but no new state shall be erected within the limits of any of the present states, without the consent of the legislature of such state, as well as of the general legislature.

Separate questions being taken on the different clauses of the proposition—They passed in the affirmative.

Yeas, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 6. *Nays*, New Hampshire, Connecticut ,New Jersey, Delaware, Maryland, 5.

The house adjourned.

THURSDAY, AUGUST 30, 1787.

It was moved and seconded to postpone the substitute for the seventeenth article, agreed to yesterday, in order to take up the amendment:

"The legislature shall have power to admit other states into the union, and new states to be formed by the division or junction of states now in the union, with the consent of the legislature of such states"—Which passed in the negative.

Yeas, New Hampshire Massachusetts, Connecticut, Pennsylva-

nia, South Carolina, 5. *Nays*, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, 6.

It was moved and seconded to commit the substitute for the seventeenth article agreed to yesterday.

And on the question being taken,—It passed in the negative.

Yeas, New Jersey, Delaware, Maryland, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 8.

It was moved and seconded to strike out the words "the limits," and to insert the words "the jurisdiction," in the substitute offered to the seventeenth article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, 7. *Nays*, New Jersey, North Carolina, South Carolina, Georgia, 4.

It was moved and seconded to insert the words "hereafter formed or," after the words "shall be," in the substitute for the seventeenth article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, Delaware, Maryland, 2.

It was moved and seconded to postpone the consideration of the substitute to the seventeenth article, as amended, in order to take up the following proposition from Maryland :

"The legislature of the United States shall have power to erect new states within as well as without the territory claimed by the several states, or either of them, and admit the same into the union: provided, that nothing in this constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the late treaty of peace"—Which passed in the negative.

Yeas, New Jersey, Delaware, Maryland, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georga, 8.

On the question to agree to the substitute offered to the seventeenth article, amended, as follows :

"New states may be admitted by the legislature into the union: but no new state shall be hereafter formed or erected within the jurisdiction of any of the present states without the consent of the legislature of such such state, as well as of the generallegislature" It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, New Jersey, Delaware, Maryland, 3.

It was moved and seconded to add the following clause to the last amendment :

"Nor shall any state be formed by the junction of two or more states or parts thereof, without the consent of the legislature of such states, as well as of the legislature of the United States"—Which passed in the affirmative.

It was moved and seconded to add the following clause to the last amendment:

"Provided nevertheless, that nothing in this constitution shall be constructed to affect the claim of the United States to vacant lands ceded to them by the late treaty of peace."

The last motion being withdrawn,

It was moved and seconded to agree to the following proposition:

"Nothing in the constitution shall be construed to alter the claims of the United States, or of the individual states, to the western territory; but all such claims may be examined into and decided upon by the supreme court of the United States."

It was moved and seconded to postpone the last proposition, in order to take up the following:

"The legislature 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 contained shall be so construed as to prejudice any claims either of the United States, or of any particular state."

It was moved and seconded to add the following clause to the last proposition:

"But all such claims may be examined into and decided upon by the supreme court of the United States"—Which passed in the negative.

Yeas, New Jersey, Maryland, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, 8.

On the question to agree to the following proposition:

"The legislature shall have power to dispose of and make needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution contained shall be so construed as to prejudice any claims either of the United States, or of any particular state"—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Maryland, 1

On the motion to agree to the first clause of the eighteenth article,—It passed in the affirmative.

It was moved and seconded to strike out the word "foreign," in the eighteenth article—Which passed in the affirmative.

It was moved and seconded to strike out the words on the application of its legislature against"—Which passed in the negative.

Yeas, New Jersey, Pennsylvania, Delaware, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8.

It was moved and seconded to strike out the words "domestic violence," and insert the word "insurrections," in the eighteenth article—Which passed in the negative.

Yeas, New Jersey, Virginia, North Carolina, South Carolina, Georgia, 5. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, 6.

It was moved and seconded to insert the words "or executive," after the word "legislature"—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, 8. *Nays*, Massachusetts, Virginia, 2.

It was moved and seconded to add the following clause to the last amendment:

"In the recess of the legislature"—Which passed in the negative.

Yea, Maryland, 1. *Nays* New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 10.

Separate questions being taken on the several clauses of the eighteenth article, as amended,—They passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, Delaware, Maryland, 2.

On the question to agree to the nineteenth article, as reported, It passed in the affirmative.

It was moved and seconded to add the words "or affirmation," after the word "oath," twentieth article—Which passed in the affirmative.

On the question to agree to the twentieth article as amended, It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, 8. *Nay*, North Carolina, 1. *Divided*, Connecticut, Maryland, 2.

It was moved and seconded to add the following clause to the twentieth article:

"But no religious test shall ever be required as a qualification to any office or public trust under the authority of the United States"—Which passed unanimously in the affirmative.

It was moved and seconded to take up the report of the committee of eleven—Which passed in the negative.

Yeas, New Jersey, Delaware, Maryland, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 8.

The house adjourned.

FRIDAY, AUGUST 31, 1787.

It was moved and seconded to insert the words "between the said states," after the word "constitution," in the twenty-first article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 9, *Nay*, Maryland, 1.

It was moved and seconded to postpone the consideration of the

twenty-first article, to take up the reports of the committee which have not been acted on—Which passed in the negative.

Yeas, New Hampshire, Pennsylvania, Delaware, Maryland, Georgia, 5. *Nays,* Massachusetts, New Jersey, Virginia, North Carolina, South Carolina, 5. *Divided,* Connecticut, 1.

It was moved and seconded to postpone the twenty-first, in order to take up the twenty-second article.

And on the question being taken,—It passed in the negative.

Yeas, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, 5. *Nays,* New Hampshire, Massachusetts, New Jersey, North Carolina, South Carolina, Georgia, 6.

It was moved and seconded to strike the words "conventions of" out of the twenty-first article—which passed in the negative.

Yeas, Connecticut, Pennsylvania, Maryland, Georgia, 4. *Nays,* New Hampshire, Massachusetts, New Jersey, Delaware, Virginia, South Carolina, 6.

It was moved and seconded to fill up the blank in the twenty-first article with the word "thirteen"—Which passed in the negative.

Yea, Maryland, 1. *Nays,* New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, S. Carolina, Georgia, 9.

It was moved and seconded to fill up the blank in the twenty-first article with the word "ten"—Which passed in the negative.

Yeas, Connecticut, New Jersey, Maryland, Georgia, 4. *Nays,* New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, 7.

It was moved and seconded to fill up the blank in the twenty-first article, as follows:

"Any seven or more states entitled to thirty-three members at least in the house of representatives, according to the allotment made in the third section, fourth article."

It was moved and seconded to fill up the blank in the twenty-first article, with the word "nine"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Georgia, 8.

On the question to agree to the twenty-first article, as amended, It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay,* Maryland. 1

It was moved and seconded to strike the words "for their approbation" out of the twenty second article—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, 7 *Nays,* Massachusetts, New Jersey, Maryland, Georgia, 4.

It was moved and seconded to agree to the following amendment to the twenty-second article:

"This constitution shall be laid before the United States in congress assembled. And it is the opinion of this convention that it should afterwards be submitted to a convention chosen in each state, in order to receive the ratification of such convention: to which end the several legislatures ought to provide for the calling conventions within their respective states as speedily as circumstances will permit"—Which passed in the negative.

Yeas, New Hampshire, Massachusetts, Pennsylvania, Delaware, 4. *Nays*, Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, 7.

It was moved and seconded to postpone the consideration of the twenty-second article—Which passed in the negative.

Yeas, New Jersey, Maryland, North Carolina, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, 8.

On the question to agree to the twenty-second article, as amended,—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Maryland, 1.

It was moved and seconded to fill up the blank in the twenty-third article with the word "nine"—Which passed in the affirmative.

It was moved and seconded to agree to the twenty-third article as far as the words "assigned by congress," inclusive—Which passed in the affirmative.

It was moved and seconded to postpone the remainder of the twenty-third article—Which passed in the negative.

Yeas, Massachusetts, Delaware, Virginia, North Carolina, 4.—*Nays*, New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, South Carolina, Georgia, 7.

It was moved and seconded to strike the words "choose the president of the United States and" out of the twenty-third article—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, Georgia, 8. *Nays*, New Hampshire, South Carolina, 2. *Divided*, Maryland, 1.

On the question to agree to the twenty-third article, as amended,—It passed in the affirmative.

It was moved and seconded to take up the report of the committee of eleven, entered on the journal of the 28th instant.

On the question to agree to the following clause of the report, to be inserted after the fourth section of the seventh article,

"Nor shall any regulation of commerce or revenue give preference to the ports of one state over those of another"—It passed in the affirmative.

On the question to agree to the following clause in the report:

"Or oblige vessels bound to or from any state to enter, clear, or pay duties in another"—It passed in the affirmative.

It was moved and seconded to strike out the word "tonnage"—Which passed in the affirmative.

On the question to agree to the following clause of the report:

"And all duties, imposts, and excises, laid by the legislature, shall be uniform throughout the United States"—It passed in the affirmative.

Yeas, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 8. *Nays*, New Hampshire, South Carolina, 2.

It was moved and seconded to refer such parts of the constitution as have been postponed, and such parts of reports as have not been acted on, to a committee of a member from each state—Which passed in the affirmative.

And a committee was appointed, by ballot, of the honorable Mr. Gilman, Mr. King, Mr. Sherman, Mr. Brearly, Mr. G. Morris, Mr. Dickinson, Mr. Carroll, Mr. Madison, Mr. Williamson, Mr. Butler and Mr. Baldwin.

It was moved and seconded to adjourn. Passed in the affirmative.

Yeas, Masachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 7. *Nay*, Connecticut, 1. *Divided*, New Hampshire, 1.

The house adjourned.

SATURDAY, SEPTEMBER 1, 1787.

The honorable Mr. Brearly, from the committee of eleven, to whom such parts of the constitution as have been postponed, and such parts of reports as have not been acted on, were referred, informed the house the committee were prepared to report partially.

The following report was then read: That in lieu of the ninth section of the sixth article, the following be inserted:

"The members of each house shall be ineligible to any civil office under the authority of the United States during the time for which they shall respectively be elected; and no person holding any office under the United States shall be a member of either house during his continuance in office."

The honorable Mr. Rutledge, from the committee to whom sundry propositions, entered on the journal of the 28th ultimo, were referred, informed the house that the committee were prepared to report. The following report was then read:

That the following additions be made to the report, namely:

After the word "states," in the last line, on the margin of the third page, add, "To establish uniform laws on the subject of bankruptcies;" And insert the following as the sixteenth article, namely:

"Full faith and credit ought to be given in each state to the public acts, records, and judicial proceedings of every other state; and the legislature shall, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect which judgments obtained in one state shall have in another."

It was moved and seconded to adjourn till Monday next, at 10 o'clock, A. M.

MONDAY, SEPTEMBER 3, 1787.

It was moved by Mr. Morris, and seconded, to strike out the words, "judgments obtained in one state shall have in another," and to insert the word "thereof," after the word "effect," in the report from the committee of five, entered on the journal of the 1st instant.—Which passed in the affirmative.

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, North Carolina, South Carolina, 6. *Nays*, Maryland, Virginia, Georgia, 3.

It was moved and seconded to strike out the words "ought to," and to insert the word "shall;" and to strike out the word "shall," and insert the word "may," in the report entered on the journal of the 1st instant.—Which passed in the affirmative.

On the question to agree to the report amended as follows:

"Full faith and credit shall be given in each state to the public acts, records, and judicical proceedings of every other state; and the legislature may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effects thereof"—It passed in the affirmative.

On the question to agree to the following clause of the report: "To establish uniform laws on the subject of bankruptcies"—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 3. *Nay*, Connecticut, 1.

It was moved and seconded to adjourn—Passed in the negative.

Yeas, Maryland, Virginia, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, North Carolina, South Carolina, Georgia, 8.

It was moved and seconded to postpone the consideration of the report from the committee of eleven, entered on the journal of the 1st instant, in order to take up the following:

"The members of each house shall be incapable of holding any office under the United States, for which they, or any other for their benefit, receive any salary, fees, or emoluments of any kind; and the acceptance of such office shall vacate their seats respectively."

On the question to postpone—It passed in the negative.

Yeas, Pennsylvania, North Carolina, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia, 8.

It was moved and seconded to adjourn—Passed in the negative.

Yeas, Pennsylvania, Maryland, Virginia, North Caralina, 4.—*Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, South Carolina, Georgia, 6.

It was moved and seconded to insert the word "created," before the word "during," in the report of the committee of eleven—Which passed in the negative.

Yeas, New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, 5. *Nays*, Connecticut, New Jersey, Maryland, South Carolina, Georgia, 5.

It was moved and seconded to insert the words "created, or the emoluments whereof shall have been "increased," before the word "during," in the report of the committee.

On the question being taken, the votes were, *Yeas*, New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, 5. *Nays*, Connecticut, New Jersey, Maryland, South Carolina, 4.—*Divided*, Georgia, 1.

The same question was taken again—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, 5. *Nays*, Connecticut, Maryland, South Carolina, 3. *Divided*, Georgia, 1.

Separate questions having been taken on the report as amended—They passed in the affirmative.

And the report as amended is as follows: "The members of each house shall be ineligible to any civil office under the authority of the United States, created, or the emoluments whereof shall have been increased, during the time for which they shall respectively be elected; and no person holding any office under the United states shall be a member of either house during his continuance in office."

The house then adjourned.

TUESDAY, SEPTEMBER 4, 1787.

The honorable Mr. Brearly, from the committee of eleven, informed the house, that the committee were prepared to report partially. It was afterwards delivered in at the secretary's table, and was again read, and is as follows:

The committee of eleven, to whom sundry resolutions, &c. were referred on the 31st ultimo, report:

That in their opinion the following additions and alterations should be made to the report before the convention, namely:

1. The first clause of the first section of the seventh article to read as follows: "the legislature shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and pro-

vide for the common defence and general welfare of the United States."

2. At the end of the second clause of the first section, seventh article, add, "and with the Indian tribes."

3. In the place of the ninth article, first section, to be inserted, "the senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two thirds of the members present."

4. After the word excellency, in the first section, tenth article, to be inserted, "he shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected in the following manner:

5. "Each state shall appoint, in such manner as its legislature may direct, a number of electors, equal to the whole number of senators and members of the house of representatives, to which the state may be entitled in the legislature.

6. "The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the senate.

7. "The president of the senate shall, in that house, open all the certificates; and the votes shall be then and there counted.—The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of the electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the senate shall choose by ballot one of them for president; but if no person have a majority, then, from the five highest on the list, the senate shall choose by ballot the president. And in every case, after the choice of the president, the person having the greatest number of votes shall be vice president. But if there should remain two or more who have equal votes, the senate shall choose from them the vice president.

8. "The legislature may determine the time of choosing and assembling the electors, and the manner of certifying and transmitting the votes.

"Sect. 2. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of the constitution, shall be eligible to the office of president; nor shall any person be elected to that office who shall be under the age of thirty-five years, and who has not been, in the whole, at least fourteen years a resident in the United States.

Sect. 3. The vice-president shall be ex officio president of the senate, except when they sit to try the impeachment of the president, in which case the chief justice shall preside; and excepting,

also, when he shall exercise the powers and duties of president, in which case, and in case of his absence, the senate shall choose a president pro tempore. The vice-president, when acting as president of the senate, shall not have a vote, unless the house be equally divided.

Sect. 4. The president, by and with the advice and consent of the senate, shall have power to make treaties: and he shall nominate, and by and with the advice and consent of the senate shall appoint ambassadors, and other public ministers, judges of the supreme court, and all other officers of the United States, whose appointments are not otherwise herein provided for. But no treaty, except treaties of peace, shall be made without the consent of two thirds of the members present."

After the words, "into the service of the United States," in the second section, tenth article, add, "and may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices."

The latter part of the second section, tenth article, to read as follows:

"He shall be removed from his office on impeachment by the house of representatives, and conviction by the senate, for treason, or bribery; and in case of his removal as aforesaid, death, absence, resignation, or inability to discharge the powers or duties of his office, the vice-president shall exercise those powers and duties until another president be chosen, or until the inablility of the president be removed."

On the question to agree to the first clause of the report—It passed in the affirmative.

On the question to agree to the second clause of the report—It passed in the affirmative.

It was moved and seconded to postpone the consideration of the third clause of the report—Which passed in the affirmative.

It was moved and seconded to postpone the consideration of the remainder of the report—Which passed in the negative.

Yea, North Carolina, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 10.

After some time passed in debate—It was moved and seconded to postpone the consideration of the remainder of the report, and that the members take copies thereof—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Delaware, Maryland, Virginia, South Carolina, Georgia, 7. *Nays*, Connecticut, New Jersey, Pennsylvania, 3.

It was moved and seconded to refer the following motion to the committee of eleven:

To prepare and report a plan for defraying the expenses of this convention—Which passed in the affirmative.

It was moved and seconded to adjourn—Which passed unanimously in the affirmative. The house adjourned.

WEDNESDAY, SEPTEMBER 5, 1787.

The honorable Mr. Brearly, from the committee of eleven, informed the house that the committee were prepared to report farther. He then read the report in his place; and the same being delivered in at the secretary's table, was again read, and is as follows:

To add to the clause "to declare war," the words "and grant letters of marque and reprisal."

To add to the clause "to raise and support armies," the words, "but no appropriation of money to that use shall be for a longer term than two years."

Instead of the twelfth section of the sixth article, say—

"All bills for raising revenue shall originate in the house of representatives, and shall be subject to alterations and amendments by the senate. No money shall be drawn from the treasury but in consequence of appropriations made by law."

Immediately before the last clause of the first section of the seventh article—

"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 the legislature, became the seat of the government of the United States; and to exercise like authority over all places purchased for the erection of forts, magazines, arsenals, dock yards, and other needful buildings.

"To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."

On the question to agree to the first clause of the report—It passed in the affirmative.

On the question to agree to the second clause of the report—It passed in the affirmative.

It was moved and seconded to postpone the consideration of the third clause of the report—It passed in the affirmative.

It was moved and seconded to insert the following words after the word "purchased," in the fourth clause of the report: "by the consent of the legislature of the state"—Which passed in the affirmative.

On the question to agree to the fourth clause of the report, It passed in the affirmative.

The following resolution and order, reported from the committee of eleven, were read:

"*Resolved*, That the United States in Congres be requested to allow, and cause to be paid to the secretary and other officers of this convention, such sums, in proportion to their respective times of service, as are allowed to the secretary and similar officers of Congress.

" *Ordered*, That the secretary make out, and transmit to the treasury office of the United States, an account for the said services, and for the incidental expenses of this convention."

Separate questions being taken on the foregoing resolve and order,—They passed in the affirmative.

It was moved and seconded to take up the remainder of the report from the committee of eleven, entered on the journal of the 4th instant.

It was moved and seconded to postpone the consideration of the report, in order to take up the following:

"He shall be elected by joint ballot by the legislature, to which election a majority of the votes of the members present shall be required. He shall hold his office during the term of seven years; but shall not be elected a second time."

On the question to postpone,—It passed in the negative.

Yeas, North Carolina, South Carolina, 2. *Nays*, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, 8. *Divided*, New Hampshire, 1.

It was moved and seconded to strike out the words "if such number be a majority of that of the electors"—Which passed in the negative.

Yea, North Carolina, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 10.

It was moved and seconded to strike out the word "senate," and insert the word "legislature"—Which passed in the negative.

Yeas, Pennsylvania, Virginia, South Carolina, 3. *Nays*, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, Georgia, 7. *Divided*, New Hampshire, 1.

It was moved and seconded to strike out the words "such majority," and to insert the words "one third"—Which passed in the negative.

Yeas, Virginia, North Carolina, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 9.

It was moved and seconded to strike out the word "five," and insert "three"—Which passed in the negative.

Yeas, Virginia, North Carolina, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 9.

It was moved and seconded to strike out the word "five," and to insert the word "thirteen"—Which passed in the negative.

Yeas, North Carolina, South Carolina, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, 9.

It was moved and seconded to add after the word "electors," the words "who shall have ballotted"—Which passed in the negative.

Yeas, Pennsylvania, Maryland, Virginia, North Carolina, 4.—*Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware South Carolina, Georgia, 7.

It was moved and seconded to add, after the words "if such number be a majority of the whole number of the electors," the word "appointed"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 9. *Nays*, Virginia, North Carolina, 2.

It was moved and seconded to insert after the words "The legislature may determine the time of choosing and assembling the electors," the words "and of their giving their votes"—Which passed in the affirmative. The house adjourned.

THURSDAY, SEPTEMBER 6, 1787.

It was moved and seconded to insert the following words after the words "may be entitled in the legislature," in the fifth clause of the report, entered on the journal of the 4th instant:

"But no person shall be appointed an elector who is a member of the legislature of the United States, or who holds any office of profit or trust under the United States"—Which passed in the affirmative.

It was moved and seconded to insert the word "seven," instead of "four," in the fourth clause of the report—Which passed in the negative.

Yeas, New Hampshire, Virginia, North Carlolina, 3. *Nays*, Massachusetts,, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, 8.

It was moved and seconded to insert the word "six," instead of "four"—Which passed in the negative.

Yeas, North Carolina, South Carolina, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, 9.

The question being put, to agree to the word "four"—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 10. *Nay*, South Carolina, 1.

On the question to agree to the fourth clause of the report, as follows:

"He shall hold his office during the term of four years, and together with the vice president, chosen for the same term, be elected in the following manner"—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 10. *Nay*, North Carolina, 1.

On the question upon the fifth clause of the report, prescribing the appointment of electors,—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, 9. *Nays*, North Carolina, South Carolina, 2.

It was moved and seconded to agree to the following clause :

"That the electors meet at the seat of the general "government" Which passed in the negative.

Yea, North Carolina, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 10.

It was moved and seconded to insert the words "under the seal of the state," after the word "transmit," in the sixth clause of the report—Which passed in the negative.

It was moved and seconded to agree to the sixth clause of the report—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 10 *Nay*, North Carolina, 1.

It was moved and seconded to agree to the words "the person having the greatest number of votes shall be president," in the seventh clause of the report—Which passed in the affirmative.

Yeas, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Massachusetts, Connecticut, 2. *Divided*, New Hampshire, 1.

It was moved and seconded to agree to the words "if such number be a majority of the whole number of the electors appointed"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, South Carolina, Georgia, 8. *Nays*, Pennsylvania, Virginia, North Carolina, 3.

It was moved and seconded to insert the words "in presence of the senate and house of representatives," after the word "counted"—Which passed in the affirmative.

Yeas, New Hampshire, Maryland, Virginia, North Carolina, South Carolina, Georgia, 6. *Nays*, Connecticut, New Jersey, Pennsylvania, Delaware, 4.

It was moved and seconded to insert the words "and who shall have given their votes," after the word "appointed," in the seventh clause of the report"—Which passed in the negative.

Yeas, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, 5. *Nays*, New Hampshire, Connecticut, New Jersey, Delaware, Maryland, Georgia, 6.

It was moved and seconded to insert the word "immediately," before the word "choose"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvanin, Delaware, Maryland, Virginia, South Carolina, Georgia, 10. *Nay*, North Carolina, 1.

It was moved and seconded to insert the words "of the elec-

tors," after the word "votes"—Which passed unanimously in the affirmative.

It was moved and seconded to agree to the following clause:

"But the election shall be on the same day throughout the United States," after the words "transmitting their votes"—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Massachusetts, New Jersey, Delaware, 3.

It was moved and seconded to strike out the words "the senate shall immediately choose by ballot, &c." and to insert the words, "the house of representatives shall immediately choose by ballot one of them for president, the members from each state having one vote"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Delaware, 1.

It was moved and seconded to agree to the following amendment:

"But a quorum for this purpose shall consist of a member or members from two thirds of the states"—Which passed unanimously in the affirmative.

On the question to agree to the following amendment:

"And also of a majority, of the whole number of the house of representatives"—It passed in the negative.

Yeas, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, 5. *Nays*, New Hampshire, New Jersey, Delaware, Maryland, South Carolina, Georgia, 6.

On the question to agree to the following paragraph of the report,

"And in every case after the choice of the president, the person having the greatest number of votes shall be the vice president, but if there should remain two or more who have equal votes, the senate shall chose from them the vice president"—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, 10. *Nay*, North Carolina, 1.

The several amendments being agreed to, on separate questions, the first section of the report is as follows:

"He shall hold the office during the term of four years; and, together with the vice president, chosen, for the same term, be elected in the following manner:

"Each state shall appoint, in such manner as its legislature may direct, a number of electors equal to the whole number of senators and members of the house of representatives to which the state may be entitled in the legislature:

"But no person shall be appointed an elector, who is a member

of the legislature of the United States, or who holds any office of profit or trust under the United States.

"The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the general government, 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 shall be the president (if such number be a majority of the whole number of the electors appointed;) and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; the representation from each state having one vote. But if no person have a majority, then from the five highest on the list, the house of representatives shall, in like manner, choose by ballot the president. In the choice of a president, by the house of representatives, a quorum shall consist of a member or members, from two thirds of the states; and the concurrence of a majority of all the states shall be necessary to such choice. And in every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them the vice president.

"The legislature may determine the time of choosing the electors, and of their giving their votes; and the manner of certifying and transmitting their votes. But the election shall be on the same day throughout the United States."

The House adjourned.

FRIDAY, SEPTEMBER 7, 1787.

It was moved and seconded to insert the following clause after the words "throughout the United States," in the first section of the report:

"The legislature may declare by law what officer of the United States shall act as president, in case of the death, resignation, or disability of the president, and vice president; and such officer shall act accordingly, until such disability be removed; or a president shall be elected"—Which passed in the affirmative.

Yeas, New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, 6. *Nays*, Massachusetts, Connecticut, Delaware, North Carolina, 4. *Divided*, New Hampshire, 1.

It was moved and seconded to insert the following amendment after the words "a member or members from two thirds of the

states," in the first section of the report : "and a concurrence of a majority of all the states shall be necessary to make such choice," Which passed in the affirmative.

On the question to agree to the second section of the report,—It passed in the affirmative.

The question being taken on the first clause of the third section of the report,

"The vice president shall be ex officio president of the senate" It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, 8. *Nays*, New Jersey, Maryland, 2.

Separate questions having been taken on the several clauses of the third section of the report—They passed in the affirmative.

It was moved and seconded to insert the words "and the house of representatives," after the word "senate," in the first clause of the fourth section of the report—Which passed in the negative.

Yea, Pennsylvania, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10.

It was moved and seconded to substitute the words "foreign ministers," instead of "ambassadors and other public ministers," in the second clause of the fourth section of the report—Which passed in the negative.

Yeas, Pennsylvania, Maryland, North Carolina, South Carolina, 4. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Virginia, Georgia, 7.

It was moved and seconded to amend the second clause of the fourth section of the report to read "Ambassadors, other public ministers, and consuls"—Which passed unanimously in the affirmative.

A question was taken on the words "judges of the supreme court"—Which passed unanimously in the affirmative.

A question was taken upon the words "and all other officers" Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, 9. *Nays*, Pennsylvania, South Carolina, 2.

It was moved by Mr. Madison, and seconded, to postpone the consideration of the fourth section of the report, in order to take up the following :

"That it be an instruction to the committee of the states to prepare a clause or clauses for establishing an executive council, or a council of state, for the president of the United States, to consist of six members, two of which from the eastern, two from the middle, and two from the southern states, with a rotation and duration of office, similar to that of the senate; such council to be apppointed by the legislature or by the senate."

On the question to postpone—It passed in the negative.

Yeas, Maryland, South Carolina, Georgia, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, 8.

It was moved and seconded to agree to the following clause:

"That the president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of the next session of the senate"—Which passed in the affirmative.

It was moved and seconded to insert the words "except treaties of peace," after the word treaty, in the fourth section of the report—Which passed in the affirmative.

On the question to agreee to the fourth section of the report as amended,—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, 8. *Nays*, New Jersey, Pennsylvania, Georgia, 3.

It was moved and seconded to postpone the following clause of the report:

"And may require the opinion in writing of the principal officer in each of the executive departments,upon any subject relating to the duties of their respective offices"—Which passed in the negative.

Yeas, Maryland, Virginia, Georgia, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, 8.

On the question to agree to the clause—It passed unanimously in the affirmative.

It was moved and seconded to agree to the following amendment:

"But no treaty of peace shall be entered into, whereby the United States shall be deprived of any of their present territory or rights, without the concurrence of two thirds of the members of the senate present."

The house adjourned.

SATURDAY, SEPTEMBER 8, 1787.

It was moved and seconded to strike the words "except treaties of peace," out of the fourth section of the report—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 3. *Nays*, New Jersey, Delaware, Maryland, 3.

It was moved and seconded to strike out the last clause of the fourth section of the report—Which passed in the negative.

Yea, Delaware, 1. *Nays*, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Divided*, Connecticut, 1.

It was moved and seconded to agree to the following amendment:

"Two thirds of all the members of the senate to make a treaty"—Which passed in the negative.

Yeas, North Carolina, South Carolina, Georgia, 3. *Nays*, N. Hampshire, Massachcsetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, 8.

It was moved and seconded to agree to the following amendment:

"A majority of all the members of the senate to make a treaty"—Which passed in the negative.

Yeas, Massachusetts, Connecticut, Delaware, South Carolina, Georgia, 5. *Nays*, New Hampshire, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, 6.

It was moved and seconded to agree to the following amendment:

"No treaty shall be made unless two thirds of the whole number of the senators be present"—Which passed in the negative.

Yeas, Maryland, Virginia, North Carolina, South Carolina, Georgia, 5. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, 6.

It was moved and seconded to agree to the following amendment:

"But no treaty shall be made before all the members of the senate are summoned, and shall have time to attend"—Which passed in the negative.

Yeas, North Carolina, South Carolina, Georgia, 3. *Nays*, N. Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, 8.

It was moved and seconded to agree to the following amendment:

"Neither shall any appointment be made as aforesaid, unless to offices established by the constitution, or by law"—Which passed in the negative.

Yeas, Massachusetts, Connecticut, New Jersey, North Carolina, Georgia, 5. *Nays*, New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, 6.

It was moved and seconded to insert the words "or other high crimes and misdemeanors against the state," after the word "bribery"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, Georgia, 7. *Nays*, New Jersey, Pennsylvania, Delaware, South Carolina, 4.

It was moved and seconded to strike out the words "by the senate," after the word "conviction"—Which passed in the negative.

Yeas, Pennsylvania, Virginia, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, 9.

It was moved and seconded to strike out the word "state," after the word "against," and to insert the words "United States" —Which passed unanimously in the affirmative.

On the question to agree to the last clause of the report—It passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Pennsylvania, 1.

It was moved and seconded to add the following clause after the words "United States: "The vice president and other civil officers of the United States shall be removed from office on impeachment and conviction as aforesaid"—Which passed unanimously in the affirmative.

It was moved and seconded to amend the third clause of the report, entered on the journal of the fifth instant, to read as follows, instead of the twelfth section, sixth article:

"All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills. No money shall be drawn from the treasury but in consequence of appropriations made by law"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 9. *Nays*, Delaware, Maryland, 2.

It was moved and seconded to amend the third clause of the report, entered on the journal of the 4th inst. to read as follows:

In the place of the first section, ninth article, insert, "the senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two thirds of the members present; and every member shall be on oath" —Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, 9. *Nays*, Pennsylvania, Virginia, 2.

It was moved and seconded to agree to the following clause:— "The legislature shall have the sole right of establishing offices not herein provided for"—Which passed in the negative.

Yeas, Massachusetts, Connecticut, Georgia, 3. *Nays*, New Hampshire, New Jersey, Pennsyvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, 8.

It was moved and seconded to amend the said clause of the second section, tenth article, to read: "He may convene both or either of the houses on extraordinary occasions"—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, New Jersey, Delaware, Maryland, North Carolina, Georgia, 7. *Nays*, Massachusetts, Pennsylvania, Virginia, South Carolina, 4.

It was moved and seconded to appoint a committee of five to re-

vise the style of, and arrange the articles agreed to by the house—Which passed in the affirmative.

And a committee was appointed, by ballot, of the honorable Mr. Johnston, Mr. Hamilton, Mr. G. Morris, Mr. Madison, and Mr King.

The house adjourned.

MONDAY, SEPTEMBER 10, 1787.

It was moved and seconded to reconsider the third section of the fourth article, which prescribes the number of the house of representatives—Which passed in the negative.

Yeas, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 5. *Nays*. New Hampshire, Massachusetts, Connecticut, New Jersey, South Carolina, Georgia, 6.

It was moved and seconded to reconsider the nineteenth article —Which passed in the affirmative.

Yeas, Massachusetts. Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina. South Carolina, Georgia, 9. *Nay*, New Jersey, 1. *Divided*, New Hampshire, 1.

It was moved and seconded to amend the nineteenth article, by adding the following clause:

"Or the legislature may propose amendments to the several states, for their approbation; but no amendment shall be binding, until consented to by the several states."

It was moved and seconded to insert the words "two thirds of," before the words "the several states"—Which passed in the negative.

Yeas, New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, 5. *Nays*, Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, 6.

It was moved and seconded to insert the words "three fourths," —Which passed unanimously in the affirmative.

It was moved and seconded to postpone the consideration of the amendment, in order to take up the following:

"The legislature of the United States, whenever two thirds of both houses shall deem necessary, or on the application of two thirds of the legislatures of the several states, shall propose amendments to this constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the legislatures of the several states, or qy conventions in three fourths thereof; as one or the other mode of ratification may be proposed by the legislature of the United States: provided, that no amendments which may be made prior to the year 1808, shall in any manner affect the fourth and fifth sections of article the seventh."

On the question to postpone—It passed in the affirmative.

On the question to agree to the last amendment—It passed in the affirmative,

Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nay*, Delaware, 1. *Divided*, New Hampshire, 1.

It was moved and seconded to reconsider the twenty-first and twenty-second articles—Which, the question being separately put upon each article, passed in the affirmative.

Yeas, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, 7. *Nays* Massachusetts, Pennsylvania, South Carolina, 3. *Divided*, New Hampshire, 1.

It was moved and seconded to postpone the twenty-first article, in order to take up the following:

"*Resolved*, That the foregoing plan of a constitution be transmitted to the United States, in congress assembled, in order that, if the same shall be agreed to by them, it may be communicated to the legislatures of the several states, to the end that they may provide for its final ratification, by referring the same to the consideration of a convention of deputies in each state, to be chosen by the people thereof; and that it be recommended to the said legislatures, in their respective acts for organizing such convention, to declare that, if the said convention shall approve of the said constitution, such approbation shall be binding and conclusive upon the state; and further, that if the said convention should be of opinion that the same, upon the assent of any new states thereto, ought to take effect between the states so assenting, such opinion shall thereupon be also binding upon each state; and the said constitution shall take effect between the states assenting thereto."

On the question to postpone—It passed in the negative.

Yea, Connecticut, 1. *Nays*, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10.

On the question to agree to the twenty-first article—It passed unanimously in the affirmative.

It was moved and seconded to restore the words "for their approbation," to the twenty-second article—Passed in the negative.

It was moved and seconded to refer the following to the committee of revision: "That it be an instruction to the committee to prepare an address to the people to accompany the present constitution, and to be laid with the same, before the United States in congress"—Which passed in the affirmative.

TUESDAY, SEPTEMBER 11, 1787.

The house met: but the committee of revision not having reported, and there being no business before the convention—The house adjourned.

WEDNESDAY, SEPTEMBER 12, 1787.

The honorable Mr. Johnson, from the committee of revision, informed the house, that the committee were prepared to report the constitution as revised and arranged. The report was then delivered in at the secretary's table; and having been once read throughout,

Ordered, That the members be furnised with printed copies thereof.

REVISED DRAFT OF THE CONSTITUTION,

Reported September 12, 1787, by the Committee of Revision.

[Paper furnished by general Bloomfield. The original is Mr. Brearly's copy of the draft, with manuscript interlineations and erasures of the amendments adopted on the examination and discussion.]

We, the people of the United States, in order to form a more perfect union, to establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ART. I—*Sect.* 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Sect. 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to servitude for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every forty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and they shall have the sole power of impeachment.

Sect. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year: so that one third may be chosen every second year. And if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state, for which he shall be chosen.

The vice president of the United States shall be, ex officio, president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

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; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Sect. 4. The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations.

The congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sect. 5. Each house shall be the judge of the elections, returns and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

Each house may determine the rules of its proceedings; punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither house, during the session of congress shall, without consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sect. 6. The senators and representatives shall receive a compensation for their services to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to, and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

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 whereof 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.

Sect. 7. The enacting style of the laws shall be, "Be it enacted by the senators and representatives in Congress assembled."

All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by its adjournment, prevent its return; in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on the question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by three-fourths of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECT. 8. The congress may, by joint ballot, appoint a treasurer. They shall have power to lay and collect taxes, duties, imposts, and excises;

To pay the debts and provide for the common defence and general welfare of the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the United States—reserving to the states respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles sqaare) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature

of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; and,

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Sect. 9. The migration or importation of such persons as the several states, now existing, shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

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.

No bill of attainder shall be passed, or any ex post facto law.

No capitation tax shall be laid, unless in proportion to the census herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No money shall be drawn from the treasury, but in consequence of appropriations made by law.

No title of nobility shall be granted by the United States.

And no person holding any office of profit or trust under them, shall, without the consent of congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Sect. 10. No state shall coin money, nor emit bills of credit, nor make any thing but gold or silver coin a tender in payment of debts, nor pass any bill of attainder, nor ex post facto laws, nor laws altering or impairing the obligation of contracts; nor grant letters of marque and reprisal; nor enter into any treaty, alliance or confederation; nor grant any title of nobility.

No state shall, without the consent of congress, lay imposts or duties on imports or exports, nor with such consent, but to the use of the treasury of the United States; nor keep troops nor ships of war in time of peace; nor enter into any agreement or compact with another state, nor with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent, as not to admit of delay until the congress can be consulted.

Art. II.—*Sect.* 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected in the following manner—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in congress; but no senator or representative shall be appointed an

elector, nor any person holding an office of trust or profit under the United States.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the general government, 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 shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, and not per capita, 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. In every case, after the choice of the president by the representatives, the person having the greatest number of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.

The congress may determine the time of choosing the electors, and the time in which they shall give their votes; but the election shall be on the same day throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

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 the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president; and such officer shall act accordingly, until the disability be removed, or the period for choosing another president arrive.

The president shall at stated times, receive a fixed compensation for his services, which shall neither be increased nor diminished during the period for which he shall have been elected.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my judgment and power, preserve, protect, and defend the constitution of the United States."

Sect. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States.—He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices. And he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

Sect. 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient.—He may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

Sect. 4. 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.

Art. III.—*Sect.* 1. The judicial power of the United States, both in law and equity, 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 during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Sect. 2. The judicial power shall extend to all cases, both in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and

citizens of another state; 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.

In cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Sect. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason: but no attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attainted.

Art. IV.—*Sect.* 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Sect. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, and removed to the state having jurisdiction of the crime.

No person legally held to service or labour in one state, escaping into another, shall, in consequence of regulations subsisting therein, be discharged from such service or labour, but shall be delivered up, on claim of the party to whom such service or labor may be due.

Sect. 3. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

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 claim of the United States, or of any particular state.

Sect. 4. The United States shall guarantee to every state in this union a republican form of government; and shall protect each of them against invasion; and, on application of the legislature or executive, against domestic violence.

Art. V.—The congress, whenever two-thirds of both houses shall deem necessary, or on the application of two-thirds of the legislatures of the several states, shall propose amendments to this constitution, which shall be valid to all intents and purposes, as part thereof, when the same shall have been ratified by three-fourths at least of the legislatures of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the   and   sections of article.

Art. VI.—All debts contracted and engagements entered into before the adoption of this constitution shall be as valid against the United States under this constitution as under the confederation.

This constitution, and the laws of the United States which shall be 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; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office of public trust under the United States.

Art. VII.—The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

The draft of a letter to congress being at the same time reported, was read once throughout; and afterwards agreed to by paragraphs.

THE LETTER TO CONGRESS.

[Paper deposited by President Washington, at the Department of State.]

We have now the honor to submit to the consideration of the United States in congress assembled, that constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired, that the power of making war, peace, and treaties; that of levying money and regulating commerce, and the correspondent executive and judicial authorities, shall be fully and effectually vested in the gene-

ral government of the union. But the impropriety of delegating such extensive trust to one body of men, is evident. Thence results the necessity of a different organization. It is obviously impracticable, in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty, to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstances, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved. And on the present occasion this difficulty was increased by a difference among the several states, as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject we kept steadily in our view that which appeared to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the convention to be less rigid in points of inferior magnitude, than might have been otherwise expected. And thus the constitution which we now present, is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every state is not, perhaps, to be expected. But each will doubtless consider, that had her interest alone been consulted, the consequences might have been particularly disagreeable and injurious to others. That it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

It was moved and seconded to reconsider the thirteenth section of the sixth article—Which pasaed in the affirmative.

It was moved and seconded to strike out the words "three-fourths," and to insert the words "two-thirds," in the thirteenth section of the sixth article—Which passed in the affirmative.

Yeas, Connecticut, New Jersey, Maryland, North Carolina, S. Carolina, Georgia, 6. *Nays*, Massachusetts, Pennsylvania, Delaware, Virginia, 4. *Divided*, New Hampshire, 1.

It was moved and seconded to appoint a committee to prepare a bill of rights—Which passed unanimously in the negative.

It was moved and seconded to reconsider the thirteenth article, in order to add the following clause at the end of the 13th article:

"*Provided* nothing herein contained shall be construed to restrain any state from laying duties upon exports, for the sole pur-

pose of defraying the charges of inspecting, packing, storing, and indemnifying the losses in keeping the commodities in the care of public officers before exportation."—It was agreed to reconsider.

Yeas, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 7. *Nays*, New Hampshire New Jersey, Delaware, 3.

THURSDAY, SEPTEMBER 13, 1787.

The honorable Mr. Johnson, from the committee of revision, reported the following as a substitute for the twenty-second and twenty-third articles:

"*Resolved*, That the preceding constitution be laid before the United States in congress assembled; and that it is the opinion of this convention, that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to, and ratifying the same, should give notice thereof to the United States in Congress assembled.

"*Resolved*, That it is the opinion of this convention, that as soon as the conventions of nine states shall have ratified this constitution, the United States in congress assembled should fix a day, on which electors should be appointed by the states which shall have ratified the same; and a day on which the electors should assemble to vote for the president; and the time and place for commencing proceedings under this constitution: that after such publication, the electors should be appointed, and the senators and representatives elected: that the electors should meet on the day fixed for the election of the president, and should transmit their votes certified, signed, sealed, and directed, as the constitution requires, to the secretary of the United States in congress assembled: that the senators and representatives should convene at the time and place assigned: that the senators should appoint a president of the senate for the sole purpose of receiving, opening, and counting the votes for president: And that after he shall be chosen, the congress, together with the president, should, without delay, proceed to execute this constitution."

The clause offered to the house yesterday to be added to the thirteenth article being withdrawn, it was moved and seconded to agree to the following amendment to the thirteenth article:

"*Provided*, That no state shall be restrained from imposing the usual duties on produce exported from such state, for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses on such produce, while in the custody of public officers; but all such regulations shall, in case of abuse, be subject to the revision and control of congress"—Which passed in the affirmative.

It was moved and seconded to postpone the consideration of the

report of the committee respecting the twenty-second and twenty-third articles—Which passed in the affirmative.

Yeas, New Hampshire, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nay,* Connecticut, 1.

It was moved and seconded to proceed to the comparing of the report from the committee of revision, with the articles which were agreed to by the house, and to them referred for arrangement—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, Georgia, 7. *Nays,* Pennsylvania, Delaware, South Carolina, 3.

And the same was read by paragraphs, compared, and in some places corrected and amended.

[No entry of the corrections and amendments adopted or proposed, appears upon the journals. The sheets of yeas and nays exhibit, however, many of the questions upon the amendments proposed, and the result of the votes upon them. The amendments adopted, are interlined in manuscript, in the revised draft of the constitution, used by Mr. Brearly; and, with the minutes furnished by Mr. Madison to complete the journal, collated with the entries on the sheets of yeas and nays, present the following questions and votes:]

It was moved and seconded to add the words "for two years," [See second section, first article.]—Which passed in the negative.

Yea, Massachusetts, 1. *Nays,* New Hampshire, Conecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10.

It was moved and seconded to insert the word "service," instead of "servitude," article first, section second, clause third—Which passed unanimously in the affirmative.

It was moved and seconded to strike out the words "and direct taxes," from the same clause—Which passed in the negative.

Yeas, New Jersey, Delaware, Maryland, 3. *Nays,* New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, 8.

It was moved and seconded to insert between "after" and "it," the words "the day on which"—Passed in the negative.

Yeas, Pennsylvania, Maryland, Virginia, 3. *Nays,* New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, North Carolina, South Carolina, Georgia, 8.

It was moved and seconded to rescind the rule for adjournment—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Virginia, North Caroli-

na, South Carolina, Georgia, 6. *Nays*, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, 5.

It was moved and seconded to insert after the word "parts," the words "of the proceedings of the senate"—Which passed in the negative.

Yeas, Pennsylvania, Maryland, North Carolina, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Virginia, Georgia, 7. *Divided*, South Carolina, 1.

It was moved and seconded to strike out the word "to," before "establish justice," in the preamble—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia, 8. *Nays*, New Jersey, Virginia, 2.

It was moved and seconded to reconsider the second clause of the third section, first article—Which passed in the negative.

Yeas, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 5. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, South Carolina, Georgia, 6.

Question omitted.

Yea, Virginia, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, 10.

Question omitted.

Yeas, Connecticut, South Carolina, Georgia, 3. *Nays*, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, 8.

It was moved and seconded to reconsider the first clause of the fifth section of the first article—Which passed in the negative.

Yeas, New Jersey, Maryland, North Carolina, Georgia, 4.—*Nays*, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, South Carolina, 7.—Question omitted.

[It was probably on adding the words "except as to the place of choosing senators," after the word "regulations," in the fourth section of the first article—which amendment was adopted.]

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, 9. *Nay*, Delaware, 1. *Divided*, Pennsylvania, 1.

Question omitted—Passed in the negative.

Yeas, Maryland, Virginia, North Carolina, Georgia, 4. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina, 7.

Question omitted—Passed in the negative.

Yeas, Massachusetts, Pennsylvania, South Carolina, 3. *Nays*, New Hampshire, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, 8.

Question omitted—Passed in the affirmative.

[It was probably on striking out the words "three-fourths," and inserting "two thirds," in the fourth clause, seventh section, first article.]

Yeas, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, 7. *Nays*, New Hampshire, Massachusetts, Pennsylvania, Virginia, 4.

FRIDAY, SEPTEMBER 14, 1787.

The report from the committee of revision, as corrected and amended yesterday, being taken up, was read, debated by paragraphs, amended and agreed to, as far as the first clause of the tenth section of the first article inclusive.

Question—To strike out the words " may by joint ballot appoint a treasurer. They" from the first clause of the eighth section, first article—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, 8. *Nays*, Massachusetts, Pennsylvania, Virginia, 3.

Question—To reconsider the tenth clause, eighth section, first article—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, 8.—*Nays*, New Jersey, Virginia, Georgia, 3.

Question—To strike out the word " punish"—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, New Jersey, Delaware, North Carolina, South Carolina, 6. *Nays*, Massachusetts, Pennsylvania, Maryland, Virginia, Georgia, 5.

Question—To grant letters of incorporation for canals, &c. A A clause proposed to be added to the eighth section of the first article—Passed in the negative.

Yeas, Pennsylvania, Virginia, Georgia, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, 8.

Question—" To establish a university." An additional clause proposed to the eighth section of the first article—Passed in the negative.

Yeas, Pennsylvania, Virginia, North Carolina, South Carolina, 4. *Nays*, New Hampshire, Massachusetts, New Jersey, Delaware, Maryland, Georgia, 6. *Divided*, Connecticut, 1.

It was moved and seconded to insert before the words " to provide for organizing, arming, &c." the words " and that the liberties of the people may be better secured against the danger of standing armies in time of peace," article first, section eighth—Passed in the negative.

Yeas, Virginia, Georgia, 2. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, 9.

Question—To reconsider the ex post facto clause—Passed unanimously in the negative.

Question—To insert the " liberty of the press shall be inviolably preserved—Passed in the negative.

Yeas, New Hampshire, Massachusetts, Maryland. Virginia, South Carolina, 5. *Nays,* Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, 6.

Question—To insert the words "or enumeration," after the word "census," in the fourth clause of the ninth section, first article—Passed in the affirmative.

Yeas, New Hampshire, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 8. *Nays,* Connecticut, South Carolina, 2.

Question omitted—Passed unanimously in the affirmative.

[Probably upon one or all of the following three amendments, adopted.]

Add at the end of the first clause of the eighth section, first article, "but all duties, imposts and excises, shall be uniform throughout the United States."

Add at the end of the fifth clause of the ninth section, first article, "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."

Add at the end of the sixth clause of the ninth section, first article, "and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

[The following amendments to the revised draft, were likewise adopted:]

Article first, section second, clause fifth. Strike out the word "they."

Article first, section third, clause second. Add at the end of the clause, after the word "legislature," the words, "which shall then fill such vacancies."

Article first, section third, clause fourth. Strike out the words "ex officio."

Article first, section third, clause sixth. After the word "oath," insert "or affirmation."

Article first, section eighth, clause third. After the word "nations," insert the word "and."

Article first, section ninth, clause first. Strike out the word "several," and between the words "as" and "the," insert the words "any of."

Alter the third clause so as to read, "no bill of attainder, or ex post facto law shall be passed."

In the fourth clause, after the word "capitation," insert the words "or other direct."

Article first, section tenth, clause first, was variously amended, to read as follows:

"No state shall enter into any treaty, alliance, or confederation, grant letters of marque and reprisal, coin money, emit bills of credit, make any thing but gold or silver coin a tender in payment of debts, pass any bill of attainder, ex post facto law, or law

impairing the obligation of contracts, or grant any title of nobility."
The house adjourned.

SATURDAY, SEPTEMBER 15, 1787.

It was moved and seconded to appoint a committee to prepare an address to the people of the United States to accompany the constitution—Which passed in the negative.

Yeas, Pennsylvania, Delaware, Maryland, Virginia 4. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, North Carolina, Georgia, 6.

It was moved and seconded to reconsider the third clause, second section, first article—Which passed in the affirmative.

Yeas, New Hampshire, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, Massachusetts, New Jersey, 2. *Divided*, Pennsylvania, 1.

It was moved and seconded to——

[N. B. The volume containing the journal of the convention, deposited in the department of state by president Washington, terminates thus, leaving the journal imperfect; and the minutes of Saturday, September 15, crossed out with a pen. It has been completed in the following manner, by minutes furnished, at the request of the President, by the late president Madison.]

——add one member to the representatives of North Carolina, and of Rhode Island.

On the question, as to Rhode Island—It passed in the negative.

Yeas, New Hampshire, Delaware, Maryland, North Carolina, Georgia, 5. *Nays*, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, South Carolina, 6.

On the question as to North Carolina—It passed in the negative.

Yeas, Maryland, Virginia, North Carolina, South Carolina, Georgia, 5. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, 6.

It was moved to set aside art. first, section tenth, clause second, and substitute "no state shall, without the consent of congress, lay any imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress."

It was moved to strike out the words "and all such laws shall be subject to the revision and control of the congress"—Which passed in the negative.

It was moved and seconded to strike out "and all such laws shall be subject to the revision and control of congress"—Which passed in the negative.

Yeas, Virginia, North Carolina, Georgia, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, South Carolina, 7. *Divided*, Pennsylvania, 1.

The substitute was then agreed to.

It was moved and seconded to substitute for first part of clause

second, section tenth, article first, the words, "no state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be indispensably necessary for executing its inspection laws; and the nett produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, 10. *Nay*, Virginia, 1.

It was moved "that no state shall be restrained from laying duties on tonnage for the purpose of clearing harbors, and erecting light houses."

It was moved "that no state shall lay any duty on tonnage without the consent of congress"—Which last motion passed in the affirmative.

Yeas, New Hampshire, Massachusetts, New Jersey, Delaware, Maryland, South Carolina, 6. *Nays*, Pennsylvania, Virginia, North Carolina, Georgia, 4. *Divided*, Connecticut, 1.

The clause was then agreed to in the following form:

"No state shall, without the consent of congress, lay any duty or tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

Article second, section first, clause sixth. On motion to strike out the words "the period for choosing another president arrived," and insert "a president shall be elected"—It passed in the affirmative.

It was moved to annex to clause seventh, section first, article second, "and he shall not receive, within that period, any other emolument from the United States, or any of them"—Which passed in the affirmative.

It was moved and seconded to annex to clause seventh, section first, article second, the words "and he [the president] shall not receive within that period any other emolument from the United States or any of them"—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, 7. *Nays*, Connecticut, New Jersey, Delaware, North Carolina, 4.

Article second, section second. It was moved to insert "except in cases of treason"—Which passed in the negative.

It was moved and seconded to insert the words "except in cases of treason," article second, section second—Which passed in the negative.

Yeas, Virginia, Georgia, 2. *Nays*, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, 8. *Divided*, Connecticut, 1.

Article second, section second, clause second. It was moved to add " but the congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments"—Which passed in the affirmative.

[The following verbal amendments, to the second and third articles of the revised draft were also adopted:]

Article second, section first, clause first. Strike out the words " in the following manner," and insert in their stead the words "as follows."

Section first, clause second. Transpose the words " shall be appointed an elector," to the end of the clause; and instead of the word " nor" read " or."

Section first, clause third. Strike out the words " and not per capita," and the words " by the representatives."

Section first, clause fourth. Strike out the words " time in," and insert the words " day on;" strike out " but the election shall be on the same day," and insert " which day shall be the same."

Section first, clause seventh. Instead of " receive a fixed compensation for his services," read " receive for his services a compensation."

In the oath to be taken by the president, strike out the word " judgment," and insert " abilities."

Section second, clause first. After the words " militia of the several states," add the words " when called into the actual service of the United States."

Section second, clause second. After the words " provided for," add " and which shall be established by law."

Article third, section first. Strike out the words " both in law and equity."

Section second, clause first. Strike out the word " both."

Article third, section second, clause third. It was moved to add the words, " and a trial by jury shall be preserved, as usual, in civil cases"—Which passed in the negative.

It was moved and seconded to annex " but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments," article second, section second, clause first—Which passed in the negative.

Yeas, New Hampshire, Connecticut, New Jersey, Pennsylvania, North Carolina, 5. *Nays*, Massachusetts, Delaware, Virginia, South Carolina, Georgia, 5. *Divided*, Maryland, 1.

Article fourth, section second, clause second. Instead of "and removed," read " to be removed."

Section second, clause third. For " of regulations subsisting," read " of any law or regulation."

Article fourth, section second, clause third. It was moved to strike out the word " legally," and insert after the word " state" the words " under the laws thereof."—Passed in the affirmative.

It was moved and seconded to strike out "legally," &c. Article fourth, section second, clause third.—Which passed in the affirmative.

Yeas, Connecticut, Maryland, Virginia, North Carolina, Georgia, 5. *Nays*, Massachusetts, New Jersey, Pennsylvania, South Carolina, 4. *Divided*, New Hampshire, Delaware, 2.

Article fourth, section third. It was moved to insert after the words "or parts of states," the words "or a state, and part of a state"—Which passed in the negative.

Article fourth, section fourth. After the word "executive," insert "when the legislature cannot be convened."

Article fifth. It was moved to amend the article so as to require a convention on application of two thirds of the states"—Which passed in the affirmative.

It was moved and seconded to amend the article fifth, so as to require a convention on the application of two-thirds of the states. Passed in the affirmative.

Yeas, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Nays*, New Hampshire, Massachusetts, New Jersey, 3.

It was moved and seconded to insert in article fourth, section third, after the words "or parts of states," the words "or a state and part of a state." Passed in the negative.

Yea, South Carolina, 1. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 10.

It was moved and seconded to strike out after "legislatures," the words, "of three-fourths," and so after the word "conventions," article fifth—[leaving future conventions to proceed like the present.] Passed in the negative.

Yeas, Massachusetts, Connecticut, New Jersey, 3. *Nays*, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, S. Carolina, Georgia, 7. *Divided*, New Hampshire, 1.

It was moved and seconded to strike out the words "or by conventions in three-fourths thereof." Passed in the negative.

Yea, Connecticut, 1. *Nays*, New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, 10.

It was moved and seconded to annex to the end of article fifth, a proviso, "that no state shall without its consent be affected in its internal police, or deprived of its equal suffrage in the senate." Passed in the negative.

Yeas, Connecticut, New Jersey, Delaware, 3. *Nays*, New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, N. Carolina, South Carolina, Georgia, 8.

It was moved and seconded to strike out article fifth. Passed in the negative.

Yeas, Connecticut, New Jersey, 2. *Nays*, New Hampshire,

Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, 8. *Divided*, Delaware, 1.

It was moved to strike out of article fifth, after the word "legislatures," the words "of three-fourths," and also after the word "conventions," so as to leave future conventions to act like the present convention according to circumstances—Which passed in the negative.

It was moved to strike out the words "or by conventions in three-fourths thereof"—Which passed in the negative.

It was moved to annex to the article a further proviso. "that no state shall, without its consent. be affected in its internal police, or deprived of its equal suffrage in the senate"—Which passed in the negative.

It was moved to strike out the fifth article altogether—Which passed in the negative.

It was moved to add a proviso, "that no state, without its consent, shall be deprived of its equal suffrage in the senate"—Which passed in the affirmative.

It was moved, as a further provisio, "that no law in nature of a navigation act be passed, prior to the year 1808, without the consent of two-thirds of each branch of the legislature"—Which passed in the negative.

It was moved and seconded "that no law in nature "of a navigation act be passed before the year 1808, without the consent of two-thirds of each branch of the legislature."—Passed in the negative.

Yeas, Maryland, Virginia, Georgia, 3. *Nays*, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina, 7.

It was moved "that amendments to the plan might be offered by the conventions, which should be submitted to, and finally decided on, by another general convention"—Which passed in the negative—all the states concurring.

It was moved and seconded "that amendments to the plan might be offered by the state conventions, which should be submitted to and finally decided on by another general convention."—Passed unanimously in the negative.

The blanks in the fifth article of the revised draft were filled up; and it was otherwise amended to read as follows :

"The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress: Provided, that no amendment which may be made prior

to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate."

On the question to agree to the constitution, as amended,—It passed in the affirmative—all the states concurring.

Ordered, That the constitution be engrossed.

The house adjourned.

MONDAY, SEPTEMBER 17, 1787.

The engrossed constitutution being read, It was moved, that the constitution be signed by the members in the following, as a convenient form:

"Done in convention, by the unanimous consent of the states present, the 17th September, &c. In witness whereof, we have hereunto subscribed our names."

It was moved to reconsider the clause declaring that the number of representatives shall not exceed one for every forty thousand," in order to strike out "forty thousand," and insert "thirty thousand"—Which passed in the affirmative.

On the question to agree to the constitution, enrolled in order to be signed,—All the states answered *ay*.

On the question to agree to the above form of signing,—It passed iu the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, 10. *Divided*, South Carolina, 1.

It was moved that the journal, and other papers of the convention, be deposited with the president—Which passed in the affirmative.

Yeas, New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, 10. *Nay*, Maryland, 1.

The president having asked what the convention meant should be done with the journal—it was resolved, nem. con. "That he retain the journal and other papers, subject to the order of the Congress, if ever formed under the constitution."

The members proceeded to sign the constitution; and the convention then dissolved itself by an adjournment sine die.

SUPPLEMENT

TO THE JOURNAL OF THE FEDERAL CONVENTION.

The following extract, from the journal of the Congress of the confederation, exhibits the proceedings of that body on receiving the report of the convention.

UNITED STATES IN CONGRESS ASSEMBLED.

FRIDAY, SEPTEMBER 28, 1787.

Present, New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina and Georgia, and from Maryland, Mr. Ross.

Congress having received *the report of the convention* lately assembled in Philadelphia,

Resolved, unanimously, That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case.

The states having accordingly passed acts for severally calling conventions, and the constitution being submitted to them, *the ratifications* thereof were transmitted to Congress as follows:

The Ratifications of the 12 *states reported in the General Convention.*

1. DELAWARE.

We the deputies of the people of the Delaware state, in convention met, having taken in our serious consideration the federal constitution proposed and agreed upon by the deputies of the United States in a general convention held at the city of Philadelphia, on the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty-seven, have approved, assented to, ratified and confirmed, and by these presents do, in virtue of the power and authority to us given for that purpose, for and in behalf of ourselves and our constituents, fully, freely, and entirely approve of, assent to, ratify and confirm the said constitution.

Done in convention at Dover, this seventh day of December, in the year aforesaid, and in the year of the independence of the United States of America the twelfth.—In testimony whereof, we have hereunto subscribed our names.

Sussex County.	*Kent County.*	*Newcastle County.*
John Ingram,	Nicholas Ridgely,	James Latimer, *President*.
John Jones,	Richard Smith,	James Black,
William Moore,	George Fruitt,	John James,
William Hall,	Richard Bassett,	Gunning Bedford, sen.
Thomas Laws,	James Sykes,	Kensey Johns,
Isaac Cooper,	Allen M'Lean,	Thomas Watson,
Woodman Stockley,	Daniel Cummins, sen.	Solomon Maxwell,
John Laws,	Joseph Barker,	Nicholas Way,
Thomas Evans,	Edward White,	Thomas Duff,
Israel Holland.	George Manlove	Gunning Bedford, jun.

[L. S.] To all whom these presents shall come, Greeting.

I, Thomas Collins, president of the Delaware state, do hereby certify, that the above instrument of writing is a true copy of the original ratification of the federal constitution by the convention of the Delaware state, which original ratification is now in my possession.—In testimony whereof I have caused the seal of the Delaware state to be hereunto annexed. THOMAS COLLINS.

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2. PENNSYLVANIA. In the name of the people of Pennsylvania.

Be it known unto all men, that we the delegates of the people of the commonwealth of Pennsylvania, in general convention assembled, have assented to, and ratified, and by these presents do, in the name, and by the authority of the same people, and for ourselves, assent to, and ratify the foregoing constitution for the United States of America. Done in convention, at Philadelphia, the 12th day of December, in the year of our Lord, one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.—In witness whereof, we have hereunto subscribed our names.

FREDERICK A. MUHLENBERG, *President.*

George Latimer,
Benjamin Rush,
Hilary Baker,
James Wilson,
Thomas M'Kean,
To. Macpherson,
John Hunn,
George Gray,
Samuel Ashmead,
Enoch Edwards,
Henry Wynkoop,
John Barclay,
Thomas Yardley,
Abraham Stout,
Thomas Bull,
Anthony Wayne,
William Gibbons,
Richard Downing,
Thomas Cheney,
John Hannum,
Stephen Chambers,
Robert Coleman,
Sebastian Graff,
John Hubley,
Jasper Yeates,
Henry Slagle,
Thomas Campbell,
Thomas Hartley,
David Grier,
John Black,
Benjamin Pedan,
John Arndt,
Stephen Balliat,
Joseph Horsefield,
David Deshler,
William Wilson,
John Boyd,
Thomas Scott,
John Nevill,
John Allison,
Jonathan Roberts,
John Richards,
James Morris,
Timothy Pickering,
Benjamin Elliot.

Attest. JAMES CAMPBELL, Sec'ry.

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3. NEW JERSEY. In convention of the state of New Jersey.

Whereas a convenrion of delegates from the following states, viz: New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, met at Philadelphia, for the purpose of deliberating on, and forming a constitution for the United States of America, finished their session on the 17th day of September last, and reported to Congress the form which they had agreed upon, in the words following, viz: [See the constitution.]

And whereas, Congress on the 28th day of September last, unanimously did resolve, "That the said report, with the resolutions and letter accompanying the same, be "transmitted to the several legislatures, in order to be submitted to a convention "of delegates, chosen in each state by the people thereof, in conformity to the re-"solves of the convention made and provided in that case."

And whereas, the legislature of this state, did, on the 29th day of October last, resolve in the words following, viz: "*Resolved unanimously*, That it be recom-"mended to such of the inhabitants of this state as are entitled to vote for repre-"sentatives in general assembly, to meet in their respective counties on the fourth "Tuesday in November next, at the several places fixed by law for holding the "annual elections, to choose three suitable persons to serve as delegates from each "county in a state convention, for the purposes herein before mentioned, and that "the same be conducted agreeably to the mode, and conformably with the rules "and regulatioms prescribed for conducting such elections.

"*Resolved unanimously*, That the persons so elected to serve in state convention, "do assemble and meet together on the second Tuesday in December next, at "Trenton, in the county of Hunterdon, then and there to take into consideration.

" the aforesaid constitution; and if approved of by them, finally to ratify the same, " in behalf and on the part of this state; and make report thereof to the United " States in Congress assembled, in conformity with the resolutions thereto annexed.

" *Resolved*, That the sheriffs of the respective counties of this state shall be, and " they are hereby required to give as timely notice as may be, by advertisements, " to the people of their counties, of the time, place, and purpose of holding elections " as aforesaid."

And whereas, the legislature of this state did also on the first day of November last, make and pass the following act, viz: " An act to authorize the people of this " state to meet in convention, deliberate upon, agree to, and ratify the constitution " of the United States, proposed by the late general convention.—Be it enacted by " the council and general assembly of this state, and it is hereby enacted by the " authority of the same, that it shall and may be lawful for the people thereof, by " their delegates, to meet in convention, to deliberate upon, and if approved of by " them, to ratify the constitution for the United States, proposed by the general " convention, held at Philadelphia, and every act, matter and clause, therein con- " tained, conformedly to the resolutions of the legislature, passed the 29th day of " October, 1787, any law, usage or custom to the contrary in any wise notwith- " standing."

Now be it known, that we the delegates of the state of New Jersey, chosen by the people thereof, for the purpose aforesaid, having maturely deliberated on, and considered the aforesaid proposed constitution, do hereby for and on the behalf of the people of the said state of New Jersey, agree to, ratify and confirm the same and every part thereof.

Done in convention by the unanimous consent of the members present, this 18th day of December, in the year of our Lord, 1787, and of the independence of the United States of America the twelfth.—In witness whereof, we have hereunto subscribed our names.

JOHN STEVENS, President,
And delegate from the county of Hunterdon.

County of Cape May, Jesse Hand,
Jeremiah Eldridge,
Matthew Willdin.
Hunterdon,..David Brearly,
Joshua Corshon.
Morris, ...William Windes,
William Woodhull,
John Iabob Faesch.
Cumberland, David Potter,
Jonathan Bowen,
Eli Elmer.
Sussex,.....Robert Ogden,
Thomas Anderson,
Robert Hoops.
Bergen,.....John Fell,
Peter Zobriskie,
Cornelius Hennion.
Essex,......John Chetwood,
Samuel Hay,
David Crane.

County of Middlesex, John Neilson,
John Beatty,
Benjamin Manning,
Monmouth,..Elisha Lawrence.
Samuel Breese,
William Crawford.
Somerset,...John Witherspoon,
Jacob R. Hardenberg,
Frederick Frelinghuysen.
Burlington,..Thomas Reynolds,
Geo. Anderson,
Joshua M. Wallace,
Gloucester,..Richard Howell,
Andrew Hunter,
Benjamin Whitall.
Salem,......Whitten Cripps,
Edmund Wetherby.

Attest. SAMUEL W. STOCKTON, Sec'ry.

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4. CONNECTICUT. In the name of the people of the state of Connecticut.

We the delegates of the people of said state in general convention assembled, pursuant to an act of the legislature in October last, have assented to, and ratified, and by these presents do assent to, ratify and adopt the constitution reported by the convention of delegates in Philadelphia, on the 17th day of September, A. D. 1787, for the United States of America.

Done in Convention this 9th day of January, A. D. 1788.—In witness whereof, we have hereunto set our hands.

MATTHEW GRISWOLD, President.

Jeremiah Wadsworth,
Jesse Root,
Isaac Lee,
Selah Hart,
Zebulon Peck, jun.
Elisha Pitkin,
Erastus Wolcott,
John Watson,
John Treadwell,
William Judd,
Joseph Mosely,
Wait Goodrich,
John Curtiss,
Asa Barns,
Stephen Mix Mitchell,
John Chester,
Oliver Elsworth,
Roger Newberry,
Roger Sherman,
Pierpont Edwards,
Samel Beach,
Daniel Holbrook,
John Holbrook,
Gideon Buckingham,
Lewis Mallet, jun.
Joseph Hopkins,
John Welton,
Richard Law,
Amasa Learned,
Samuel Huntington,
Jedediah Huntington,
Isaac Huntington,
Robert Robbins,
Daniel Foot,
Eli Hyde,
Joseph Woodbridge,
Stephen Billings,
Andrew Lee,
William Noyes,
Joshua Raymond, jun.
Jeremiah Halsey,
Wheeler Coit,
Charles Phelps,
Nathaniel Minor,
Jonathan Sturges,
Thaddeus Burr.
Elisha Whittlesey,
Joseph Moss White,
Amos Mead,
Jabez Fitch,
Nehemiah Beardsley,
James Potter,
John Chandler,
John Beach,
Hezekiah Rogers,
Lemuel Sanford,
William Heron,
Philip Burr Bradley,
Nathan Dauchy,
James Davenport,
John Davenport, jun.
Wm. Samuel Johnson,
Elisha Mills,
Eliphalet Dyer,
Jedediah Elderkin,
Simeon Smith,
Hendrick Dow,
Seth Paine,
Asa Witter,
Moses Cleaveland,
Samson Howe,
William Danielson,
William Williams,
James Bradford,
Joshua Dunlap,
Daniel Learned,
Moses Campbell,
Benjamin Dow,
Oliver Wolcott,
Jedediah Strong,
Moses Hawley,
Charles Burrall,
Nathan Hale,
Daniel Miles,
Asaph Hall,
Isaac Burnham.
John Wilder,
Mark Prindle,
Jedediah Hubbel,
Aaron Austin,
Samuel Canfield,
Daniel Everitt,
Hezekiah Fitch,
Joshua Porter,
Benjamin Hinman,
Epaphras Sheldon,
Eleazer Curtiss,
John Whittlesey,
Dan. Nath Brinsmade.
Thomas Fenn,
David Smith,
Robert M'Cune,
Daniel Sherman,
Samuel Orton,
Asher Miller,
Samuel H. Parsons,
Ebenezer White,
Hezekiah Goodrich,
Dyer Throop,
Jabez Chapman,
Cornelius Higgins,
Hezekiah Brainard,
Theophilus Morgan,
Hezekiah Lane,
William Hart,
Samuel Shipman,
Jeremiah West,
Samuel Chapman,
Ichabod Warner,
Samuel Carver,
Jeremiah Ripley,
Ephraim Root,
John Phelps,
Isaac Foot,
Abijah Sessions,
Caleb Holt,
Seth Crocker.

State of Connecticut, ss. Hartford, January ninth, Anno Domini, 1788. The foregoing ratifications was agreed to, and signed as above, by one hundred and twenty-eight, and dissented to by forty delegates in convention, which is a majority of eighty-eight.

Certified by MATTHEW GRISWOLD, President.

Teste. JEDEDIAH STRONG, Sec'ry.

5. COMMONWEALTH OF MASSACHUSETTS.

In convention of the delegates of the people of the commonwealth of Massachusetts. February 6, 1788.

The convention having impartially discussed, and fully considered the constitution for the United States of America, reported to congress by the convention of delegates from the United States of America, and submitted to us by a resolution of the general court of the said commonwealth, passed the 25th day of October last past, and acknowledging with grateful hearts, the goodness of the Supreme Ruler of the Universe in affording the people of the United States, in the course of his Providence, an opportunity, deliberately and peaceably, without fraud or surprise, of entering into an explicit and solemn compact with each other, by

assenting to and ratifying a new constitution, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity—Do, in the name and in behalf of the people of the commonwealth of Massachusetts, assent to, and ratify the said constitution for the United States of America.

And as it is the opinion of this convention, that certain amendments and alterations in the said constitution would remove the fears, and quiet the apprehensions of many of the good people of this commonwealth, and more effectually guard against an undue administration of the federal government—The convention do therefore recommend that the following alterations and provisions be introduced into the said constitution.

I. That it be explicitly declared that all powers not expressly delegated by the aforesaid constitution, are reserved to the several states to be by them exercised.

II. That there shall be one representative to every thirty thousand persons, according to the census mentioned in the constitution, until the whole number of the representatives amounts to two hundred.

III. That congress do not exercise the powers vested in them by the 4th section of the 1st article, but in cases when a state shall neglect or refuse to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress, agreeably to the constitution.

IV. That congress do not lay direct taxes but when the moneys arising from the impost and excise are insufficient for the public exigencies, nor then until Congress shall have first made a requisition upon the states to assess, levy, and pay their respective proportions of such requisition, agreeably to the census fixed in the said constitution, in such way and manner as the legislatures of the states shall think best; and in such case if any state shall neglect or refuse to pay its proportion pursuant to such requisition, then Congress may assess and levy such states proportion, together with interest thereon at the rate of six per cent per annum, from the time of payment, prescribed in such requisition.

V. That Congres erect no company of merchants with exclusive advantages of commerce.

VI. That no person shall be tried for any crime by which he may incur an infamous punishment, or loss of life, until he be first indicted by a grand jury, except in such cases as may arise in the government and regulation of the land and naval forces.

VII. The supreme judicial federal court shall have no jurisdiction of causes between citizens of different states, unless the matter in dispute, whether it concerns the reality or personalty, be of the value of three thousand dollars at the least—nor shall the federal judicial powers extend to any actions between citizens of different states, where the matter in dispute, whether it concerns the reality or personalty, is not of the value of fifteen hundred dollars at least.

VIII. In civil actions between citizens of different states, every issue of fact arising in actions at common law, shall be tried by a jury, if the parties or either of them request it.

IX. Congress shall at no time consent that any person holding an office of trust or profit under United States, shall accept of a title of nobility, or any other title or office, from any king, prince, or foreign state.

And the convention do, in the name and in behalf of the people of this commonwealth, enjoin it upon their representatives in congress at all times, until the alterations and provisions aforesaid have been considered agreeably to the fifth article of the said constitution, to exert all their influence, and use all reasonable and legal methods to obtain a ratification of the said alterations and provisions, in such manner as is provided in the said article.

And that the United States in congress assembled may have due notice of the assent and ratification of the said constitution by this convention, it is *Resolved*, That the assent and ratification aforesaid be engrossed on parchment, together with the recommendation and injunction aforesaid, and with this resolution; and that his excellency John Hancock, Esq. president, and the honorable Wm. Cushing, Esq. vice president of this convention, transmit the same, countersigned by the secretary of the convention, under their hands and seals, to the United States, in congress assembled. JOHN HANCOCK. President.

George Richards Minot, Sec'ry. WILLIAM CUSHING, Vice President.

Pursuant to the resolution aforesaid, we the president and vice president above named, do hereby transmit to the United States in Congress assembled, the same resolution, with the above assent and ratification of the constitution aforesaid, for the United States, and the recommendation and injunction above specified.

In witness whereof, we have hereunto set our hands and seals, at Boston, in the commonwealth aforesaid, this 7th day of February Anno Domini, 1788, and in the twelfth year of the independence of the United States of America.

JOHN HANCOCK, President. [L. S.]
WM. CUSHING, Vice President. [L. S.]

6. STATE OF GEORGIA.

In convention, Wednesday, January the 2nd, 1788.

To all whom these presents shall come, Greeting:

Whereas the form of a constitution for the government of the United States of America, was, on the 17th day of September, 1788, agreed upon and reported to congress by the deputies of the said United States convened in Philadelphia, which said constitution is written in the words following to wit:

And whereas, the United States in congress assembled, did, on the 28th day of September, 1787, *Resolve* unanimously, "That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case."

And whereas, the legislature of the state of Georgia, did, on the 26th day of October, 1787, in pursuance of the above recited resolution of Congress, *Resolve*, That a convention be elected on the day of the next general election, and in the same manner as representatives are elected; and that the said convention consist of not more than three members from each county; and that the said convention should meet at Augusta, on the 4th Tuesday in December then next, and as soon thereafter as convenient, proceed to consider the said report, and resolutions, and to adopt or reject any part or the whole thereof.

Now know ye, that we, the delegates of the people of the state of Georgia, in convention met, pursuant to the resolutions of the legislature aforesaid, having taken into our serious consideration the said constitution, have assented to, ratified and adopted, and by these presents do, in virtue of the powers and authority to us given by the people of the said state for that purpose, for, and in behalf of ourselves and our constituents, fully and entirely assent to, ratify and adopt the said constitution.

Done in convention, at Augusta, in the said state, on the 2nd day of January, in the year of our Lord, 1788, and of the independence of the United States the 12th.—In witness whereof, we have hereunto subscribed our names.

JOHN WEREAT, President,
And delegate for the county of Richmond.

County of Chatham, W. Stephens,
Joseph Habersham.
Effingham, . . Jenhim Davis,
N. Brownson.
Burke, ... Edward Telfair,
H. Todd.
Richmond, . . . William Few,
James M'Niel.
Wilkes, ... Geo. Matthews,
Flor. Sullivan,
John King.
Liberty . . . . . James Powell,
John Elliot,
James Maxwell.

County of Glynn, George Handley,
Christopher Hillary,
J. Milton.
Camden, ... Henry Osborn,
James Seagrove,
Jacob Weed.
Washington, . Jared Irwin,
John Rutherford.
Greene, ... Robert Christmas,
Thomas Daniell,
R. Middleton.

7. MARYLAND.

In convention of the delegates of the people of the State of Maryland. April 28, 1788.

We the delegates of the people of the state of Maryland, having fully considered the constitution of the United States of America, reported to congress by the convention of deputies from the United States of America, held in Philadelphia, on the 17th day of September, in the year 1787, of which the annexed is a copy, and submitted to us by a resolution of the general assembly of Maryland, in November session, 1787, do, for ourselves, and in the name and on the behalf of the people of this state, assent to and ratify the said constitution.

In witness whereof, we have hereunto subscribed our names.

GEO. PLATER, President.

Richard Barnes,
Charles Chilton,
N. Lewis Sewall,
William Tilghman,
Donaldson Yeates,
Isaac Perkins,
William Granger,
Joseph Wilkinson,
Charles Graham,
John Chesley, jun.
W. Smith,
G. R. Brown,
J. Parnham,
Zeph. Turner,
Michael Jenifer Stone,
R. Goldsborough, jun.
Edward Lloyd,
John Stevens,
George Gale,
Henry Waggaman,
John Stewart,
John Gale,
N. Hammond,
Daniel Sullivan,
James Shaw,
Jos. Gilpin,
H. Hollingsworth,
James Gordon Heron,
Samuel Evans,
Fielder Bowie,
Osb. Sprigg,
Benjamin Hall,
George Digges,
Nicholas Carrole,
A. C. Hanson,
James Tilghman,
John Seney,
James Hollyday,
William Hemsley,
Peter Chaille,
James Martin,
William Morris,
John Done,
Thomas Johnson,
Thomas S. Lee,
Richard Potts,
Abraham Few,
William Paca,
J. Richardson,
William Richardson,
Matt. Driver,
Peter Edmonson,
James M'Henry,
John Coulter,
Thomas Sprigg,
John Stull,
Moses Rawlings,
Henry Shryock,
Thomas Cramphin,
Richard Thomas,
William Deakins, jun.
Ben. Edwards.

Attest. WM. HARWOOD, Clk.

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8. STATE OF SOUTH CAROLINA.

In convention of the people of the state of South Carolina, by their representatives, held in the city of Charleston, on Monday, the 12th day of May, and continued by divers adjournments to Friday, the 23d day of May, Anno Domini, 1788, and in the twelfth year of the independence of the United States of America.

The convention having maturely considered the constitution, or form of government, reported to Congress by the convention of delegates from the United States of America, and submitted to them by a resolution of the legislature of this state, passed the 17th and 18th days of February last, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defence promote the general welfare, and secure the blessings of liberty to the people of the said United States, and their posterity—Do, in the name and behalf of the people of this state, hereby assent to, and ratify the said constitution.

Done in convention, the 23d day of May, in the year of our Lord, 1788, and of the independence of the United States of America, the twelfth.

THOMAS PINCKNEY, President. [L. S.]

Attest. JOHN SANFORD DART, Sec'ry. [L. S.]

And whereas it is essential to the preservation of the rights reserved to the several states, and the freedom of the people, under the operations of a general government, that the right of prescribing the manner, time, and places of holding the elections to the federal legislature, should be forever inseparably annexed to the sovereignty of the several states: This convention doth declare, that the same ought to remain to all posterity, a perpetual and fundamental right in the local, exclusive of the interference of the general government, except in cases where the legislatures of the states shall refuse or neglect to perform and fulfil the same, according to the tenor of the said constitution.

This convention doth also declare, that no section or paragraph of the said constitution warrants a construction that the states do not retain every power not expressly relinquished by them, and vested in the general government of the union.

Resolved, That the general government of the United States ought never to impose direct taxes, *but* where the moneys arising from the duties, imports and excise, are insufficient for the public exigencies, *nor then until* Congress shall have made a requisition upon the states to assess, levy, and pay their respective proportions of such requisitions; and in case any state shall neglect or refuse to pay its proportion, pursuant to such requisition, then Congress may assess and levy such state's proportion, together with interest thereon, at the rate of six per centum per annum, from the time of payment prescribed by such requisition.

Resolved, That the third section of the sixth article ought to be amended, by inserting the word "other," between the words "no," and "religious."

Resolved, That it be a standing instruction to all such delegates as may hereafter be elected to represent this state in the general government, to exert their utmost abilities and influence, to effect an alteration of the constitution, conformably to the aforegoing resolutions.

Done in convention, the 23d day of May, in the year of our Lord, 1788, and of the independence of the United States of America, the twelfth.

THOMAS PINCKNEY, President. [L. S.]

Attest. JOHN SANFORD DART, Sec'ry. [L. S.]

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9. STATE OF NEW HAMPSHIRE.

In Convention of the Delegates of the People of the State of New Hampshire, June the 21st 1788.

The convention having impartially discussed, and fully considered the constitution for the United States of America, reported to Congress by the convention of delegates from the United States of America, and submitted to us by a resolution of the general court of said state, passed the 14th day of December last past, and acknowledging with grateful hearts the goodness of the Supreme Ruler of the universe in affording the people of the United States, in the course of his Providence, an opportunity, deliberately and peaceably, without fraud or surprise of entering into an explicit and solemn compact with each other, by assenting to and ratifying a new constitution, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity—Do, in the name and behalf of the people of the state of New Hampshire, assent to and ratify the said constitution, for the United States of America. And as it is the opinion of this convention, that certain amendments and alterations in the said constitution, would remove the fears and quiet the apprehensions of many of the good people of this state, and more effectually guard against an undue administration of the federal government—The convention do therefore recommend, that the following alterations and provisions be introduced in the said constitution.

I. That it be explicitly declared that all powers not expressly and particularly delegated by the aforesaid constitution, are reserved to the several states to be by them exercised.

II. That there shall be one representative to every thirty thousand persons, according to the census mentioned in the constitution, until the whole number of representatives amount to two hundred.

III. That congress do not exercise the powers vested in them by the fourth section of the first article, but in cases when a state shall neglect or refuse to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress—Nor shall Congress in any case make regulations contrary to a free and equal representation.

IV. That congress do not lay direct taxes but when the money arising from impost, excise, and their other resources are insufficient for the public exigencies, nor then, until Congress shall have first made a requisition upon the states, to assess, levy, and pay their respective proportions of such requisition, agreeably to the census fixed in the said constitution, in such way and manner as the legislature of the state shall think best; and in such case, if any state shall neglect, then Congress may assess and levy such state's proportion, together with the interest thereon at the rate of six per cent. per annum, from the time of payment, prescribed in such requisition.

V. That congress shall erect no company of merchants with exclusive advantages of commerce.

VI. That no person shall be tried for any crime by which he may incur an infamous punishment, or loss of life, until he first be indicted by a grand jury, except in such cases as may arise in the government and regulation of the land and naval forces.

VII. All common law cases between citizens of different states, shall be commenced in the common law courts of the respective states, and no appeal shall be allowed to the federal court, in such cases, unless the sum or value of the thing in controversy amount to three thousand dollars.

VIII. In civil actions between citizens of different states, every issue of fact arising in actions at common law, shall be tried by jury, if the parties or either of them request it.

IX. Congress shall at no time consent that any person holding an office of trust or profit under the United States, shall accept any title of nobility, or any other title or office, from any king, prince, or foreign state.

X. That no standing army shall be kept up in time of peace, unless with the consent of three-fourths of the members of each branch of Congress; nor shall soldiers in time of peace be quartered upon private houses, without the consent of the owners.

XI. Congress shall make no laws touching religion, or to infringe the rights of conscience.

XII. Congress shall never disarm any citizen, unless such as are or have been in actual rebellion.

And the convention do, in the name and in behalf of the people of this state, enjoin it upon their representatives in Congress, at all times until the alterations and provisions aforesaid have been considered agreeably to the fifth article of the said constitution, to exert all their influence, and use all reasonable and legal methods to obtain a ratification of the said alterations and provisions, in such manner as is provided in the article.

And that the United States in Congress assembled may have due notice of the assent and ratification of the said constitution by this convention, it is *Resolved*, That the assent and ratification aforesaid be engrossed on parchment, together with the recommendation and injunction aforesaid, and with this resolution; and that John Sullivan, Esq. president of the convention, and John Langdon, Esq. president of the state, transmit the same, countersigned by the secretary of convention, and the secretary of the state, under their hands and seals. to the United States in Congress assembled.

JOHN SULLIVAN, Pres. of the Conv. [L. S.]
JOHN LANGDON, Pres. of the State. [L. S.]

By Order. JOHN CALF, Sec'ry of Convention.
JOSEPH PEARSON, Sec'ry of State.

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10. VIRGINIA, TO WIT:

We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the general assembly, and now met in convention, having fully and freely investigated and discussed the proceedings of the federal convention, and being prepared as well as the most mature deliberation hath enabled us to decide thereon—Do, in the name and in behalf of the people of Virginia, declare and make known, that the powers granted under the constitution, being derived from the people of the United States, may be resumed by them, whensoever the same shall be perverted to their injury or oppression, and that every power not granted thereby, remains with them, and at their will: that therefore no right of any denomination, can be cancelled, abridged, restrained, or modified, by the Congress by the senate, or house of representatives, acting in any capacity, by the president, or any department, or officer of the United States, except in those instances in which power is given by the constitution for those purposes: and that among other essential rights, the liberty of conscience, and of the press, cannot be cancelled, abridged, restrained, or modified, by any authority of the United States. With these impressions, with a solemn appeal to the Searcher of all hearts, for the purity of our intentions, and under the conviction that whatsoever imperfections may exist in the constitution, ought rather to be examined in the mode prescribed therein, than to bring the union into danger, by a delay, with a hope of obtaining amendments previous to

the ratification—We the said delegates, in the name and in behalf of the people of Virginia, do, by these presents, assent to and ratify the constitution recommended on the 17th day of September, 1787, by the federal convention, for the government of the United States, hereby announcing to all those whom it may concern, that the said constitution is binding upon the said people, according to an authentic copy here hereto annexed, in the words following. [See constitution.]

Done in convention, this 26th day of June, 1787.

By Order of the Convention. EDM. PENDLETON, President. [L. S.]

See Volume 2. Page 483, &c. where the declaration, or bill of rights, and amendments, are printed at large.

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11. STATE OF NEW YORK.

We, the delegates of the the people of the state of New York, duly elected and met in convention, having maturely considered the constitution for the United States of America, agreed to on the 17th day of September, in the year 1787, by the convention then assembled at Philadelphia, in the commonwealth of Pennsylvania, (a copy whereof precedes these presents) and having also seriously and deliberately considered the present situation of the United States, do declare and make known,

That all power is originally vested in and consequently derived from the people, and that government is instituted by them for their common interest, protection and security.

That the enjoyment of life, liberty, and the pursuit of happiness, are essential rights which every government ought to respect and preserve.

That the powers of government may be re-assumed by the people, whensoever it shall become necessary to their happiness; that every power, jurisdiction and right, which is not by the said constitution clearly delegated to the Congress of the United States, or the departments of the government thereof, remains to the people of the several states, or to their respective state governments, to whom they may have granted the same; and that those clauses in the said constitution, which declare, that Congress shall not have or exercise certain powers, do not imply that Congress is entitled to any powers not given by the said constitution; but such clauses are to be construed either as exceptions to certain specified powers, or as inserted merely for greater caution.

That the people have an equal, natural, and unalienable right, freely and peaceably to exercise their religion, according to the dictates of conscience; and that no religious sect or society ought to be favored or established by law in preference to others.

That the people have a right to keep and bear arms; that a well regulated militia, including the body of the people *capable of bearing arms*, is the proper, natural, and safe defence of a free state.

That the militia should not be subject to martial law, except in time of war, rebellion, or insurrection.

That standing armies in time of peace are dangerous to liberty, and ought not to be kept up, except in cases of necessity, and that at all times the military should be under strict subordination to the civil power.

That in time of peace no soldier ought to be quartered in any house without the consent of the owner; and in time of war, only by the civil magistrate, in such manner as the laws may direct.

That no person ought to be taken, imprisoned or disseized of his freehold, or be exiled or deprived of his privileges, franchises, life, liberty or property, but by due process of law.

That no person ought to be put twice in jeopardy of life or limb for one and the same o ence, nor, unless in case of impeachment, be punished more than once for the same offence.

That every person restrained of his liberty is entitled to an inquiry into the lawfulness of such restraint, and to a removal thereof if unlawful, and that such inquiry and removal ought not to be denied or delayed, except when, on account of public danger, the Congress shall suspend the privilege of the writ of habeas corpus.

That excessive bail ought not to be required; nor excessive fines imposed; nor cruel or unusual punishments inflicted.

That (except in the government of the land and naval forces, and of the militia when in actual service, and in cases of impeachment) a presentment or indictment by a grand jury ought to be observed as a necessary preliminary to the trial of all crimes cognizable by the judiciary of the United States; and such trial should be speedy, public, and by an impartial jury of the county where the crime was committed; and that no person can be found guilty without the unanimous consent of such jury. But in cases of crimes not committed within any county of any of the United States, and in cases of crimes committed within any county in which a general insurrection may prevail, or which may be in the possession of a foreign enemy, the inquiry and trial may be in such county as the Congress shall by law direct; which county in the two cases last mentioned, should be as near as conveniently may be to that county in which the crime may have been committed. And that in all criminal prosecutions, the accused ought to be informed of the cause and nature of his accusation, to be confronted with his accusers and the witnesses against him, to have the means of producing his witnesses, and the assistance of counsel for his defence, and should not be compelled to give evidence against himself.

That the trial by jury in the extent that it obtains by the common law of England, is one of the greatest securities to the rights of a free people, and ought to remain inviolate.

That every freeman has a right to be secure from all unreasonable searches and seizures of his person, his papers or his property; and therefore, that all warrants to search suspected places, or seize any freeman, his papers or property, without information upon oath or affirmation, of sufficient cause, are grievous and oppressive; and that all general warrants, (or such in which the place or person suspected are not particularly designated) are dangerous and ought not to be granted.

That the people have a right peaceably to assemble together to consult for their common good, or to instruct their representatives, and that every person has a right to petition or apply to the legislature for redress of grievances.

That the freedom of the press ought not to be violated or restrained.

That there should be once in four years, an election of the president and vice president, so that no officer who may be appointed by the Congress to act as president, in case of the removal, death, resignation or inability of the president and vice president, can in any case continue to act beyond the termination of the period for which the last president and vice president were elected.

That nothing contained in the said constitution is to be construed to prevent the legislature of any state from passing laws at its discretion, from time to time, to divide such state into convenient districts, and to apportion its representatives to, and amongst such districts.

That the prohibition contained in the said constitution, against ex post facto laws, extends only to laws concerning crimes.

That all appeals in causes, determinable according to the course of the common law, ought to be by writ of error, and not otherwise.

That the judicial power of the United States, in cases in which a state may be a party, does not extend to criminal prosecutions, or to authorize any suit by any person against a state.

That the judicial power of the United States, as to controversies between citizens of the same state, claiming lands under grants of different states, is not to be construed to extend to any other controversies between them, except those which relate to such lands, so claimed, under grants of different states.

That the jurisdiction of the supreme court of the United States, or of any other court to be instituted by the Congress, is not in any case to be increased, enlarged, or extended, by any faction, collusion or mere suggestion; and that no treaty is to be construed, so to operate, as to alter the constitution of any state.

Under these impressions, and declaring that the rights aforesaid cannot be abridged or violated, and that the explanations aforesaid are consistent with the said constitution, and in confidence that the amendments which shall have been proposed to the said constitution will receive an early and mature consideration: We, the said delegates, in the name and in the behalf of the people of the state of New York, do, by these pressents assent to and ratify the said constitution. In full confidence, nevertheless, that until a convention shall be called and convened for proposing amendments to the said constitution, the militia of this state will not be continued in service out of this state for a longer term than six weeks, without the consent of the legislature thereof; that the congress will not make or alter any regulation in this state,

respecting the times, places, and manner of holding elections for senators or representatives, unless the legislature of this state shall neglect or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the the same; and that in those cases such power will only be exercised until the legislature of this state shall make provision in the premises; that no excise will be imposed on any article of the growth, production or manufacture of the U. States, or any of them, within this state, ardent spirits excepted; and that the congress will not lay direct taxes within this state, but when the moneys arising from the impost and excise shall be insufficient for the public exigencies, nor then, until congress shall first have made a requisition upon this state, to assess, levy and pay the amount of such requisition, made agreeably to the census fixed in the said constitution, in such way and manner as the legislature of this state shall judge best; but that in such case, if the state shall neglect or refuse to pay its proportion, pursuant to such requisition, then the congress may assess and levy this state's proportion, together with interest at the rate of six per centum per annum, from the time at which the same was required to be paid.

Done in convention, at Poughkeepsie, in the county of Duchess, in the state of New York, the 26th day of July, in the year of our Lord 1788.

By order of the convention.

GEO. CLINTON, President.

Attested.—JOHN M'KESSON, A. B. BANKER, Secretaries.

And the convention do, in the name and behalf of the people of the state of New York, enjoin it upon their representatives in congress, to exert all their influence, and use all reasonable means to obtain a ratification of the following amendments to the said constitution, in the manner prescribed therein; and in all laws to be passed by the congress, in the mean time, to conform to the spirit of the said amendments, as far as the constitution will admit

That there shall be one representative for every thirty thousand inhabitants, according to the enumeration or census mentioned in the constitution, until the whole number of representatives amounts to two hundred; after which that number shall be continued or increased, but not diminished, as congress shall direct, and according to such ratio as the congress shall fix, in conformity to the rule prescribed for the apportionment of representatives and direct taxes.

That the congress do not impose any excise on any article (ardent spirits excepted) of the growth, production or manufacture of the United States, or any of them.

That congress do not lay direct taxes, but when the moneys arising from the impost and excise shall be insufficient for the public exigencies, nor then, until congress shall first have made a requisition upon the states, to assess, levy and pay their respective proportions of such requisition, agreeably to the census fixed in the said constitution, in such way and manner as the legislature of the respective states shall judge best; and in such case, if any state shall neglect or refuse to pay its proportion, pursuant to such requisition, then congress may assess and levy such state's proportion, together with interest at the rate of six per centum per annum, from the time of payment, prescribed in such requisition.

That the congress shall not make or alter any regulation, in any state, respecting the times, places and manner of holding elections for senators and representatives, unless the legislature of such state shall neglect or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the same, and then only, until the legislature of such state shall make provision in the premises; provided that congress may prescribe the time for the election of representatives.

That no persons, except natural born citizens, or such as were citizens on or before the 4th day of July, 1776, or such as held commissions under the United States during the war, and have at any time, since the 4th day of July, 1776, become citizens of one or other of the United States, and who shall be freeholders, shall be eligible to the places of president, vice president, or members of either house of the congress of the United States.

That the congress do not grant monopolies, or erect any company, with exclusive advantages of commerce.

That no standing army or regular troops shall be raised, or kept up in time of peace, without the consent of two thirds of the senators and representatives present in each house.

That no money be borrowed on the credit of the United States, without the assent of two thirds of the senators and representatives present in each house.

That the congress shall not declare war, without the concurrence of two thirds of the senators and representatives present in each house.

That the privilege of the habeas corpus shall not by any law be suspended for a longer term than six months, or until twenty days after the meeting of the congress next following the passing the act for such suspension.

That the right of the congress to exercise exclusive legislation over such district not exceeding ten miles square, as may by cession of a particular state, and the acceptance of congress, become the seat of the government of the United States, shall not be so exercised as to exempt the inhabitants of such district from paying the like taxes, imposts, duties and excises, as shall be imposed on the other inhabitants of the state in which such district may be; and that no person shall be privileged within the said district from arrest for crimes committed, or debts contracted out of the said district.

That the right of exclusive legislation with respect to such places as may be purchased for the erection of forts, magazines, arsenals, dock yards, and other needful buildings, shall not authorize the congress to make any law to prevent the laws of the states respectively in which they may be, from extending to such places in all civil and criminal matters, except as to such persons as shall be in the service of the United States; nor to them with respect to crimes committed without such places.

That the compensation for the senators and representatives be ascertained by standing laws; and that no alteration of the existing rate of compensation shall operate for the benefit of the representatives, until after a subsequent election shall have been had.

That the journals of the congress shall be published at least once a year, with the exception of such parts relating to treaties or military operations, as in the judgment of either house shall require secrecy: and that both houses of congress shall always keep their doors open during their sessions, unless the business may in their opinion require secrecy. That the yeas and nays shall be entered on the journals whenever two members in either house may require it.

That no capitation tax shall ever be laid by the congress.

That no person be eligible as a senator for more than six years in any term of twelve years; and that the legislatures of the respective states may recal their senators or either of them, and elect others in their stead, to serve the remainder of the time for which the senators so recalled were appointed.

That no senator or representative shall, during the time for which he was elected, be appointed to any office under the authority of the United States.

That the authority given to the executives of the states to fill the vacancies of senators be abolished, and that such vacancies be filled by the respective legislatures.

That the power of congress to pass uniform laws concerning bankruptcy, shall only extend to merchants and other traders; and that the states respectively may pass laws for the relief of other insolvent debtors.

That no person shall be eligible to the office of president of the United States, a third time.

That the executive shall not grant pardons for treason, unless with the consent of the congress; but may, at his discretion, grant reprieves to persons convicted of treason, until their cases can be laid before the congress.

That the president, or person exercising his powers for the time being, shall not command an army in the field in person, without the previous desire of the congress.

That all letters patent, commissions, pardons, writs and process of the United States, shall run in the name of *the people of the United States*, and be tested in the name of the president of the United States, or the person exercising his powers for the time being, or the first judge of the court out of which the same shall issue, as the case may be.

That the congress shall not constitute, ordain, or establish any tribunals of inferior courts, with any other than appellate jurisdiction, except such as may be necessary for the trial of causes of admiralty, and maritime jurisdiction, and for the trial of piracies and felonies committed on the high seas, and in all other cases, to which the judicial power of the United States extends, and in which the supreme court of the United States has not original jurisdiction, the causes shall be heard, tried, and determined, in some one of the state courts, with the right of appeal to the supreme court of the United States, or other proper tribunal, to be established for that pur-

pose, by the congress, with such exceptions, and under such regulations as the congress shall make.

That the court for the trial of impeachments shall consist of the senate, the judges of the supreme court of the United States, and the first or senior judge, for the time being, of the highest court of general and ordinary common law jurisdiction in each state; that the congress shall, by standing laws, designate the courts in the respective states answering this description, and in states having no courts exactly answering this description, shall designate some other court, preferring such, if any there be, whose judge or judges may hold their places during good behavior provided that no more than one judge, other than judges of the supreme courts of the United States, shall come from one state.

That the congress be authorized to pass laws for compensating the judges for such services, and for compelling their attendance; and that a majority at least of the said judges shall be requisite to constitute the said court. That no person impeached shall sit as a member thereof; that each member shall, previous to the entering upon any trial, take an oath or affirmation, honestly and impartially to hear and determine the cause; and that a majority of the members present shall be necessary to a conviction.

That persons aggrieved by any judgment, sentence or decree of the supreme court of the United States in any cause in which that court has original jurisdiction, with such exceptions and under such regulations as the congress shall make concerning the same, shall upon application, have a commission, to be issued by the president of the United States, to such men learned in the law as he shall nominate, and by and with the advice and consent of the senate appoint not less than seven, authorizing such commissioners, or any seven or more of them, to correct the errors in such judgment, or to review such sentence, and decree as the case may be, and to do justice to the parties in the premises.

That no judge of the supreme court of the United States shall hold any other office under the United States, or any of them.

That the judicial power of the United States shall extend to no controversies respecting land, unless it relate to claims of territory or jurisdiction between states, or to claims of land between individuals, or between states and individuals under the grants of different states.

That the militia of any state shall not be compelled to serve without the limits of the state for a longer term than six weeks, without the consent of the legislature thereof.

That the words *without the consent of the congress*, in the seventh clause of the ninth section of the first article of the constitution be expunged.

That the senators and representatives, and all executive and judicial officers of the United States, shall be bound by oath or affirmation not to infringe or violate the constitutions or rights of the respective states.

That the legislatures of the respective states may make provision by law, that the electors of the election districts, to be by them appointed, shall choose a citizen of the United States, who shall have been an inhabitant of such district for the term of one year immediately preceding the time of his election, for one of the representatives of such state.

Done in convention, at Poughkeepsie, in the county of Duchess, in the state of New York, the 26th day of July, in the year of our Lord 1788.

By order of the convention.

GEO. CLINTON, President.

Attested.—JOHN M'KESSON,
AB. B. BANKER, Secretaries.

12. STATE OF NORTH CAROLINA.—In Convention, August 1, 1788.

Resolved, That a declaration of rights, asserting and securing from encroachment the great principles of civil and religious liberty, and the unalienable rights of the people, together with amendments to the most ambiguous and exceptionable parts of the said constitution of government, ought to be laid before Congress, and the convention of the states that shall or may be called for the purpose of amending the said constitution, for their consideration, previous to the ratification of the constitution aforesaid, on the part of the state of North Carolina.

By order, J. Hunt, Sec'y. SAM. JOHNSON.

[See page 210, &c. vol. 3, where the declaration on ratifying the constitution, is published at large.]

The above are the *proceedings of the convention of the twelve states,* which had been represented in the general convention. The ratification of New Hampshire, being the ninth in order, was received by Congress on the 2d of July, 1788. The following is an extract from their journal of that day.

UNITED STATES IN CONGRESS ASSEMBLED.

Wednesday, July 2, 1788.

The state of New Hampshire having ratified the constitution transmitted to them by the act of the 28th of September last, and transmitted to Congress their ratification, and the same being read, the president reminded Congress that this was the ninth ratification transmitted and laid before them; whereupon,

On motion of Mr. Clarke, seconded by Mr. Edwards,

Ordered, That the ratifications of the constitution of the United States, transmitted to Congress, be referred to a committee to examine the same, and report an act to Congress for putting the said constitution into operation, in pursuance of the resolutions of the late federal convention.

On the question to agree to this order, the yeas and nays being required by Mr. Yates:

State	Member	Vote	State vote
New Hampshire,	Mr. Gilman,	ay	ay
	Mr. Wingate,	ay	
Massachusetts,	Mr. Dane,	ay	ay
	Mr. Otis,	ay	
Rhode Island,	Mr. Arnold,		excused.
	Mr. Hazard,		
Connecticut,	Mr. Huntington,	ay	ay
	Mr. Edwards,	ay	
New York,	Mr. L'Hommedieu	ay	divided.
	Mr. Yates,	no	
New Jersey,	Mr. Clarke,	ay	ay
	Mr. Elmer,	ay	
	Mr. Dayton,	ay	
Pennsylvania,	Mr. Bingham,	ay	ay
	Mr. Read,	ay	
Maryland,	Mr. Contee,	ay	*
Virginia,	Mr. Griffin,	ay	ay
	Mr. Carrington,	ay	
	Mr. Brown,	ay	
South Carolina,	Mr. Huger,	ay	ay
	Mr. Parker,	ay	
	Mr. Tucker,	ay	
Georgia,	Mr. Few,	ay	ay
	Mr. Baldwin	ay	

So it passed in the affirmative.

On the 14th of July, 1788, the committee reported an act for putting the constitution into operation, which was debated until the 13th of September of the same year, when the following resolution was adopted.

Whereas the convention assembled in Philadelphia, pursuant to the resolution of Congress of the 21st of February, 1787, did, on the 17th of September, in the same year, report to the United States in Congress assembled, a constitution for the people of the United States; whereupon Congress, on the 28th of the same September, did resolve unanimously, "That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates, chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case:" and whereas the constitution so reported by the convention, and by Congress transmitted to the several legislatures, has been ratified in the manner therein declared to be sufficient for the establishment of the same, and such ratifications, duly authenticated, have been received by Congress and are filed in the office of the secretary; therefore,

Resolved, That the first Wednesday in January next, be the day for appointing electors in the several states, which, before the said day, shall have ratified the said constitution; that the first Wednesday in February next, be the day for the electors to assemble in their respective states, and vote for a president; and that the first Wednesday in March next, be the time, and the present seat of Congress the place for commencing proceedings under the said constitution.

The elections of the several states were held conformably to the above resolution; on Wednesday the 4th of March, 1789, proceedings commenced under the constitution; and on the 30th of April, of the same year, George Washington, elected by the unanimous suffrage of the electors, was inaugurated as president of the U. States.

On the 11th of January, 1790, the following ratification of the constitution by the state of North Carolina, was communicated by president Washington to both houses of Congress.

STATE OF NORTH CAROLINA. In Convention.

Whereas the general convention which met in Philadelphia, in pursuance of a recommendation of Congress, did recommend to the citizens of the United States, a constitution or form of government in the following words, namely,

"We the people," &c.

[Here follows the constitution of the United States, verbatim.]

Resolved, That this convention, in behalf of the freemen, citizens and inhabitants of the state of North Carolina, do adopt and ratify the said constitution and form of government.

Done in convention this twenty-first day of November, one thousand seven hundred and eighty-nine.

(Signed) SAMUEL JOHNSTON,
President of the Convention.

J. HUNT, JAMES TAYLOR, Secretaries.

On the 16th of June, 1790, the following ratification by the state of Rhode Island was communicated to congress.

RHODE ISLAND.

[The Constitution of the United States of America precedes the following ratification.]

Ratification of the Constitution by the convention of the state of Rhode Island and Providence Plantations.

We the delegates of the people of the state of Rhode Island and Providence Plantations, duly elected and met in convention, having maturely considered the constitution for the United States of America, agreed to on the seventeenth day of September, in the year one thousand seven hundred and eighty-seven, by the convention then assembled at Philadelphia, in the commonwealth of Pennsylvania, (a copy whereof precedes these presents;) and having also seriously and deliberately considered the present situation of this state, do declare and make known

I. That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity, among which are the enjoyment of life and liberty, with the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.

II. That all power is naturally vested in, and consequently derived from the people; that magistrates, therefore, are their trustees and agents, and at all times amenable to them.

III. That the powers of government may be re-assumed by the people, whensoever it shall become necessary to their happiness. That the rights of the states respectively to nominate and appoint all state officers, and every other power, jurisdiction and right, which is not by the said constitution clearly delegated to the congress of the United States, or to the departments of government thereof, remain to the people of the several states or their respective state governments, to whom they may have granted the same; and that those clauses in the said constitution which declare that congress shall not have or exercise certain powers, do not imply that congress is entitled to any powers not given by the said constitution; but such clauses are to be construed as exceptions to certain specified powers, or as inserted merely for greater caution..

IV. That religion, or the duty which we owe to our creator, and the manner of discharging it, can be directed only by reason and conviction, and not by force and violence, and therefore all men have an equal, natural and unalienable right to the exercise of religion, according to the dictates of conscience; and that no particular religious sect or society ought to be favored or established, by law, in preference to others.

V. That the legislative, executive, and judiciary powers of government should be separate and distinct; and that the members of the two first may be restrained from oppression, by feeling and participating the public burdens, they should at fixed periods be reduced to a private station, return into the mass of the people, and the vacancies be supplied by certain and regular elections, in which all or any part of the former members to be eligible or ineligible, as the rules of the constitution of government and the laws shall direct.

VI. That elections of representatives in legislature ought to be free and frequent, and all men having sufficient evidence of permanent common interest with, and attachment to the community, ought to have the right of suffrage; and no aid, charge, tax or fee, can be set, rated or levied upon the people without their own consent, or that of their representatives so elected, nor can they be bound by any law to which they have not in like manner consented for the public good.

VII. That all power of suspending laws, or the execution of laws, by any authority, without the consent of the representatives of the people in the legislature, is injurious to their rights, and ought not to be exercised.

VIII. That in all capital and criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence and be allowed counsel in his favor, and to a fair and speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty, (except in the government of the land and naval forces) nor can he be compelled to give evidence against himself.

IX. That no freeman ought to be taken, imprisoned or disseized of his freehold, liberties, privileges or franchises, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the trial by jury, or by the law of the land.

X. That every freeman restrained of his liberty, is entitled to a remedy, to enquire into the lawfulness thereof, and to remove the same if unlawful, and that such remedy ought not to be denied or delayed.

XI. That in controversies respecting property, and in suits between man and man, the ancient trial by jury, as hath been exercised by us and our ancestors, from the time whereof the memory of man is not to the contrary, is one of the greatest securities to the rights of the people, and ought to remain sacred and inviolable.

XII. That every freeman ought to obtain right and justice, freely and without sale, completely and without denial, promptly and without delay; and that all establishments or regulations contravening these rights are oppressive and unjust.

XIII. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

XIV. That every person has a right to be secure from all unreasonable searches and seizures of his person, his papers or his property; and therefore, that all warrants to search suspected places, or seize any person, his papers or his property, without information upon oath or affirmation of sufficient cause, are grievous and oppressive; and that all general warrants (or such in which the place or person suspected are not particularly designated) are dangerous, and ought not to be granted.

XV. That the people have a right peaceably to assemble together to consult for their common good, or to instruct their representatives; and that every person has a right to petition or apply to the legislature for redress of grievances.

XVI. That the people have a right to freedom of speech, and of writing and publishing their sentiments. That freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated.

XVII. That the people have a right to keep and bear arms; that a well regulated militia, including the body of the people capable of bearing arms, is the proper, natural, and safe defence of a free state; that the militia shall not be subject to martial law, except in time of war, rebellion or insurrection; that standing armies in time of peace, are dangerous to liberty, and ought not to be kept up, except in cases of necessity; and that at all times the military should be under strict subordination to the civil power; that in time of peace no soldier ought to be quartered in any house without the consent of the owner, and in time of war only by the civil magistrate in such manner as the law directs.

XVIII. That any person religiously scrupulous of bearing arms, ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead.

Under these impressions, and declaring that the rights aforesaid cannot be abridged or violated, and that the explanations aforesaid are consistent with the said constitution, and in confidence that the amendments hereafter mentioned will receive an early and mature consideration, and conformably to the fifth article of said constitution, speedily become a part thereof—We the said delegates, in the name and in the behalf of the people of the state of Rhode Island and Providence Plantations, do by these presents assent to and ratify the said constitution.—In full confidence, nevertheless, that until the amendments hereafter proposed and undermentioned, shall be agreed to and ratified, pursuant to the aforesaid fifth article, the militia of this state will not be continued in service out of this state for a longer term than six weeks, without the consent of the legislature thereof; that the congress will not make or alter any regulation in this state respecting the times, places, and manner of holding elections for senators or representatives, unless the legislature of this state shall neglect or refuse to make laws or regulations for the purpose, or from any circumstance be incapable of making the same, and that in those cases such power will only be exercised until the legislature of this state shall make provision in the premises; that the congress will not lay direct taxes within this state, but when the moneys arising from the impost, tonnage and excise, shall be insufficient for the public exigencies, nor until the congress shall have first made a requisition upon this state to assess, levy, and pay the amount of such requisition made agreeable to the census fixed in the said constitution, in such way and manner as the legislature of this state shall judge best, and that congress will not lay any capitation or poll tax.

Done in convention at Newport, in the county of Newport, in the state of Rhode Island and Providence Plantations, the twenty-ninth day of May, in the year of our Lord one thousand seven hundred and ninety, and in the fourteenth year of the independence of the United States of America.

By order of the convention.

Attest.—DANIEL UPDIKE, Secretary. (Signed) DANIEL OWEN, President.

And the convention do, in the name and behalf of the people of the state of Rhode Island and Providence Plantations, enjoin it upon their senators and representative or representatives which may be elected to represent this state in congress, to exert all their influence and use all reasonable means to obtain a ratification of the following amendments to the said constitution, in the manner prescribed therein, and in all laws to be passed by the congress in the mean time, to conform to the spirit of the said amendments, as far as the constitution will admit.

AMENDMENTS.

I. The United States shall guarantee to each state its sovereignty, freedom, and independence, and every power, jurisdiction and right, which is not by this constitution expressly delegated to the United States.

II. That congress shall not alter, modify, or interfere in the times, places or manner of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse, or be disabled by invasion or rebellion, to prescribe the same, or in case when the provision made by the state is so imperfect as that no consequent election is had, and then only until the legislature of such state shall make provision in the premises.

III. It is declared by the convention, that the judicial power of the United States, in cases in which a state may be a party, does not extend to criminal prosecutions, or to authorize any suit by any person against a state: but to remove all doubts or controversies respecting the same, that it be especially expressed as a part of the constitution of the United States, that congress shall not directly or indirectly, either by themselves, or through the judiciary, interfere with any one of the states, in the redemption of paper money already emitted, and now in circulation, or in liquidating or discharging the public securities of any one state; that each and every state shall have the exclusive right of making such laws and regulations for the before mentioned purpose as they shall think proper.

IV. That no amendments to the constitution of the United States, hereafter to be made pursuant to the fifth article, shall take effect, or become a part of the constitution of the United States, after the year one thousand seven hundred and ninety-three, without the consent of eleven of the states heretofore united under the confederation.

V. That the judicial powers of the United States shall extend to no possible case where the cause of action shall have originated before the ratification of this constitution; except in disputes between states about their territory, disputes between persons claiming lands under grants of different states, and debts due to the United States.

VI. That no person shall be compelled to do military duty otherwise than by voluntary enlistment, except in cases of general invasion; any thing in the second paragraph of the sixth article of the constitution, or any law made under the constitution, to the contrary, notwithstanding.

VII. That no capitation or poll tax shall ever be laid by congress.

VIII. In cases of direct taxes, congress shall first make requisitions on the several states to assess, levy and pay their respective proportions of such requisitions, in such way and manner as the legislatures of the several states shall judge best: and in case any state shall neglect or refuse to pay its proportion pursuant to such requisition, then congress may assess and levy such state's proportion, together with interest at the rate of six per cent. per annum, from the time prescribed in such requisition.

IX. That congress shall lay no direct taxes without the consent of the legislatures of three-fourths of the states in the union.

X. That the journals of the proceedings of the senate and house of representatives, shall be published as soon as conveniently may be, at least once in every year; except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy.

XI. That regular statements of the receipts and expenditures of all public moneys shall be published at least once a year.

XII. As standing armies in time of peace are dangerous to liberty, and ought not to be kept up except in cases of necessity, and as at all times the military should be under strict subordination to the civil power, that therefore no standing army or regular tsoops shall be raised or kept up in time of peace.

XIII. That no moneys be borrowed on the credit of the United States, without the assent of two-thirds of the senators and representatives present in each house.

XIV. That the congress shall not declare war without the concurrence of two-thirds of the senators and representatives present in each house.

XV. That the words "without the consent of congress," in the seventh clause in the ninth section of the first article of the constitution, be expunged.

XVI. That no judge of the supreme court of the United States, shall hold any other office under the United States, or any of them; nor shall any officer appointed by congress, or by the president and senate of the United States, be permitted to hold any office under the appointment of any of the states.

XVII. As a traffic tending to establish or continue the slavery of any part of the human species, is disgraceful to the cause of liberty and humanity; that congress shall as soon as may be, promote and establish such laws and regulations as may effectually prevent the importation of slaves of every description into the United States.

XVIII. That the state legislatures have power to recal, when they think it expedient, their federal senators, and to send others in their stead.

XIX. That congress have power to establish a uniform rule of inhabitancy or settlement of the poor of the different states throughout the United States.

XX. That congress erect no company with exclusive advantages of commerce.

XXI. That when two members shall move or call for the ayes and nays on any question, they shall be entered on the journals of the houses respectively.

Done in convention, at Newport, in the county of Newport, in the state of Rhode Island and Providence Plantations, the twenty-ninth day of May, in the year of our Lord one thousand seven hundred and ninety, and the fourteenth year of the independence of the United States of America.

By order of the convention.

(Signed) DANIEL OWEN, President.

Attest.—Daniel Updike, Secretary.

On the 9th of February, 1791, the following acts of the state of Vermont relating to the constitution were communicated to congress.

14. STATE OF VERMONT.

An act to authorize the people of this state to meet in convention to deliberate upon and agree to the constitution of the United States.

Whereas, in the opinion of this legislature, the future interest and welfare of this state, render it necessary that the constitution of the U. States of America, as agreed to by the convention at Philadelphia, on the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, with the several amendments and alterations, as the same has been established by the United States, should be laid before the people of this state for their approbation.

It is hereby enacted by the general assembly of the state of Vermont, That the first constable in each town shall warn the inhabitants, who, by law, are entitled to vote for representatives in general assembly, in the same manner as they warn freemen's meetings, to meet in their respective towns on the first Tuesday of December next, at ten o'clock forenoon, at the several places fixed by law for holding the annual election, and when so met they shall proceed in the same manner as in the election of representatives, to choose some suitable person from each town to serve as a delegate in a state convention, for the purpose of deliberating upon and agreeing to the constitution of the United States as now established; and the said constable shall certify to the said convention the person so chosen in the manner aforesaid. And,

It is hereby further enacted by the authority aforesaid, That the persons so elected to serve in state convention as aforesaid, do assemble and meet together on the first Thursday of January next, at Bennington, then and there to deliberate upon the aforesaid constitution of the United States, and if approved of by them, finally to assent to, and ratify the same in behalf and on the part of the people of this state, and make report thereof to the governor of this state, for the time being, to be by

him communicated to the president of the United States, and the legislature of this state.

State of Vermont. Secretary's office, Bennington, Jan. 21, 1791:
The preceding is a true copy of an act passed by the legislature of the state of Vermont, the twenty-seventh day of October, in the year of our Lord one thousand seven hundred and ninety. ROSWELL HOPKINS,
Secretary of State.

In convention of the delegates of the people of the state of Vermont.

Whereas by an act of the commissioners of the state of New York, done at New York, the seventeenth day of October, in the fifteenth year of the independence of the United States of America, one thousand seven hundred and ninety, every impediment, as well on the part of the state of New York, as on the part of the state of Vermont, to the admission of the state of Vermont into the union of the United States of America, is removed. In full faith and assurance that the same will stand approved and ratified by Congress.

This convention having impartially deliberated upon the constitution of the United States of America, as now established, submitted to us by an act of the general assembly of the state of Vermont, passed October twenty-seventh, one thousand seven hundred and ninety, do, in virtue of the power and authority to us given for that purpose, fully and entirely approve of, assent to and ratify the said constitution; and declare, that immediately from and after this state shall be admitted by the congress into the union, and to a full participation of the benefits of the government now enjoyed by the states in the union, the same shall be binding on us, and the people of the state of Vermont for ever.

Done at Bennington, in the county of Bennington, the tenth day of January, in the fifteenth year of the independence of the United States of America, one thousand seven hundred and ninety-one. In testimony whereof we have hereunto subscribed our names. (Signed)
THOMAS CHITTENDEN, President.

Signed by one hundred and five members—Dissented four.
Attest—Roswell Hopkins, Secretary of Convention.

At the first session of the first congress under the constitution, the following resolution was adopted.

CONGRESS OF THE UNITED STATES;

Begun and held at the city of New York, on Wednesday, the 4th of March, 1789.

The conventions of a number of the states, having at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added. And as extending the ground of public confidence in the government will best insure the beneficent ends of its institution:

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 articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States, all or any of which articles, when ratified by three-fourths of the said legislatures, to be valid to all intents and purposes, as part of the said constitution, namely:

Articles in addition to, and amendment of, the constitution of the United States of America, proposed by congress, and ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.

Art. I. After the first enumeration required by the first article of the constitution, there shall be one representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by congress, that there shall not be less than one hundred representatives, nor less than one representative for every forty thousand persons, until the number of representatives shall amount to two hundred, after which the proportion shall be so regulated by congress, that there shall not be less than two hundred representatives, nor more than one representative for every fifty thousand.

ART. II. No law varying the compensation for services of the senators and representatives shall take effect, until an election of representatives shall have intervened.

ART. III. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ART. IV. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ART. V. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner prescribed by law.

ART. VI. The right of the people to be secure in their persons, houses, papers 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. VII. No person shall be held to answer for a capital or otherwise infamous crime, unless on 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. VIII. In all criminal prosecutions, the accused shall enjoy the right of 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 for his defence.

ART. IX. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

ART X. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ART. XI. The enumeration in the constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ART. XII. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or the people.

FREDERICK AUGUSTUS MUHLENBERG,
Speaker of the House of Representatives.
JOHN ADAMS, Vice President of the United States,
and President of the Senate.

Attest.—JOHN BECKLEY, Clerk of the House of Representatives.
SAMUEL A. OTIS, Secretary of the Senate.

Which being transmitted to the several state legislatures, were decided upon by them, according to the following returns:

By the State of New Hampshire—Agreed to the whole of the said amendments, except the second article.

By the State of New York—Agreed to the whole of the said amendments, except the second article.

By the State of Pennsylvania—Agreed to the 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th 11th & 12th articles of the said amendments.

By the State of Delaware—Agreed to the whole of the said amendments, except the first article.

By the State of Maryland—Agreed to the whole of the said twelve amendments.

By the State of S. Carolina—Agreed to the whole said twelve amendments.

By the State of North Carolina—Agreed to the whole of the said 12 amendments.

By the State of Rhode Island and Providence Plantations—Agreed to the whole of the said twelve articles.

By the State of New Jersey—Agreed to the whole of the said amendments, except the second article.

By the State of Virginia—Agreed to the whole of the said twelve articles.

No returns were made by the states of Massachusetts, Connecticut, Georgia and Kentucky.

The amendments thus proposed became a part of the constitution—the first and second of them excepted, which were not ratified by a sufficient number of the state legislatures.

At the first session of the third Congress, the following amendment was proposed to the state legislatures.

UNITED STATES IN CONGRESS ASSEMBLED.

Resolved by the senate and house of representatives of he 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 as part of the said constitution, namely,

"The judicial power of the United States shall not be construed to extend to any "suit in law or equity, commenced or prosecuted against one of the United States, "by citizens of another state, or by citizens or subjects of any foreign state."

FREDERICK AUGUSTUS MUHLENBERG,
Speaker of the House of Representatives.
JOHN ADAMS, Vice President of the United States,
and President of the Senate.

Attest.—J. Beckley, Clerk of the House of Representatives.
Sam. A. Otis, Secretary of the Senate.

From the journals of the house of representatives, at the second session of the third congress, it appears, that returns from the state legislatures, ratifying this amendment, were received as follows:

From New York, Massachusetts, Vermont, New Hampshire, Georgia and Delaware.

At the first session of the fourth congress, further returns ratifying the same amendment, were received from Rhode Island and North Carolina.

At the second session of the fourth congress, on the second of March, 1787, the following resolution was adopted:

UNITED STATES IN CONGRESS ASSEMBLED.

Resolved by the senate and house of representatives of the United States of America, in Congress assembled, That the president be requested to adopt some speedy and effectual means of obtaining information from the state of Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, Kentucky, Tennessee and South Carolina, whether they have ratified the amendment proposed by congress to the constitution concerning the suability of states; if they have, to obtain the proper evidence thereof.

JONATHAN DAYTON, Speaker of the House of Representatives.
WILLIAM BINGHAM, President pro tem-pore of the Senate.
Approved, March 2, 1797.
GEORGE WASHINGTON, President of the United States.

At the second session of the fifth congress, the following messages from the president of the United States, were transmitted to both houses.

From a report of the secretary of state, made under the direction of president Adams, on the 28th December, 1797, it appeared that the states of Connecticut, Maryland and Virginia had ratified the amendment—that New Jersey and Pennsylvania had not ratified it—South Carolina had not definitely acted upon it. No answers had been received from Kentucky and Tennessee.

MESSAGE.

Gentlemen of the Senate, and Gentlemen of the House of Representatives:

I have an opportunity of transmitting to congress, a report of the secretary of state, with a copy of an act of the legislature of the state of Kentucky, consenting to the ratification of the amendment of the constitution of the United States proposed by congress, in their resolution of the second day of December, 1793, relative to the suability of states. This amendment, having been adopted by three-fourths of the several states, may now be declared to be a part of the constitution of the United States. JOHN ADAMS.

United States, January 8, 1798.

At the first session of the eighth congress, the following amendment was proposed by congress, to the state legislatures.

EIGHTH CONGRESS OF THE UNITED STATES.

At the first session, begun and held at the city of Washington, in the territory of Columbia, on Monday, the seventeenth of October, one thousand eight hundred and three.

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, 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 the 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 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 the death or 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.

Attest.—John Beckley, Clerk of the House of Representates of the U. States.
Saml A. Otis, Secretary to the Senate of the United States.

At the same session, an act passed, of which the following is the first section:

An act supplementary to the act, entitled "An act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as president, in case of vacancies in the offices both of president and vice president."

Be it enacted, by the Senate and House of Representatives of the United States of America, in congress assembled, That whenever the amendment proposed during the present session of congress, to the constitution of the United States, respecting the manner of voting for president and vice president of the United States, shall have been ratified by the legislatures of three-fourths of the several states, the secretary of state shall forthwith cause a notification thereof to be made to the executive of every state, and shall also cause the same to be published, in at least one of the newspapers printed in each state, in which the laws of the U. States are annually published.—The executive authority of each state shall cause a transcript of the said notification to be delivered to the electors appointed for that purpose, who shall first thereafter meet in such state, for the election of a president and vice president of the United States: and whenever the said electors shall have received the said transcript of notification, or whenever they shall meet more than five days subsequent to the publication of the ratification of the above mentioned amendment, in one of the newspapers of the state, by the secretary of state, they shall vote for president and vice president of the United States, respectively, in the manner directed by the above mentioned amendment; and having made and signed three certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one, of the votes given for president, and the other, of the votes given for vice president, they shall seal up the said certificates, certifying on each, that lists of all the votes of such state given for president, and of all the votes given for vice president, is contained therein, and shall cause the said certificates to be transmitted and disposed of, and in every other respect act in conformity with the provisions of the act to which this is a supplement. And every other provision of the act to which this is a supplement, and which is not virtually repealed by this act, shall extend and apply to every election of a president and vice president of the United States, made in conformity to the above mentioned amendment to the constitution of the United States.

And on the 25th September, 1804, the following notice, in pursuance of the above provision, was issued from the state department.

By James Madison, Secretary of State of the United States.

Public notice is hereby given, in pursuance of the act of congress passed on the 26th March last, entitled "An act supplementary to the act "entitled An act relative to the election of a president and vice president of the U. "States, and declaring the officer who shall act as president, in case of vacancies in "the offices both of president and vice president"—That the amendment proposed during the last session of congress, to the constitution of the United States, respecting the manner of voting for president and vice president of the United States, has been ratified by the legislatures of three-fourths of the several states, to wit. by those of Vermont, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Virginia, Ohio, Kentucky, Tennessee, North Carolina, South Carolina, and Georgia, and has thereby become valid as part of the constitution of the U. States.

Given under my hand, at the city of Washington, this 25th day of Sept. 1804.

(Signed) JAMES MADISON.

Constitution

OF

THE UNITED STATES OF AMERICA.

[Copied and carefully compared with the original in the Department of State.—Punctuation, paragraphs, and capital letters, same as said original.]

CONSTITUTION.

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 and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION I.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION II.

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, 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 actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island* and *Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECTION III.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments, until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro-tempore, in the absence of the Vice-President or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments: when sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend farther than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION IV.

The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business;

but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither House, during the Session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION VI.

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

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 whereof 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.

SECTION VII.

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose, or concur with, amendments, as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted,) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The Congress shall have power To lay and collect taxes, duties, imposts and excises, to pay the debts and

provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin,and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas and offences against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land or water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

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, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or office thereof.

SECTION IX.

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 eighteen hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

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.

No bill of attainder or ex post facto law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any State.

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.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

SECTION X.

No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law; or law impairing the obligation of contracts, or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the nett produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

The executive power shall be vested in a President of the United States of America. He shall hold his

office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the 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 shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall, in like manner, choose 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. In every case, after the choice of the President, the person having the greatest number of votes of the

electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

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 the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States."

SECTION II.

The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION III.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and, in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION IV.

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.

ARTICLE III.

SECTION I.

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

SECTION II.

The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and the treaties made, or which shall be made, under their authority; to all cases—affecting ambassadors, other public ministers, and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and citizens of another State;—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.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the supreme court shall have original jurisdiction. In all the other cases before-mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION III.

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV.

SECTION I.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION II.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislature of the States concerned as well as of the Congress.

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 of any particular State.

SECTION IV.

The United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of

three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, and the laws of the United States which shall be 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; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before-mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine States, shall be sufficient for the establishment of this constitution between the States so ratifying the same.

Done in convention by the unanimous consent of the States present the seventeenth day of September in

the year of our Lord one thousand seven hundred and eighty-seven and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

G°. WASHINGTON,
President, and Deputy from Virginia.

New Hampshire.
John Langdon,
Nicholas Gilman.

Massachusetts.
Nathaniel Gorham,
Rufus King.

Connecticut.
William Samuel Johnson,
Roger Sherman.

New York.
Alexander Hamilton.

New Jersey.
William Livingston,
David Brearley,
William Patterson,
Jonathan Dayton.

Pennsylvania.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

Delaware.
George Reed,
Gunning Bedford, jun.
John Dickinson,
Richard Bassett,
Jacob Broom.

Maryland.
James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.

Virginia.
John Blair,
James Madison, jr.

North-Carolina.
William Blount,
Richard Dobbs Spaight.
Hugh Williamson.

South-Carolina.
John Rutledge,
Charles C. Pinckney,
Charles Pinckney,
Pierce Butler.

Georgia.
William Few,
Abraham Baldwin.

Attest: WILLIAM JACKSON,
Secretary.

IN CONVENTION.

MONDAY, *September 17th,* 1787.

Present—The State of New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Resolved, That the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of delegates, chosen in each State by the people thereof,

under the recommendation of its Legislature, for their assent and ratification; and that each Convention assenting to, and ratifying the same, should give notice thereof to the United States in Congress assembled.

Resolved, That it is the opinion of this Convention, that, as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution. That after such publication, the electors should be appointed, and the Senators and Representatives elected: That the electors should meet on the day fixed for the election of the President, and should transmit their votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the time and place assigned; that the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening and counting the votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

By the unanimous order of the Convention,

G°. WASHINGTON,
Presid't.

W. Jackson, *Secretary.*

IN CONVENTION.

September 17*th*, 1787.

Sir: We have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired that the power of making war, peace, and treaties; that of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union; but the impropriety of delegating such extensive trust to one body of men is evident—hence results the necessity of a different organization.

It is obviously impracticable in the federal government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those

rights which must be surrendered, and those which may be reserved; and, on the present occasion, this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject, we kept steadily in our view that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety—perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the convention t o be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus, the constitution which we now present, is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State, is not perhaps to be expected; but each will doubtless consider, that had her interest alone been consulted the consequences might have been particularly disagraeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish. With great respect, we have the honor to be, sir, your Excellency's most obedient and humble servants. By the unanimous order of the Convention.

G°. WASHINGTON, *Presid't.*

His Excellency the President of Congress.

THE UNITED STATES IN CONGRESS ASSEMBLED.

Friday, September 28th, 1787.

Present—New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, and Georgia; and from Maryland, Mr. Ross.

Congress having received the report of the Convention lately assembled in Philadelphia,

Resolved, unanimously, That the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to submit to a convention of delegates, chosen in each State by the people thereof, in conformity to the resolves of the convention, made and provided in that case.

CHARLES THOMPSON, *Secretary.*

AMENDMENTS.

Article the First.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article the Second.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Article the Third.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

Article the Fourth.

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 particuliarly describing the place to be searched, and the persons or things to be seized.

Article the Fifth.

No person shall be held to answer for a capital or otherwise infamous crime, unless on 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.

Article the Sixth.

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 for his defence.

Article the Seventh.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Article the Eighth.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article the Ninth.

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Article the Tenth.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Article the Eleventh.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Article the Twelfth.

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 the government of the United States, directed to the President of the Senate: the President of the Senate shall, in 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 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 case of the death or 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.

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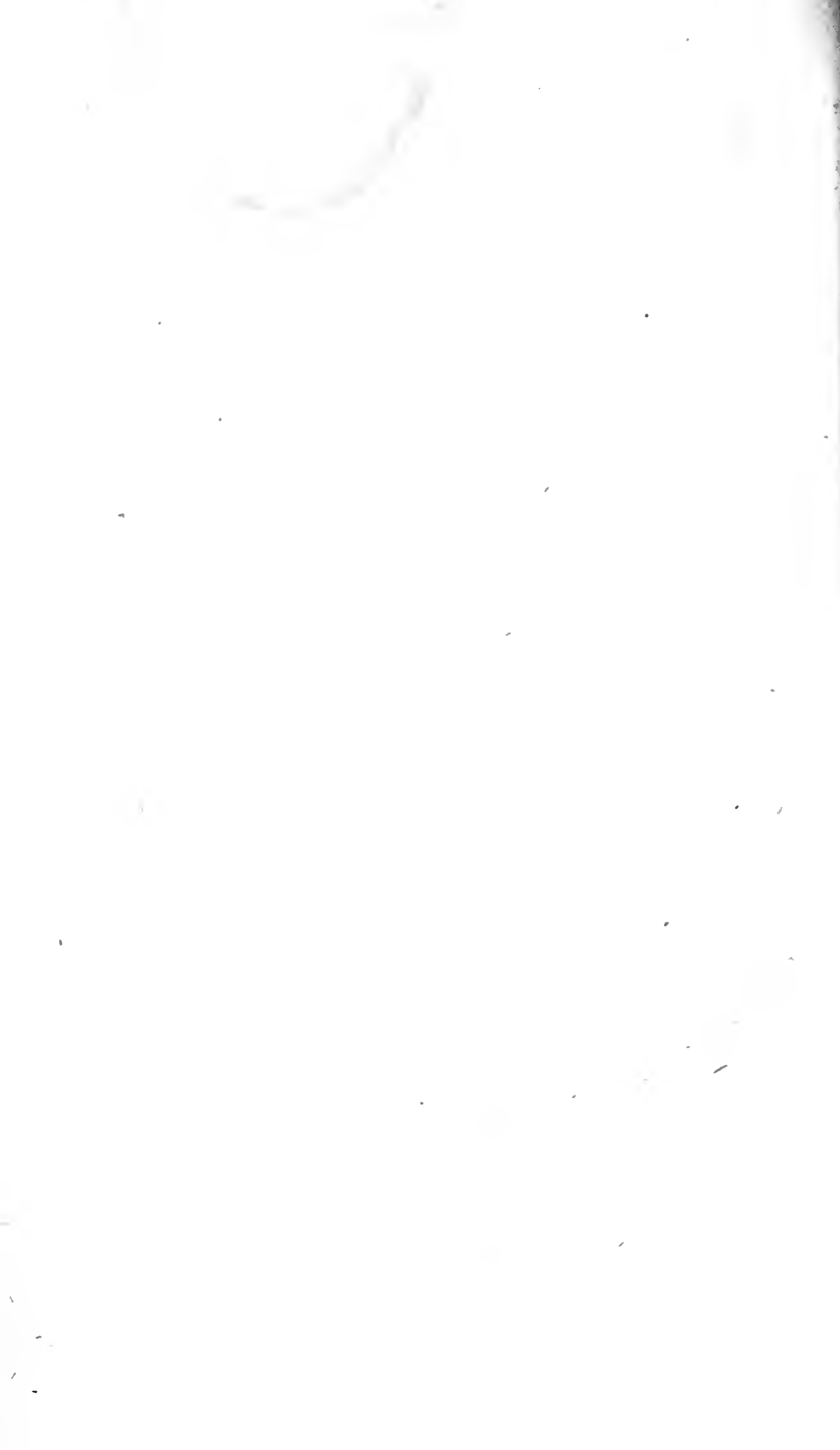

DIGEST OF DECISIONS

IN

THE COURTS OF THE UINON,

INVOLVING

CONSTITUTIONAL PRINCIPLES.

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1. The individual states have a constitutional right to pass naturalization laws provided they do not contravene the rule established by the authority of the Union. *Collet* v. *Collet*, 2 Dall 294. But see *United States* v. *Villatto*, *Ibid*, 370.

2. The 2d section of the 3d art. constitution ,giving original jurisdiction to the supreme Court in cases affecting consuls, does not preclude the legislature from vesting a concurrent jurisdiction in inferior courts. *United States* v. *Ravara*, Dall. 297.

Every act of the legislature, repugnant to the constitution, is *ipso facto* void, and it is the duty of the court so to declare it. *Vanhorne's lessee* v. *Dorrance*, 2 Dall. 304.

3. It is contrary to the letter and spirit of the constitution to divest one citizen of his right, and vest it in another, without full compensation; and if the legislature may do so, upon full indemnification, it cannot of itself constitutionally determine upon the amount of the compensation. *Ibid.*

4. The constitution of England is at the mercy of parliament: every act of parliament is transcendent, and must be obeyed. *Ibid.* 308.

5. In America, the case is widely different. Every state of the Union has its constitution reduced to written exactitude. A constitution is the form of goverument delineated by the mighty hand of the people, in which certain first principles of fundamental law are established. The constitution is certain and fixed; it contains the permanent will of the people, and is the supreme law of the land; it is paramount to the power of the legislature, and can be revoked or altered only by the power that made it. The life giving principle and the death dying stroke, must proceed from the same hand. The legislatures are creatures of the constitution, they owe their existence to the constitution, they derive their powers from the constitution. It is their commission, and therefore all their acts must be conformable to it, or else they will be void. The constitution is the work or will of the people themselves, in their original, sovereign, and unlimited capacity. Law is the work or will of the legislature, in their derivative and subordinate capacity. The one is the work of the creator, and the other, of the creature. The constitution fixes limits to the exercise of the legislative authority, and prescribes the orbit in which it must move. Whatever may be the case in other countries, yet in this there can be no doubt, that every act of the legislature repugnant to the constitution, is absolutely void. *Ibid.*

6. The right of trial by jury is a fundamental law, made sacred by the constitution, and cannot be legislated away. *Ibid.* 309.

7. Whether the individual states have concurrent authority with the United States to pass naturalization laws *Quere?* *United States* v. *Villatto*, 2 Dall. 370. See *ante*, No. 1.

8. Congress cannot, by law, assign the judicial department any duties, but such as are of a judicial character: *e. g.* appointing the judges of the Circuit Court to receive and determine upon claims of persons to be placed on the pension list. *Hayburn's case*, 2 Dall. 409.

9. A tax on carriages is not a direct tax, within the meaning of the constitution and the act of congress of 5th *June*, 1794, *ch.* 219. (2 Bior. 414.) laying a tax on carriages, was constitutional and valid. *Hylton* v. *United States* 3 Dall. 171.

10. A treaty under the 6th article, *sec.* 2, of the constitution, being the supreme law of the land, the treaty of peace in 1783 operates as a repeal of all state laws,

previously created, inconsistent with its provisions. *Ware, adm'r* v. *Hylton*, 3 Dall. 199.

11. The prohibition in the federal constitution of *ex post facto* laws extends to penal statutes only; and does not extend to cases, affecting only the civil rights of individuals. *Calder et ux* v. *Bull et ux*. 3. Dall. 386.

12. A resolution or law of the legislature of Connecticut, setting aside a decree of a court, and granting a new trial. to be had before the same court, is not void under the constitution as an *ex post facto* law. *Ibid.*

13. It is a self-evident proposition that the several state legislatures retain all the powers of legislation, delegated to them by the state constitutions, which are not expressly taken away by the constitution of the United States. Per Chase, J. *Ibid.*

14 A law that punishes a citizen for an innocent action, or, in other words, for act which, when done, was in violation of no existing law, a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man judge in his own cause, or a law that takes property from A. and gives it to B., is contrary to the great first principles of the social compact, and cannot be considered as a rightful exercise of legislative authority. The genius, the nature, the spirit of our state governments, amount to a prohibition of such acts of legislation, and the general principles of law and reason forbid them. Per Chase, J *Ibid.*

15. The words and intent of the prohibition embrace: 1st. Every law that makes an action done before the framing of the law, and which was innocent when done, criminal, and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime when committed. 4th Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offence in order to convict the offender. Per Chase, J. *Ibid.*

16. If any act of congress or of the legislature of a state, violates the constitutional provisions, it is unquestionably void; if on the other hand the legislature of the union or the legislature of any member of the union, shall pass a law within the general scope of their constitutional power, the court cannot pronounce it to be void, merely because it is in their judgment, contrary to the principles of natural justice. If the legislature pursue the authority delegated to them, their acts are valid; if they transgress the boundaries of that authority, their acts are invalid. Per Iredell, J. *Ibid.*

17. An act of a state legislature, banishing the person and confiscating the property of certain individuals therein named, as traitors, passed before the establishment of the federal constitution is not void. *Cooper* v. *Telfair*, 4 Dall. 14.

18. The words of the constitution, declaring that "the judicial power shall extend to all cases of admiralty and maritime jurisdiction," must be taken to refer to the admiralty and maritime jurisdiction of England. *United States* v. *M'Gill*, 4 Dall. 426. 429.

19. The constitution, article 2d, *sect* 2, 3, with regard to the appointment and commissioning of officers by the president, seems to contemplate three distinct operations: 1. The nomination; this is the sole act of the president, and is completely voluntary. 2. The appointment; this is also the act of the president, though it can only be performed by and with the advice and consent of the senate. 3. The commission: to grant a commission to a persen appointed, might perhaps be deemed a duty enjoined by the constitution. *Marbury* v. *Madison*, 1 Cranch, 137. 155.

20. The acts of appointing to office and commissioning the person appointed, are distinct acts. *Ibid.* 156.

21. The constitution contemplates cases where the law may direct the president to commission an officer appointed by the courts or by the heads of departments. In such case, to issue a commission would be apparently a duty distinct from the appointment, the performance of which perhaps could not be legally refused. *Ibid.*

22. Where the officer is not removable at the will of the executive, the appointment is not revocable and cannot be annulled, it has conferred legal rights which cannot be resumed. *Ibid.* 162.

23. The question whether the legality of the act of the head of department be examinable in a court of justice or not, must always depend on the nature of that act. *Ibid.* 165. Where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the president, or rather to act on cases

in which the executive possesses a confidential or legal discretion, nothing can be more perfectly clear, than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend on the performance of that duty, it seems equally clear that the individual who considers himself injured has a right to resort to the laws of his country for a remedy. *Ibid.* 166.

24. Where the head of a department acts in a case in which executive discretion is to be exercised, in which he is the mere organ of executive will, any application to a court to control in any respect his conduct, would be rejected without hesitation. But where he is directed by law to do a certain act, affecting the absolute rights of individuals,, in the performance of which he is not placed under the particular direction of the president, and the performance of which the president cannot lawfully forbid, and therefore is never presumed to have forbidden; as for example, to record a commission or a patent for land which has received all the legal solemnities; or to give a copy of such record: in such cases, the courts of the country are no further excused from the duty of giving judgment that right be done to an injured individual, than if the same services were performed by a person not at the head of a department. *Ibid.* 171.

25. The authority given to the Supreme Court by the act establishing the judicial courts of the United States to issue writs of mandamus to public officers, is not warranted by the constitution. *Ibid.* 176.

26. An act of congress repugnant to the constitution, cannot become the law of the land. *Ibid.* 176, 7. 180.

27. An act of congress cannot invest the Supreme Court with an authority not warranted by the constitution. *Ibid.* 175, 6.

28. A contemporary exposition of the constitution, practised and acquiesced under for a period of years, fixes the construction, and the court will not shake or control it. *Stuart* v. *Laird*, 1 Cranch, 299.

29. An act of congress, giving to the United States a preference over all other creditors in all cases, is constitutional and valid. *United States* v. *Fisher et al.* 2 Cranch, 358. 395.

30. Such preference exists in a case where no suit has beeen instituted; as upon an assignment by a bankrupt, the United States must be first paid. *Ibid.*

31. The legislature of a state cannot annul the judgment, or determine the jurisdiction of the courts of the United States. *United States* v. *Peters*, 5 Cranch, 115.

32. In an action of ejectment between two citizens of the state where the lands lie, if the defendant set up an outstanding title in a British subject, which he contends is protected by treaty, and that therefore the title is out of the plaintiff, and the highest state court decides against the title thus set up, it is not a case in which a writ of error lies to the Supreme Court of the United States. *Owing* v. *Norwood's lessee*, 5 Cranch, 344.

33. This is not a case arising under the treaty, and the words of the judiciary act must be restrained by those of the constitution. *Ibid.*

34. Whenever a right grows out of, or is protected by a treaty, it is sanctioned against all the laws and judicial decisions of the states; and whoever may have this right it is protected. But if the person's title is not affected by the treaty, if he claims nothing under the treaty, his title cannot be protected by the treaty *Ibid.* 348.

35. If a title be derived from a legislative act, which the legislature might constitutionally pass; if the act be clothed with all the requisite forms of law, a court, sitting as a court of law, cannot sustain a suit by one individual against another, founded on the allegation that the act is a nullity, in consequence of the impure motives which influenced certain members of the legislature which passed the act. *Fletcher* v. *Peck*, 6 Cranch, 87. 131.

36. One legislature, so far as respects general legislation, is competent to repeal any act which a former legislature was competent to pass; and one legislature cannot abridge the powers of a succeeding legislature. But if an act be done under a law, a succeeding legislature cannot undo it. *Ibid.* 135.

37. When a law is, in its nature, a contract, and absolute rights have vested under that contract, a repeal of the law cannot divest those rights. *Ibid.*

38. It may well be doubted whether the nature of society and government, does not prescribe some limits to the legislative power; and if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation? *Ibid.*

39. The question whether a law be void for its repugnancy to the constitution, is a question which ought seldom if ever to be decided in the affirmative in a doubtful case. The opposition between the constitution and the law should be such, that the judge feels a clear and strong conviction of their incompatibility with each other. *Ibid.* 128.

40. Where an estate has passed under a legislative grant, into the hands of a purchaser for a valuable consideration, without notice, the state is restrained, either by general principles, which are common to our free institutions, or by the particular provisions of the constitution of the United States, from passing a law, whereby the estate so purchased can be impaired and invalidated. *Ibid.* 139.

41. The appellate powers of the Supreme Court are given by the constitution, but they are limited, and regulated by the judiciary act, and other acts of congress. *Durousseau* v. *United States*, 6 Cranch, 307.

42. An act of the legislature, declaring that certain lands which should be purchased for the Indians, should not thereafter be subject to any tax, constituted a contract which could not be rescinded by a subsequent legislative act. Such repealing act, being void under that clause of the constitution of the United States, which prohibits a state from passing any law impairing the obligation of contracts. *New Jersey* v. *Wilson*, 7 Cranch, 164.

43. In expounding the constitution of the United States, a construction ought not lightly to be admitted, which would give to a declaration of war, an effect in this country it does not possess elsewhere, and which would fetter that exercise of entire discretion respecting enemy's property, which may enable the government to apply to the enemy the rule that he applies to us. *Brown* v. *United States*, 8 Cranch, 110.

44. The power of making "rules concerning captures on land and water," which is superadded in the constitution to that of declaring war, is not confined to captures which are extra territorial, but extends to rules respecting enemy's property found within the territory, and is an express grant to congress of the power of confiscating enemy's property, found within the territory at the declaration of war, as an independent substantive power, not included in that of declaring war. *Ibid.*

45. The legislature may enact laws more effectually to enable all sects to accomplish the great objects of religion, by giving them corporate rights for the management of their property, and the regulation of their temporal as well as spiritual concerns. *Terret et al.* v. *Taylor et al.* 6 Cranch, 43.

46. Consistently with the constitution of Virginia, the legislature could not create or continue a religious establishment, which should have exclusive rights and prerogatives, or compel the citizens to worship under a stipulated form or discipline, or to pay taxes to those whose creed they could not conscientiously believe. But the free exercise of religion is not restrained by aiding with equal attention, the votaries of every sect, to perform their own religious duties, or by establishing funds for the support of ministers, for public charities, for the endowment of churches, or for the sepulture of the dead. Nor did either public or constitutional principles require the abolition of all religious corporations. *Ibid.*

47. The public property acquired by the episcopal churches under the sanctions of the laws did not, at the revolution, become the property of the state. The title was indefeasibly vested in the churches, or their legal agents. The dissolution of the form of government did not involve in it a dissolution of civil rights or an abolition of the common law. *Ibid.*

48 A legislative grant and confirmation vests an indefeasible irrevocable title: is not revocable, in its own nature, or held only *durante bene placito*. *Ibid.*

49. In respect to public corporations, which exist only for public purposes, as counties, towns, cities, &c. the legislature may, under proper limitations, have a right to change, modify, enlarge, or restrain them; securing however the property for the uses of those for whom, and at whose expense, it was originally purchased. *Ibid.*

50. But the legislature cannot repeal statutes creating private corporations, or confirming to them property already acquired under the faith of previous laws, and by such repeal vest the property exclusively in the state, or dispose of the same to such purposes as they may please, without the consent or default of the corporators. *Ibid.*

51. Congress cannot vest any portion of the judicial power of the United States, except in courts ordained and established by itself. *Martin* v. *Hunters' lessee*, 1 Wheat. 304. 330.

52. The 25th *sect.* of the judiciary act of *September* 24th, 1789, ch. 20. (2 Bior. 56.) is supported by the letter and spirit of the constitution. *Ibid.*

The constitution of the United States was ordained and established, not by the United States in their sovereign capacities, but as the preamble declares, by the people of the United States. *Ibid.* 324.

53. It was competent for the people to invest the national government with all the powers which they might deem proper and necessary, to extend or limit these powers at their pleasure, and to give to them a paramount and supreme authority. *Ibid.*

54. The people had a right to prohibit to the states the exercise of any powers which were, in their judgment, incompatible with the objects of the general compact; to make the powers of the state governments, in given cases, subordinate to those of the nation; or to reserve to themselves those sovereign authorities which they might not choose to delegate to either. *Ibid.*

55. The constitution was not therefore necessarily carved out of existing state sovereignties, nor a surrender of powers already existing in the state governments. *Ibid.*

56. On the other hand, the sovereign powers vested in the state governments by their respective constitutions, remain unaltered and unimpaired, except so far as they are granted to the government of the United States. *Ibid.*

57. The government of the United States can claim no powers which are not granted to it by the constitution, either expressly or by necessary implication. *Ibid.*

58. The constitution, like every other grant, is to have a reasonable construction, according to the import of its terms; the words are to be taken in their natural and obvious sense, and not in a sense either unreasonably restricted or enlaaged. *Ibid.*

59. The power of naturalization is exclusively in congress. *Chirac* v. *Chirac*, 2 Wheat. 259.

See *ante*, No. 1.

60. The grant, in the constitution, to the United States, of all cases of admiralty and maritime jurisdiction, does not extend to a cession of the waters in which those cases may rise, or of the general jurisdiction over them. *United States* v. *Bevans*, 3 Wheat. 336.

61. Congress may pass all laws which are necessary for giving the most complete effect to the exercise of the admiralty and maritime jurisdiction, granted in the constitution to the United States; but the general jurisdiction, subject to this grant, adheres to tne territory as a portion of sovereignty not yet given away, and the residuary powers of legslation still remain in the state. *Ibid.*

62. Congress has power to provide for the punishment of offences, committed by persons serving on board a ship of war of the United States, whereever that ship may be: but congress has not exercised that power in the case of a ship lying in the waters of the United States. *Ibid*

63. Since the adoption of the Constitution of the United States, a state has authority to pass a bankrupt law, provided such law does not impair the obligation of contracts, provided there be no act of congress in force, to establish a uniform system of bankruptcy, conflicting with such law. *Sturges* v. *Crowninshield*, 4 Wheat. 122. Contra. *Golden* v. *Prince*, 3 Wash. C. C. R. 313. 5 Hall's Am. L. Journ. 502. S. C. Accord, *Adams* v. *Storey*, 6 Hall's Am. L. Journ. 474.

64. The mere grant of a power to congress, does not imply a prohibition on the states to exercise the same power. *Ibid.*

65. Whenever the terms in which a power is granted to congress, require that it should be exercised exclusively by congress, the subject is as completely taken from the state legislatures, as if they had been expressly forbidden to act upon it. *Ibid.*

66. To release the future acquisitions of a debtor from liability to a contract, impairs its obligation. *Ibid.* 198.

67. Statutes of limitation and usury laws, unless retroactive in their effect, do not impair the obligation of contracts, within the meaning of the constution. *Ibid.*

68. The right of the states to pass bankrupt laws is not extinguished by the enactment of a uniform bankrupt law throughout the Union by congress; it is only suspended. The repeal of that law cannot confer that power upon the states, but it removes a disability to its exercise, which was created by the act of congress. *Ibid.*

69. The act of the legislature of the state of New York of *April*, 3d, 1811, which not only liberated the person of the debtor, but discharged him from all liability for any debt contracted previous to his discharge, on his surrendering his property in the manner prescribed, so far as it attempted to discharge the contract, is a law impairing the obligation of contracts within the meaning of the constitution of the U. States, and is not a good plea in bar of an action brought upon such contract. *Ibid.*

70. A state bankrupt or insolvent law, which not only liberates the person of the debtor, but discharges him from all liability for the debt, so far as it attempts to discharge the contract, is repugnant to the constitution of the United States: and it makes no difference whether the law was passed before or after the debt was contracted. *M'Millan* v. *M'Neil*, 4 Wheat. 209.

71. The act of assembly of Maryland, of 1793, incorporating the Bank of Columbia, and giving to the corporation a summary process by execution in the nature of an attachment, against its debtors, who have by an express consent in writing, made the bonds, bills or notes by them drawn or endorsed negotiable at the bank, is not repugnant to the constitution of the United States or of Maryland. *Bank of Columbia* v. *Okely*, 4 Wheat. 235.

72. Congress has power to incorporate a Bank. *M'Culloch Maryland*, 4 Wheat. 316.

73. The government of the Union is a government of the people; it emanates from them, its powers are granted by them, and are to be exercised directly on them, and for their benefit. *Ibid.*

74. The government of the Union, though limited in its powers, is supreme within its sphere of action, and its laws, when made in pursuance of the constitution, form the supreme law of the land. *Ibid.*

75. The government which has right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means. *Ibid.*

76. There is nothing in the constitution of the United States similar to the articles of confederation, which excludes incidental or implied powers. *Ibid.*

77. If the end be legitimate, and within the scope of the constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect. *Ibid.*

78. The power of establishing a corporation is not a distinct sovereign power or end of government, but only the means of carrying into effect other powers which are sovereign. Whenever it becomes an appropriate means of exercising any of the powers given by the constitution to the government of the union, it may be exercised by that government. *Ibid.*

79. If certain means to carry into effect any of the powers expressly given by the constitution to the government of the Union, be an appropriate measure, not prohibited by the constitution, the degree of its necessity is a question of legislative discretion, not of judicial cognizance. *Ibid.*

80. The act of *April* 10th, 1816, ch. 44. (3 Stor. 1547.) to "incorporate the subscribers to the Bank of the United States," is a law made in pursuance of the constitution. *Ibid.*

81. The Bank of the United States has, constitutionally, a right to establish its branches or offices of discount and deposite, within any state. *Ibid.*

82. The state within which such branch may be established, cannot constitutionally tax that branch. *Ibid.*

83. The state governments have no right to tax any of the constitutional means employed by the government of the union, to execute its constitutional powers. *Ibid.*

84. The states have no power by taxation or otherwise, to retard, impede, burthen or in any manner control the operations of the constitutional laws enacted by congress, to carry into effect the powers vested in the national government. *Ibid.*

85. This principle does not extend to a tax, paid by the real property of the Bank of the United States, in common with the other real property in a particular state, nor to a tax imposed on the proprietary interest which the citizens of that state may hold in this institution, in common with other property of the same description throughout the state. *Ibid.*

86. The charter granted by the British crown to the trustees of Dartmouth College in New Hampshire, in the year 1769, is a contract within the meaning of that clause of the constitution of the United States, (art. 1. *sect.* 10.) which declares that no state shall make any law impairing the obligation of contracts: and this charter

was not dissolved by the revolution. *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518.

87. An act of the legislature of New Hampshire, altering the charter in a material respect, without the consent of the corporation, is an act impairing the obligation of a contract, and is unconstitutional and void. *Ibid.*

88. The act of congress of March 3d, 1819, ch. 76. § 35 referring to the law of nations for a definition of the crime of piracy, is a constitutional exercise of the power of congress to define that crime. *United States* v. *Smith*, 5 Wheat. 153.

89. Congress has authority to impose a direct tax on the District of Columbia, in proportion to the census directed to be taken by the constitution. *Loughborough* v. *Blake*, 5 Wheat. 317.

90. The power of congress to levy and collect taxes, duties, imposts and excise, is co-extensive with the territory of the United States. *Ibid.*

91. The power of congress to exercise exclusive legislation, in all cases whatsoever, within the district of Columbia, includes the power of taxing it. *Ibid.*

92. Congress has no power to exempt any state from its due share of the burthen of taxes, but is not bound to extend a direct tax to the district and territories. *Ibid.*

93. The present constitution of the United States, did not commence its operation until the first Wednesday in *March* 1789: and the provision that "no state shall make any law impairing the obligation of contracts," does not extend to a law, enacted before that day, and operating upon rights of property vested before that time. *Owings* v. *Speed et al.* 5 Wheat. 420.

94. An act of a state legislature which discharges a debtor from all liability for debts contracted previous to his discharge, on his surrendering his property for the benefit of his creditors, is a law impairing the obligation of a contract, within the meaning of the constitution of the United States: and it is immaterial that the suit was brought in a state court of a state of which both parties were citizens, where the contract was made, and the discharge obtained, and where they continued to reside until the suit was brought. *Farmers and Mechanics' Bank of Pennsylvania*, v. *Smith*, 6 Wheat. 131.

95. The Supreme Court has, constitutionally, appellate jurisdiction, under the 25th, *sec.* of the judiciary act of *September* 24th, 1789, *ch.* 20. (2 Bior. 56.) from the final judgment or decree of the highest court of law or equity of a state, having jurisdiction of the suit, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under the United States, and the decision is against their validity: or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favour of their validity: or of the constitution, or of a treaty of, or statute of, or a commission held under the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party, under the constitution, treaty, statute, or commission. *Cohens* v. *Virginia*, 6 Wheat. 264.

96. It is no objection to the exercise of this appellate jurisdiction, that one of the parties is a state, and the other a citizen of that state. *Ibid.*

97. The second section of the third article of the constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the courts of the United States in two classes of cases. In the first, their jurisdiction depends on the *character of the cause*, whoever may be the parties. This class comprehends "all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." In the second class, the jurisdiction depends entirely on the *character of the parties*. In this class are comprehended "controversies between two or more states, between a state and citizens of another state," and "between a state and foreign states' citizens or subjects." If these be the parties, it is entirely unimportant what may be the subject of the controversy: be it what it may, these parties have a constitutional right to come into the courts of the Union. *Ibid.* 378.

98. A case in law or equity consists of the rights of the one party as well as of the other, and is said to arise under the constitution or a law of the United States, whenever its correct decision depends on the construction of either. *Ibid.*

99. The judicial power of every well constituted government must be co-extensive with the legislative, and must be capable of deciding every judicial question which grows out of the constitution and laws. *Ibid.*

100. Where the words of the constitution confer only apellate jurisdiction upon the Supreme Court, original jurisdiction is most clearly not given: but where the

words admit of appellate jurisdiction, the power to take cognizance of the suit originally does not necessarily negative the power to decide upon it on an appeal, if it may originate in a different court. *Ibid.* 397.

101. In every case to which the judicial power extends, and in which original jurisdiction is not expressly given, that power shall be exercised in the appellate, and only in the appellate form. The original jurisdiction of the Supreme Court cannot be enlarged, but its appellate jurisdiction may be exercised in every case, cognizable under the third article of the constitution in the federal courts, in which original jurisdiction cannot be exercised. *Ibid.*

102. Where a state obtains a judgment against an individual, and the court rendering such judgment overrules a defence set up under the constitution or laws of the United States, the transfer of the record into the Supreme Court, for the sole purpose of inquiring whether the judgment violates the constitution or laws of the United States, cannot be denominated a suit commenced or prosecuted against the state whose judgment is so far re-examined, within the 11th amendment to the constitution of the United States. *Ibid.*

103. The act of *Kentucky*, of *February* 27, 1797, concerning occupying claimants of land, whilst it was in force, was repugnant to the constitution of the *United States.* It was, however, repealed by a subsequent act of *January* 31, 1812. This last act is also repugnant to the constitution of the *United States*, being in violation of the compact between the states of *Virginia* and *Kentucky* contained in the act of the legislature of *Virginia December* 18, 1789, and incorporated into the constitution of *Kentucky. Green et al.* v. *Biddle*, 8 Wheat. 1.

104. The objection to a law, on the ground of its impairing the obligation of a contract, can never depend on the extent of the change which the law may make in it, any deviation from its terms, by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation. *Ibid.*

105. The compact between the states of *Kentucky* and *Virginia* of 1789, 1790, is valid and binding upon the parties, and has, within the meaning of the constitution of the United States, received the assent of congress, by act of *February* 4, 1791, ch. 78 (2 Bior. 191.) *Ibid.*

106. This compact is not valid on the ground of its containing limitations or a surrender of sovereign rights. *Ibid.*

107. A compact between two states, is a contract within that clause of the constitution which prohibits states from passing any laws impairing the obligation of contracts. *Ibid.*

108. The several acts of the legislature of the state of New York, granting and securing to Robert R. Livingston and Robert Fulton the exclusive jurisdiction of all the waters within the jurisdiction of that state, boats moved by fire or steam, for the periods therein specified, are in collision with a constitutional act of Congress, and so far repugnant to the constitution of the United States and void. *Gibbons* v. *Ogden*, 9 Wheat, 1. 209. 210.

109. The framers of the constitution must be understood to have employed words in their natural sense, and to have intended what they have said, and in construing the extent of the powers which it creates, there is no other rule to consider the language of the instrument which confers them, in connexion with the purposes for which they were conferred. *Ibid.* 188, 9.

110. In the clause of the constitution of the United States, which declares that "congress shall have power to regulate *commerce* with foreign nations, and among the several states, and with the Indian tribes," the word "commerce" comprehends "navigation," and a power to regulate navigation is as expressly granted, as if that that term had been added to the word commerce. *Ibid.* 189. 193.

111. It is a rule of construction, that exceptions from a power mark its extent. *Ibid.* 191.

112. The power to regulate commerce extends to every species of commercial intercourse between the United States and foreign nations, and among the several states. *Ibid.* 193.

113. It does not comprehend that commerce which is completely internal, which is carried on between man and man in a state, or between different parts of the same state, and which does not extend to or affect other states. *Ibid.* 194.

114. But it does not stop at the jurisdictional lines of the several states; it must be exercised wherever the subject exists, and must be exercised within the territorial jurisdiction of the several states. *Ibid.* 195, 6.

115. This power to regulate commerce, is the power to prescribe the rule by which commerce is to be governed. *Ibid.*

116. Like all other powers vested in congress, it is complete in itself, may be exercised to its utmost extent, and has no other limitations than such as are prescribed in the constitution. *Ibid.*

117 The authority of congress to lay and collect taxes, does not interfere with the power of the states to tax for the support of their own governments; nor is the exercise of that power by the states an exercise of any portion of the power that is granted to the United States. Ibid. 199.

118. But when a state proceeds to regulate commerce with foreign nations, or among the several states, it is exercising the very power that is granted to congress.

119. The power of laying duties or imposts on exports, is considered in the constitution as a branch of the taxing power, and not of the power to regulate commerce. Ibid. 201.

120. The inspection laws, quarantine laws, health laws of every description, laws for regulating the internal commerce of a state, and those which respect turnpike roads, ferries, &c. are not in the exercise of a power to regulate commerce within the language of the constitution. Ibid. 203.

121. Although congress cannot enable a state to legislate, it may adopt the provisions of a state on any subject. Ibid. 207.

122. *It seems* that the power to regulate, implies in its nature, full power over the thing to be regulated, and excludes necessarily the action of all others that would perform the same operation on the same thing. Ibid. 209.

123. When the legislature attaches certain privileges and exemptions to the exercise of a right over which its control is absolute, the law must imply the power to exercise the right, and therefore the act on the subject of the coasting trade implies an authority to licensed vessels to carry on that trade. Ibid. 212

124. The license under that law is a legislative authority to the licensed vessel tobe employed in the coasting trade; and is not intended merely to confer the national character: that character is conferred by the enrolment, not by the license. Ibid. 214.

125 The power to regulate commerce, extends as well to vessels employed in carrying passengers, as to those employed in transporting property. Ibid. 215.

126. It extends equally to vessels propelled by steam or fire, as to those navigated by the instrumentality of wind and sails. Ibid. 219.

127. The clause in the act of incorporation of the Bank of the United States, which authorizes the bank to sue in the federal courts, is warranted by the 3d article of the constitution of the United States, which declares "that the judicial power shall extend to all cases in law and equity arising under the constitution, the laws of the United States, or treaties made or which shall be made under their authority." *Osborn et al.* v. *Bank of the United States*, 9 Wheat. 733.

128. The executive department may constitutionally execute every law which the legislature may constitutionally make, and the judicial department may receive from the legislature the power of construing every such law Ibid.

129 The third article of the constitution of the United States enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case. Ibid.

130. In those cases in which original jurisdiction is given to the Supreme Court, the judicial power of the United States cannot be exercised in its appellate form. In every other case the power is to be exercised in its orginal or appellate form, or both, as the wisdom of congress may direct. Ibid.

131. With the exception of those cases, in which original jurisdiction is given to the Supreme Court, there is none to which the judicial power extends from which the original jurisdiction of the inferior courts is excluded by the constitution. Ibid.

132. The constitution establishes the Supreme Court and defines its jurisdiction. It enumerates cases in which jurisdiction is original and exclusive; and then defines

that which is appellate, but does not insinuate that, in any such case, the power cannot be exercised in its original forms by courts of original jurisdiction.

133. The postmaster general cannot sue in the federal courts under that part of the constitution which gives jurisdiction to those courts in consequence of the character of the party, nor is he authorized to sue by the judiciary act: he comes into the courts of the United States under the authority of an act of congress, the constitutionality of which rests upon the admission that this suit is a case arising under the law of the United States. Ibid.

134. The clause in the patent law authorizing suits in the circuit courts, stands on the principle that they are cases arising under a law of the United States. Ibid.

135. Jurisdiction is neither give nor ousted by the relative situation of the parties concerned in interest, but by the relative situation of the parties named on the record, consequently the 11th amendment to the constitution, which restrains the jurisdiction of the federal courts over suits against states, is limited to those suits in which a state is a party on the record. Ibid. Bank of United States. v. Planters' Bank of Georgia. Ibid. 904. S. P.

136. The circuit courts of the United States have jurisdiction of a bill in equity, filed by the Bank of the United States for the purpose of protecting the bank in the exercise of its franchises which are threatened with invasion and destruction under an unconstitutional state law, and as the state itself cannot be made a defendant, it may be maintained against the officers and agents of the state who are appointed to execute such law. Ibid.

137. The act of February 28, 1795. c. 277. (2 Bior. 479.) to provide for calling out the militia, to execute the laws of the Union, to suppress insurrections and repel invasions, is within the constitutional authority of congress. *Martin* v. *Mott*, 12 Wheat. 19.

138. The power granted to congress, by the constitution, "to establish uniform laws on the subject of bankruptcy throughout the United States," does not exclude the right of the states to legislate on the same subject, except when the power is actually exercised by congress, and the state laws conflict with those of congress. *Ogden* v. *Saunders*, 12 Wheat. 213.

139. A state bankrupt or insolvent law, which discharges both the person of the debtor and his future acquisitions of property, is not "a law impairing the obligation of contracts" so far as respects debts contracted subsequent to the passage of such law. *Ibid.*

140. But a certificate of discharge under such law cannot be pleaded in bar of an action brought by a citizen of another state in the courts of the United States, or of any other state than that where the discharge was obtained. *Ibid.*

141. The States have a right to regulate or abolish imprisonment for debt, as a part of the remedy for enforcing the performance of contracts. *Mason* v. *Haile*, 12 Wheat. 370.

142. An act of a state legislature, requiring all importers of foreign goods, by the bale or package, &c. and other persons selling the same by wholesale, bale or package, &c. to take out a license, for which they shall pay fifty dollars, and in case of neglect or refusal to take out such license, subjecting them to certain forfeitures and penalties, is repugnant to that provision of the constitution of the United States which declares, that "no state shall, without the consent of congress, lay any impost or duty on imports and exports, excepting what may be absolutely necessary for executing its own inspection laws;" and also, to that which declares that congress shall have power to regulate commerce with foreign nations, among the several states, and with the Indian tribes. *Brown et al.* v. *State of Maryland*, 12 Wheat. 419.

143. It is extremely doubtful whether the legislature can constitutionally impose upon a judge of the Supreme Court of the United States the authority or duty to hold a district Court. There is a great difference between giving new jurisdiction to a court of which such judge is a member, and appointing him *pro hac vice* to a new office. Nor is there any sound distinction between an appointment to a new office, and an appointment to perform the duties of another office, while it remains a separate and distinct office. *Ex parte United States*, 1 Gallis. 338.

144. The act of New Hampshire of *June* 19th, 1805, which allows to tenants the value of improvements &c., on recoveries againgt them, if it applies to past improvements, is so far unconstitution and void. *Society for the Propagation, &c. Wheeler et al.* 2 Gallis. 105.

145. The expressions "admiralty and maritime jurisdiction" in the constitution of the United States, give jurisdiction of all things done upon and relating to the sea, or in other words, all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea. *De Covio* v. *Boit et al.* 2 Gallis. 398. 468.

146. The delegation of cognizance " of all civil causes of admiralty and maritime jurisdiction" to the courts of the United States, comprehends all maritime contracts, torts and injuries. The latter branch is necessarily bounded by locality; the former extends over all contracts, wheresoever they may be made or executed, or whatsoever may be the form of the stipulations, which relate to the navigation, business, or commerce of the sea. *Ibid.* 474, 5.

147. The ninth section of the first article of the constitution of the United States, which restrained Congress from forbidding the migration or importation of slaves, prior to the year 1808, did not apply to state legislatures, who might at any time prohibit the introduction of such persons. *Butler* v. *Hopper*, 1 Wash. C. C. R. 499.

148. The 2d *sec.* of the 4th article of the constitution of the United States, does not extend to a slave voluntarily carried by his master into another state, and there left under the protection of a law declaring him free, but to slaves escaping from one state into another. *Ibid.*

149. The powers bestowed by the constitution upon the government of the U. States, were limited in their extent, and were not intended, nor can they be construed with other powers before vested in the state governments, which of course were reserved to those governments, impliedly as well as by an express provision of the constitution. *Golden* v. *Prince*, C. C. R. 3 Wash. 313. 5 Hall's Am. L. Journ. 502. S. C.

150. The state governments therefore retained the right to make such laws as they might think proper within the ordinary functions of legislation, if not inconsistent with the powers vested exclusively in the government of the United States, and not forbidden by some article of the constitution of the United States or of the state, and such laws were obligatory upon all the citizens of that state, as well as others who might claim rights or redress for injuries under those laws, or in the courts of that state. *Ibid.*

151. The establishment of federal courts, and the jurisdiction granted to them in certain specified cases, could not, consistently with the spirit and provisions of the constitution impair any of the obligations thus imposed by the laws of the state, by setting up in those courts a rule of decision, at variance with that which was binding upon the citizens, and which they were bound to obey. *Ibid.*

152. Thus the laws of a state, affecting contracts, regulating the disposition and transmission of property, real or personal, and a variety of others, which in themselves are free from all constitutional objections, are equally valid and obligatory within the state, since the adoption of the constitution of the United States, as they were before. They provide rules of civil conduct for every individual who is subject to their power. *Ibid.*

153. With respect to rules of practice for transacting the business of the courts, a different principle prevails. These rules form the law of the court, and it is in relation to the federal courts, a law arising under the constitution of the United States consequently not subject to state regulations. It is in reference to this principle that the 17th sec. of the judicial act authorizes the courts of the United States, to make all necessary rules for the orderly conducting of business in the said courts, provided the same are not repugnant to the laws of the United States; and under this power, the different circuit courts, at their first session, adopted the state practice as it then existed, which conitnues to this day in all the states, except so far as the courts have thought proper from time to time to alter and amend it. *Ibid.*

154. A law may be unconstitutional, and of course void, in relation to particular cases, and yet valid to all intents and purposes in its application to other cases within the scope of its provisions, but varying from the former in particular circumstances. Thus a law prospective in its operation, under which a contract afterwards made may be avoided in a way different from that provided by the parties, would be clearly constitutional; because the stipulations of the parties, which are inconsistent with such a law, never had a legal existence, and of course could not be impaired by the law. But if the law act retrospectively as to other contracts, so as to impair their obligation, the law is invalid, or in milder terms affords no rule of decision in these latter cases. *Ibid.*

155. A law of a state, which declares that a debtor, by delivering up his estate for the benefit of his creditors, shall be for ever discharged from the payment of his debts, due or contracted before the passage of the law, whether the creditor do any act or not in aid of the law, cannot be set up to bar the right of such creditor to recover his debt either in a federal or state court; such law impairs the obligation of the contract. *Ibid.*

156. A law which authorizes the discharge of a contract by a smaller sum, or at a different time, or in a different manner than the parties have stipulated, impairs its obligation by substituting, for the contract of the parties, one which they never entered into, and to the performance of which, of course, they had never consented. *Ibid.*

157. A state law, directing that the court, before whom an insolvent debtor is discharged, shall make an order, that whenever a majority of the creditors shall consent; the debtor shall be released, and his future acquisitions exempted from liability for seven years, is unconstitutional and void. *United States* v. *Kederickson*, C. C. U. S. P. Oct 1821. M. S.

158. There is nothing in the constitution of the United States which forbids Congress to pass laws violating the obligation of contracts, though such power is denied to the states individually. *Evans* v. *Eaton*, 1 Peters' C. C. R. 322.

159. If the local ordinances of a city are in collison with an act of Congress, the former must give way. The laws of Congress, made in pursuance of the constitution of the United States, are the supreme laws of the land, any thing in the constitution or laws of any particular state notwithstanding. *United States* v. *Hart*, 1 Peters' C. C. R. 390.

160. An act of Congress, laying an embargo for an indefinite period of time, is constitutional and valid. *United States* v. *The William*, 2 Hall's Am. L. Journ. 255.

161. There is nothing in the constitution of the United States which forbids the legislature of a state to exercise judicial functions. *Satterlee* v. Mathewson. *Peters' Reports* vol. 2. 413.

162. There is no part of the constitution of the U. States, which applies to a state law, which divested rights vested by law in an individual, provided, its effect be not to impair the obligation of a contract. *Ibid.* 413.

163. A tax imposed by a law of any state of the U. States, or under the authority of such a law, on stock issued for loans made to the United States, is unconstitutional. *Weston, et al.* v. *The City Council of Charleston.* *Ibid.* 449.

164. It is not the want of original power in an independent sovereign state to prohibit loans to a foreign government, which restrains the state legislature from direct opposition to those made by the U. States. The restraint is imposed by our constitution. The American people have conferred the power of borrowing money on the government, and by making that government supreme, have shielded its action in the exercise of that power, from the action of the local governments. The grant of the power, and the declaration of supremacy, are a declaration that no such restraining or controlling power shall be exercised. *Ibid.* 468.

SECRET PROCEEDINGS

OF THE

FEDERAL CONVENTION OF 1787.

The Genuine Information, delivered to the Legislature of the State of Maryland, relative to the Proceedings of the General Convention, held at Philadelphia, in 1787, by LUTHER MARTIN, *Esquire, Attorney General of Maryland, and one of the Delegates in the said Convention.*

To the hon. THOMAS COCKEY DEYE, Speaker of the House of Delegates of Maryland.

SIR, I flatter myself the subject of this letter will be a sufficient apology for thus publicly addressing it to you, and through you to the other members of the house of delegates. It cannot have escaped your or their recollection, that when called upon as the servant of a free state, to render an account of those transactions in which I had had a share, in consequence of the trust reposed in me by that state, among other things, I informed them, "that some time in July, the honorable Mr. Yates and Mr. Lansing, of New York, left the convention; that they had uniformly opposed the system, and that I believe, despairing of getting a proper one brought forward, or of rendering any real service, they returned no more. You cannot, sir, have forgot, for the incident was too remarkable not to have made some impression, that upon my giving this information, the zeal of one of my honorable colleagues, in favor of a system which I thought it my duty to oppose, impelled him to interrupt me, and in a manner which I am confident his zeal alone prevented him from being convinced was not the most delicate, to insinuate pretty strongly, that the statement which I had given of the conduct of those gentlemen, and their motives for not returning, were not candid.

Those honorable members have officially given information on this subject, by a joint letter to his excellency governor Clinton—it is published. Indulge me, sir, in giving an extract from it, that it may stand contrasted in the same page with the information I gave, and may convict me of the want of candor of which I was charged, if the charge was just—if it will not do that, then let it silence my accusers.

"Thus circumstanced, under these impressions, to have hesitated would have been to be culpable;—we therefore gave the principles of the constitution, which has received the sanction of a majority of the convention, our decided and unreserved dissent. We

were not present at the completion of the new constitution; but before we left the convention, its principles were so well established as to convince us, that no alteration was to be expected to conform it to our ideas of expediency and safety. A persuasion that our further attendance would be fruitless and unavailing rendered us less solicitous to return."

These, sir, are their words; on this I shall make no comment; I wish not to wound the feelings of any person: I only wish to convince.

I have the honor to remain, with the utmost respect, your very obedient servant, LUTHER MARTIN.

Baltimore, January 27, 1788.

Mr. Martin, when called upon, addressed the House nearly as follows:

Since I was notified of the resolve of this honorable house, that we should attend this day, to give information with regard to the proceedings of the late convention, my time has necessarily been taken up with business, and I have also been obliged to make a journey to the Eastern Shore: These circumstances have prevented me from being as well prepared as I could wish, to give the information required.—However, the few leisure moments I could spare, I have devoted to refreshing my memory, by looking over the papers and notes in my possession; and shall with pleasure, to the best of my abilities, render an account of my conduct.

It was not in my power to attend the convention immediately on my appointment—I took my seat, I believe, about the 8th or 9th of June. I found that governor Randolph, of Virginia, had laid before the convention certain propositions for their consideration, which have been read to this house by my honorable colleague, and I believe, he has very faithfully detailed the substance of the speech with which the business of the convention was opened; for though I was not there at the time, I saw notes which had been taken of it.

The members of the convention from the states came there under different powers; the greatest number, I believe, under powers nearly the same, as those of the delegates of this state—Some came to the convention under the former appointment, authorising the meeting of delegates merely to regulate trade. Those of Delaware were *expressly instructed to agree to no system which should take away from the states, that equality of suffrage secured by the original articles of confederation.* Before I arrived, a number of rules had been adopted to regulate the proceedings of the convention, by one of which, seven states might proceed to business, and consequently four states the majority of that number, might eventually have agreed upon a system which was to affect the whole union. By another, *the doors were to be shut*, and *the whole proceedings were to be kept secret;* and so far did this rule extend, that we were thereby prevented from corresponding with gentlemen in the different states

upon the subjects under our discussion—a circumstance, sir, which I confess I greatly regretted—I had no idea, that all the wisdom, integrity, and virtue of this state, or of the others, were centered in the convention—I wished to have corresponded freely, and confidentially, with eminent political characters in my own, and other states, not implicitly to be dictated to by them, but to give their sentiments due weight and consideration. So *extremely solicitous* were they, that their proceedings should not transpire, that *the members were prohibited even from taking copies of resolutions, on which the convention were deliberating, or extracts of any kind from the journals without formally moving for, and obtaining permission, by a vote of the convention for that purpose.*

You have heard, sir, the resolutions which were brought forward by the honorable member from Virginia; let me call the attention of this house to the conduct of Virginia, when our confederation was entered into—that state then proposed, and obstinately contended, *contrary to the sense of, and unsupported by, the other states, for an equality of suffrage* founded on *numbers, or some such scale* which should give *her*, and certain other states, *influence in the union over the rest;* pursuant to that spirit which then characterized her, and uniform in her conduct, the very second resolve, is calculated expressly for that purpose *to give her a representation proportioned to her numbers*, as if the *want of that* was *the principal defect* in our original system, and this alteration, the great means of remedying the evils, we had experienced under our present government.

The object of *Virginia* and *other large states, to encrease their power and influence over the others*, did not escape observation: the subject, however, was discussed with great coolness in the committee of the whole house (for the convention had resolved itself into a committee of the whole to deliberate upon the propositions delivered in by the honorable member from Virginia.) Hopes were formed, that the farther we proceeded in the examination of the resolutions, the better the house might be satisfied of the impropriety of adopting them, and that they would finally be rejected by a majority of the committee; if on the contrary, a majority should report in their favour, it was considered, that it would not preclude the members from bringing forward and submitting any other system to the consideration of the convention; and accordingly while those resolves were the subject of discussion in the committee of the whole house, a number of the members who disapproved them, were preparing *another system*, such as *they thought more conducive to the happiness and welfare of the states.*—The propositions originally submitted to the convention having been debated, and undergone a variety of alterations in the course of our proceedings, the committee of the whole house by a *small majority* agreed to a *report*, which I am happy, sir, to have in my power to lay before you; it was as follows:

1. *Resolved*, That it is the opinion of this committee, that a *national* government ought to be established, consisting of a supreme legislative, judiciary and executive.

2. That the legislative ought to consist of *two branches*.

3. That the members of the first branch of the national legislature ought to be elected by the people of the several states, for the term of three years, to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury, to be ineligible to any office established by a particular state, or under the authority of the United States, except those particularly belonging to the functions of the first branch, during the term of service, and under the national government, for the space of one year after its expiration.

4. That the members of the second branch of the legislature ought to be chosen by the individual legislatures, to be of the age of thirty years at least, to hold their offices for a term sufficient to ensure their independency, namely, seven years, one third to go out biennially, to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury, to be ineligible to any office by a particular state, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and under the national government, for the space of one year after its expiration.

5. That each branch ought to possess the right of originating acts.

6. That the national legislature ought to be empowered to enjoy the legislative rights vested in congress by the confederation, and *moreover to legislate in all cases to which the separate states are incompetent*, or in which the *harmony of the United States may be interrupted, by the exercise of individual legislation*; to *negative* all laws passed by the *several states*, contravening, in the *opinion* of the *legislature* of the *United States*, the articles of union, or any treaties subsisting under the authority of the Union.

7. That the *right of suffrage* in the *first* branch of the national legislature, *ought not to be according to the rule established in the articles of confederation*, but according to some equitable rate of representation, namely, *in proportion to the whole number of white, and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons*, not comprehended in the foregoing description, except Indians not paying taxes in each state.

8. That the *right of suffrage* in the *second branch* of the national legislature, *ought to be according to the rule established in the first*.

9. That a national executive be instituted to consist of a single person, *to be chosen by the national legislature* for the term of seven years, with power to carry into execution the national laws, *to appoint to offices* in cases not otherwise provided for, to be in-

eligible a second time, and to be removeable on impeachment and conviction of malpractice or neglect of duty, to receive a fixed stipend, by which he may be compensated for the devotion of his time to public service—to be paid out of the national treasury.

10. That the national executive shall have a right to *negative any legislative act which shall not afterwards be passed, unless by two thirds of each branch of the national legislature.*

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

12. That the *national legislature* be empowered to appoint *inferior tribunals.*

13. That the jurisdiction of the *national* judiciary shall extend to cases which respect the collection of the national revenue; cases arising under the laws of the United States, impeachments of any national officer, *and questions which involve the national peace and harmony.*

14. *Resolved,* That provision ought to be made for the admission of states lawfully arising within the limits of the United States, whether from a voluntary junction of government, territory or otherwise, with the consent of a number of voices in the national legislature less than the whole.

15. *Resolved,* That provision ought to be made for the continuance of congress, and their authority and privileges, until a given day after the reform of the articles of union shall be adopted, and for the completion of all their engagements.

16. That a republican constitution and its existing laws ought to be guaranteed to each state by the United States.

17. That provision ought to be made for the amendment of the articles of union, whensoever it shall seem necessary.

18. That the legislative, executive and judiciary powers, within the several states, ought to be bound by oath to support the articles of the union.

19. That the amendments which shall be offered to the confederation by this convention, ought, at a proper time or times, after the approbation of congress, to be submitted to an assembly or assemblies, recommended by the legislatures, to be expressly chosen by the people, to consider and decide thereon.

These propositions, sir, were *acceded to* by a *majority of the members of the committee*—a system by which the *large states were to have not only an inequality of suffrage in the first branch,* but also, *the same inequality* in the *second branch,* or senate; however, it was not designed the second branch should consist of the same *number* as the first. It was proposed that the senate should consist of *twen-*

ty-eight members, formed on the following scale—Virginia to send *five*, Pennsylvania and Massachusetts each *four*, South Carolina, North Carolina, Maryland, New York, and Connecticut, *two* each, and the states of New-Hampshire, Rhode-Island, Jersey, Delaware, and Georgia each of them *one*; upon this plan, the three large states, Virginia, Pennsylvania and Massachusetts, would have *thirteen* senators out of *twenty-eight*, almost *one half of the whole number*—Fifteen senators were to be a quorum to proceed to business; those *three states* would, therefore, have *thirteen* out of that quorum.—Having this inequality *in each branch* of the legislature, it must be evident, sir, that *they would make what laws they pleased, however injurious or disagreeable to the other states*, and that *they would always prevent the other states from making any laws, however necessary and proper, if not agreeable to the views of those three states*—They were not only, sir, by this system, to have such an undue superiority in making laws and regulations for the union, but to have the same superiority in the *appointment* of the *president*, the *judges*, and all *other officers* of government. Hence, these three states, would in reality have the appointment of the president, judges, and all other officers.—This president, and these judges, so appointed, we may be morally certain, would be citizens of one of those three states; and the president as appointed by them, and a citizen of one of them, would espouse their interests and their views, when they came in competition with the views and interests of the other states. This president, so appointed by the three large states, and so unduly under their influence, was to have a negative upon every law that should be passed, which, if negatived by him, was not to take effect, unless assented to by two thirds of each branch of the legislature, a provision which deprived ten states of even the faintest shadow of liberty; for if they, by a miraculous unanimity, having all their members present, should outvote the other three, and pass a law contrary to their wishes, those three large states need only procure the president to negative it, and thereby prevent a possibility of its ever taking effect, because the representatives of those three states would amount to much more than one third (almost one half) of the representatives in each branch. And, sir, this government, so organized with all this undue superiority in those three large states, was, as you see, to have a power of negativeing the laws passed by every state legislature in the union. Whether, therefore, laws passed by the legislature of Maryland, New York, Connecticut, Georgia, or of any other of the ten states, for the regulation of their internal police should take effect, and be carried into execution, was to depend on the good pleasure of the representatives of Virginia, Pennsylvania, and Massachusetts.

This system of slavery, which bound hand and foot ten states in the union, and placed them at the mercy of the other three, and under the most abject and servile subjection to them, was approved

by a majority of the members of the convention, and reported by the committee.

On this occasion, the house will recollect, that the convention was resolved into a committee of the whole—of this committee Mr. Gorham was chairman. The honorable Mr. Washington was then on the floor, in the same situation with the other members of the convention at large, to oppose any system he thought injurious, or to propose any alterations or amendments he thought beneficial. To these propositions so reported by the committee, no opposition was given by that illustrious personage, or by the president of the state of Pennsylvania. They both appeared cordially to approve them, and to give them their hearty concurrence; yet this system, I am confident, Mr. Speaker, there is not a member in this house would advocate, or who would hesitate one moment in saying it ought to be rejected. I mention this circumstance in compliance with the duty I owe this honorable body, not with a view to lessen those exalted characters, but to show how far the greatest and best of men may be led to adopt very improper measures, through error in judgment, state influence, or by other causes, and to show that it is our duty not to suffer our eyes to be so far dazzled by the splendor of names, as to run blindfolded into what may be our destruction.

Mr. Speaker, I revere those illustrious personages as much as any man here. No man has a higher sense of the important services they have rendered this country. No member of the convention went there more disposed to pay deference to their opinions: but I should little have deserved the trust this state reposed in me, if I could have sacrificed its dearest interests to my complaisance for their sentiments.

When, contrary to our hopes it was found, that a majority of the members of the convention had in the committee agreed to the system, I have laid before you, we then thought it necessary to bring forward the propositions which such of us who had disapproved the plan before had prepared.—The memberswho prepared these resolutions were principally of the Connecticut, New York, Jersey, Delaware, and Maryland delegations. The hon. Mr. Patterson, of the Jerseys, laid them before the convention; of these propositions I am in possession of a copy, which I shall beg leave to read to you.

These propositions were referred to a committee of the whole house: unfortunately the New Hampshire delegation had not yet arrived, and the sickness of a relation of the honorable Mr. M'Henry, obliged him still to be absent, a circumstance, sir, which I considered much to be regretted, as Maryland thereby was represented by only two delegates, and they unhappily differed very widely in their sentiments.

The result of the reference of these last propositions to a committee, was a speedy and hasty determination to reject them—I doubt not, sir, to those who consider them with attention, so sudden a re-

jection will appear surprising; but it may be proper to inform you, that on our meeting in convention, it was soon found there was among us three parties of very different sentiments and views.

One party, whose object and wish it was to abolish and annihilate all state governments, and to bring forward one general government over this extensive continent, of a monarchical nature, under certain restrictions and limitations: Those who openly avowed this sentiment were, it is true, but few, yet it is equally true, sir, that there was a considerable number who did not openly avow it, who were by myself, and many others of the convention, considered as being in reality favorers of that sentiment, and acting upon those principles, covertly endeavoring to carry into effect what they well knew openly and avowedly could not be accomplished. The second party was not for the abolition of the state governments nor for the introduction of a monarchical government under any form; but they wished to establish such a system as could give their own states undue power and influence in the government over the other states.

A third party was what I considered truly federal and republican; this party was nearly equal in number with the other two, and were composed of the delegations from Connecticut, New York, New Jersey, Delaware, and in part from Maryland; also of some individuals from other representations.—This party, sir, were for proceeding upon terms of *federal equality*; they were for taking our present *federal system* as the basis of their proceedings, and as far as experience had shewn us that there were defects, to remedy those defects; as far as experience had shewn that other powers were necessary to the federal government, to give those powers—They considered this the object for which they were sent by their states, and what their states expected from them; they urged, that if after doing this, experience should shew that there still were defects in the system (as no doubt there would be) the same good sense that induced this convention to be called, would cause the states when they found it necessary to call another; and if that convention should act with the same moderation, the members of it would proceed to correct such errors and defects as experience should have brought to light—That by proceeding in this train, we should have a prospect at length of obtaining as perfect a system of federal government as the nature of things would admit. On the other hand, if we, contrary to the purpose for which we were entrusted, considering ourselves as master-builders, too proud to amend our original government, should demolish it entirely, and erect a new system of our own, a short time might shew the new system as defective as the old, perhaps more so: should a convention be found necessary again, if the members thereof acting upon the same principles, instead of amending and correcting its defects, should demolish that entirely, and bring forward a third system, that also might soon be found no better than either of the former, and thus we might al-

ways remain young in government, and always suffering the inconveniencies of an incorrect, imperfect system.

But, sir, the favourers of monarchy, and those who wished the total abolition of state governments, well knowing that a government founded on *truly federal principles*, the basis of which were the *thirteen state governments, preserved in full force and energy*, would be destructive of their views; and knowing they were too weak in numbers, openly to bring forward their system, conscious also that the people of America would reject it if proposed to them, joined their interest with that party, who wished a system, giving *particular states* the *power* and *influence over the others*, procuring in return mutual sacrifices from them, in giving the government *great* and *undefined powers* as to its *legislative* and *executive*, well knowing that by *departing from a federal system*, they paved the way for their favorite object, the *destruction of the state governments*, and the *introduction of monarchy*—And hence, Mr. Speaker, I apprehend, in a great measure, arose the objections of those honorable members, Mr. Mason and Mr. Gerry. In every thing that tended to give the *large states power* over the *smaller*, the *first* of those gentlemen could not forget he belonged to the *ancient dominion*, nor could the *latter* forget that he represented Old Massachusetts; that part of the system which tended to give those states power over the others met with their *perfect approbation;* but when they viewed it charged with *such powers* as *would destroy all state governments*, their *own* as well as the *rest*—when they saw a president so constituted as to differ from a monarch, scarcely but in name, and having it in his power to become such in reality when he pleased; they being *republicans* and *federalists*, as far as an attachment to their own states would permit them, they warmly and zealously opposed those parts of the system. From these different sentiments, and from this combination of interest, *I apprehend*, sir, proceeded the fate of what was called the Jersey resolutions, and the report made by the committee of the whole house.

The Jersey propositions being thus rejected, the convention took up those reported by the committee, and proceeded to debate them by paragraphs; it was now that they who disapproved the report found it necessary to make a *warm* and *decided opposition*, which took place upon the discussion of the seventh resolution, which related to the *inequality* of representation in the *first* branch. Those who advocated this inequality, urged, that when the articles of confederation were formed, it was *only* from *necessity* and *expediency* that the states were admitted *each* to have an *equal vote;* but that our situation was now altered, and therefore those states who considered it contrary to their interest, would no longer abide by it. They said no state ought to wish to have influence in government, except in proportion to what it contributes to it; that if it contributes but little it ought to have but a small vote; that taxation and representation ought always go together; that if one state had *sixteen times as many inhabitants* as another, or was *sixteen times as wealthy*, it ought

to have *sixteen times as many votes*; that an inhabitant of Pennsylvania ought to have as much weight and consequence as an inhabitant of Jersey or Delaware; that it was contrary to the feelings of the human mind; what the *large states* would *never* submit to; that the *large states* would have *great objects* in view, in which they would never permit the *smaller states* to thwart them;—that *equality of suffrage* was the rotten part of the constitution, and that this was a happy time to get clear of it. In fine, that it was the poison which contaminated our whole system, and the source of all the evils we experienced.

This, sir, is the substance of the arguments, if arguments they may be called, which were used in favor of *inequality of suffrage*. Those who advocated the *equality of suffrage* took the matter up on the original principles of government; they urged that all men considered in a state of nature, before any government formed, are equally free and independent, no one having any right or authority to exercise power over another, and this *without any regard to difference in personal strength, understanding or wealth*—That when such individuals enter into government, they have *each* a *right* to an *equal voice* in its first formation, and afterwards have *each* a right to an *equal vote* in every matter which relates to their government—That if it could be done conveniently, they have a right to exercise it in person—Where it cannot be done in person but for convenience, representatives are appointed to act for them, *every person* has a *right* to an *equal vote*, in choosing that representative who is entrusted to do for the whole, that which the whole, if they could assemble, might do in person, and in the transacting of which each would have an equal voice—That if we were to admit, because a man was *more wise, more strong*, or *more wealthy*, he should be entitled to *more votes* than another, it would be *inconsistent with the freedom and liberty of that other*, and would reduce him to *slavery*. Suppose, for instance, ten individuals in a state of nature, about to enter into government, *nine* of whom are *equally wise, equally strong, and equally wealthy*, the *tenth is ten times as wise, ten times as strong*, or *ten times as rich*; if for this reason he is to have *ten votes* for *each vote of either of the others*, the *nine* might as well *have no vote at all*, since though the *whole nine* might assent to a measure, yet the *vote* of the *tenth* would *countervail*, and *set aside all their votes*—If this *tenth* approved of what *they* wished to adopt, it would be well, but if he disapproved, he could prevent it, and in the same manner he could carry into execution *any measure he wished, contrary to the opinion of all the others, he* having *ten votes*, and the *other* altogether but *nine*. It is evident that on these principles, *the nine* would have *no will nor discretion of their own*, but must be *totally dependent* on the *will* and *discretion* of the *tenth*, to *him they* would be as *absolutety slaves* as *any negro* is to his *master*—If *he* did not attempt to carry into execution any measures injurious to the *other nine*, it could only be said that they had a *good master*, they would not be

the *less slaves*, because *they* would be *totally dependant* on the *will of another*, and not on *their own will*—They might not *feel their chains*, but they would notwithstanding *wear them*, and whenever their *master* pleased he might draw them so tight as to gall them to the bone. Hence it was urged, *the inequality of representation*, or giving to one man more votes than another on account of his wealth, &c. was *altogether inconsistent with the principles of liberty*, and in the *same proportion as it should be adopted*, in favor of *one* or *more*, in *that proportion are the others enslaved*—It was urged, that though every individual should have an equal voice in the government, yet, even the superior wealth, strength, or understanding, would give great and undue advantages to those who possessed them. That wealth attracts respect and attention; superior strength would cause the weaker and more feeble to be cautious how they offended, and to put up with small injuries rather than to engage in an unequal contest—In like manner superior understanding would give its possessor many oppportunities of profiting at the expence of the more ignorant. Having thus established these principles with respect to the *rights* of *individuals* in a *state of nature*, and what is due to *each* on entering into government, principles established by every writer on liberty, they proceeded to show that *states* when *once formed*, are considered *with respect* to *each other* as *individuals* in a state of nature; that like individuals, each *state* is considered *equally free* and *equally independent*, the *one* having no right to exercise authority over the *other*, though *more strong*, *more wealthy*, or *abounding with more inhabitants*—That when a number of *states* unite themselves under a *federal government*, the *same principles apply* to *them* as when a *number* of *individual men* unite themselves under a *state government*—That every argument which shews *one man* ought not to have *more votes* than *another*, because he is *wiser*, *stronger*, or *wealthier*, proves that *one state* ought not to have *more votes* than *another*, because it is *stronger*, *richer*, or *more populous*—And that by *giving one state*, or *one or two states more votes* than the *others*, the *others* thereby are *enslaved to such state or states*, having the *greater number of votes*. in the *same manner* as in the case before put of *individuals* when *one* has *more votes than the others*. That the reason why each individual man in forming a state government should have an equal vote is, because each individual before he enters into government is *equally free* and *independent*—So *each state*, when *states enter* into a *federal government*, are entitled to an *equal vote*, because before they entered into such federal government, *each state* was *equally free* and *equally independent*—That *adequate* representation of men *formed into a state government*, consists in *each man* having an *equal voice*, either personally, or if by representatives, that he should have an equal voice in choosing the representatives—So adequate representation of *states* in a *federal government*, consists in *each state* having an *equal voice* either in person or by its representative in every thing which relates to

the federal government—That this *adequacy of representation* is *more important* in a *federal*, than in a *state* government, because the members of a state government, the *district* of which is *not very large*, have generally such a *common interest*, that laws can scarcely be made by *one* part *oppressive* to the *others*, without *their suffering in common*; but the *different states* composing an *extensive federal empire*, widely distant *one* from the *other*, may have *interests so totally distinct*, that the *one* part might be greatly *benefited* by what would be *destructive* to the *other*.

They were not satisfied by resting it on principles; they also appealed to history—They shewed that in the amphyctionic confederation of the Grecian cities, *each city* however *different* in *wealth*, *strength*, and other *circumstances* sent the same *number* of deputies, and had *each* an *equal voice* in every thing that related to the common concerns of Greece. It was shewn that in the seven provinces of the United Netherlands, and the confederated cantons of Switzerland, *each canton* and *each province* have an *equal vote*, although there are as great distinctions of wealth, strength, population, and extent of territory among *those provinces* and those *cantons*, as among *these states*. It was said, that the maxim that taxation and representation ought to go together, was true so far that no person ought to be *taxed* who is not *represented*, but not in the extent insisted upon, to wit, that the *quantum* of *taxation* and *representation* ought to be the *same*; on the contrary, the *quantum* of *representation* depends upon the quantum of *freedom*, and therefore *all* whether *individual states*, or individual *men*, who are *equally free*, have a right to *equal representation*—That to those who insist that he who pays the greatest share of taxes, ought to have the greatest number of votes, it is a sufficient answer to say, that *this rule* would be *destructive* of the *liberty* of the *others*, and would render *them slaves* to the *more rich* and *wealthy*—That if one man pays *more taxes* than another, it is because he has *more wealth* to be protected by government, and he receives greater benefits from the government—So if one state pays more to the federal government, it is because as a state, she enjoys greater blessings from it; she has more wealth protected by it, or a greater number of inhabitants, whose rights are secured, and who share its advantages.

It was urged that upon these principles the Pennsylvanian, or inhabitant of a large state, was of as much consequence as the inhabitant of Jersey, Delaware, Maryland, or any other state—That *his consequence* was to be decided by *his situation* in his *own state*;—that if he was *there* as *free*, if he had as great share in the forming of his own government, and in the making and executing its laws, as the inhabitants of those other states, then was he equally important and of equal consequence—Suppose a confederation of states had never been adopted, but every state had remained absolutely in its independent situation, no person could with propriety, say that the citizen of the large state was not as important as the citizen of

the smaller, the confederation of states cannot alter the case. It was said, that in all transactions *between state and state*, the freedom, independence, importance and consequence, even the individuality of each citizen of the different states, might with propriety be said to be swallowed up, or concentrated in the independence, the freedom and the individuality *of the state* of which they are citizens; That the *thirteen states* are *thirteen distinct political individual existences*, as to each other; that the *federal* government is or *ought to be* a government *over these thirteen political individual existences*, which form the members of that government; and that as the *largest state* is only a *single individual* of this government, it ought to have only *one vote*; the *smallest state* also being *one individual member* of this government, ought also to have *one vote*—To those who urged that the states have equal suffrage, was contrary to the feelings of the human heart, it was answered, that it was admitted to be contrary to the feelings of *pride* and *ambition*; but those were feelings which ought not be gratified at the expence of *freedom*.

It was urged, that the position that great states would have great objects in view, in which they would not suffer the less states to thwart them, was one of the strongest reasons why inequality of representation ought not to be admitted. If those great objects were not *inconsistent* with the interest of the *less states*, they would readily concur in them, but if they were *inconsistent* with the *interest* of a *majority of the states* composing the government, in that case *two* or *three states* ought not to have it in their power to *aggrandize themselves* at the *expence of all the rest*—To those who alledged that equality of suffrage in our federal government, was the poisonous source from which all our misfortunes flowed, it was answered, that the allegation was not founded in fact—That *equality of suffrage* had *never been complained of by the states* as a *defect* in our federal system—That among the eminent writers, foreigners and others, who had treated of the defects of our confederation, and proposed alterations, *none had proposed an alteration in this part of the system*: And members of the convention, both in and out of congress, who advocated the equality of suffrage, called upon their opponents both in and out of congress, and challenged them to produce *one single instance* where a *bad measure* had been adopted, or a *good measure* had failed of adoption in consequence of the states having an *equal vote*: on the contrary, they urged, that all our evils flowed from the *want of power* in the federal head, and that let the *right of suffrage* in the states be *altered in any manner whatever*, *if* no *greater powers were given* to the government, the *same inconveniencies would continue*.

It was denied that the *equality of suffrage* was *originally* agreed to on principles of *necessity* or *expediency*. on the contrary, that it was adopted on the principles of the *rights of men* and the *rights of states*, which were *then* well known, and which then influenced our conduct although *now* they seem to be *forgotten*—For this the jour-

nals of congress were appealed to; it was from them shewn, that when the committee of congress reported to that body the articles of confederation, the very first article which became the subject of discussion, was that respecting equality of suffrage—That Virginia proposed divers modes of suffrage, all on the principle of inequality, which were *almost unanimously* rejected; that on the question for adopting the article, it passed, Virginia being the only state which voted in the *negative*—That after the articles of confederation were submitted to the states, by them to be ratified, almost every state proposed certain amendments, which they instructed their delegates to endeavor to obtain before ratification, and that among all the amendments proposed, *not one state*, not even Virginia, proposed an amendment of that *article, securing the equality of suffrage*—the most convincing proof it was agreed to and adopted, not from *necessity*, but *upon a full conviction*, that according to the principles of free government, the states had a *right to that equality of suffrage*.

But, sir, it was to no purpose that the futility of their objections were shewn; when driven from the *pretence* that the *equality of suffrage* had been originally agreed to on principles of *expediency* and *necessity*. the representatives of the *large states* persisting in a declaration, that they would never agree to admit the *smaller states* to an *equality* of suffrage—In answer to this, they were informed, and informed in terms the *most strong* and *energetic* that could *possibly be used*, that *we never would agree* to a system giving them the *undue influence* and *superiority* they proposed—That we would risk every possible consequence—That from anarchy and confusion *order might arise*—That *slavery* was the *worst* that could ensue, and we considered the *system* proposed to be the *most complete, most abject* system of *slavery* that the wit of man ever devised, under the *pretence* of forming a government for free states—That we never would submit tamely and servilely to a *present certain evil* in dread of a *future*, which might be *imaginary*; that we were sensible the eyes of our country and the world were upon us—That we would not labor under the *imputation* of being *unwilling* to *form a strong* and *energetic federal government*; but we would publish the system which we *approved*, and also that which we *opposed*, and leave it to our country and the world at large to judge between us, who *best understood* the rights of *free men* and *free states*, and who *best advocated them:* and to the same tribunal we would submit, who ought to be answerable for all the consequences which might arise to the union from the convention breaking up, without proposing any system to their constituents. During this debate we were *threatened*, that if we did not agree to the system proposed, we *never* should have an *opportunity of meeting in convention* to deliberate on *another*, and this was frequently urged—In answer, we called upon them to shew *what was to prevent it*, and from what quarter was our danger to proceed; was it from a *foreign enemy?* Our *distance* from Europe,

and the *political situation* of that country, left us but little to fear: Was there any *ambitious state* or *states, who in violation of every sacred obligation* was preparing to *enslave* the *other* states, and raise *itself* to *consequence* on the *ruin* of the *others?* Or was there any such *ambitious individual?* We did not apprehend it to be the case: but suppose it to be true, it rendered it the *more necessary* that *we* should *sacredly guard against a system* which might enable *all those ambitious views to be carried into effect, even under the sanction of the constitution and government:* In fine, sir, *all these threats* were treated with *contempt,* and they were told that we apprehended but *one reason* to prevent the states meeting again in convention; that when they discovered the part *this* convention had acted, and how much its members were *abusing the trust* reposed in them the states would never trust another convention. At length, sir, after every argument had been exhausted by the advocates of equality of representation, the question was called, when a majority decided in favor of the inequality—Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina and Georgia voting for it—Connecticut, New York, New Jersey and Delaware against; Maryland divided. It may be thought surprising, sir, that Georgia, a state *now small* and comparatively *trifling* in the union, should advocate this system of *unequal representation,* giving up her *present* equality in the federal government, and sinking herself almost to total insignificance in the scale; but, sir, it must be considered that Georgia has the *most extensive* territory in the union, being *larger* than the *whole island of Great Britain,* and *thirty* times as large as *Connecticut.* This system being designed to *preserve to the states their whole territory unbroken,* and to prevent the erection of new states within the territory of any of them: Georgia looked forward *when her population* being increased in some measure *proportioned to her territory,* she should *rise* in the scale and *give law* to the other states, and hence we found the delegation of Georgia warmly advocating the proposition of giving the states unequal representation. Next day the question came on with respect to the *inequality* of representation in the *second* branch, but little debate took place; the subject had been exhausted on the former question. On the votes being taken, Massachusetts, Pennsylvania, Virginia, North Carolina, and South Carolina, voted for the inequality. Connecticut, New York, New Jersey, Delaware and Maryland* were in the negative. Georgia had only two representatives on the floor, *one* of whom (not I believe because he was against the measure, but from a conviction that he would go home, and thereby dissolve the convention before

* On *this question* Mr. Martin was the *only* delegate for Maryland *present,* which circumstance *secured* the state a *negative.* Immediately after the question had been taken, and the president had declared the votes, Mr. Jenifer came into the convention, when Mr. King, from Massachusetts, valuing himself on Mr. Jenifer to divide the state of Maryland on this question, as he had on the former, requested of the president that the question might be put again—however, the motion was *too extraordinary* in its nature to meet with success,

we would give up the question) voted also in the negative, by which that state was divided. Thus, sir, on this *great* and *important* part of the system, the convention being equally divided, five states for the measure, five against, and one divided, there was a total stand, and we did not seem very likely to proceed any further. At length it was proposed, that a select committee should be ballotted for, composed of a member from each state, which committee should endeavor to devise some mode of *conciliation* or *compromise:* I had the honor to be on that committee; we met and discussed the subject of difference; the *one side* insisted on the *inequality* of suffrage in *both branches*, the *other* insisted on the *equality* in both; each party was tenacious of their sentiments, when it was found that nothing could induce us to yield the inequality in both branches; they at length proposed by way of compromise, if *we* would *accede* to their wishes as to the *first* branch, *they* would *agree* to the equal representation in the *second*. To this it was answered, that there was no merit in the proposal, it was only consenting, after they had struggled to put *both their feet on our necks*, to take *one of them off*, provided we would consent to let them *keep the other on*, when they knew at the same time, that they could not put *one foot* on *our necks*, unless *we would consent to it*, and that by being permitted to keep on that one foot, they should *afterwards be able to place the other foot on whenever they pleased.*

They were also called on to inform us what *security* they could give us should we agree to this compromise, that they would *abide* by the plan of government formed upon it, *any longer* than *suited their interests*, or they found it *expedient*.—"The states have a *right* to an equality of representation. This *is secured* to *us* by our *present* articles of confederation, *we* are in *possession* of this right; *it is now* to be *torn from us.* What security can you give us, that, when you get the *power* the *proposed system* will give you, when you have *men* and *money*, that you will not *force from* the states that *equality* of suffrage in the *second branch*, which you *now* deny to be their right, and *only give up* from *absolute necessity?* Will you tell us we ought to trust you because you *now enter into a solemn compact with us?* This you have done *before*, and *now* treat with the utmost *contempt*. Will you *now* make an appeal to the Supreme Being, and call on him to guarantee your observance of this compact? The *same* you have *formerly done* for your observance of the articles of confederation, which you are *now violating* in the most *wanton* manner!

The same reasons which you *now* urge for destroying our *present* federal government, may be urged for *abolishing the system* which you now propose to adopt; and as the *method prescribed* by the *articles* of confederation is *now totally disregarded* by you, as *little regard* may be shewn by you to the *rules prescribed* for the amendment of the *new system*, whenever having obtained power by the government, you shall *hereafter* be pleased either to *discard it en-*

tirely, or so to *alter it* as to give *yourselves* all that *superiority* which *you* have *now contended* for, and to *obtain which* you have shewn yourselves disposed to *hazard* the union."—Such, sir, was the language used on that occasion, and they were told that as we could not *possibly* have a stronger tie on them for their observance of the new system than we had for their observance of the articles of confederation, which had proved *totally insufficient*, it would be *wrong* and *imprudent* to *confide in them*. It was further observed, that the inequality of the representation would be *daily increasing*. That many of the states whose territory, was confined, and whose population was at this time large in proportion to their territory, would probably twenty, thirty, or forty years hence, have no more representatives than at the introduction of the government, whereas the states having extensive territory, where lands are to be procured cheap, would be daily encreasing in the number of their inhabitants, not only from propagation, but from the *emigration* of the inhabitants of the *other states*, and would have soon double, or perhaps treble the number of representatives that they are to have at first, and thereby enormously *increase* their *influence* in the national councils. However, the *majority* of the select committee at length agreed to a series of propositions by way of compromise, part of which related to the representation in the first branch nearly as the system is now published : and part of them to the second branch, securing in that equal representation, and reported them as a compromise upon the *express terms* that they were *wholly* to be *adopted* or *wholly to be rejected* ; upon this compromise, a great number of the members so far engaged themselves, that if the system was progressed upon agreeable to the terms of compromise, they would lend it their names, by signing it, and would not actively oppose it, if their states should appear inclined to adopt it.—Some, however, in which number was myself, who joined in the report, and agreed to proceed upon those principles, and see *what kind of a system* would *ultimately* be formed upon it, yet reserved to themselves in the most *explicit manner* the right of *finally* giving a *solemn dissent* to the system, if it was thought by them *inconsistent* with the *freedom* and *happiness* of their country. This, sir, will account why the members of the convention so *generally* signed their names to the system; not because they thought it a *proper one* ; not because they *thorougly approved*, or were *unanimous* for it; but because they thought it *better* than the system attempted to be forced upon them. This report of the select committee was after long dissention adopted by a majority of the convention, and the system was proceeded in accordingly—I believe near a fortnight, perhaps more, was spent in the discussion of this business, during which we were on the verge of dissolution, scarce held together by the strength of an hair, though the public papers were announcing our extreme unanimity.

Mr. Speaker, I think it my duty to observe, that during this *struggle* to prevent the *large states* from having *all power* in their hands, which had nearly terminated in a dissolution of the convention, it did not appear to me, that either of those illustrious characters, the honorable Mr. *Washington*, or the president of the state of Pennsylvania, were disposed to favor the claims of the *smaller states*, against the *undue superiority* attempted by the *large states*; on the contrary, the honorable president of Pennsylvania, was a *member* of the *committee* of *compromise*, and there *advocated* the *right* of the *large states* to an *inequality* in *both branches*, and only *ultimately conceded* it in the *second branch* on the *principle of conciliation*, when it was found no other terms would be accepted. This, sir, I think it my duty to mention, for the *consideration of those*, who endeavor to *prop up a dangerous* and *defective* system by *great names*; soon after this period, the honorable Mr. *Yates* and Mr. *Lansing* of New-York, left us; they had uniformily opposed the system, and I *believe*, despairing of getting a *proper one* brought forward, or of *rendering any real service*, they returned no more. The *propositions* reported by the committee of the *whole house*, having been fully discussed by the convention, and with many alterations having been agreed to by a *majority*, a committee of five, were appointed to *detail* the system according to the principles contained in what had been agreed to by that majority; this was likely to require some time, and the convention adjourned for eight or ten days. Before the adjournment, I moved for liberty to be given to the different members to take *correct copies* of the *propositions*, to which the convention had then agreed, in order that during the recess of the convention, we might have an opportunity of *considering* them, and if it should be thought that any *alterations* or *amendments* were *necessary*, that we might be *prepared* against the convention met to bring them forward for discussion. But, sir, the same spirit which caused our *doors to be shut*—our *proceedings to be kept secret*—*our journals to be locked up*—and *every avenue as far as possible, to be shut* to *public information*, prevailed also in this case, and the proposal so reasonable and *necessary* was *rejected* by a *majority* of the convention; thereby precluding even the members themselves from the necessary means of information, and deliberation on the important business in which they were engaged.

It has been observed, Mr. Speaker, by my honorable colleagues, that the debate respecting the mode of representation, was productive of considerable warmth—This observation is true. But, sir, it is equally true, that if we could have *tamely* and *servilely* consented to be *bound in chains* and meanly condescended to assist in rivetting them fast, we might have avoided all that warmth, and have proceeded with as much calmness and coolness as any stoic could have wished. Having thus, sir, given the honorable members of this house, a short history of some interesting parts of our proceedings,

I shall beg leave to take up the *system published* by the convention, and shall request your indulgence, while I make some observations on different parts of it, and give you such further information as may be in my power. [Here Mr. Martin read the *first section* of the *first article*, and then proceeded.] With respect to this part of the system, Mr. Speaker, there was a diversity of sentiment; those who were for *two* branches in the legislature, a house of representatives and a senate, urged the necessity of a *second* branch to serve as a check upon the *first*, and used all those trite and common place arguments which may be proper and just, when applied to the formation of a state government over individuals variously distinguished in their habits and manners, fortune and rank; where a body chosen in a select manner, respectable for their wealth and dignity, may be necessary, frequently to prevent the hasty and rash measures of a representation more popular; but on the other side it was urged, that none of those arguments could with propriety be *applied* to the formation of a federal government over a number of independent states—that it is the state governments which are to watch over and protect the *rights* of the *individual*, whether *rich* or *poor*, or of moderate circumstances, and in which the democratic and aristocratic influence or principles are to be so blended, modified, and checked, as to prevent oppression and injury—That the federal government is to guard and protect the *states* and *their rights*, and to regulate *their common concerns*; That a federal government is formed by the *states*, as *states*, that is in their *sovereign* capacities, in the same manner as *treaties* and *alliances* are formed—that a *sovereignty* considered as such, cannot be said to have jarring interests or principles, the one aristocratic, and the other democratic; but that the principles of a *sovereignty* considered as a sovereignty, are the *same* whether the sovereignty is monarchical, aristocratical, democratical, or mixed; that the history of mankind doth not furnish an instance from its earliest period to the present time, of a federal government constituted of two *distinct branches*—that the members of the federal government if appointed by the *states* in their *state capacities*, that is by their legislatures, as they *ought*, would be select in their choice, and coming from different states, having different *interests* and *views*; this difference of interests and views, would always be a *sufficient check* over the *whole*; and it was shewn, that even Adams, who the reviewers have justly observed, appears to be as fond of *checks* and *balances* as Lord Chesterfield of the *graces*, even *he* declares that a council consisting of *one* branch has always been found *sufficient* in a *federal* government.

It was urged, that the government we were forming was not in reality a *federal* but a *national* government, not founded on the principles of the preservation, but the abolition or consolidation of all *state governments*—That we appeared totally to have forgot the business for which we were sent, and the situation of the country

for which we were preparing our system—That we had not been sent to form a government over the inhabitants of America, considered as individuals, that as individuals they were all subject to their respective state governments, which governments would still remain, though the federal government should be dissolved—That the system of government we were entrusted to prepare, was a government over these thirteen states; but that in our proceedings, we adopted principles which would be right and proper, *only* on the supposition that there were no state governments *at all*, but that all the inhabitants of this extensive continent were in their individual capacity, without government, and in a state of nature—That accordingly the system proposes the legislature to consist of two branches, the *one* to be drawn from the people at large, immediately in their *individual capacity*; the *other* to be chosen in a more select manner, as a *check* upon the *first*—It is in its very introduction declared to be a compact between the people of the United States as individuals; and it is to be ratified by the people at large in their capacity as individuals; all which it was said, would be quite right and proper, if there were no state governments, if all the people of this continent were in a *state of nature*, and we were forming one national government *for* them as individuals, and is nearly the same as was done in most of the states, when they formed their governments over the people who compose them.

Whereas it was urged, that the principles on which a *federal* government over *states* ought to be *constructed* and *ratified* are the *reverse*; and instead of the legislature consisting of *two branches*, *one* branch was sufficient, whether examined by the *dictates* of *reason*, or the *experience of ages*—That the representation, instead of being drawn from the *people at large*, as *individuals*, ought to be drawn from the *states* as *states* in their *sovereign* capacity—That in a *federal* government, the *parties* to the compact are not the *people* as *individuals*, but the *states* as *states*, and that it is by the *states* as *states* in their *sovereign* capacity, that the system of government ought to be *ratified*, and not by the *people* as *individuals*.

It was further said, that in a *federal* government over states *equally* free, sovereign, and independent, *every state* ought to have an equal share in *making* the *federal laws* or *regulations*; in *deciding* upon them, and in *carrying them into execution, neither* of which was the case in *this* system, but the *reverse*, the states not having an *equal voice* in the legislature, nor in the *appointment* of the *executive*, the *judges*, and the *other officers of government*: it was insisted, that in the *whole* system there was but *one federal* feature, the appointment of the senators by the states in their sovereign capacity, that is by their legislatures, and the equality of sufferage in that branch; but it was said that *this feature* was only *federal in appearance*.

To prove *this*, and the senate *as constituted* could not be a *security* for the *protection* and *preservation* of the *state* governments, and that the *senators* could not be considered the *representatives* of the *states* as *states*, it was observed, that upon *just principles* the *representative* ought to *speak* the sentiments of his *constituents*, and ought to *vote* in the *same manner* that his *constituents* would do (as far as he can judge) provided his constituents were acting in *person*, and had the same knowledge and information with himself; and therefore that the *representatives* ought to be *dependant* on his *constituents*, and *answerable* to them; that the connexion between the *representatives* and the *represented*, ought to be as *near* and as *close* as possible; according to these principles, Mr. Speaker, in this state it is provided by *its constitution*, that the representatives in congress, shall be chosen *annually*, shall be *paid* by the *state*, and shall be subject to *recall* even within the year; so *cautiously* has our *constitution* guarded against an *abuse* of the trust reposed in our representatives in the federal government; whereas by the *third* and *sixth* section of the *first* article of this new system, the senators are to be chosen for six years, instead of being chosen annually; instead of being paid by their *states* who send them, *they*, in conjunction with the other branch, are to *pay themselves* out of the treasury of the United States; and are not liable to be *recalled* during the period for which they are chosen: Thus, sir, for *six years*, the *senators* are rendered totally and absolutely *independent* of *their states*, of *whom* they ought to be the *representatives*, without any *bond*, or *tie* between them: During that time they may join in measures *ruinous* and *destructive* to *their states*, even such as should *totally annihilate* their *state governments*, and their states *cannot recall them*, nor *exercise any control over them*. Another consideration, Mr. Speaker, it was thought ought to have *great weight* to prove that the *smaller* states cannot *depend* on the *senate* for the *preservation* of *their rights*, either against *large* and *ambitious states*, or against an *ambitious aspiring president*. The senate, sir, is so constituted, that they are not only to compose one branch of the legislature, but by the second section of the second article, they are to *compose a privy council for the president*; hence, it will be necessary, that they should be, in a great measure, a *permanent* body, constantly residing at the seat of government. *Seven* years is esteemed for the life of a man; it can hardly be supposed, that a senator, especially from the states remote from the seat of empire, will accept of an appointment which must *estrange* him for *six years from his state*, without giving up to a great degree his prospects in his *own state*. If he has a family, he will take his family with him to the place where the government shall be fixed, *that* will become his *home*, and there is every reason to expect, that his *future* views and prospects will *centre* in the *favors* and *emoluments* of the *general government*, or of the government of *that state* where the seat of empire is established. In

either case, he is *lost* to his *own state.* If he places his future prospects in the favors and emoluments of the *general government,* he will become the *dependent* and *creature* of the *president,* as the system *enables* a senator to be *appointed to office,* and without the *nomination* of the *president, no appointment can take place;* as *such,* he will favor the wishes of the president, and concur in his measures, who, if he has no *ambitious views of his own* to gratify, may be *too favorable* to the *ambitious views* of the *large states,* who will have an *undue share* in his *original appointment,* and *on whom* he will be *more dependant* afterwards than on the states which are smaller. If the senator places his future prospects in that *state* where the seat of empire is fixed, from that time he will be in every question wherein its particular interest may be concerned the *representative* of *that state,* not of *his own.*

But even this provision *apparently* for the *security* of the state governments inadequate as it is, is *entirely left* at the mercy of the general government, for by the fourth section of the first article, it is expressly provided, that the *congress* shall have a power to *make* and *alter* all regulations concerning the *time* and *manner* of *holding elections for senators;* a provision, *expressly looking to.* and I have no doubt designed for the utter extinction and abolition of all state governments; nor will this, I believe, be doubted by any person, when I inform you that some of the warm advocates and patrons of the system in convention, *strenuously opposed* the *choice* of the senators by the *state legislatures, insisting* that the state governments ought not to be introduced in any manner so as to be *component parts of,* or instruments for carrying into execution, the general government: Nay, so far were the friends of the system from pretending that they meant it, or considered it as a *federal* system, that on the question being proposed, "that a union of the states, merely federal, ought to be the sole object of the exercise of the powers vested in the convention;" it was negatived by a majority of the members, and it was resolved, "that a *national* government ought to be formed"—afterwards the word "*national*" was struck out by them, because they thought the *word* might tend to *alarm:* and although *now,* they who *advocate* the system, pretend to call themselves *federalists,* in convention the distinction was quite the reverse; those who *opposed* the system, were *there* considered and styled the *federal party,* those who advocated it, the *antifederal.*

Viewing it as a national, not a federal government, as calculated and designed not to protect and preserve, but to *abolish* and annihilate the state governments, it was opposed for the following reasons, it was said, that this continent was *much too extensive* for *one national* government, which should have sufficient *power* and *energy* to *pervade* and hold in *obedience* and subjection all its *parts,* consistent with the *enjoyment* and preservation of liberty; that the genius and habits of the people of America, were opposed to such

a government.—That during their connexion with Great Britain, they had been accustomed to have all their concerns transacted within a narrow circle, their colonial district; they had been accustomed to have their seats of government near them, to which they might have access, without much inconvenience, when their business should require it—That at *this time* we find if a county is *rather large* the people complain of the inconvenience, and clamor for a division of their county, or for a removal of the place where their courts are held, so as to render it more central and convenient—That in those states, the territory of which is extensive, as soon as the population increases remote from the seat of government, the inhabitants are urgent for a removal of the seat of their government, or to be erected into a new state—As a proof of this, the inhabitants of the western parts of Virginia and North Carolina, of Vermont and the province of Maine, were instances, even the inhabitants of the western parts of Pennsylvania, who it is said, already seriously look forward to the time when they shall either be erected into a new state, or have their seat of government removed to the Susquehanna. If the inhabitants of the different states consider it as a grievance to attend a *county court* or the *seat* of their *own government*, when a little inconvenient, can it be supposed they would ever *submit* to have a *national government* established, the *seat* of which would be more than a thousand miles removed from some of them? It was insisted that governments of a *republican nature*, are those *best* calculated to *preserve* the *freedom* and *happiness* of the citizen—That governments of *this kind*, are only calculated for a territory but *small* in its extent; that the only method by which an extensive continent like America could be connected and united together consistent with the principles of freedom, must be by having a number of strong and energetic state governments for securing and protecting the rights of *individuals* forming those governments, and for regulating all their concerns; and a strong energetic *federal* government over those states for the protection and preservation, and for regulating the common concerns of the state. It was further insisted, that even if it was possible to effect a total abolition of the state governments at this time, and to establish one general government over the people of America, it could not long subsist, but in a little time would again be broken into a *variety* of governments of a *smaller extent*, similar in some manner to the present situation of this continent; the principle difference in all probability would be that the governments, so established, being affected by some violent convulsion, might not be formed on principles so favorable to liberty as those of our present state governments—That this ought to be an important consideration to such of the states who had *excellent* governments, which was the case with Maryland and most others, whatever it might be to persons who disapproving of their particular state government would be willing to *hazard* every thing to

overturn and destroy it. These reasons, sir, influenced me to vote against two branches in the legislature, and against every part of the system which was repugnant to the principles of a federal government—Nor was there a single argument urged, or reason assigned, which to my mind was satisfactory, to prove that a good government on *federal* principles was unattainable, the whole of their arguments only proving, what none of us controverted, that our federal government as *originally formed*, was *defective*, and *wanted amendment*—However, a *majority* of the convention hastily and inconsiderately, without condescending to make a fair trial, in their great wisdom, deciding that a kind of government which a Montesquieu and a Price have declared the best calculated of any to preserve internal liberty, and to enjoy external strength and security, and the only one by which a large continent can be connected and united, consistent with the principles of liberty was totally impracticable, and they acted accordingly.

With respect to that part of the *second* section of the *first* article, which relates to the apportionment of representation and direct taxation, there were considerable objections made to it, besides the great objection of inequality—It was urged, that no principle could justify taking *slaves* into computation in apportioning the number of *representatives* a state should have in the government—That it involved the absurdity of increasing the power of a state in making laws for *free men* in proportion as that state violated the rights of freedom—That it might be proper to take slaves into consideration, when *taxes* were to be apportioned, because it had a tendency to *discourage slavery*; but to take them into account in giving representation tended to *encourage* the *slave trade*, and to make it the *interest* of the states to *continue* that *infamous traffic*—That slaves could not be taken into account as *men*, or *citizens*, because they were not admitted to the *rights of citizens*, in the states which adopted or continued slavery—If they were to be taken into account as *property*, it was asked, what peculiar circumstance should render this property (of all others the most odious in its nature) entitled to the high privilege of conferring consequence and power in the government to its possessors, rather than *any other* property: and why *slaves* should, as property, be taken into account rather than horses, cattle, mules, or any other species; and it was observed by an honorable member from Massachusetts, that he considered it as dishonorable and humiliating to enter into compact with the *slaves* of the *southern states*, as it would with the *horses* and *mules* of the *eastern*. It was also objected, that the numbers of representatives appointed by this section to be sent by the particular states to compose the first legislature, were not precisely agreeable to the rule of representation adopted by this system, and that the numbers in this section are artfully lessened for the large states, while the smaller

states have their full proportion in order to prevent the undue influence which the large states will have in the government from being too apparent; and I think, Mr. Speaker, that this objection is well founded. I have taken some pains to obtain information of the number of freemen and slaves in the different states, and I have reason to believe, that if the estimate was *now* taken, which is directed, and one delegate to be sent for every thirty thousand inhabitants, that Virginia would have at least *twelve* delegates, Massachusetts eleven, and Pennsylvania *ten*, instead of the number stated in *this section*; whereas the *other* states, I believe, would not have more than the number there allowed them, nor would Georgia, most probably, at present, send more than *two*—If I am right, Mr. Speaker, upon the enumeration being made, and the representation being apportioned according to the rule prescribed, the whole number of delegates would be *seventy-one*, *thirty-six* of which would be a *quorum* to do business; the Delegates of Virginia, Massachusetts and Pennsylvania, would amount to thirty-three of that quorum—Those three states, will, therefore, have much more than equal power and influence in making the laws and regulations, which are to affect this continent, and will have a moral certainty of preventing any laws or regulations which they disapprove, although they might be thought ever so necessary by a great majority of the states. It was further objected, that even if the states who had most inhabitants ought to have a greater number of delegates, yet the number of delegates ought not to be in exact proportion to the number of inhabitants, because the influence and power of those states whose delegates are numerous, will be greater when compared to the influence and power of the other states, than the proportion which the numbers of their delegates bear to each other; as for instance, though Delaware has *one* delegate and Virginia but *ten*, yet Virginia has more than *ten times* as much *power* and *influence* in the government as Delaware: to prove this, it was observed that Virginia would have a much greater chance to carry any measure than any number of states whose delegates were altogether ten, (suppose the states of Delaware, Connecticut, Rhode Island, and New Hampshire) since the ten delegates from Virginia, in every thing that related to the interest of that state would *act in union*, and move one solid and compact body, whereas the delegates of these four states, though collectively equal in number to those from Virginia, coming from different states having different interests, will be less likely to harmonize and move in concert. As a further proof, it was said, that Virginia, as the system is now reported, by uniting with her the delegates of *four* other states, can carry a question against the sense and interest of the eight states by sixty-four different combinations; the *four* states voting with Virginia, being every time so far different as not to be composed of the same four; whereas the state of Delaware can only, by uniting four other states with

her, carrying a measure against the sense of eight states by *two* different combinations—a mathematical proof that the state of Virginia has thirty-two times greater chance of carrying a measure against the sense of eight states than Delaware, although Virginia has only ten times as many delegates: It was also shewn, that the idea was totally fallacious which was attempted to be maintained, that if a state had one-thirteenth part of the numbers composing the delegation in this system, such state would have as much influence as under the articles of confederation: to prove the fallacy of this idea, it was shewn, that under the articles of confederation the state of Maryland had but one vote in thirteen, yet no measure could be carried against her interests without seven states, a majority of the whole concurring in it; whereas in this system, though Maryland has six votes, which is more than the proportion of *one* in *thirteen*, yet *five* states may, in a variety of combinations, carry a question against her interest, though seven other states concur with her, and six states, by a much greater number of combinations, may carry a measure against Maryland, united with six other states. I shall here, sir, just observe, that as the committee of detail reported the system, the delegates from the different states were to be one for every forty thousand inhabitants; it was afterwards altered to one for every thirty thousand; this alteration was made after I left the convention, at the instance of whom I know not; but it is evident, that the alteration is in favor of the states which have large and extensive territory, to increase their power and influence in the government, and to the injury of the smaller states—Since it is the states of extensive territory, who will most speedily increase the number of their inhabitants, as before has been observed, and will therefore, most speedily procure an increase to the number of their delegates—By this alteration, Virginia, North Carolina, or Georgia, by obtaining one hundred and twenty thousand additional inhabitants, will be entled to four additional delegates, whereas such state would only have been entitled to three, if forty thousand had remained, the number by which to apportion the delegation. As to that part of this section that relates to direct taxation, there was also an objection for the following reasons: It was said that a large sum of money was to be brought into the national treasury by the duties on commerce, which would be almost wholly paid by the commercial states; it would be unequal and unjust, that the sum which was necessary to be raised by direct taxation should be apportioned equally upon all the states, obliging the commercial states to pay as large a share of the revenue arising therefrom, as the states from whom no revenue had been drawn by imposts; since the wealth and industry of the inhabitants of the commercial states will in the first place be severely taxed through their commerce, and afterwards be equally taxed with the industry and wealth of the inhabitants of the other states, who have paid no part of that revenue.

so that by this provision, the inhabitants of the commercial states are in this system obliged to bear an unreasonable and disproportionate share in the expenses of the union, and the payment of that foreign and domestic debt, which was incurred not more for the benefit of the commercial, than of the other states.

In the sixth section of the first article, it is provided, that senators and representatives may be appointed to any civil office under the authority of the United States, except such as shall have been created, or the emoluments of which have been increased during the time for which they were elected: upon this subject, sir, there was a great diversity of sentiment among the members of the convention—As the propositions were reported by the committee of the whole house, a senator or representative could not be appointed to any office under a particular state, or under the United States, during the time for which they were chosen, nor to any office under the United States until one year after the expiration of that time. It was said, and in my opinion justly, that no good reason could be assigned why a senator or representative should be incapacitated to hold an office in his own government, since it can only bind him more closely to his state, and attach him the more to its interests, which, as its representative, he is bound to consult and sacredly guard, as far as is consistent with the welfare of the union; and therefore, at most, would only add the additional motive of gratitude for discharging his duty; and according to this idea, the clause which prevented senators or delegates from holding offices in their own states, was rejected by a considerable majority; but, sir, we sacredly endeavored to preserve all that part of the resolution which prevented them from being eligible to offices under the United States, as we considered it *essentially necessary* to preserve the integrity, independence and dignity of the legislature, and to secure its members from corruption.

I was in the number of those who were extremely solicitous to preserve this part of the report; but there was a powerful opposition made by such who wished the members of the legislature to be eligible to offices under the United States—Three different times did they attempt to procure an alteration, and as often failed, a majority firmly adhering to the resolution as reported by the committee; however, an alteration was at length by dint of perseverance, obtained even within the last twelve days of the convention, for it happened after I left Philadelphia—As to the exception that they cannot be appointed to offices created by themselves, or the emoluments of which are by themselves increased, it is certainly of little consequence, since they may easily evade it by creating new offices, to which may be appointed the persons who fill the offices before created, and thereby vacancies will be made, which may be filled by the members who for that purpose have created the new offices.

It is true, the acceptance of an office vacates their seat, nor can they be re-elected during their continuance in office; but it was said, that the evil would first take place; that the price for the office would be paid before it was obtained; that vacating the seat of the person who was appointed to office, made way for the admission of a new member, who would come there as desirous to obtain an office as him whom he succeeded, and as ready to pay the price necessary to obtain it; in fine, that it would be only driving away the flies who were filled, to make room for those that were hungry—And as the system is now reported, the president having the power to nominate to *all offices*, it must be evident, that there is no possible security for the integrity and independence of the legislature, but that they are most unduly placed under the influence of the president, and exposed to *bribery* and *corruption*.

The seventh section of this article was also the subject of contest--It was thought by many members of the convention, that it was very wrong to confine the origination of all revenue bills to the house of representatives, since the members of the senate will be chosen by the people as well as the members of the house of delegates, if not immediately, yet mediately, being chosen by the members of the state legislature, which members are elected by the people, and that it makes no real difference whether we do a thing in person, or by a deputy, or agent appointed by us for that purpose.

That no argument can be drawn from the house of lords in the British constitution, since they are neither mediately nor immediately the representatives of the people, but are one of the *three estates*, composing that kingdom, having hereditary rights and privileges, distinct from, and independent of the people.

That it may, and probably will be, a future source of dispute and controversy between the two branches, what are, or are not revenue bills, and the more so, as they are not defined in the constitution ; which controversies may be difficult to settle, and may become serious in their consequences, there being no power in the constitution to decide upon, or authorized in cases of absolute necessity to terminate them by a prorogation or dissolution of either of the branches : a remedy provided in the British constitution, where the king has that power, which has been found necessary at times to be exercised in case of violent dissentions between the lords and commons on the subject of money bills.

That every regulation of commerce; every law relative to excises, stamps, the post-office, the imposing of taxes, and their collection; the creation of courts and offices; in fine, every law for the union, if enforced by any pecuniary sanctions, as they would tend to bring money into the continental treasury, might, and no doubt would be considered a revenue act, that consequently the senate, the members of whom will it may be presumed, be the most select in their choice, and consist of men the most enlightened, and of

the greatest abilities, who from the duration of their appointment and the permanency of their body, will probably be best acquainted with the common concerns of the states, and with the means of providing for them, will be rendered almost useless as a part of the legislature; and that they will have but little to do in that capacity, except patiently to wait the proceedings of the house of representatives, and afterwards examine and approve, or propose amendments.

There were also objections to that part of this section which relates to the negative of the president—There were some who thought no good reason could be assigned for giving the president a negative of any kind—Upon the principle of a check to the proceedings of the legislature, it was said to be unnecessary; that the two branches having a control over each others proceedings, and the senate being chosen by the state legislatures, and being composed of members from the different states, there would always be a sufficient guard against measures being hastily or rashly adopted.

That the president was not likely to have more wisdom or integrity than the senators, or any of them, or to better know or consult the interest of the states, than any member of the senate, so as to be entitled to a negative on that principle—And as to the precedent from the British constitution (for we were eternally troubled with arguments and precedents from the British government) it was said it would not apply. The king of Great Britian there composed one of the *three estates* of the kingdom; he was possessed of rights and privileges as such, distinct from the lords and commons; rights and privileges which descended to his heirs, and were inheritable by them; that for the preservation of these it was necessary he should have a negative, but that this was not the case with the president of the United States, who was no more than an officer of government, the sovereignty was not in him, but in the legislature: And it was further urged, even if he was allowed a negative, it ought not to be of so great extent as that given by the system, since his single voice is to countervail the whole of either branch and any number less than two thirds of the other; however a majority of the convention was of a different opinion, and adopted it as it now makes a part of the system.

By the eighth section of this article, congress is to have power to lay and collect taxes, duties, imposts and excises. When we met in convention after our adjournment, to receive the report of the committee of detail, the members of that committee were requested to inform us, what powers were meant to be vested in congress by the word duties in this section, since the word imposts extended to duties on goods imported, and by another part of the system no duties on exports were to be laid: In answer to this inquiry we were informed, that it was meant to give the general government the power of laying stamp duties on paper, parchment,

and vellum. We then proposed to have the power inserted in *express words*, least disputes hereafter might arise on the subject, and that the meaning might be understood by all who were to be affected by it; but to this it was objected, because it was said that the word stamp would probably sound odiously in the ears of many of the inhabitants, and be a cause of objection. By the power of imposing *stamp duties* the congress will have a right to declare, that *no wills, deeds*, or other *instruments* of writing, shall be good and valid, without being stamped—that without being reduced to writing, and being stamped, no bargain, sale, transfer of property or contract of any kind or nature whatsoever shall be binding; and also that no exemplifications of records, depositions, or probates of any kind shall be received in evidence, unless they have the same solemnity—They may likewise oblige all proceedings of a judicial nature to be stamped to give them effect—Those stamp duties may be imposed to any amount they please, and under the pretence of securing the collection of these duties, and to prevent the laws which imposed them from being evaded, the congress may bring the decision of all questions relating to the conveyance, disposition and rights of property, and every question relating to contracts between man and man, into the courts of the general government; their inferior courts in the first instance and the superior court by appeal. By the power to lay and collect imposts, they may impose duties on any or every article of commerce imported into these states to what amount they please. By the power to lay excises, a power very odious in its nature, since it authorises officers to go into your houses, your kitchens, your cellars, and to examine into your private concerns, the congress may impose duties on every article of use or consumption, on the food that we eat, on the liquors that we drink, on the clothes that we wear, the glass which enlighten our houses, or the hearths necessary for our warmth and comfort. By the power to lay and collect taxes, they may proceed to *direct taxation* on every individual, either by a *capitation* tax on their heads, or an assessment on their property. By this part of the section therefore, the government has power to lay what duties they please on goods imported; to lay what duties they please afterwards on whatever we use or consume; to impose stamp duties to what amount they please, and in whatever case they please: afterwards to impose on the people direct taxes, by capitation tax, or by assessment, to what amount they choose, and thus to sluice them at every vein as long as they have a drop of blood, without any control, limitation, or restraint; while all the officers for collecting these taxes, stamp duties, imposts, and excises, are to be appointed by the general government, under its directions, not accountable to the states; nor is there even a security that they shall be citizens of the respective states, in which they are to exercise their offices; at the same time the construction of every law imposing any and all these taxes and duties, and di-

recting the collection of them, and every question arising thereon, and on the conduct of the officers appointed to execute these laws, and to collect these taxes and duties so various in their kinds, are taken away from the courts of justice of the different states, and confined to the courts of the general government, there to be heard and determined by judges holding their offices under the appointment not of the states, but of the general government.

Many of the members, and myself in the number, thought that states were much better judges of the circumstances of their citizens, and what sum of money could be collected from them by *direct taxation*, and of the manner in which it could be raised, with the greatest ease and convenience to their citizens, than the general government could be; and that the general government ought not to have the power of laying direct taxes in any case, but in that of the delinquency of a state. Agreeable to this sentiment, I brought in a proposition on which a vote of the convention was taken, the proposition was as follows: "And whenever the legislature of the United States shall find it necessary that revenue should be raised by direct taxation, having apportioned the same by the above rule, requisitions shall be made of the respective states to pay into the continental treasury their respective quotas, within a time in the said requisition to be specified, and in case of any of the states failing to comply with such requisition, then and then only, to have power to devise and pass acts directing the mode and authorising the collection of the same."

Had this proposition been acceded to, the dangerous and oppressive power in the general government of imposing direct taxes on the inhabitants, which it now enjoys in all cases, would have been only vested in it, in case of the non-compliance of a state, as a punishment for its delinquency, and would have ceased the moment that the state complied with the requisition—But the proposition was rejected by a majority, consistent with their aim and desire of increasing the power of the general government as far as possible, and destroying the powers and influence of the states. And though there is a provision that all duties, imposts and excises shall be uniform, that is, to be laid to the same amount on the same articles in each state, yet this will not prevent congress from having it in their power to cause them to fall *very unequal* and *much heavier* on *some* states than on others, because these duties may be laid on articles but little or not at all used in some states, and of absolute necessity for the use and consumption of others, in which case the first would pay little or no part of the revenue arising therefrom, while the whole or nearly the whole of it would be paid by the last, to wit, the states which use and consume the articles on which the imposts and excises are laid.

By our original articles of confederation, the congress have power to borrow money and emit bills of credit on the credit of the United States; agreeable to which was the report on this sys-

tem as made by the *committee of detail.* When we came to this part of the report, a motion was made to strike out the words "to emit bills of credit;" against the motion we urged, that it would be improper to deprive the congress of that power; that it would be a novelty unprecedented to establish a government which should not have such authority. That it was impossible to look forward into futurity so far as to decide, that events might not happen that should render the exercise of such a power absolutely necessary; and that we doubted, whether if a war should take place it would be possible for this country to defend itself, without having recourse to paper credit, in which case there would be a necessity of becoming a *prey* to our *enemies*, or violating the consitution of our government; and that considering the administration of the government would be principally in the hands of the wealthy, there could be little reason to fear an abuse of the power by an unnecessary or injurious exercise of it. But, sir, a majority of the convention, being wise beyond every event, and being willing to risk any political evil rather than admit the idea of a paper emission, in any possible case, refused to trust this authority to a government, to which they were lavishing the most unlimited powers of taxation, and to the mercy of which they were willing blindly to trust the liberty and property of the citizens of every state in the union; and they erased that clause from the system. Among other powers given to this government in the eighth section, it has that of appointing tribunals inferior to the supreme court; to this power there was an opposition. It was urged, that there was no occasion for inferior courts of the general government to be appointed in the different states, and that such ought not to be admitted—That the different state judiciaries in the respective states would be competent to, and sufficient for the cognizance in the first instance of all cases that should arise under the laws of the general government, which being by this system made the supreme law of the states, would be binding on the different state judiciaries—That by giving an *appeal* to the *supreme court* of the United States, the general government would have a *sufficient* check over their decisions, and security for the enforcing of their laws—That to have inferior courts appointed under the authority of congress in the different states, would eventually absorb and swallow up the state judiciaries, by drawing all business from them to the courts of the general government, which the *extensive* and *undefined* powers, legislative and judicial, of which it is possessed, would easily enable it to do--That it would unduly and dangerously increase the weight and influence of congress in the several states, be productive of a prodigious number of officers, and be attended with an enormous additional and unnecessary expense—That the judiciaries of the respective states not having power to decide upon the laws of the general government, but the determination of those laws being confined to the judiciaries appointed under the author

ity of congress in the first instance, as well as on appeal, there would be a necessity for judges or magistrates of the general government, and those to a considerable number, in each county of every state—That there would be a necessity for courts to be holden by them in each county, and that these courts would stand in need of all the proper officers, such as sheriffs, clerks and others, commissioned under the authority of the general government; in fine, that the administration of justice, as it will relate to the laws of the general government, would require in each state all the magistrates, courts, officers and expense, which is now found necessary in the respective states for the administration of justice as it relates to the laws of the state governments. But here again we were overruled by a majority, who *assuming* it as a principle that the general government and the state governments (as long as they should exist) would be at perpetual variance and enmity, and that their interests would constantly be opposed to each other, insisted for that reason that the state judges being citizens of their respective states, and holding their commissions under them, ought not, though acting on oath, to be entrusted in the administration of the laws of the general government.

By the eighth section of the first article, the congress have also a power given them to raise and support armies without any limitation as to numbers, and without any restriction in time of peace. Thus, sir, this plan of government, instead of *guarding against a standing army*, that engine of arbitrary power, which has so often and so successfully been used for the subversion of freedom, has in its formation, given it an express and constitutional sanction, and hath *provided for its introduction*; nor could this be prevented. I took the sense of the convention on a proposition, by which the congress should not have power, in time of peace, to keep embodied more than a certain number of regular troops—that number to be ascertained by what should be considered a respectable peace establishment. This proposition was rejected by a majority, it being their determination, that the power of congress to keep up a standing army, even in peace, should only be restrained by their will and pleasure.

This section proceeds further to give a power to the congress to provide for the calling forth the militia, to execute the laws of the union, suppress insurrections and repel invasions. As to giving such a power there was no objection; but it was thought by some, that this power ought to be given with certain restrictions. It was thought that not more than a certain part of the militia of any one state, ought to be obliged to march out of the same, or be employed out of the same, at any one time, without the consent of the legislature of such state. This amendment I endeavored to obtain; but it met with the same fate, which attended almost every attempt to limit the powers given to the general government, and constitutionally to guard against their abuse, it was not adopted.

As it now stands, the congress will have the power, if they please, to march the whole militia of Maryland to the remotest part of the union, and keep them in service as long as they think proper, without being in any respect dependent upon the *government of Maryland* for this unlimited exercise of power over its citizens, all of whom, from the lowest to the greatest, may, during such service, be subjected to *military* law, and tied up and whipped at the halbert like the meanest of slaves.

By the next paragraph, congress is to have the power to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States.

For this *extraordinary* provision, by which the militia, the only defence and protection which the state can have for the security of their rights against arbitrary encroachments of the general government, is taken entirely out of the power of their respective states, and placed under the power of congress. It was speciously assigned as a reason, that the general government would cause the militia to be better regulated and better disciplined than the state governments, and that it would be proper for the whole militia of the union to have a uniformity in their arms and exercise. To this it was answered, that the reason however specious, was not just; that it would be absurd that the militia of the western settlements, who were exposed to an Indian enemy, should either be confined to the same arms or exercise, as the militia of the eastern or middle states; that the same penalties which would be sufficient to enforce an obedience to militia laws in some states, would be totally disregarded in others—That leaving the power to the several states, they would respectively best know the situation and circumstance of their citizens, and the regulations that would be necessary and sufficient to effect a well regulated militia in each—That we were satisfied the militia had heretofore been as well disciplined, as if they had been under the regulations of congress; and that the states would now have an additional motive to keep their militia in proper order, and fit for service, as it would be the only chance to preserve their existence against a general government, armed with powers sufficient to destroy them. These observations, sir, procured from some of the members an open avowal of those reasons, by which we believed before, that they were actuated.—They said, that as the states would be opposed to the general government, and at enmity with it, which, as I have already observed, they assumed as a principle, if the militia was under the control and the authority of the respective states, it would enable them to thwart and oppose the general government. They said the states ought to be at the mercy of the general government, and therefore, that the militia ought to be put under its power, and not suffered to remain under the power of the respective states. In answer to these declarations, it was urged, that if after having retained to

the general government the great powers already granted, and among those, that of raising and keeping up regular troops without limitations, the power over the militia should be taken away from the states, and also given to the general government, it ought to be considered as the *last coup de grace*, to the state governments; that it must be the most convincing proof, the advocates of this system design the *destruction* of the state governments, and that no professions, to the contrary, ought to be trusted; and that every state in the union ought to reject such a system with indignation, since, if the general government should attempt to oppress and enslave them they could not have any possible means of self-defence; because the proposed system, taking away from the states the right of organizing, arming and disciplining of the militia, the first attempt made by a state to put the militia in a situation to counteract the arbitrary measures of the general government, would be construed into an act of rebellion or treason; and congress would instantly march their troops into the state. It was further observed, that when a government wishes to deprive their citizens of freedom, and reduce them to slavery, it generally makes use of a standing army for that purpose, and leaves the militia in a situation as contemptible as possible, least they might oppose its arbitrary designs--That in this system, we give the general government every provision it could wish for, and even invite it to subvert the liberties of the states and their citizens, since we give them the right to increase and keep up a standing army as numerous as it would wish, and by placing the militia under its power, enable it to leave the militia totally unorganized, undisciplined, and even to disarm them; while the citizens, so far from complaining of this neglect, might even esteem it a favor in the general government, as thereby they would be freed from the burthen of militia duties, and left to their own private occupations or pleasures.—However, all arguments, and every reason that could be urged on this subject, as well as on many others, were obliged to yield to one that was *unanswerable*, a *majority* upon the division.

By the ninth section of this article, the importation of such persons as any of the states now existing, shall think proper to admit, shall not be prohibited prior to the year one thousand eight hundred and eight, but a duty may be imposed on such importation not exceeding ten dollars for each person.

The design of this clause is to prevent the general government from prohibiting the importation of slaves, but the same reasons which caused them to strike out the word "national," and not admit the word "stamps," influenced them here to guard against the word "*slaves*." They anxiously sought to avoid the admission of expressions which might be odious in the ears of Americans, although they were willing to admit into their system those things which the expressions signified: And hence it is, that the clause is so worded, as really to authorise the general government to impose

a duty of ten dollars on every foreigner who comes into a state to become a citizen, whether he comes absolutely free, or qualifiedly so as a servant; although this is contrary to the design of the framers, and the duty was only meant to extend to the importation of slaves.

This clause was the subject of a great diversity of sentiment in the convention; as the system was reported by the committee of detail, the provision was general, that such importation should not be prohibited, without confining it to any particular period. This was rejected by eight states—Georgia, South Carolina, and I think North Carolina, voting for it.

We were then told by the delegates of the two first of those states, that their states would never agree to a system which put it in the power of the general government to prevent the importation of slaves, and that they, as delegates from those states, must withhold their assent from such a system.

A committee of one member from each state was chosen by ballot, to take this part of the system under their consideration, and to endeavor to agree upon some report, which should reconcile those states; to this committee also was referred the following proposition, which had been reported by the committee of detail, viz: "No navigation act shall be passed without the assent of two thirds of the members present in each house;" a proposition which the staple and commercial states were solicitous to retain, lest their commerce should be placed too much under the power of the eastern states, but which these last states were as anxious to reject. This committee, of which also I had the honor to be a member, met and took under their consideration the subjects committed to them. I found the *eastern* states, notwithstanding their *aversion to slavery*, were very willing to indulge the southern states, at least with a temporary liberty to prosecute the *slave trade*, provided the southern states would in their turn gratify them, by laying no restriction on navigation acts, and after a very little time, the committee by a great majority, agreed on a report, by which the general government was to be prohibited from preventing the importation of slaves for a limited time, and the restrictive clause relative to navigation acts was to be omitted.

This report was adopted by a majority of the convention but not without considerable opposition. It was said, that we had just assumed a place among independent nations, in consequence of our opposition to the attempts of Great Britain to *enslave us*; that this opposition was grounded upon the preservation of those rights, to which God and nature had entitled us, not in *particular*, but in *common* with the rest of all mankind—That we had appealed to the Supreme Being for his assistance, as the God of freedom, who could not but approve our efforts to preserve the *rights* which he had thus imparted to his creatures; that now, when we scarcely had risen from our knees, from supplicating his aid and protection

—in forming our government over a free people, a government formed pretendedly on the principles of liberty and for its preservation; in that government to have a provision not only putting it out of its power to restrain and prevent the slave trade, even encouraging that most infamous traffic, by giving the states power and influence in the union, in proportion as they cruelly and wantonly sport with the rights of their fellow creatures, ought to be considered as a solemn mockery of, and insult to that God whose protection we had then implored, and could not fail to hold us up in detestation, and render us contemptible to every true friend of liberty in the world. It was said, it ought to be considered that national crimes can only be, and frequently are, punished in this world by national punishments, and that the continuance of the slave trade, and thus giving it a national sanction and encouragement, ought to be considered as justly exposing us to the displeasure and vengeance of Him, who is equally Lord of all, and who views with equal eye, the poor African slave and his American master!

It was urged, that by this system, we were giving the general government full and absolute power to regulate commerce, under which general power it would have a right to restrain, or totally prohibit the slave trade: it must therefore appear to the world absurd and disgraceful to the last degree, that we should except from the exercise of that power, the only branch of commerce which is unjustifiable in its nature, and contrary to the rights of mankind—That on the contrary we ought rather to prohibit expressly in our constitution, the further importation of slaves; and to authorise the general government from time to time, to make such regulations as should be thought most advantageous for the gradual abolition of slavery, and the emancipation of the slaves which are already in the states.

That slavery is inconsistent with the genius of republicanism, and has a tendency to destroy those principles on which it is supported, as it lessens the sense of the equal rights of mankind, and habituates us to tyranny and oppression. It was further urged, that by this system of government, every state is to be protected both from foreign invasion and from domestic insurrections; that from this consideration, it was of the utmost importance it should have a power to restrain the importation of slaves, since in proportion as the number of slaves were increased in any state, in the same proportion the state is weakened and exposed to foreign invasion, or domestic insurrection, and by so much less will it be able to protect itself against either; and therefore will by so much the more, want aid from, and be a burthen to the union. It was further said, that as in this system we were giving the general government a power under the idea of national character, or national interest, to regulate even our weights and measures, and have prohibited all possibility of emitting paper money, and passing in-

solvent laws, &c. it must appear still more extraordinary, that we should prohibit the government from interfering with the slave trade, than which nothing could so materially affect both our national honor and interest. These reasons influenced me both on the committee and in convention, most decidedly to oppose and vote against the clause, as it now makes a part of the system.

You will perceive, sir, not only that the general government is prohibited from interfering in the slave trade before the year eighteen hundred and eight, but that there is no provision in the constitution that it shall afterwards be prohibited, nor any security that such prohibition will ever take place; and I think there is great reason to believe that if the importation of slaves is permitted until the year eighteen hundred and eight, it will not be prohibited afterwards: At this time we do not generally hold this commerce in so great abhorrence as we have done—When our liberties were at stake, we warmly felt for the common rights of men—The danger being thought to be past, which threatened ourselves, we are daily growing more insensible to those rights—In those states who have restrained or prohibited the importation of slaves, it is only done by legislative acts which may be repealed—When those states find that they must in their national character and connexion suffer in the disgrace, and share in the inconveniences attendant upon that detestable and iniquitous traffic, they may be desirous also to share in the benefits arising from it, and the odium attending it will be greatly effaced by the sanction which is given to it in the general government.

By the next paragraph, the general government is to have a power of suspending the *habeas corpus act*, in cases of *rebellion* or *invasion*.

As the state governments have a power of suspending the habeas corpus act in those cases, it was said, there could be no reason for giving such a power to the general government, since, whenever the state which is invaded, or in which an insurrection takes place, finds its safety requires it, it will make use of that power—And it was urged, that if we gave this power to the general government, it would be an engine of oppression in its hands, since whenever a state should oppose its views, however arbitrary and unconstitutional, and refuse submission to them, the general government may declare it an act of rebellion, and suspending the habeas corpus act, may seize upon the persons of those advocates of freedom, who have had virtue and resolution enough to excite the opposition, and may imprison them during its pleasure in the remotest part of the union, so that a citizen of Georgia might be *bastiled* in the furthest part of New Hampshire; or a citizen of New Hampshire in the furthest extreme to the south, cut off from their family, their friends, and their every connexion—These considerations induced me, sir, to give my negative also to this clause.

In this same section there is a provision that no preference shall be given to the ports of one state over another, and that vessels bound to or from one state shall not be obliged to enter, clear, or pay duties in another. This provision, as well as that which relates to the uniformity of impost duties and excises, was introduced, sir, by the delegation of this state—Without such a provision, it would have been in the power of the general government to have compelled all ships sailing into, or out of the Chesapeake, to clear and enter at Norfolk, or some port in Virginia—a regulation which would be extremely injurious to our commerce, but which would, if considered merely as to the interest of the union, perhaps not be thought unreasonable, since it would render the collection of the revenue arising from commerce more certain and less expensive.

But, sir, as the system is now reported, the general government have a power to establish what ports they please in each state, and to ascertain at what ports in every state ships shall clear and enter in such state; a power which may be so used as to destroy the effect of that provision, since by it may be established a port in such a place, as shall be so inconvenient to the states, as to render it more eligible for their shipping to clear and enter in another, than in their own states. Suppose, for instance, the general government should determine that all ships which cleared or entered in Maryland, should clear and enter at Georgetown, on Potomac, it would oblige all the ships which sailed from, or were bound to, any other port of Maryland, to clear or enter in some port in Virginia. To prevent such a use of the power which the general government now has of limiting the number of ports in a state, and fixing the place or places where they shall be, we endeavored to obtain a provision, that the general government should only, in the first instance, have authority to ascertain the number of ports proper to be established in each state, and transmit information thereof to the several states, the legislatures of which, respectively, should have the power to fix the places where those ports should be, according to their idea what would be most advantageous to the commerce of their state, and most for the ease and convenience of their citizens; and that the general government should not interfere in the establishment of the places, unless the legislature of the state should neglect or refuse so to do; but we could not obtain this alteration.

By the tenth section every state is prohibited from emitting bills of credit—As it was reported by the committee of detail, the states were only prohibited from emitting them without the consent of congress: but the convention was so smitten with the paper money dread, that they insisted the prohibition should be absolute. It was my opinion, sir, that the states ought not to be totally deprived of the right to emit bills of credit, and that as we had not given an authority to the general government for that pur-

pose, it was the more necessary to retain it in the states. I considered that this state, and some others, have formerly received great benefit from paper emissions, and that if public and private credit should once more be restored, such emissions may hereafter be equally advantageous; and further, that it is impossible to foresee that events may not take place which shall render paper money of absolute necessity; and it was my opinion, if this power was not to be exercised by a state without the permission of the general government, it ought to be satisfactory even to those who were the most haunted by the apprehensions of paper money; I therefore thought it my duty to vote against this part of the system.

The same section, also, puts it out of the power of the states, to make any thing but gold and silver coin a tender in payment of debts, or to pass any law impairing the obligation of contracts.

I considered, sir, that there might be times of such great public calamities and distress, and of such extreme scarcity of specie, as should render it the duty of a government, for the preservation of even the most valuable part of its citizens, in some measure to interfere in their favor, by passing laws totally or partially stopping courts of justice, or authorizing the debtor to pay by instalments, or by delivering up his property to his creditors at a reasonable and honest valuation. The times have been such as to render regulations of this kind necessary in most, or all of the states, to prevent the wealthy creditor and the monied man from totally destroying the poor, though industrious debtor—Such times may again arrive. I therefore voted against depriving the states of this power—a power which I am decided they ought to possess, but which I admit ought only to be exercised on very important and urgent occasions. I apprehend, sir, the principle cause of complaint among the people at large is, the public and private debt with which they are oppressed and which, in the present scarcity of cash, threatens them with destruction, unless they can obtain so much indulgence in point of time, that by industry and frugality, they may extricate themselves.

This government proposal, I apprehend, so far from removing, will greatly increase those complaints, since grasping in its all powerful hand the citizens of the respective states, it will, by the imposition of the variety of taxes, imposts, stamps, excises, and other duties, squeeze from them the little money they may acquire, the hard earnings of their industry, as you would squeeze the juice from an orange, till not a drop more can be extracted, and then let loose upon them their private creditors, to whose mercy it consigns them, by whom their property is to be seized upon and sold in this *scarcity of specie at a sheriff's sale*, where nothing but ready cash can be received, *for a tenth part of its value*, and themselves and their families to be consigned to indigence and distress, without their governments having a power to give them a moment's indulgence, however necessary it might be, and however desirous to grant them aid.

By this same section, every state is also prohibited from laying any imposts, or duties on imports or exports, without the permission of the general government. It was urged, that as almost all sources of taxation were given to congress, it would be but reasonable to leave the states the power of bringing revenue into their treasuries, by laying a duty on exports, if they should think proper, which might be so light as not to injure or discourage industry, and yet might be productive of considerable revenue—Also that there might be cases in which it would be proper, for the purpose of encouraging manufactures, to lay duties to prohibit the exportation of raw materials, and even in addition to the duties laid by congress on imports for the sake of revenue, to lay a duty to discourage the importation of particular articles into a state, or to enable the manufacturer here to supply us on as good terms as they could be obtained from a foreign market; however, the most we could obtain was, that this power might be exercised by the states with, and only with the consent of congress, and subject to its control—and so anxious were they to seize on every shilling of our money for the general government, that they insisted even the little revenue that might thus arise, should not be appropriated to the use of the respective states where it was collected, but should be paid into the treasury of the United States; and accordingly it is so determined.

The second article relates to the executive—his mode of election—his powers—and the length of time he should continue in office.

On these subjects there was a great diversity of sentiment; many of the members were desirous that the president should be elected for seven years, and not to be eligible a second time; others proposed that he should not be absolutely ineligible, but that he should not be capable of being chosen a second time, until the expiration of a certain number of years—The supporters of the above propositions, went upon the idea that the best security for liberty was a limited duration, and a rotation of office, in the chief executive department.

There was a party who attempted to have the president appointed during good behaviour, without any limitation as to time, and not being able to succeed in that attempt, they then endeavored to have him re-eligible without any restraint. It was objected that the choice of a president to continue in office during good behaviour, would be at once rendering our system an elective monarchy; and, that if the president was to be re-eligible without any interval of disqualification, it would amount nearly to the same thing, since the powers that the president is to enjoy, and the interests and influence with which they will be attended, he will be almost absolutely certain of being re-elected from time to time, as long as he lives: As the propositions were reported by the committee of the

whole house, the president was to be chosen for seven years, and not to be eligible at any time after. In the same manner the proposition was agreed to in convention, and so it was reported by the committee of detail, although a variety of attempts were made to alter that part of the system by those who were of a contrary opinion, in which they repeatedly failed; but, sir, by never losing sight of their object, and choosing a proper time for their purpose, they succeeded at length in obtaining the alteration, which was not made until within the last twelve days before the convention adjourned.

As the propositions were agreed to by the committee of the whole house, the president was to be appointed by the national legislature, and as it was reported by the committee of detail, the choice was to be made by ballot, in such a manner that the states should have an equal voice in the appointment of this officer, as they, of right, ought to have; but those who wished as far as possible, to establish a national, instead of a federal government, made repeated attempts to have the president chosen by the people at large; on this the sense of the convention was taken, I think not less than three times while I was there, and as often rejected; but within the last fortnight of their session, they obtained the alteration in the manner it now stands, by which the large states have a very undue influence in the appointment of the president. There is no case where the states will have an equal voice in the appointment of the president, except where two persons shall have an equal number of votes, and those a majority of the whole number of electors, a case very unlikely to happen, or where no person has the majority of the votes; in these instances the house of representatives are to choose by ballot, each state having an equal voice; but they are confined in the last instance to the five who have the greatest number of votes, which gives the largest states a very unequal chance of having the president chosen under their nomination.

As to the vice-president, that great officer of government, who is, in case of death, resignation, removal, or inability of the president, to supply his place, and be vested with his powers, and who is officially to be the president of the senate, there is no provision by which a majority of the voices of the electors are necessary for his appointment, but after it is decided who is chosen president, that person who has the next number of votes of the electors, is declared to be legally elected to the vice-presidency, so that by this system it is very possible, and not improbable, that he may be appointed by the electors of a single large state; and a very undue influence in the senate is given to that state of which the vice-president is a citizen, since in every question where the senate is divided that state will have two votes, the president having on those occasions a casting voice. Every part of the system which relates to the vice-president, as well as the present mode of electing the

president, was introduced and agreed upon after I left Philadelphia.

Objections were made to that part of this article, by which the president is appointed commander in chief of the army and navy of the United States, and of the militia of the several states, and it was wished to be so far restrained, that he should not command in person; but this could not be obtained. The power given to the president of granting reprieves and pardons, was also thought extremely dangerous, and as such opposed—The president thereby has the power of pardoning those who are guilty of treason, as well as of other offences; it was said that no treason was so likely to take place as that in which the president himself might be engaged—The attempt to assume to himself powers not given by the constitution, and establish himself in regal authority; in which attempt a provision is made for him to secure from punishment the creatures of his ambition, the associates and abettors of his treasonable practices, by granting them pardons, should they be defeated in their attempts to subvert the constitution.

To that part of this article also, which gives the president a right to *nominate*, and with the consent of the senate to appoint all the officers, civil and military, of the United States, there were considerable opposition—it was said that the person who *nominates*, will always in reality *appoint*, and that this was giving the president a power and influence, which together with the other powers bestowed upon him, would place him above all restraint or control. In fine, it was urged, that the president as here constituted, was a KING, in every thing but the name; that though he was to be chosen for a limited time, yet at the expiration of that time, if he is not re-elected, it will depend entirely upon his own moderation whether he will resign that authority with which he has once been invested—that from his having the appointment of all the variety of officers in every part of the civil department for the union, who will be very numerous, in them and their connexions, relations, friends and dependents, he will have a formidable host devoted to his interest, and ready to support his ambitious views. That the army and navy, which may be increased without restraint as to numbers, the officers of which, from the highest to the lowest, are all to be appointed by him, and dependent on his will and pleasure, and commanded by him in person, will, of course, be subservient to his wishes, and ready to execute his commands; in addition to which, the militia are also entirely subjected to his orders—That these circumstances, combined together, will enable him, when he pleases, to become a *king* in *name*, as well as in *substance*, and establish himself in office not only for his own life, but even if he chooses, to have that authority perpetuated to his family.

It was further observed, that the only appearance of responsibility in the president, which the system holds up to our view, is the provision for impeachment; but that when we reflect that he can-

not be impeached but by the house of delegates, and that the members of this house are rendered dependent upon, and unduly under the influence of the president, by being appointable to offices of which he has the sole nomination, so that without his favor and approbation, they cannot obtain them, there is little reason to believe that a majority will ever concur in impeaching the president, let his conduct be ever so reprehensible, especially too, as the final event of that impeachment will depend upon a different body, and the members of the house of delegates will be certain, should the decision be ultimately in favor of the president to become thereby the objects of his displeasure, and to bar to themselves every avenue to the emoluments of government.

Should he, contrary to probability, be impeached, he is afterwards to be tried and adjudged by the senate, and without the concurrence of two thirds of the members who shall be present, he cannot be convicted—This senate being constituted a privy council to the president, it is probable many of its leading and influential members may have advised or concurred in the very measures for which he may be impeached; the members of the senate also are by the system, placed as unduly under the influence of, and dependent upon, the president, as the members of the other branch, since they also are appointable to offices, and cannot obtain them but through the favor of the president—There will be great, important and valuable offices under this government, should it take place, more than sufficient to enable him to hold out the expectation of one of them to *each* of the senators—Under these circumstances, will any person conceive it to be difficult for the president always to secure to himself more than one third of that body? Or, can it reasonably be believed, that a criminal will be convicted, who is constitutionally empowered to bribe his judges, at the head of whom is to preside on those occasions the chief justice, which officer in his original appointment, must be *nominated* by the president, and will therefore, probably, be appointed not so much for his eminence in legal knowledge and for his integrity, as from favoritism and influence, since the president knowing that in case of impeachment the chief justice is to preside at his trial, will naturally wish to fill that office with a person of whose voice and influence he shall consider himself secure. These are reasons to induce a belief, that there will be but little probability of the president ever being either impeached or convicted; but it was also urged, that vested with the powers which the system gives him, and with the influence attendant upon those powers, to him it would be of little consequence whether he was impeached or convicted, since he will be able to set both at defiance. These considerations occasioned a part of the convention to give a negative to this part of the system establishing the executive as it is now offered for our acceptance.

By the *third article*, the judicial power of the United States is vested in *one supreme court*, and in such *inferior courts*, as the

congress may from time to time ordain and establish: These courts, and *these only*, will have a right to decide upon the laws of the United States, and all questions arising upon their construction, and in a judicial manner to carry those laws into execution; to which the courts both superior and inferior of the respective states and their judges and other magistrates are rendered incompetent. To the courts of the general government are also *confined* all cases in law or equity, arising under the proposed constitution, and treaties made under the authority of the United States—all cases affecting ambassadors, other public ministers and consuls—all cases of admiralty and maritime jurisdiction—all controversies to which the United States are a party—all controversies between two or more 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. Whether therefore, any *laws* or *regulations* of the *congress*, or any *acts* of *its president* or *other officers* are *contrary to*, or not *warranted by*, the constitution, rests *only* with the judges who are *appointed* by congress to *determine*; by whose determinations *every state* must be *bound*.—Should any question arise between a foreign consul and any of the citizens of the United States, however remote from the seat of empire, it is to be heard before the judiciary of the general government, and in the *first* instance to be heard in the supreme court, however inconvenient to the parties, and however trifling the subject of dispute.

Should the mariners of an American or foreign vessel, while in any American port, have occasion to sue for their wages, or in any other instance a controversy belonging to the admiralty jurisdiction should take place between them and their masters or owners, it is in the courts of the general government the suit must be instituted; and either party may carry it by appeal to its supreme court: the injury to commerce and the oppression to individuals which may thence arise, need not be enlarged upon. Should a citizen of Virginia, Pennsylvania, or any other of the United States be indebted to, or have debts due from, a citizen of this state, or any other claim be subsisting on one side or the other, in consequence of commercial or other transactions, it is only in the courts of congress that either can apply for redress. The case is the same should any claim subsist between citizens of this state and foreigners, merchants, mariners, and others, whether of a commercial or of any other nature, they must be prosecuted in the same courts; and though in the first instance they may be brought in the inferior, yet an appeal may be made to the supreme judiciary, even from the remotest state in the union.

The inquiry concerning, and trial of every offence against, and breach of the laws of congress, are also *confined* to its courts; the same courts also have the *sole* right to inquire concerning and try every offence, from the lowest to the highest, committed by the ci-

tizens of any other state, or of a foreign nation, against the laws of this state within its territory—and in *all these cases* the decision may be ultimately brought before the supreme tribunal since the *appellate jurisdiction* extends to *criminal* as well as to civil cases.

And in all those cases where the general governmet has jurisdiction in civil questions, the proposed constitution not only makes no *provision for the trial by jury* in the first instance, but by its appellate jurisdiction absolutely takes away that inestimable privilege, since it expressly declares the supreme court shall have appellate jurisdiction both as to law and fact. Should therefore a jury be adopted in the *inferior* court, it would only be a needless *expence*, since on an appeal the *determination* of that jury, *even on questions of fact*, hower honest and upright, is to be of *no possible effect*—the supreme court is to take up *all questions of fact*—to *examine the evidence relative* thereto—to *decide upon* them in the *same manner* as if they had *never been tried by a jury*—nor is *trial by jury secured in criminal cases.* It is tre, that in the first instance, in the inferior court, the trial is to be by jury; in this and in this only, is the difference between criminal and civil cases.—But, sir, the *appellate jurisdiction extends*, as I have observed, to cases *criminal* as well as to civil, and on the *appeal* the *court* is to decide not only on the law but on the fact. If, therefore, *even* in *criminal* cases, the general government is not satisfied with the verdict of the jury, its officer may remove the prosecution to the supreme court, and *there* the *verdict of the jury is to be of no effect*, but the *judges of this court are to decide upon the fact* as well as the law, the same as in civil cases.

Thus, sir, jury trials, which have ever been the boast of the English constitution, which have been by our several state constitutions so cautiously secured to us—jury trials which have so long been considered the surest barrier against arbitrary power, and the palladium of liberty—with the loss of which the loss of our freedom may be dated, and taken away by the proposed form of government, not only in a great variety of questions between individual and individual, but in every case whether civil or criminal arising under the laws of the United States, or the execution of those laws. It is taken away in those very cases where of all others it is most essential for our liberty, to have it sacredly guarded and preserved, in every case, whether civil or criminal, between government and its officers on the one part, and the subject or citizen on the other. Nor was this the effect of inattention, nor did it arise from any real difficulty in establishing and securing jury trials by the proposed constitution, if the convention had wished so to do; but the same reason influenced here as in the case of the establishment of inferior courts; as they could not trust state judges, so would they not confide in state juries. They alledged that the general government and the state governments would always be at variance; that the citizens of the different states would en-

ter into the the views and interests of their respective states, and therefore ought not to be trusted in determining causes in which the general government was any way interested, without giving the general government an opportunity, if it disapproved the verdict of the jury, to appeal, and to have the facts examined into again and decided upon by its own judges, on whom it was thought a reliance might be had by the general government, they being appointed under its authority.

Thus, sir, in consequence of this appellate jurisdiction and its extension to facts as well as to law, every arbitrary act of the general government, and every oppression of all those variety of officers appointed under its authority for the collection of taxes, duties, impost, excise, and other purposes, must be submitted to by the individual, or must be opposed with little prospect of success, and almost a certain prospect of ruin, as least in those cases where the middle and common class of citizens are interested. Since to avoid that oppression, or to obtain redress, the application must be made to one of the courts of the United States—by good fortune should this application be in the first instance attended with success, and should damages be recovered equivalent to the injury sustained, an appeal lies to the supreme court, in which case the citizen must at once give up his cause, or he must attend to it at the distance of perhaps more than a thousand miles from the place of his residence, and must take measures to procure before that court on the appeal all the evidence necessary to support his action, which even if ultimately prosperous must be attended with a loss of time, a neglect of business, and an expense which will be greater than the original grievance, and to which men in moderate circumstances would be utterly unequal.

By the third section of this article, it is declared, that treason against the United States, shall consist in levying war against them, or in adhering to their enemies, giving them aid or comfort.

By the principles of the American revolution arbitrary power may and ought to be resisted even by arms if necessary—The time may come when it shall be the duty of a state, in order to preserve itself from the oppression of the general government, to have recourse to the sword—In which case the proposed form of government declares, that the state and every one of its citizens who act under its authority, are guilty of a direct act of treason; reducing by this provision the different states to this alternative, that they must tamely and passively yield to despotism, or their citizens must oppose it at the hazard of the halter if unsuccessful—and reducing the citizens of the state which shall take arms, to a situation in which they must be exposed to punishment, let them act as they will, since if they obey the authority of their state government, they will be *guilty of treason against the United States*—if they join the general government they will be guilty of treason against their own state.

To save the citizens of the respective states from this disagreeable dilemma, and to secure them from being punishable as *traitors* to the *United States*, when acting expressly in obedience to the authority of their own state, I wished to have obtained as an amendment to the third section of this article the following clause: "Provided, that no act or acts done by *one* or *more* of the states against the United States, or by any citizen of any one of the United States under the authority of one or more of the said states, shall be deemed *treason* or *punished as such*; but in case of war being levied by one or more of the states against the United States, the conduct of each party towards the other, and their adherents respectively, shall be regulated by the laws of war and of nations."

But this provision was not adopted, being too much opposed to the great object of many of the leading members of the convention, which was by all means to leave the states, at the *mercy* of the *general government*, since they could not succeed in their immediate and entire abolition.

By the third section of the fourth article, no new state shall be formed or erected within the jurisdiction of any other state, without the consent of the legislature of such state.

There are a number of states which are so circumstanced, with respect to themselves and to the other states, that every principle of justice and sound policy require their dismemberment or division into smaller states. Massachusetts is divided into two districts, totally separated from each other by the state of New Hampshire, on the north-east side of which lies the provinces of Maine and Sagadohock, more extensive in point of territory, but less populous than old Massachusetts, which lies on the other side of New Hampshire. No person can cast his eye on the map of that state but he must in a moment admit, that every argument drawn from convenience, interest, and justice, require that the provinces of Maine and Sagadohock should be erected into a new state, and that they should not be compelled to remain connected with old Massachusetts under all the inconveniences of their situation.

The state of Georgia is larger in extent than the whole island of Great Britain, extending from its sea coast to the Mississippi, a distance of eight hundred miles or more; its breadth for the most part, about three hundred miles. The states of North Carolina and Virginia in the same manner reach from the sea coast unto the Mississippi.

The hardship, the inconvenience, and the injustice of compelling the inhabitants of those states who may dwell on the western side of the mountains and along the Ohio and Mississippi rivers to remain connected with the inhabitants of those states respectively, on the atlantic side of the mountains, and subject to the same state governments, would be such, as would, in my opinion, justify even recourse to arms, to free themselves from, and to shake off so ignominious a yoke.

This representation was made in convention, and it was further urged, that the territory of these states were too large, and that the inhabitants thereof would be too much disconnected for a republican government to extend to them its benefits, which is only suited to a small and compact territory. That a regard also for the peace and safety of the union, ought to excite a desire that those states should become in time divided into separate states, since when their population should become proportioned in any degree to their territory, they would from their strength and power become dangerous members of a federal government. It was further said, that if the general government was not by its constitution to interfere, the inconvenience would soon remedy itself, for that as the population increased in those states, their legislatures would be obliged to consent to the erection of new states to avoid the evils of a civil war; but as by the proposed constitution the general government is obliged to protect each state against domestic violence, and consequently will be obliged to assist in suppressing such commotions and insurrections as may take place from the struggle to have new states erected, the general government ought to have a power to decide upon the propriety and necessity of establishing or erecting a new state, even without the approbation of the legislature of such states, within whose jurisdiction the new state should be erected, and for this purpose I submitted to the convention the following proposition: "That on the application of the inhabitants of any district of territory within the limits of any of the states, it shall be lawful for the legislature of the United States, if they shall under all circumstances think it reasonable, to erect the same into a new state, and admit it into the union *without the consent* of the state of which the said district may be a part." And it was said, that we surely might trust the general government with *this power* with *more propriety* than with *many others* with which they were proposed to be entrusted—and that as the general government was bound to suppress all insurrections and commotions which might arise on this subject, it ought to be in the power of the general government to decide upon it, and not in the power of the legislature of a single state, by obstinately and unreasonably opposing the erection of a new state to prevent its taking effect, and thereby extremely to *oppress* that part of its citizens which live remote from, and inconvenient to the seat of its government. and even to involve the union in war to support its injustice and oppression. But, upon the vote being taken, Georgia, South Carolina, North Carolina, Virginia, Pennsylvania, and Massachusetts, were in the *negative*. New Hampshire, Connecticut, Jersey, Delaware and Maryland, were in the *affirmative*. New York was absent.

That it was inconsistent with the rights of free and independent states, to have their territory dismembered without their consent, was the principal argument used by the opponents of this proposi-

tion. The truth of the objection we readily admitted, but at the same time insisted that it was not *more inconsistent* with the rights of free and independent states than *that inequality* of *suffrage* and *power* which the *large states* had *extorted* from the *others*; and that if the *smaller states* yielded up *their rights* in *that instance*, they were *entitled* to demand from the states of extensive territory a *surrender* of their rights in *this instance*; and in a particular manner, as it was *equally necessary* for the true interest and happiness of the *citizens* of *their own states, as* of the *union*. But, sir, although when the large states demanded *undue* and *improper* sacrifices to be made to their pride and ambition, they treated the rights of free states with more contempt than ever a British parliament treated the rights of her colonial establishment; yet when a *reasonable* and *necessary sacrifice* which was asked from them, they spurned the idea with ineffable disdain. They then perfectly understood the full value and the sacred obligation of state rights, and at the least attempt to infringe them where they were concerned, they were tremblingly alive and agonized at every pore.

When we reflect how *obstinately* those states contended for that *unjust superiority* of power in the government, which they have in part obtained, and for the establishment of this superiority by the constitution—When we reflect that they appeared willing to hazard the existence of the union rather than not to succeed in their unjust attempt—That should their legislatures consent to the erection of new states within their jurisdiction, it would be an immediate sacrifice of that power, to obtain which they appeared disposed to sacrifice every other consideration. When we further reflect that they now have a motive for desiring to preserve their territory entire and unbroken, which they never had before—the gratification of their ambition in possessing and exercising superior power over their sister states—and that this constitution is to give them the means to effect this desire of which they were formerly destitute—the whole force of the United States pledged to them for restraining intestine commotions, and preserving to them the obedience and subjection of their citizens, even in the extremest part of their territory:—I say, sir, when we consider these things, it would be too absurd and improbable to deserve a serious answer, should any person suggest that these states mean ever to give their consent to the erection of new states within their territory: Some of them, it is true, have been for some time past amusing their inhabitants in those districts that wished to be erected into new states, but should this constitution be adopted, *armed with a sword and halter*, to compel their obedience and subjection, they will no longer act with indecision; and the state of Maryland may, and probably will be called upon to assist with her wealth and her blood in subduing the inhabitants of Franklin, Kentucky, Vermont, and the provinces of Maine and Sagadohock, and in compelling them to continue in subjection to the states which respectively claim jurisdiction over them.

Let it not be forgotten at the same time, that a great part of the territory of these large and extensive states, which they now hold in possession, and over which they now claim and exercise jurisdiction, were crown lands, unlocated and unsettled when the American revolution took place—Lands which were acquired by the *common blood and treasure*, and which ought to have been the *common stock*, and for the *common benefit* of the union. Let it be remembered that the state of Maryland was so deeply sensible of the injustice that these lands should be held by particular states for their own emolument, even at a time when no superiority of authority or power was annexed to extensive territory, that in the midst of the late war and all the dangers which threatened us, it withheld for a long time its assent to the articles of confederation for that reason, and when it ratified those articles it entered a solemn protest against what it considered so *flagrant injustice*: But, sir, the question is not now whether those states shall hold that territory unjustly to themselves, but whether by that act of injustice they shall have superiority of power and influence over the other states, and have a constitutional right to domineer and lord it over them—Nay, more, whether we will agree to a form of government by which we pledge to those states the whole force of the union to preserve to them their extensive territory entire and unbroken, and with our blood and wealth to assist them, whenever they please to demand it, to preserve the inhabitants thereof under their subjection, for the purpose of encreasing their superiority over us—of gratifying their unjust ambition—in a word, for the purpose of giving ourselves masters, and of rivetting our chains!

The part of the system, which provides that *no religious test* shall ever be required as a qualification to any office or public trust under the United States, was adopted by a great majority of the convention, and without much debate—however, there were some members so unfashionable as to think that a belief of the existence of a Deity, and of a state of future rewards and punishments would be some security for the good conduct of our rulers, and that in a christian country it would be at least decent to hold out some distinction between the professors of christianity and downright infidelity or paganism.

The seventh article declares, that the ratification of nine states shall be sufficient for the establishment of this constitution between the states ratifying the same.

It was attempted to obtain a resolve that if seven states, whose votes in the first branch should amount to a majority of the representation in that branch, concurred in the adoption of the system, it should be sufficient, and this attempt was supported on the principal, that a majority ought to govern the minority: but to this it was objected, that although it was true, after a constitution and form of government is agreed on, in every act done under and consistent with that constitution and form of government, the act of the majority, unless otherwise agreed in the

constitution, should bind the minority, yet it was directly the reverse in originally forming a constitution or dissolving it—That in originally forming a constitution, it was necessary that every individual should agree to it to become bound thereby—and that when once adopted, it could not be dissolved by consent, unless with the consent of every individual who was party to the original agreement—That in forming our original federal government, every member of that government, that is, each state, expressly consented to it; that it is a part of the compact made and entered into in the most solemn manner, that there should be no dissolution or alteration of that federal government without the consent of every state, the members of, and parties to, the original compact; that therefore no alteration could be made by a consent of a part of these states, or by the consent of the inhabitants of a part of the states, which could either release the states so consenting, from the obligation they are under to the other states, or which could in any manner become obligatory upon those states that should not ratify such alterations. Satisfied of the truth of these positions, and not holding ourselves at liberty to violate the compact, which this state had solemnly entered into with the others, by altering it in a different manner from that which by the same compact is provided and stipulated, a number of the members, and among those the delegation of this state, opposed the ratification of this system in *any other manner* than by the *unanimous consent* and agreement of all the states.

By our original articles of confederation any alterations proposed are in the first place to be approved by congress.—Accordingly as the resolutions were originally adopted by the convention, and as they were reported by the committee of detail, it was proposed that this system should be laid before congress *for their approbation*; but, sir, the warm advocates of this system fearing it would not meet with the approbation of congress, and determined even though congress and the respective state legislatures should disapprove the same, to force it upon them, if possible, through the intervention of the people at large, moved to strike out the words "for their approbation," and succeeded in their motion; to which, it being directly in violation of the mode prescribed by the articles of confederation for the alteration of our federal government, a part of the convention, and myself in the number, thought it a duty to give a decided negative.

Agreeable to the articles of confederation entered into in the most *solemn manner* and for the *observance* of which the states pledged themselves to each other, and called upon the *Supreme Being* as a witness and avenger between them, no alterations are to be made in those articles, unless after they are approved by congress, they are agreed to and ratified by the legislature of every state; but by the resolve of the convention this constitution is not to be ratified by the legislatures of the respective states, but is to be submitted to conventions chosen by the people, and if ratified by them is to be binding.

This resolve was opposed among others by the delegation of Maryland;—your delegates were of opinion, that as the form of government proposed was, if adopted, most essentially to *alter* the *constitution* of *this state*, and as our constitution had pointed out a mode by which, and by which only, alterations were to be made therein, a convention of the people could not be called to agree to and ratify the said form of government without a *direct violation* of our constitution, which it is the duty of every individual in this state to protect and support. In this opinion all your delegates who were attending were unanimous. I, sir, opposed it also upon a more extensive ground, as being directly contrary to the mode of altering our federal government *established* in our original compact; and as such, being a *direct violation* of the mutual faith plighted by the states to each other, I gave it my negative.

I was of opinion, that the states considered as states, in their political capacity, are the members of a federal government; that the states in their political capacity, or as sovereignties, are entitled, and *only entitled* originally to agree upon the form of, and submit themselves to, a federal government, and afterwards by mutual consent to dissolve or alter it—That every thing which relates to the formation, the dissolution or the alteration of a federal government over states equally free, sovereign and independent, is the peculiar province of the states in their *sovereign* or *political* capacity, in the same manner as what relates to forming alliances or treaties of peace, amity or commerce, and that the people at large in their individual capacity, have no more right to interfere in the one case than in the other: That according to these principles we originally acted in forming our confederation; it was the states as states, by their representatives in congress, that formed the articles of confederation; it was the states as states, by their legislatures, who ratified those articles, and it was there established and provided, that the states as states, that is by their legislatures, should agree to any alterations that should hereafter be proposed in the federal government, before they should be binding—and any alterations agreed to any other manner cannot release the states from the obligation they are under to each other by virtue of the original articles of confederation. The people of the different states never made any objection to the manner the articles of confederation were formed or ratified, or to the mode by which alterations were to be made in that government—with the rights of their respective states they wished not to interfere—Nor do I believe the people in their individual capacity, would ever have expected or desired to have been appealed to on the present occasion, in violation of the rights of their respective states, if the favorers of the proposed constitution, imagining they had a better chance of forcing it to be adopted by a hasty appeal to the people at large, who could not be so good judges of the dangerous consequence, had not insisted upon this mode—Nor do these positions in the least inter-

ferfere with the principle, that all power originates from the people, because when once the people have *exercised their power* in establishing and forming themselves into a *state government*, it never devolves back to them, nor have they a *right* to resume or again to exercise that power until such events take place as will amount to a dissolution of their state government:—And it is an established principle that a dissolution or alteration of a federal government doth not dissolve the state governments which compose it. It was also my opinion, that upon principles of sound policy, the agreement or disagreement to the proposed system ought to have been by the state legislatures, in which case, let the event have been what it would, there would have been but little prospect of the public peace being disturbed thereby—Whereas the attempt to force down this system, although congress and the respective state legislatures should disapprove, by appealing to the people, and to procure its establishment in a manner totally unconstitutional, has a tendency to set the state governments and their subjects at variance with each other—to lessen the obligations of government—to *weaken the bands* of *society*—to introduce *anarchy* and *confusion*—and to light the torch of discord and civil war throughout this continent. All these considerations weighed with me most forcibly against giving my assent to the mode by which it is resolved this system is to be ratified, and were urged by me in opposition to the measure.

I have now, sir, in discharge of the duty I owe to this house, given such information as hath occurred to me, which I consider most material for them to know; and you will easily perceive from this detail that a great portion of that time, which ought to have been devoted calmly and impartially to consider what alterations in our federal government would be most likely to procure and preserve the happiness of the union, was employed in a *violent struggle* on the one side to obtain all power and dominion in their own hands, and on the other to prevent it; and that the *aggrandizement* of particular states and particular individuals appears to have been much more the object sought after, than the welfare of our country.

The interest of this state, not confined merely to itself, abstracted from all others, but considered relatively, as far as was consistent with the common interest of the other states, I thought it my duty to pursue, according to the best opinion I could form of it.

When I took my seat in the convention, I found them attempting to bring forward a system, which I was sure never had entered into the contemplation of those I had the honor to represent, and which upon the fullest consideration, I considered not only injurious to the interest and the rights of this state, but also incompatible with the political happiness and freedom of the states in general; from that time until my business compelled me to leave the convention, I gave it every possible opposition in every stage of its progression. I opposed the system there with the same

explicit frankness with which I have here given you a history of our proceedings, an account of my own conduct, which in a particular manner I consider you as having a right to know—While there, I endeavored to act as became a freeman, and the delegate of a free state. Should my conduct obtain the approbation of those who appointed me, I will not deny it would afford me satisfaction; but to me that approbation was at most no more than a secondary consideration—my first was to *deserve* it; left to myself to act according to the best of my discretion, my conduct should have been the same, had I been even sure your censure would have been my only reward, since I hold it sacredly my duty to dash the cup of poison, if possible, from the hand of a state, or an individual, however anxious the one or the other might be to swallow it.

Indulge me, sir, in a single observation further:—There are persons who endeavor to hold up the idea that this system is only opposed by the officers of government. I, sir, am in that predicament. I have the honor to hold an appointment, in this state. Had it been considered any objection, I presume I should not have been appointed to the convention; if it could have had any effect on my mind, it would only be that of warming my heart with gratitude, and rendering me more anxious to promote the true interest of that state, which has conferred on me the obligation, and to heighten my guilt had I joined in sacrificing its essential rights: But, sir, it would be well to remember, that this system is not calculated to diminish the number or the value of offices; on the contrary, if adopted, it will be productive of an enormous increase in their number; many of them will be also of great honor and emoluments. Whether, sir, in this variety of appointments, and in the scramble for them, I might not have as good a prospect to advantage myself as many others, is not for me to say; but this, sir, I can say with truth, that so far was I from being influenced in my conduct by interest, or the consideration of office, that I would cheerfully resign the appointment I now hold; I would bind myself never to accept another, either under the general government or that of my own state: I would do more, sir, so destructive do I consider the present system to the happiness of my country, I would cheerfully sacrifice that share of property with which heaven has blessed a life of industry—I would reduce myself to indigence and poverty, and those who are dearer to me than my own existence, I would entrust to the care and protection of that providence who hath so kindly protected myself, if on *those terms only* I could procure my country to reject those chains which are forged for it.

THE NOTES

Of the Secret Debates of the Federal Convention of 1787, taken by the late Hon. ROBERT YATES, *Chief Justice of the State of New York, and one of the Delegates from that State to the said Convention.*

[Copied from the original manuscript of Chief Justice Yates, by John Lansing, jr. and certified by him to be a true copy.]

FRIDAY, MAY 25, 1787.

Attended the convention of the states, at the state house in Philadelphia, when the following states were represented:

New York,	Alex'r. Hamilton,	*Virginia,*	Geo. Wythe,
	Robert Yates.		Geo. Mason,
New Jersey,	David Brearly,		James Madison,
	Wm. C. Houston,		John Blair,
	Wm. Patterson.		James M'Clurg.
Pennsylvania,	Robert Morris,	*N. Carolina,*	Alex'r. Martin,
	Thos. Fitzsimons,		Wm. R. Davie,
	James Wilson,		Rich.D. Spaight,
	Gouv. Morrris.		H. Williamson.
Delaware,	George Read,	*S. Carolina,*	John Rutledge,
	Richard Bassett.		C. C. Pinckney,
	Jacob Broom.		Chas. Pinckney,
Virginia,	Geo. Washington,		Pierce Butler.
	Edm. Randolph,		

A motion by R. Morris, and seconded, that General Washington take the chair—unanimously agreed to.

When seated, he (Gen. Washington) declared, that as he never had been in such a situation, he felt himself embarrassed; that he hoped his errors, as they would be unintentional, would be excused.

Mr. Hamilton, in behalf of the state of New York, moved that Major Jackson be appointed secretary; the delegates for Pennsylvania, moved for Temple Franklin: by a majority Mr. Jackson carried it—called in and took his seat.

After which, the respective credentials of the seven states were read. N. B. That of Delaware restrained its delgates from assenting to an abolition of the fifth article of the confederation, by which it is declared that each state shall have one vote.

Door keeper and messengers being appointed, the house adjourned to Monday the 28th day of May, at ten o'clock.

MONDAY, MAY 28, 1787.

Met pursuant to adjournment. A committee of three members, (whose appointment I omitted in the entry of the proceedings of Friday last,) reported a set of rules for the order of the convention; which being considered by articles, were agreed to, and additional ones proposed and referred to the same committee. The representation was this day increased to nine states—Massachusetts, and Connecticut becoming represented. Adjourned to next day.

TUESDAY, MAY 29th, 1787.

The additional rules agreed to. His excellency Governor Randolph, a member from Virginia, got up, and in a long and elaborate speech, shewed the defects in the system of the present federal government as totally inadequate to the peace, safety and security of the confederation, and the absolute necessity of a more energetic government.

He closed these remarks with a set of resolutions, fifteen in number, which he proposed to the convention for their adoption, and as leading principles whereon to form a new government—He candidly confessed that they were not intended for a federal government—he meant a strong *consolidated* union, in which the idea of states should be nearly annihilated. [See page 41, part I. in this volume, where they are printed at large.]

He then moved that they should be taken up in committee of the whole house.

Mr. C. Pinckney, a member from South Carolina, then added, that he had reduced his ideas of a new government to a system, which he read, and confessed that it was grounded on the same principle as of the above resolutions. [See p. 43, part I. of this vol.]

The house then resolved, that they would the next day form themselves into a committee of the whole, to take into consideration *the state of the union*. Adjourned to next day.

WEDNESDAY, MAY 30th, 1787.

Convention met pursuant to adjournment. The convention, pursuant to order, resolved itself into a committee of the whole—Mr. Gorham (a member from Massachusetts) appointed chairman,

Mr. Randolph then moved his first resolve, to wit: "Resolved, that the articles of the confederation ought to be so corrected and enlarged, as to accomplish the objects proposed by their institution, namely, common defence, security of liberty, and general welfare."

Mr. G. Morris observed, that it was an unnecessary resolution, as the subsequent resolutions would not agree with it. It was then withdrawn by the proposer, and in lieu thereof the following were proposed, to wit:

1. *Resolved*, That a union of the states, merely federal, will

not accomplish the objects proposed by the articles of the confederation, namely, common defence, security of liberty, and general welfare.

2. *Resolved*, That no treaty or treaties among any of the states as sovereign, will accomplish or secure their common defence, liberty or welfare.

3. *Resolved*, That a national government ought to be established, consisting of a supreme judicial, legislative and executive.

In considering the question on the first resolve, various modifications were proposed, when Mr. Pinckney observed, at last, that if the convention agreed to it, it appeared to him that their business was at an end; for as the powers of the house in general were to revise the present confederation, and to alter or amend it as the case might require; to determine its insufficiency or incapability of amendment or improvement, must end in the dissolution of the powers.

This remark had its weight, and in consequence of it, the 1st and 2d resolve was dropt, and the question agitated on the third.

This last resolve had also its difficulties; the term *supreme* required explanation—It was asked whether it was intended to annihilate state governments? It was answered, only so far as the powers intended to be granted to the new govrnment should clash with the states, when the latter was to yield.

For the resolution, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina.

Against it, Connecticut, New York divided, Jersey and other states unrepresented.

The next question was on the following resolve: In substance that the mode of the present representation was unjust—the suffrage ought to be in proportion to number or property.

To this Delaware objected, in consequence of the restrictions in their credentials, and moved to have the consideration thereof postponed, to which the house agreed. Adjourned to to-morrow.

THURSDAY, MAY 31st, 1787.

Met pursuant to adjournment. This day the state of Jersey was represented, so that there were now ten states in convention.

The house went again into committee of the whole, Mr. Gorham in the chair.

The 3d resolve, to wit, "That the national legislature ought to consist of two branches," was taken into consideration, and without any debate agreed to. [N. B. As a previous resolution had already been agreed to, to have a supreme legislature, I could not see any objection to its being in two branches.]

The 4th resolve, "That the members of the first branch of the national legislature ought to be elected by the people of the several states," was opposed; and strange to tell, by Massachusetts and Connecticut, who supposed they ought to be chosen by the legisla-

tures; and Virginia supported the resolve, alledging that this ought to be the democratic branch of government, and as such, immediately vested in the people.

This question was carried, but the remaining part of the resolve detailing the powers, was postponed.

The fifth resolve, " That the members of the second branch of the national legislature ought to be elected by those of the first out of a proper number of persons nominated by the individual legistures, and the detail of the mode of election and duration of office, was postponed.

The sixth resolve is taken in detail: " That each branch ought to possess the right of originating acts." Agreed to.

" That the national legislature ought to be empowered to enjoy the legislative rights vested in congress by the confederation."—Agreed to.

" And, moreover, to legislate in all cases to which the separate states are incompetent."—Agreed to.

FRIDAY, JUNE 1st, 1787.

Met pursuant to adjournment. The 7th resolve, That a national executive be instituted. Agreed to.

To continue in office for seven years. Agreed to.

A general authority to execute the laws. Agreed to.

To appoint all officers not otherwise provided for. Agreed to.

Adjourned to the next day.

SATURDAY, JUNE 2d, 1787.

Met pursuant to adjournment. Present 11 states.

Mr. Pinckney called for the order of the day.

The convention went into committee of the whole.

Mr. Wilson moved that the states should be divided into districts, consisting of one or more states, and each district to elect a number of senators to form the second branch of the national legislature—The senators to be elected, and a certain proportion to be annually dismissed—avowedly on the plan of the New York senate. Question put—rejected.

In the 7th resolve, the words *to be chosen by the national legislature*, were agreed to.

President Franklin moved, that the consideration of that part of the 7th resolve, which had in object the making provision for a compensation for the service of the executive, be postponed for the purpose of considering a motion, *that the executive should receive no salary, stipend or emolument for the devotion of his time to the public services, but that his expenses should be paid.* Postponed.

Mr. Dickinson moved that in the seventh resolution, the words, *and removable on impeachment and conviction for mal-conduct or neglect in the execution of his office*, should be inserted after the

words *ineligible a second time.* Agreed to. The remainder postponed.

Mr. Butler moved to fill the number of which the executive should consist.

Mr. Randolph.—The sentiments of the people ought to be consulted—they will not hear of the semblance of monarchy—He preferred three divisions of the states, and an executive to be taken from each. If a single executive, those remote from him would be neglected, local views would be attributed to him, frequently well founded, often without reason. This would excite disaffection. He was therefore for an executive of three.

Mr. Butler.—Delays, divisions and dissentions arise from an executive consisting of many. Instanced Holland's distracted state, occasioned by her many counsellors. Further consideration postponed.

Mr. C. Pinckney gave notice for the reconsideration of the mode of election of the first branch. Adjourned till Monday next.

MONDAY, JUNE 4th, 1787.

Met pursuant to adjournment. Mr. Pinkney moved that the blank in the 7th resolve *consisting of* be filled up with an individual.

Mr. Wilson, in support of the motion, asserted, that it would not be obnoxious to the minds of the people, as they in their state governments were accustomed and reconciled to a single executive. Three executives might divide so that two could not agree in one proposition—the consequence would be anarchy and confusion.

Mr. Sherman thought there ought to be one executive, but that he ought to have a council. Even the king of Great Britain has his privy council.

Mr. Gerry was for one executive—if otherwise, it would be absurd to have it consist of three. Numbers equally in rank would oddly apply to a general or admiral.

Question put—7 states for, and 3 against. New York against it.

The 8th resolve, That the executive and a number of the judicial officers ought to compose a council of revision.

Mr. Gerry objects to the clause—moves its postponement in order to let in a motion—*that the right of revision should be in the executive only.*

Mr. Wilson contends that the executive and judicial ought to have a joint and full negative—they cannot otherwise preserve their importance against the legislature.

Mr. King was against the interference of the judicial; they may be biased in the interpretation—He is therefore to give the executive a complete *negative.*

Carried to be postponed, 6 states against 4—New York for it.

The next question, that the executive have a complete negative; and it was therefore moved to expunge the remaining part of the clause.

Dr. Franklin against the motion—The power dangerous, and would be abused so as to get money for passing bills.

Mr. Madison against it—because of the difficulty of an executive venturing on the exercise of this negative, and is therefore of opinion that the revisional authority is better.

Mr. Bedford is against the whole, either negative or revisional; the two branches are sufficient checks on each other; no danger of subverting the executive, because his powers may by the convention be so well defined, that the legislature cannot overleap the bounds.

Mr. Mason against the negative power in the executive, because it will not accord with the genius of the people.

On this the question was put and carried, *nem. con.* against expunging part of the clause so as to establish a complete negative.

Mr. Butler then moved that all acts passed by the legislature be suspended for the space of days by the executive.—Unanimously in the negative.

It was resolved and agreed, that the blank be filled up with the words *two thirds of the legislature.*—Agreed to.

The question was then put on the whole of the resolve as amended and filled up. Carried, 8 states for; two against. New-York for it.

Mr. Wilson then moved for the addition *of a convenient number of the national judicial* to the executive as a council of revision.—Ordered to be taken into consideration to-morrow. Adjourned until to-morrow.

TUESDAY, JUNE 5th, 1787.

Met pursuant to adjournment. The 9th resolve, *That a national judicial be established, to consist of one supreme tribunal, and of inferior tribunals, to hold their offices during good behaviour; and no augmentation or diminution in the stipends during the time of holding their offices.* Agreed to.

Mr. Wilson moved that the *judicial be appointed by the executive*, instead of the *national legislature.*

Mr. Madison opposed the motion, and inclined to think that the executive ought by no means to make the appointments, but rather that branch of the legislature called the senatorial; and moves that the words, *of the appointment of the legislature*, be expunged.

Carried, by 8 states; against it, 2. The remaining part of the resolve postponed. The 10th resolve read and agreed to. The 11th resolve agreed to be postponed. The 12th resolve agreed to without debate. The 13th and 14th resolves postponed.

The 15th or last resolve, *That the amendment which shall be offered to the confederstion, ought at a proper time or times, after the approbation of congress to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people, to consider and decide thereon,* was taken into consideration.

Mr. Madison endeavored to enforce the necessity of this resolve. because the new national constitution ought to have the highest source of authority, at least paramount to the powers of the respective constitutions of the states; points out the mischiefs that have arisen in the old confederation, which depends upon no higher authority than the confirmation of an ordinary act of a legislature—instances the law operation of treaties, when contravened by any antecedent acts of a particular state.

Mr. King supposes, that as the people have tacitly agreed to a federal government, that therefore the legislature in every state have a right to confirm any alterations or amendments in it—a convention in each state to approve of a new government, he supposes however, the most eligible.

Mr. Wilson is of opinion, that the people by a convention are the only power that can ratify the proposed system of the new government.

It is possible that all the states, nay, that not even a majority, will immediately come into the measure; but such as do ratify it, will be immediately bound by it, and others as they may from time to time accede to it

Question put for postponement of this resolve. 7 states for postponement; 3 against it.

Question on the 9th resolve, to strike out the words, *and of inferior tribunals.*

Carried, by 5 states against 4; 2 states divided, of which last number New-York was one.

Mr. Wilson then moved, *that the national legislature shall have the power to appoint inferior tribunals*, be added to the resolve.

Carried, by 7 states against 3. New-York divided. [N: B. Mr. Lansing, from New-York, was prevented by sickness from attending to-day.] Adjourned to to-morrow morning.

WEDNESDAY, JUNE 6th, 1787.

Met pursuant to adjournment. Mr. Pinkney moved (pursuant to a standing order for reconsideration) that in the 4th resolve, the words *by the people,* be expunged, and the words *by the legislature,* be inserted.

Mr. Gerry.—If the national legislature are appointed by the state legislatures, demagogues and corrupt members will creep in.

Mr. Wilson is of opinion that the national legislative powers ought to flow immediately from the people, so as to contain all their understanning, and to be an exact transcript of their minds. He observed that the people had already parted with as much of their power as was necessary to form on its basis a perfect government; and the particular states must part with such a portion of it as to make the present national government adequate to their peace and the security of their liberties. He admitted that the state governments would probably be rivals and opposers of the national government.

Mr. Mason observed that the national legislature, as o one branch, ought to be elected by the people; because the objcts of their legislation will not be on states, but on individual ersons.

Mr. Dickinson is for combining the state and nationallegislatures in the same views and measures; and that this obect can only be effected by the national legislature, flowing from he state legislatures.

Mr. Read is of opinion, that the state governments mst sooner or later be at an end, and that therefore we must make te present national government as perfect as possible.

Mr. Madison is of opinion, that when we agreed to te first resolve of having a national government, consisting ofa supreme executive, judicial and legislative power, it was then itended to operate to the exclusion of a federal government; an the more extensive we made the basis, the greater probability f duration, happiness, and good order.

The question for the amendment was negatived, by 8 states against 3. New-York in the majority.

On the 8th resolve, Mr. Wilson moved (in consequence of a vote to reconsider the question on the revisional powers vested in the executive) that there be added these words, *with a convenient number of the national judicial.*

Upon debate, carried in the negative; 3 states for and 8 against. New-York for the addition. Adjourned to to-morrow morning.

THURSDAY, JUNE 7th, 1787.

Met pursuant to adjournment. Mr. Rutledge moved to take into consideration the mode of electing the second branch of the national legislature.

Mr. Dickinson thereupon moved, *that the second branch of the national legislature be chosen by the legislatures of the individual states.* He observed, that this mode will more intimately connect the state governments with the national legislature—it will also draw forth the first characters either as to family or talent, and that it ought to consist of a considerable number.

Mr. Wilson against the motion, because the two branches thus constituted, cannot agree, they having different views and different sentiments.

Mr. Dickinson is of opinion that the mode by him proposed, like the British house of lords and commons, whose powers flow from different sources, are mutual checks on each other, and will thus promote the real happiness and security of the country—a government thus established would harmonize the whole and like the planetary system, the national council like the sun, would illuminate the whole; the planets revolving round it in perfect order; or like the union of several small streams, would at last form a respectable river, gently flowing to the sea.

Mr. Vilson—The state governments ought to be preserved—the freeom of the people and their internal good police depends on their xistence in full vigor--but such a government can only answer leal purposes—That it is not possible a general government, as 'espotic as even that of Roman emperors, could be adequate to te government of the whole without this distinction.—He hoped hat the national government would be independent of state goveaments, in order to make it vigorous, and therefore moved thathe above resolution be postponed, and that the convention in ts room adopt the following resolve: *That the second branch of te national legislature be chosen by districts, to be formed for that purpose.*

Mr. Sheran supposes the election of the national legislature will be bette vested in the state legislatures, than by the people, for by pursing different objects, persons may be returned who have not onetenth of the votes.

Mr. Gerr observed, that the great mercantile interest and of stockholders is not provided for in any mode of election—they will howevei be better represented if the state legislatures choose the second banch.

Question carried against the postponement—10 states against 1.

Mr. Masoi then spoke to the general question—observing on the propiety that the second branch of the national legislature should flew fom the legislature of each state, to prevent the encroachments m each other and to harmonize the whole.

The question put on the first motion, and carried unanimously. Adjournec to :o-morrow morning.

FRIDAY, JUNE 8, 1787.

Met pursuant to adjournment—11 states. Mr. Pinkney moved, *That the national legislature shall have the power of negativing all laws to be pssed by the state legislatures which they may judge improper*, in the room of the clause as it stood reported.

He grounds his motion on the necessity of one supreme controlling pewer, and he considers this as the *corner-stone* of the present system; and hence the necessity of retrenching the state authorities in order tc preserve the good government of the national council.

Mr. Williamson against the motion. The national legislature ought to possess the power of negativing such laws only as will encroach on the national government.

Mr. Madison wished that the line of jurisprudence could be drawn—he would be for it—but upon reflection he finds it impossible, and therefore he is for the amendment. If the clause remains without the amendment it is inefficient—The judges of the state must give the state laws their operation, although the law abridges the rights of the national government—how is it to be repealed? By the power who made it! How shall you compel them?

By force! To prevent this disagreeable expedient, the power of negativing is absolutely necessary—this is the only attractive principle which will retain its centrifugal force, and without this the planets will fly from their orbits.

Mr. Gerry supposes that this power ought to extend to all laws already made; but the preferable mode would be to designate the powers of the national legislature, to which the negative ought to apply—he has no objection to restrain the laws which may be made for issuing paper money. Upon the whole, he does not choose on this important trust, *to take a leap in the dark.*

Mr. Pinckney supposes that the proposed amendment had no retrospect to the state laws already made. The adoption of the new government must operate as a complete repeal of all the constitutions and state laws, as far as they are inconsistent with the new government.

Mr. Wilson supposes the surrender of the rights of a federal government to be a surrender of sovereignty. True, we may define some of the rights, but when we come near the line it cannot be found. One general excepting clause must therefore apply to the whole. In the beginning of our troubles, congress themselves were as one state—dissentions or state interests were not known—they gradually crept in after the formation of the constitution, and each took to himself a slice. The original draft of confederation was drawn on the first ideas, and the draft concluded on, how different!

Mr. Bedford was against the motion, and states the proportion of the intended representation of the number 90: Delaware 1—Pennsylvania and Virginia one third. On this computation where is the weight of the small states when the interest of the one is in competition with the other on trade, manufactures and agriculture? When he sees this mode of government so strongly advocated by the members of the great states, he must suppose it a question of *interest*.

Mr. Madison confesses it is not without its difficulties on many accounts; some may be removed, others modified, and some are unavoidable. May not this power be vested in the senatorial branch? They will probably be always sitting. Take the question on the other ground, who is to determine the line when drawn in doubtful cases? The state legislatures cannot, for they will be partial in support of their own powers; no tribunal can be found. It is impossible that the articles of confederation can be amended—they are too tottering to be invigorated—nothing but the present system, or something like it, can restore the peace and harmony of the country.

The question put on Mr. Pinckney's motion—7 states against it—Delaware divided—Virginia, Pennsylvania and Massachusetts for it. Adjourned to to-morrow morning.

SATURDAY, JUNE 9th, 1787.

Met pursuant to adjournment. Motion by Mr. Gerry to reconsider the appointment of the national executive.

That the national executive be appointed by the state executives. He supposed that in the national legislature there will be a great number of bad men of various descriptions—these will make a wrong appointment. Besides, an executive thus appointed, will have his partiality in favor of those who appointed him; that this will not be the case by the effect of his motion, and the executive will by this means be independent of the national legislature, but the appointment by the state executives ought to be made by votes in proportion to their weight in the scale of the representation.

Mr. Randolph opposes the motion. The power vested by it is dangerous—confidence will be wanting—the large states will be masters of the election—an executive ought to have great experience, integrity and activity. The executives of the states cannot know the persons properly qualified as possessing these. An executive thus appointed will court the officers of his appointment, and will relax him in the duties of commander of the militia. Your single executive is already invested with negativing laws of the state. Will he duly exercise the power? Is there no danger in the combinations of states to appoint such an executive as may be too favorable to local state governments? Add to this the expense and difficulty of bringing the executives to one place to exercise their powers. Can you suppose they will ever cordially raise the great oak, when they must sit as shrubs under its shade?

Carried against the motion, 10 noes, and Delaware divided.

On motion of Mr. Patterson, the consideration of the 2d resolve was taken up, which is as follows: *Resolved, therefore, that the rights of suffrage in the national legislature ought to be apportioned to the quotas of contribution, or to the number of inhabitants, as the one or other rule may seem best in different cases.*

Judge Brearly—The present question is an important one. On the principle that each state in the union was sovereign, congress, in the articles of confederation, determined that each state in the public councils had *one* vote. If the states still remain sovereign, the form of the present resolve is founded on principles of injustice. He then stated the comparative weight of each state—the number of votes 90. Georgia would be one, Virginia 16, and so of the rest. This vote must defeat itself, or end in despotism.—If we must have a national government, what is the remedy? Lay the map of the confederation on the table, and extinguish the present boundary lines of the respective state jurisdictions, and make a new division so that each state is equal—then a government on the present system will be just.

Mr. Patterson opposed the resolve. Let us consider with what powers are we sent here? (moved to have the credentials of Massachusetts read, which was done.) By this and the other creden-

tials we see, that the basis of our present authority is founded on a revision of the articles of the present confederation, and to alter or amend them in such parts where they may appear defective. Can we on this ground form a national government? I fancy not. Our commissions give a complexion to the business: and can we suppose that when we exceed the bounds of our duty, the people will approve our proceedings?

We are met here as the deputies of 13 independent sovereign states, for federal purposes. Can we consolidate their sovereignty and form one nation, and annihilate the sovereignties of our states who have sent us here for other purposes?

What, pray, is intended by a proportional representation? Is property to be considered as part of it? Is a man, for example, possessing a property of £4000 to have 40 votes to one possessing only £100? This has been asserted on a former occasion. If state distinctions are still to be held up, shall I submit the welfare of the state of New Jersey, with 5 votes in the national council, opposed to Virginia who has 16 votes? Suppose, as it was in agitation before the war, that America had been represented in the British parliament, and had sent 200 members; what would this number avail against 600? We would have been as much enslaved in that case as when unrepresented; and what is worse, without the prospect of redress. But it is said that this national government is to act on individuals and not on states; and cannot a federal government be so framed as to operate in the same way? It surely may. I therefore declare, that I will never consent to the present system, and I shall make all the interest against it in the state which I represent that I can. Myself or my state will never submit to tyranny or despotism.

Upon the whole, every sovereign state according to a confederation must have an equal vote, or there is an end to liberty. As long therefore as state distinctions are held up, this rule must invariably apply; and if a consolidated national government must take place, then state distinctions must cease, or the states must be equalized.

Mr. Wilson was in favor of the resolve. He observed that a majority, nay, even a minority of the states have a right to confederate with each other, and the rest may do as they please. He considered numbers as the best criterion to determine representation. Every citizen of one state possesses the same rights with the citizen of another. Let us see how this rule will apply to the present question. Pennsylvania, from its numbers, has a right to 12 votes, when on the same principle New Jersey is entitled to 5 votes. Shall New Jersey have the same right or influence in the councils of the nation with Pennsylvania? I say no. It is unjust —I never will confederate on this plan. The gentleman from New Jersey is candid in declaring his opinion—I commend him for it— I am equally so. I say again, I never will confederate on his

principles. If no state will part with any of its sovereignty, it is in vain to talk of a national government. The state who has five times the number of inhabitants ought, nay, must have the same proportion of weight in the representation. If there was a probability of equalizing the states, he would be for it. But we have no such power. If however, we depart from the principle of representation in proportion to numbers, we will lose the object of our meeting.

The question postponed for farther consideration. Adjourned to to-morrow morning.

MONDAY, JUNE 11th, 1787.

Met pursuant to adjournment. Present 11 states. Mr. Sherman moved *that the first branch of the national legislature be chosen in proportion to the number of the whole inhabitants in each state.* He observed that as the people ought to have the election of one of the branches of the legislature, the legislature of each state ought to have the election of the second branch, in order to preserve the state sovereignty; and that each state ought in this branch to have one vote.

Gov. Rutledge moved as an amendment of the first proposition. *that the proportion of representation ought to be according to, and in proportion to the contribution of each state.*

Mr. Butler supported the motion, by observing that money is strengh; and every state ought to have its weight in the national council in proportion to the quantity it possesses. He further observed, that when a boy, he read this as one of the remarks of Julius Cæsar, who declared if he had but money he would find soldiers, and every thing necessary to carry on a war.

Mr. King observed, that it would be better first to establish a principle (that is to say) whether we will depart from federal grounds in forming a national government; and therefore, to bring this point to view, he moved as a previous question, that the sense of the committee be taken on the following question:

That the right of suffrage in the first branch of the national legislature, ought not to be according to the rule in the articles of confederation, but according to some equitable ratio of representation.

Gov. Franklin's written remarks on this point were read by Mr. Wilson. In these Gov. Franklin observes, that representation ought to be in proportion to the importance of numbers or wealth in each state—that there can be no danger of undue influence of the greater against the lesser states. This was the apprehension of Scotland when the union with England was proposed, when in parliament they were allowed only 16 peers and 45 commons; yet experience has proved that their liberties and influence were in no danger.

The question on Mr. King's motion was carried in the affirmative—7 ayes—3 noes, and Maryland divided, New York, New Jersey and Delaware in the negative.

Mr. Dickinson moved as an amendment, to add the words, *according to the taxes and contributions of each state actually collected and paid in the national treasury.*

Mr. Butler was of opinion that the national government will only have the right of making and collecting the taxes, but that the states individually must lay their own taxes.

Mr. Wilson was of opinion, and therefore moved, *that the mode of representation of each of the states ought to be from the number of its free inhabitants, and of every other description three fifths to one free inhabitant.* He supposed that the impost will not be the only revenue—The post office he supposes would be another substantial source of revenue. He observed further, that this mode had already received the approbation of eleven states in their acquiescence to the quota made by congress. He admitted that this resolve would require further restrictions, for where numbers determined the representation a census at different periods of 5, 7 or 10 years, ought to he taken.

Mr. Gerry—The idea of property ought not to be the rule of representation. Blacks are property, and are used to the southward as horses and cattle to the northward; and why should their representation be increased to the southward on account of the number of slaves, than horses or oxen to the north?

Mr. Madison was of opinion at present, to fix the standard of representation, and let the detail be the business of a sub-committee.

Mr. Rutledge's motion was postponed.

Mr. Wilson's motion was then put, and carried by 9 states against 2, New York in the majority.

Mr. Wilson then moved, as an amendment to Mr. Sherman's motion, *That the same proportion be observed in the election of the second branch as the first.*

The question however was first put on Mr. Sherman's motion, and lost, 6 states against, and 5 for it.

Then Mr. Wilson's motion was put and carried, 6 ayes, 5 noes.

The eleventh resolve was then taken into consideration. Mr. Madison moved to add after the word *junctions,* the words, *or separation.*

Mr. Read against the resolve *in toto.* We must put away state governments, and we will then remove all cause of jealousy. The guarantee will confirm the assumed rights of several states to lands which do belong to the confederation.

Mr. Madison moved an amendment, to add to, or alter the resolution as follows: *The republican constitutions and the existing laws of each state, to be guaranteed by the United States.*

Mr. Randolph was for the present amendment, because a republican government must be the basis of our national union; and no state in it ought to have it in their power to change its government into a monarchy. Agreed to.

13th Resolve—the first part agreed to.

14th Resolve taken into consideration.

Mr. Williamson. This resolve will be unnecessary, as the union will become the law of the land.

Governor Randolph. He supposes it to be absolutely necessary. Not a state government, but its officers, will infringe on the rights of the national government. If the state judges are not sworn to the observance of the new government, will they not judicially determine in favor of their state laws? We are erecting a supreme national government; ought it not to be supported, and can we give it too many sinews?

Mr. Gerry rather supposes that the national legislators ought to be sworn to preserve the state constitutions, as they will run the greatest risk to be annihilated; and therefore moved it.

For Mr. Gerry's amendment, 7 ayes; 4 noes.

Main question then put on the clause or resolve; 6 ayes, 5 noes. New-York in the negative. Adjourned to to-morrow morning.

TUESDAY, JUNE 12th, 1787.

Met pursuant to adjournment. Present 11 states.

The 15th or last resolve was taken into consideration. No debate arose on it, and the question was put and carried; 5 states for it, 3 against, and 2 divided. New-York in the negative.

Having thus gone through with the resolves, it was found necessary to take up such parts of the preceding resolves as had been postponed, or not agreed to. The remaining part of the 4th resolve was taken into consideration.

Mr. Sherman moved that the blank of the duration of the first branch of the national legislature, be filled with *one year*. Mr. Rutledge with *two years*, and Mr. Jenifer with *three years*.

Mr. Madison was for the last amendment; observing that it will give it stability, and induce gentlemen of the first weight to engage in it.

Mr. Gerry is afraid the people will be alarmed, as savoring of despotism.

Mr. Madison. The people's opinions cannot be known, as to the particular modifications which may be necessary in the new government. In general, they believe there is something wrong in the present system that requires amendment; and he could wish to make the republican system the basis of the change, because if our amendments should fail of securing their happiness, they will despair it can be done in this way, and incline to monarchy.

Mr. Gerry could not be governed by the prejudices of the people: their good sense will ever have its weight. Perhaps a limited

monarchy would be the best government, if we could organize it by creating a house of peers; but that cannot be done.

The question was put on the three year's amendment, and carried; 7 ayes, 4 noes. New-York in the affirmative.

On motion to expunge the clause of the qualification as to age, it was carried; 10 states against one.

On the question for fixed stipends, without augmentation or diminution, to this branch of the legislature, it was moved that the words *to be paid by the national treasury*, be added; carried, 8 states for; 3 against. New-York in the negative.

The question was then put on the clause as amended, and carried; 8 ayes, 3 noes. New-York in the negative.

On the clause respecting the ineligibility to any other office, it was moved that the words *by any particular state*, be expunged. 4 states for, 5 against, and 2 divided. New-York affirmative.

The question was then put on the whole clause, and carried; 10 ayes, 1 no.

The last blank was filled up with one year, and carried; 8 ayes, 2 noes, 1 divided.

Mr. Pinkney moved to expunge the clause. Agreed to, *nem. con.*

The question to fill up the blank with 3 *years*, agreed to; 7 states for, 4 against.

It was moved to fill the blank, as to the duration, with *seven years.*

Mr. Pierce moved to have it for three years—instanced the danger of too long a continuance, from the evils arising in the British parliaments from their septennial duration, and the clamors against it in that country by its real friends.

Mr. Sherman was against the seven years, because if they are bad men it is too long, and if good they may be again elected.

Mr. Madison was for 7 years—considers this branch as a check on the democracy. It cannot therefore be made too strong.

For the motion, 8 ayes, 1 no; 2 states divided. New-York one of the last.

Mr. Butler moved to expunge the clause of the stipends. Lost; 7 against, 3 for, 1 divided.

Agreed that the second branch of the national legislature be paid in the same way as the first branch.

Upon the subject of ineligibility, it was agreed that the same rule should apply as to the first branch.

6th resolve agreed to be postponed *sine die.*

9th resolve taken into consideration, but postponed to-morrow. Then adjourned to to-morrow morning.

WEDNESDAY, JUNE 13th, 1787.

Met pursuant to adjournment. Present 11 states.

Gov. Randolph observed the difficulty in establishing the powers of the judiciary—the object however at present is to establish this principle, to wit, the security of foreigners where treaties are in their favor, and to preserve the harmony of states and that of the citizens thereof. This being once established, it will be the business of a sub-committee to detail it; and therefore moved to obliterate such parts of the resolve so as only to establish the principle, to wit, *that the jurisdiction of the national judiciary shall extend to all cases of national revenue, impeachment of national officers, and questions which involve the national peace or harmony.* Agreed to unanimously.

It was further agreed that the judiciary be paid out of the national treasury.

Mr. Pinkney moved that the judiciary be appointed by the national legislature.

Mr. Madison is of opinion, that the second branch of the legislature ought to appoint the judiciary, which the convention agreed to.

Mr. Gerry moved that the first branch shall have the only right of originating bills to supply the treasury.

Mr. Butler against the motion. We are constantly running away with the idea of the excellence of the British parliament, and with or without reason copying from them; when in fact there is no similitude in our situations. With us both houses are appointed by the people, and both ought to be equally trusted.

Mr. Gerry. If we dislike the British government for the oppressive measures by them carried on against us, yet he hoped we would not be so far prejudiced as to make ours in every thing opposite to theirs.

Mr. Madison's question carried.

The committee having now gone through the whole of the propositions from Virginia—Resolved, That the committee do report to the convention their proceedings. This was accordingly done. [*See page* 41.

The house resolved, on the report being read, that the consideration thereof be postponed to to-morrow, and that members have leave to take copies thereof.

Adjourned to to-morrow morning.

THURSDAY, JUNE 14th, 1787.

Met pursuant to adjournment. Present 11 states.

Mr. Patterson moved that the further consideration of the report be postponed until to-morrow, as he intended to give in principles to form a federal system of government materially different from

the system now under consideration. Postponement agreed to. Adjourned until to-morrow morning.

FRIDAY, JUNE 15th, 1787.

Met pursuant to adjournment. Present 11 states.

Mr. Patterson, pursuant to his intentions as mentioned yesterday read a set of resolves as the basis of amendment to the confederation. [*See page* 70 *of this volume.*]

He observed that no government could be energetic on paper only, which was no more than straw—that the remark applied to the one as well as to the other system, and is therefore of opinion that there must be a small standing force to give every government weight.

Mr. Madison moved for the report of the Committee, and the question may then come on whether the convention will postpone it in order to take into consideration the system now offered.

Mr. Lansing is of opinion that the two systems are fairly contrasted. The one now offered is on the basis of amending the federal government, and the other to be reported as a national government, on propositions which exclude the propriety of amendment. Considering therefore its importance, and that justice may be done to its weighty consideration, he is for postponing it a day.

Col. Hamilton cannot say he is in sentiment with either plan—supposes both might be again considered as federal plans, and by this means they will be fairly in committee, and be contrasted so as to make a comparative estimate of the two.

Thereupon it was agreed, that the report be postponed, and that the house will resolve itself into a committee of the whole, to take into consideration both propositions to-morrow. Then the convention adjourned to to-morrow morning.

SATURDAY, JUNE 16, 1787.

Met pursuant to adjournment. Present 11 states.

Mr. Lansing moved to have the first article of the last plan of government read; which being done, he observed, that this system is fairly contrasted with the one ready to be reported—the one federal, and the other national. In the first, the powers are exercised as flowing from the respective state governments—The second, deriving its authority from the people of the respective states—which latter must ultimately destroy or annihilate the state governments. To determine the powers on these grand objects with which we are invested, let us recur to the credentials of the respective states, and see what the views were of those who sent us. The language is there expressive—it is, upon the revision of the present confederation, to alter and amend such parts as may appear defective, so as to give additional strength to the union. And he would venture to assert, that had the legislature of the state of New-York apprehended that their powers would have

been construed to extend to the formation of a national government, to the extinguishment of their independency, no delegates would have here appeared on the part of that state. This sentiment must have had its weight on a former occasion, even in this house; for when the second resolution of Virginia, which declared, in substance, that a federal government could not be amended for the good of the whole, the remark of an honorable member of South-Carolina, that by determining this question in the affirmative their deliberative powers were at an end, induced this house to wave the resolution.

It is in vain to adopt a mode of government. which we have reason to believe the people gave us no power to recommend—as they will consider themselves on this ground authorized to reject it. See the danger of exceeding your powers by the example which the requisition of congress of 1783 afforded. They required an impost on all imported articles; to which, on federal grounds, they had no right unless voluntarily granted. What was the consequence? Some, who had least to give. granted it; and others, under various restrictions and modifications, so that it could not be systematized. If we form a government, let us do it on principles which are likely to meet the approbation of the states. Great changes can only be gradually introduced. The states will never sacrifice their essential rights to a national government. New plans, annihilating the rights of the states (unless upon evident necessity) can never be approved. I may venture to assert, that the prevalent opinion of America is, that granting additional powers to congress would answer their views, and every power recommended for their approbation exceeding this idea, will be fruitless.

Mr. Patterson.—As I had the honor of proposing a new system of government for the union, it will be expected that I should explain its principles.

1st. The plan accords with our own powers.

2d. It accords with the sentiments of the people.

But if the subsisting confederation is so radically defective as not to admit of amendment, let us say so and report its insufficiency, and wait for enlarged powers. We must, in the present case, pursue our powers, if we expect the approbation of the people. I am not here to pursue my own sentiments of government, but of those who have sent me; and I believe that a little practical virtue is to be preferred to the finest theoretical principles, which cannot be carried into effect. Can we, as representatives of independent states, annihilate the essential powers of independency? Are not the votes of this convention taken on every question under the idea of independency? Let us turn to the 5th article of confederation—in this it is mutually agreed, that each state should have one vote—It is a fundamental principle arising from confederated governments. The 13th article provides for amendments;

but they must be agreed to by every state—the dissent of one renders every proposal null. The confederation is in the nature of a compact; and can any state, unless by the consent of the whole, either in politics or law, withdraw their powers? Let it be said by Pennsylvania, and the other large states, that they, for the sake of peace, assented to the confederation; can she now resume her original right without the consent of the donee?

And although it is now asserted that the larger states reluctantly agreed to that part of the confederation which secures an equal suffrage to each, yet let it be remembered, that the smaller states were the last who approved the confederation.

On this ground, representation must be drawn from the states to maintain their independency, and not from the people composing those states.

The doctrine advanced by a learned gentleman from Pennsylvania, that all power is derived fron the people, and that in proportion to their numbers they ought to participate equally in the benefits and rights of government, is right in principle, but unfortunately for him, wrong in the application to the question now in debate.

When independent societies confederate for mutual defence, they do so in their collective capacity; and then each state for those purposes must be considered as *one* of the contracting parties. Destroy this balance of equality, and you endanger the rights of the *lesser* societies by the danger of usurpation in the greater.

Let us test the government intended to be made by the Virginia plan on these principles. The representatives in the national legislature are to be in proportion to the number of inhabitants in each state. So far as it is right upon these principles of equality, when state distinctions are done away, but those to certain purposes still exist. Will the government of Pennsylvania admit a participation of their common stock of land to the citizens of New Jersey? I fancy not. It therefore follows, that a national government, upon the present plan, is unjust, and destructive of the common principles of reciprocity. Much has been said that this government is to operate on persons, not on states. This, upon examination, will be found equally fallacious; for the fact is, it will, in the quotas of revenue, be proportioned among the states, as states; and in this business Georgia will have 1 vote, and Virginia 16. The truth is both plans may be considered to compel individuals to a compliance with their requisitions, although the requisition is made on the states.

Much has been said in commendation of two branches in a legislature, and of the advantages resulting from their being checks to each other. This may be true when applied to the state governments, but will not equally apply to a national legislature, whose legislative objects are few and simple.

Whatever may be said of congress, or their conduct on particular occasions, the people in general, are pleased with such a body, and in general wish an increase of their powers, for the good government of the union. Let us now see the plan of the national government on the score of expense. The least the second branch of the legislature can consist of is 90 members—The first branch of at least 270. How are they to be paid in our present impoverished situation? Let us therefore fairly try whether the confederation cannot be mended, and if it can, we shall do our duty, and I believe the people will be satisfied.

Mr. Wilson first stated the difference between the two plans.

Virginia plan proposes two branches in the legislature.
Jersey a single legislative body.
Virginia, the legislative powers derived from the people.
Jersey, from the states.
Virginia, a single executive.
Jersey, more than one.
Virginia, a majority of the legislature can act.
Jersey, a small majority can control.
Virginia, the legislature can legislate on all national concerns.
Jersey, only on limited objects.
Virginia, legislature to negative all state laws.
Jersey, giving power to the executive to compel obedience by force.
Virginia, to remove the executive by impeachment.
Jersey, on application of a majority of the states.
Virginia, for the establishment of inferior judiciciary tribunals.
Jersey, no provision.

It is said and insisted on, that the Jersey plan accords with our powers. As for himself he considers his powers to extend to every thing or nothing; and therefore that he has a right and is at liberty to agree to either plan or none. The people expect relief from their present embarrassed situation, and look up for it to this national convention, and it follows that they expect a *national government*, and therefore the plan from Virginia has the preference to the other. I would (says he) with a reluctant hand add any powers to congress, because they are not a body chosen by the people, and consist only of one branch, and each state in it has one vote. Inequality in representation poisons every government.

The English courts are hitherto pure, just, and incorrupt, while their legislature are base and venal. The one arises from unjust representation; the other from their independency of the legislature. Lord Chesterfield remarks, that one of the states of the United Netherlands withheld its assent to a proposition until a major of their state was provided for. He needed not to have added (for the conclusion was self-evident,) that it was one of the lesser states. I mean no reflection, but I leave it to gentlemen to

consider whether this has not also been the case in congress? The argument in favor of the Jersey plan goes too far, as it cannot be completed unless Rhode Island assents. A single legislature is very dangerous: despotism may present itself in various shapes. May there not be legislative despotism, if, in the exercise of their power, they are unchecked or unrestrained by another branch? On the contrary, an executive to be restrained must be an individual. The first triumvirate of Rome combined, without law, was fatal to its liberties; and the second, by the usurpation of Augustus, ended in despotism. The two kings of Sparta, and the consuls of Rome, by sharing the executive, distracted their governments.

Mr. C. C. Pinkney supposes that if New-Jersey was indulged with one vote out of 13, she would have no objection to a national government. He supposes that the convention have already determined, virtually, that the federal government cannot be made efficient. A national government being therefore the object, this plan must be pursued, as our business is not to conclude but to recommend.

Judge Elsworth is of opinion that the first question on the new plan will decide nothing materially on principle, and therefore moved the postponement thereof, in order to bring on the second.

Gov. Randolph.—The question now is which of the two plans is to be preferred. If the vote on the first resolve will determine it, and it is so generally understood, he has no objection that it be put. The resolutions from Virginia must have been adopted on the supposition that a federal government was impracticable. And it is said, that power is wanting to institute such a government; but when our all is at stake, I will consent to any mode that will preserve us. View our present deplorable situation: France, to whom we are indebted in every motive of gratitude and honor, is left unpaid the large sums she has supplied us with in the day of our necessity. Our officers and soldiers, who have successfully fought our battles, and the loaners of money to the public, look up to you for relief.

The bravery of our troops is degraded by the weakness of our government.

It has been contended, that the 5th article of the confederation cannot be repealed under the powers to new modify the confederation by the 13th article. This surely is false reasoning, since the whole of the confederation upon revision is subject to *amendment and alteration*; besides, our business consists in recommending a system of government, not to make it. There are great reasons when persons with limited powers are justified in exceeding them, and a person would be contemptible not to risk it. Originally our confederation was founded on the weakness of each state to repel a foreign enemy; and we have found that the powers granted to congress are insufficient. The body of congress is ineffectual to carry the great objects of safety and protection into ex-

ecution. What would their powers be over the commander of the military, but for the virtue of the commander? As the state assemblies are constantly encroaching on the powers of congress, the Jersey plan would rather encourage such encroachments than be a check to it; and from the nature of the institution, congress would ever be governed by cabal and intrigue. They are besides too numerous for an executive, nor can any additional powers be sufficient to enable them to protect us against foreign invasion.—Amongst other things, congress was intended to be a body to preserve peace among the states; and, in the rebellion of Massachusetts, it was found they were not authorised to use the troops of the confederation to quell it. Every one is impressed with the idea of a general regulation of trade and commerce. Can congress do this? when, from the nature of their institution, they are so subject to cabal and intrigue? And would it not be dangerous to entrust such a body with the power, when they are dreaded on these grounds? I am certain that a national government must be established, and this is the only moment when it can be done: and let me conclude by observing, that the best exercise of power is to exert it for the public good.

Then adjourned to Monday morning.

MONDAY, JUNE 19th, 1787.

Met pursuant to adjournment. Present 11 states.

Mr. Hamilton.—To deliver my sentiments on so important a subject, when the first characters of the union have gone before me, inspires me with the greatest diffidence, especially when my own ideas are so materially dissimilar to the plans now before the committee. My situation is disagreeable, but it would be criminal not to come forward on a question of such magnitude. I have well considered the subject, and am convinced that no amendment of the confederation can answer the purpose of a good government, so long as the state sovereignties do, in any shape, exist; and I have great doubts whether a national government on the Virginia plan can be made effectual. What is federal? An association of several independent states into one. How or in what manner this association is formed, is not so clearly distinguishable. We find the diet of Germany has in some instances the power of legislation on individuals. We find the United States of America have it in an extensive degree in the cases of piracies.

Let us now review the powers with which we are invested. We are appointed for the *sole* and *express* purpose of revising the confederation, and to *alter* or *amend* it, so as to render it effectual for the purposes of a good government. Those who suppose it must be federal, lay great stress on the terms *sole* and *express*, as if these words intended a confinement to a federal government; when the manifest import is no more than that the institution of a good government must be the *sole* and *express* object of your deliberations.

Nor can we suppose an annihilation of our powers by forming a national government, as many of the states have made in their constitutions no provision for any alteration; and thus much I can say for the state I have the honor to represent, that when our credentials were under consideration in the senate, some members were for inserting a restriction in the powers, to prevent an encroachment on the constitution: it was answered by others, and thereupon the resolve carried on the credentials, that it might abridge some of the constitutional powers of the state, and that possibly in the formation of a new union it would be found necessary. This appears reasonable, and therefore leaves us at liberty to form such a national government as we think best adapted for the good of the whole. I have therefore no difficulty as to the extent of our powers, nor do I feel myself restrained in the exercise of my judgment under them. We can only propose and recommend;—the power of ratifying or rejecting is still in the states. But on this great question I am still greatly embarrassed. I have before observed my apprehension of the inefficacy of either plan, and I have great doubts whether a more energetic government can pervade this wide and extensive country. I shall now show that both plans are materially defective.

1. A good government ought to be constant, and ought to contain an active principle. 2. Utility and necessity. 3. An habitual sense of obligation. 4. Force. 5. Influence.

I hold it, that different societies have all different views and interests to pursue, and always prefer local to general concerns. For example: New-York legislature made an external compliance lately to a requisition of congress; but do they not at the same time counteract their compliance by gratifying the local objects of the state, so as to defeat their concession? And this will ever be the case. Men always love power, and states will prefer their particular concerns to the general welfare; and as the states become large and important, will they not be less attentive to the general government? What in process of time will Virginia be? She contains now half a million of inhabitants: in twenty-five years she will double the number. Feeling her own weight and importance, must she not become indifferent to the concerns of the union? And where, in such a situation, will be found national attachment to the general government?

By *force* I mean the *coercion* of law and the coercion of arms. Will this remark apply to the power intended to be vested in the government to be instituted by their plan? A delinquent must be compelled to obedience by force of arms. How is this to be done? If you are unsuccessful, a dissolution of your government must be the consequence; and in that case the individual legislatures will reassume their powers; nay, will not the interest of the states be thrown into the state governments?

By *influence*, I mean the regular weight and support it will re-

ceive from those who find it their interest to support a government intended to preserve the peace and happiness of the community no the whole. The state governments, by either plan, will exert the means to counteract it. They have their state judges and militia all combined to support their state interests; and these will be influenced to oppose a national government. Either plan is therefore precarious. The national government cannot long exist when opposed by such a weighty rival. The experience of ancient and modern confederacies evince this point, and throw considerable light on the subject. The amphyctionic council of Greece had a right to require of its members troops, money and the force of the country. Were they obeyed in the exercise of those powers?—Could they preserve the peace of the greater states and republics? or where were they obeyed? History shows that their decrees were disregarded, and that the stronger states, regardless of their power, gave law to the lesser.

Let us examine the federal institution of Germany. It was instituted upon the laudable principle of securing the independency of the several states of which it was composed, and to protect them against foreign invasion. Has it answered these good intentions? Do we not see that their councils are weak and distracted, and that it cannot prevent the wars and confusions which the respective electors carry on against each other? The Swiss cantons, or the Helvetic union, are equally inefficient.

Such are the lessons which the experience of others affords us, and from whence results the evident conclusion that all federal governments are weak and distracted. To avoid the evils deducible from these observations, we must establish a general and national government, completely sovereign, and annihilate the state distinctions and state operations; and unless we do this, no good purpose can be answered. What does the Jersey plan propose? It surely has not this for its object. By this we grant the regulation of trade and a more effectual collection of the revenue, and some partial duties. These at five or ten per cent, would only perhaps amount to a fund to discharge the debt of the corporation.

Let us take a review of the variety of important objects, which must necessarily engage the attention of a national government. You have to protect your rights against Canada on the north, Spain on the south, and your western frontier against the savages. You have to adopt necessary plans for the settlement of your frontiers, and to institute the mode in which settlements and good government are to be made.

How is the expense of supporting and regulating these important matters to be defrayed? By requisition on the states, according to the Jersey plan? Will this do it? We have already found it ineffectual. Let one state prove delinquent, and it will encourage others to follow the example; and thus the whole will fail. And what is the standard to quota among the states their respective

proportions? Can lands be the standard? How would that apply between Russia and Holland? Compare Pennsylvania with North Carolina, or Connecticut with New-York. Does not commerce or industry in the one or other make a great disparity between these different countries, and may not the comparative value of the states from these circumstances, make an unequal disproportion when the data is numbers? I therefore conclude that either system would ultimately destroy the confederation, or any other government which is established on such fallacious principles. Perhaps imposts, taxes on specific articles, would produce a more equal system of drawing a revenue.

Another objection against the Jersey plan is, the unequal representation. Can the great states consent to this? If they did it would eventually work its own destruction. How are forces to be raised by the Jersey plan? By quotas? Will the states comply with the requisition? As much as they will with the taxe s.

Examine the present confederation, and it is evident they can raise no troops nor equip vessels before war is actually declared. They cannot therefore take any preparatory measure before an enemy is at your door. How unwise and inadequate their powers! and this must ever be the case when you attempt to define powers.—Something will always be wanting. Congress, by being annually elected, and subject to recal will ever come with the prejudices of their states rather than the good of the union. Add therefore additional powers to a body thus organized, and you establish a *sovereignty* of the worst kind, consisting of a single body. Where are the checks? None. They must either prevail over the state governments, or the prevalence of the state governments must end in their dissolution. This is a conclusive objection to the Jersey plan.

Such are the insuperable objections to both plans: and what is to be done on this occasion? I confess I am at a loss. I foresee the difficulty on a consolidated plan of drawing a representation from so extensive a continent to one place. What can be the inducements for gentlemen to come 600 miles to a national legislature? The expense would at least amount to £100,000. This however can be no conclusive objection if it eventuates in an extinction of state governments. The burden of the latter would be saved, and the expense then would not be great. State distinctions would be found unnecessary, and yet I confess, to carry government to the extremities, the state governments reduced to corporations, and with very limited powers, might be necessary, and the expense of the national government become less burthensome.

Yet, I confess, I see great difficulty of drawing forth a good representation. What, for example, will be the inducements for gentlemen of fortune and abilities to leave their houses and business to attend annually and long? It cannot be the wages; for these, I presume, must be small. Will not the power, therefore,

be thrown into the hands of the demagogue or middling politician, who, for the sake of a small stipend and the hopes of advancement, will offer himself as a candidate, and the real men of weight and influence, by remaining at home, add strength to the state governments? I am at a loss to know what must be done—I despair that a republican form of government can remove the difficulties. Whatever may be my opinion, I would hold it however unwise to change that form of government. I believe the British government forms the best model the world ever produced, and such has been its progress in the minds of the many, that this truth gradually gains ground. This government has for its object *public strength* and *individual security*. It is said with us to be unattainable. If it was once formed it would maintain itself. All communities divide themselves into the few and the many. The first are the rich and well born, the other the mass of the people. The voice of the people has been said to be the voice of God; and however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right. Give therefore to the first class a distinct, permanent share in the government. They will check the unsteadiness of the second, and as they cannot receive any advantage by a change, they therefore will ever maintain good government. Can a democratic assembly, who annually revolve in the mass of the people, be supposed steadily to pursue the public good? Nothing but a permanent body can check the imprudence of democracy. Their turbulent and uncontroling disposition requires checks. The senate of New York, although chosen for four years, we have found to be inefficient. Will, on the Virginia plan, a continuance of seven years do it? It is admitted that you cannot have a good executive upon a democratic plan. See the excellency of the British executive. He is placed above temptation—he can have no distinct interests from the public welfare.—Nothing short of such an executive can be inefficient. The weak side of a republican government is the danger of foreign influence. This is unavoidable, unless it is so constructed as to bring forward its first characters in its support. I am therefore for a general government, yet would wish to go the full length of republican principles.

Let one body of the legislature be constituted during good behaviour or life.

Let one executive be appointed who dares execute his powers.

It may be asked is this a republican system? It is strictly so, as long as they remain elective.

And let me observe, that an executive is less dangerous to the liberties of the people when in office during life, than for seven years.

It may be said this constitutes an elective monarchy? Pray what is a monarchy? May not the governors of the respective states be

considered in that light? But by making the executive subject to impeachment, the term monarchy cannot apply. These elective monarchs have produced tumults in Rome, and are equally dangerous to peace in Poland; but this cannot apply to the mode in which I would propose the election. Let electors be appointed in each of the states to elect the executive—[*Here Mr. H. produced his plan—See page 73,*] to consist of two branches; and I would give them the unlimited power of passing *all laws* without exception. The assembly to be elected for three years by the people in districts—the senate to be elected by electors to be chosen for that purpose by the people, and to remain in office during life. The executive to have the power of negativing all laws; to make war or peace, with the advice of the senate—to make treaties with their advice, but to have the sole direction of all military operations, and to send ambassadors and appoint all military officers, and to pardon all offenders, treason excepted, unless by advice of the senate. On his death or removal, the president of the senate to officiate, with the same powers, until another is elected. Supreme judicial officers to be appointed by the executive and the senate. The legislature to appoint courts in each state, so as to make the state governments unnecessary to it.

All state laws to be absolutely void which contravene the general laws. An officer to be appointed in each state to have a negative on all state laws. All the militia and the appointment of officers to be under the national government.

I confess that this plan and that from Virginia are very remote from the idea of the people. Perhaps the Jersey plan is nearest their expectation. But the people are gradually ripening in their opinions of government—they begin to be tired of an excess of democracy—and what even is the Virginia plan, but *pork still, with a little change of the sauce.*

Then adjourned to to-morrow.

TUESDAY, JUNE 19th, 1787.

Met pursuant to adjournment. Present 11 states.

On the consideration of the first resolve of the Jersey plan.

Mr. Madison—This is an important question—many persons scruple the powers of the convention. If this remark had any weight, it is equally applicable to the adoption of either plan.—The difference of drawing the powers in the one from the people and in the other from the states, does not affect the powers. There are two states in the union where the members of congress are chosen by the people. A new government must be made. Our all is depending on it; and if we have but a clause that the people will adopt, there is then a chance for our preservation. Although all the states have assented to the confederation, an infraction of any one article by one of the states is a dissolution of the whole. This is the doctrine of the civil law on treaties.

Jersey pointedly refused complying with a requisition of congress, and was guilty of this infraction, although she afterwards rescinded her non-complying resolve. What is the object of a confederation? It is two-fold—1st, to maintain the union; 2dly, good government. Will the Jersey plan secure these points? No; it is still in the power of the confederated states to violate treaties. Has not Georgia, in direct violation of the confederation made war with the Indians, and concluded treaties? Have not Virginia and Maryland entered into a partial compact? Have not Pennsylvania and Jersey regulated the bounds of the Delaware? Has not the state of Massachusetts, at this time, a considerable body of troops in pay? Has not congress been obliged to pass a conciliatory act in support of a decision of their federal court, between Connecticut and Pennsylvania, instead of having the power of carrying into effect the judgment of their own court? Nor does the Jersey plan provide for a ratification by the respective states of the powers intended to be vested. It is also defective in the establishment of the judiciary, granting only an appellate jurisdiction, without providing for a second trial; and in case the executive of a state should pardon an offender, how will it effect the definitive judgment on appeal? It is evident, if we do not *radically* depart from a federal plan, we shall share the fate of ancient and modern confederacies. The amphyctionic council, like the American congress, had the power of judging in the *last resort* in war and peace —call out forces—send ambassadors. What was its fate or continuance? Philip of Macedon, with little difficulty, destroyed every appearance of it. The Athenian had nearly the same fate—The Helvetic confederacy is rather a league. In the German confederacy the parts are too strong for the whole. The Dutch are in a most wretched situation—weak in all its parts, and only supported by surrounding contending powers.

The rights of individuals are infringed by many of the state laws—such as issuing paper money, and instituting a mode to discharge debts differing from the form of the contract. Has the Jersey plan any checks to prevent the mischief? Does it in any instance secure internal tranquility? Right and force, in a system like this, are synonymous terms. When force is employed to support the system, and men obtain military habits, is there no danger they may turn their arms against their employers? Will the Jersey plan prevent foreign influence? Did not Persia and Macedon distract the councils of Greece by acts of corruption? And is not Jersey and Holland at this day subject to the same distractions? Will not the plan be burthensome to the smaller states, if they have an equal representation? But how is military coercion to enforce government? True, a smaller state may be brought to obedience, or crushed; but what if one of the larger states should prove disobedient, are you sure you can by force effect a submission? Suppose we cannot agree on any plan, what will be the con-

dition of the smaller states? Will Delaware and Jersey be safe against Pennsylvania, or Rhode Island against Massachusetts? And how will the smaller states be situated in case of partial confederacies? Will they not be obliged to make larger concessions to the greater states? The point of representation is the great point of difference, and which the greater states cannot give up; and although there was an equalization of states, state distinctions would still exist. But this is totally impracticable; and what would be the effect of the Jersey plan if ten or twelve new states were added?

Mr. King moved that the committee rise, and report that the Jersey plan is not admissible, and report the first plan.

Mr. Dickinson supposed that there were good regulations in both. Let us therefore contrast the one with the other, and consolidate such parts of them as the committee approve.

Mr. King's motion was then put—For it 7 states—3 against—one divided. New York in the minority.

The committee rose and reported again the first plan, and the inadmissibility of the Jersey plan.

The convention then proceeded to take the first plan into consideration.

The first resolve was read.

Mr. Wilson—I am (to borrow a sea-phrase) for taking a new departure, and wish to consider in what direction we sail, and what may be the end of our voyage. I am for a national government, though the idea of federal is, in my view, the same. With me it is not a desirable object to annihilate the state governments, and here I differ from the honorable gentleman from New York. In all extensive empires a subdivision of power is necessary. Persia, Turkey and Rome, under its emperors, are examples in point. These, although despots, found it necessary. A general government, over a great extent of territory, must in a few years make subordinate jurisdictions. Alfred the great, that wise legislator, made this gradation, and the last division on his plan amounted only to ten territories. With this explanation, I shall be for the first resolve.

Mr. Hamilton. I agree to the proposition. I did not intend yesterday a total extinguishment of state governments; but my meaning was, that a national government ought to be able to support itself without the aid or interference of the state governments, and that therefore it was necessary to have full sovereignty. Even with corporate rights the states will be dangerous to the national government, and ought to be extinguished, new modified, or reduced to a smaller scale.

Mr. King. None of the states are now sovereign or independent--Many of these essential rights are vested in congress. Congress, by the confederation, possesses the rights of the United States. This is a union of the men of those states. None of

the states, individually or collectively, but in congress, have the rights of *peace* or *war*. The magistracy in congress possesses the sovereignty—To certain points we are now a united people. Consolidation is already established. The confederation contains an article to make alterations—Congress have the right to propose such alterations. The 8th article respecting the quotas of the states, has been altered, and eleven states have agreed to it. Can it not be altered in other instances? It can excepting the guarantee of the states.

Mr. Martin. When the states threw off their allegiance on Great Britian, they became independent of her and each other. They united and confederated for mutual defence, and this was done on principles of perfect reciprocity—They will now again meet on the same ground. But when a dissolution takes place, our original rights and sovereignties are resumed.—Our accession to the union has been by states. If any other principle is adopted by this convention, he will give it every opposition.

Mr. Wilson. The declaration of independence preceded the state constitutions. What does this declare? In the name of the people of these states, we are declared to be free and independent. The power of war, peace, alliances and trade, are declared to be vested in congress.

Mr. Hamilton. I agree to Mr. Wilson's remark.—Establish a weak government and you must at times overleap the bounds. Rome was obliged to create dictators. Cannot you make propositions to the people because we before confederated on other principles?—The people can yield to them, if they will. The three great objects of government, *agriculture, commerce and revenue*, can only be secured by a general government. Adjourned to to-morrow morning.

WEDNESDAY, JUNE 20th, 1787.

Met pursuant to adjournment. Present 11 states.

Judge Elsworth. I propose, and therefore move, to expunge the word *national*, in the first resolve, and to place in the room of it, *government of the United States*—which was agreed to, *nem. con.*

Mr. Lansing then moved that the first resolve be postponed, in order to take into consideration the following: *That the powers of legislation ought to be vested in the United States in congress.*

I am clearly of opinion that I am not authorized to accede to a system which will annihilate the state governments, and the Virginia plan is declarative of such extinction. It has been asserted that the public mind is not known. To some points it may be true, but we may collect from the fate of the requisition of the impost, what it may be on the principles of a national government.—When many of the states were so tenacious of their rights on this point, can we expect that *thirteen* states will surrender their governments up to a national plan? Rhode Island pointedly

refused granting it. Certainly she had a federal right to do so; and I hold it as an undoubted truth, as long as state distinctions remain, let the national government be modified as you please, both branches of your legislature will be impressed with local and state attachments. The Virginia plan proposes a negative on the state laws where, *in the opinion* of the national legislature, they contravene the national government: and no laws can pass unless approved by them.—They will have more than a law in a day to revise; and are they competent to judge of the wants and necessities of remote states?

This national government will, from their power, have great influence in the state governments; and the existence of the latter are only saved in appearence. And has it not been asserted that they expect their extinction? If this be the object, let us say so, and extinguish them at once. But remember, if we devise a system of which government will not meet the approbation of our constituents, we are dissolving the union—but if we act within the limits of our power, it will be approved of; and should it upon experiment prove defective, the people will entrust a future convention again to amend it. Fond as many are of a general government, do any of you believe it can pervade the whole continent so effectually as to secure the peace, harmony and happiness of the whole? The excellence of the British model of government has been much insisted on; but we are endeavoring to complicate it with state governments, on principles which will gradually destroy the one or the other. You are sowing the seeds of rivalship, which must at last end in ruin.

Mr. Mason. The material difference between the two plans has already been clearly pointed out. The objection to that of Virginia arises from the want of power to institute it, and the want of practicability to carry it into effect. Will the first objection apply to a power merely recommendatory? In certain seasons of public danger it is commendable to exceed power. The treaty of peace, under which we now enjoy the blessings of freedom, was made by persons who exceeded their powers. It met the approbation of the public, and thus deserved the praises of those who sent them. The impracticability of the plan is still less groundless. These measures are supported by one who, at his time of life, has little to hope or expect from any government. Let me ask, will the people entrust their dearest rights and liberties to the determination of one body of men, and those not chosen by them, and who are invested both with the *sword* and *purse*? They never will—they never can—to a conclave, transacting their business secret from the eye of the public. Do we not discover by their public journals of the years 1778-9, and 1780, that factions and party spirit had guided many of their acts? The people of America, like all other people, are unsettled in their minds, and their principles fixed to no object, except that a republican

government is the best, and that the legislature ought to consist of two branches. The constitutions of the respective states, made and approved of by them, evince this principle. Congress, however from other causes, received a different organization. What, would you use military force to compel the observance of a social compact? It is destructive to the rights of the people. Do you expect the militia will do it, or do you mean a standing army? The first will never, on such an occasion, exert any power; and the latter may turn its arms against the government which employs them. I never will consent to destroy state governments, and will ever be as careful to preserve the one as the other. If we should, in the formation of the latter, have omitted some necessary regulation, I will trust my posterity to amend it. That the one government will be productive of disputes and jealousies against the other, I believe; but it will produce mutual safety. I shall close with observing, that though some gentlemen have expressed much warmth on this and former occasions, I can excuse it, as the result of sudden passion; and hope that although we may differ in some particular points, if we mean the good of the whole, that our good sense upon reflection, will prevent us from spreading our discontent further.

Mr. Martin. I know the government must be supported; and if the one was incompatible with the other, I would support the state government at the expense of the union—for I consider the present system as a system of slavery. Impressed with this idea, I made use, on a former occasion, of expressions perhaps rather harsh. If gentlemen conceive that the legislative branch is dangerous, divide them into two. They are as much the representatives of the states, as the state assemblies are the representatives of the people. Are not the powers which we here exercise given by the legislatures? [After giving a detail of the revolution and of state governments, Mr. M. continued.] I confess when the confederation was made, congress ought to have been invested with more extensive powers; but when the states saw that congress indirectly aimed at sovereignty, they were jealous, and therefore refused any farther concessions. The time is now come that we can constitutionally grant them not only new powers, but to modify their government, so that the state governments are not endangered. But whatever we have now in our power to grant, the grant is a state grant, and therefore it must be so organized that the state governments are interested in supporting the union. Thus systematized, there can be no danger if a shall force is maintained.

Mr. Sherman. We have found during the war that though congress consisted of but one branch, it was that body which carried us through the whole war, and we were crowned with success. We closed the war, performing all the functions of a good government, by making a beneficial peace. But the great difficulty now is, how shall we pay the public debt incurred during that war. The

unwillingness of the states to comply with the requisitions of congress, has embarrassed us greatly. But to amend these defects in government I am not fond of speculation. I would rather proceed on experimental ground. We can so modify the powers of congress, that we will all be mutual supporters of one another. The disparity of the states can be no difficulty. We know this by experience—Virginia and Massachusetts were the first who unanimously ratified the old confederation. They then had no claim to more votes in congress than one. Foreign states have made treaties with us as confederated states, not as a national government. Suppose we put an end to that government under which those treaties were made, will not these treaties be void?

Mr. Wilson. The question before us may admit of the three following considerations:

1. Whether the legislature shall consist of one or two branches.

2. Whether they are to be elected by the state government or by the people.

3. Whether in proportion to state importance, or states individually.

Confederations are usually of a short date. The amphyctionic council was instituted in the infancy of the Grecian republics—as those grew in strength, the council lost its weight and power. The Achæan league met the same fate—Switzerland and Holland are supported in their confederation, not by its intrinsic merit, but the incumbent pressure of surrounding bodies. Germany is kept together by the house of Austria. True, congress carried us through the war even against its own weakness. That powers were wanting, you Mr. President, must have felt. To other causes, not to congress, must the success be ascribed. That the great states acceded to the confederation, and that they in the hour of danger, made a sacrifice of their interest to the lesser states is true. Like the wisdom of Solomon in adjudging the child to its true mother, from tenderness to it, the greater states well knew that the loss of a limb was fatal to the confederation—they two, through tenderness sacrificed their dearest rights to preserve the whole. But the time is come, when justice will be done to their claims—Situations are altered.

Congress have frequently made their appeal to the people. I wish they had always done it—the national government would sooner have been extricated.

Question then put on Mr. Lansing's motion and lost.—Six states against four—one divided. New York in the minority.

Adjourned till to-morrow morning.

THURSDAY, JUNE 21st, 1787.

Met pursuant to adjournment. Present eleven states.

Dr. Johnson. It appears to me that the Jersey plan has for its principal object, the preservation of the state governments. So

far it is a departure from the plan of Virginia, which although it concentrates in a distinct national government, it is not totally independent of that of the states. A gentleman from New York, with boldness and decision, proposed a system totally different from both; and though he has been praised by every body, he has been supported by none. How can the state governments be secured on the Virginia plan? I could have wished, that the supporters of the Jersey system could have satisfied themselves with the principles of the Virginia plan, and that the individuality of the states could be supported. It is agreed on all hands that a portion of government is to be left to the states. How can this be done? It can be done by joining the states in their legislative capacity with the right of appointing the second branch of the national legislature, to represent the states individually.

Mr. Wilson. If security is necessary to preserve the one, it is equally so to preserve the other. How can the national government be secured against the states? Some regulation is necessary. Suppose the national government had a component number in the state legislature? But where the one government clashed with the other, the state government ought to yield, as the preservation of the general interest must be preferred to a particular. But let us try to designate the powers of each, and then no danger can be apprehended, nor can the general government be possessed of any ambitious views to encroach on the state rights.

Mr. Madison. I could have wished that the gentleman from Connecticut had more accurately marked his objections to the Virginia plan. I apprehend the greatest danger is from the encroachment of the states on the national government—This apprehension is justly founded on the experience of ancient confederacies, and our own is a proof of it.

The right of negativing in certain instances the state laws, affords one security to the national government. But is the danger well founded? Have any state governments ever encroached on the corporate rights of cities? And if it was the case that the national government usurped the state government, if such usurpation was for the good of the whole, no mischief could arise. To draw the line between the two, is a difficult task. I believe it cannot be done, and therefore I am inclined for a general government.

If we cannot form a general government, and the states become totally independent of each other, it would afford a melancholy prospect.

The second resolve was then put and carried—seven states for—three against—one divided. New York in the minority.

The 3rd resolve was then taken into consideration by the convention.

Mr. Pinkney. I move *that the members of the first branch be appointed in such manner as the several state legislatures shall direct*. instead of the mode reported. If this motion is not agreed to, the

other will operate with great difficulty, if not injustice—If you make district elections and join, as I presume you must, many counties in one district, the largest county will carry the election as its united influence will give a decided majority in its favor.

Mr. Madison. I oppose the motion—there are difficulties, but they may be obviated in the details connected with the subject.

Mr. Hamilton. It is essential to the democratic rights of the community, that this branch be directly elected by the people.—Let us look forward to probable events—There may be a time when state legislatures may cease, and such an event ought not to embarrass the national government.

Mr. Mason. I am for preserving inviolably the democratic branch of the government—True, we have found inconveniences from pure democracies; but if we mean to preserve peace and real freedom, they must necessarily become a component part of a national government. Change this necessary principle, and if the government proceeds to taxation, the states will oppose your powers.

Mr. Sherman thought that an amendment to the proposed amendment is necessary.

Gov. Rutledge. It is said that an election by representatives is not an election by the people. This proposition is not correct.—What is done by my order is done by myself. I am convinced that the mode of election by legislatures will be more refined, and better men will be sent.

Mr. Wilson. The legislature of the states by the proposed motion will have an uncontrolable sway over the general government. Election is the exercise of *original* sovereignty in the people—but if by representatives, it is only *relative* sovereignty.

Mr. King. The magistrates of the states will ever pursue schemes of their own, and this, on the proposed motion, will pervade the national government—and we know the state governments will be ever hostile to the general government.

Mr. Pinkney. All the reasoning of the gentlemen opposed to my motion has not convinced me of its impropriety. There is an *esprit de corps* which has made heretofore every *unfederal* member of congress, after his election, become strictly *federal*, and this I presume will ever be the case in whatever manner they may be elected.

Question put on Mr. Pinkney's motion and carried by 6 states against 4—one divided.

Question then put on the resolve—9 states for—1 against—one divided.

Gov. Randolph. I move that in the resolve for the duration of the first branch of the general legislature, the word *three* be expunged, and the words *two years* be inserted.

Mr. Dickinson. I am against the amendment. I propose that the word *three* shall remain, but that they shall be removable annually in classes.

Mr. Sherman. I am for one year. Our people are accustomed to annual elections. Should the members have a longer duration of service, and remain at the seat of government, they may forget their constituents, and perhaps imbibe the interest of the state in which they reside, or there may be danger of catching the *esprit de corps*.

Mr. Mason. I am for two years. One year is too short.—In extensive states four months may elapse before the returns can be known. Hence the danger of their remaining too long unrepresented.

Mr. Hamilton. There is a medium in every thing. I confess three years is not too long. A representative ought to have full freedom of deliberation, and ought to exert an opinion of his own. I am convinced that the public mind will adopt a solid plan. The government of New-York, although higher toned than that of any other state, still we find great listlessness and indifference in the electors; nor do they in general bring forward the first characters to the legislature. The public mind is perhaps not now ready to receive the best plan of government, but certain circumstances are now progressing which will give a different complexion to it. *Two years* duration agreed to.

Adjourned till to-morrow morning.

FRIDAY, JUNE 22d, 1787.

Met pursuant to adjournment. The clause of the 3d resolve respecting *the stipends*, taken into consideration.

Judge Elsworth.—I object to this clause. I think the state legislatures ought to provide for the members of the general legislature, and as each state will have a proportionate number, it will not be burthensome to the smaller states. I therefore move to strike out the clause.

Mr. Gorham.—If we intend to fix the stipend, it may be an objection against the system, as the states would never adopt it. I join in the sentiment to strike out the whole.

Gov. Randolph.—I am against the motion. Are the members to be paid? Certainly. We have no sufficient fortunes to induce gentlemen to attend for nothing. If the state legislatures pay the members of the national council, they will control the members, and compel them to pursue state measures. I confess the payment will not operate impartially, but the members must be paid, and be made easy in their circumstances. Will they attend the service of the public without being paid?

Mr. Sherman.—The states ought to pay their members; and I judge of the approbation of the people on matters of government by what I suppose they will approve.

Mr. Wilson.—I am against going as far as the resolve. If, however, it is intended to throw the national legislature into the hand of the states, I shall be against it. It is possible the states

may become unfederal, and they may then shake the national government. The members ought to be paid out of the national treasuyr.

Mr. Madison.—Our attention is too much confined to the present moment, when our regulations are intended to be perpetual. Our national government must operate for the good of the whole, and the people must have a general interest in its support; but if you make its legislators subject to, and at the mercy of the state governments, you ruin the fabric; and whatever new states may be added to the general government the expence will be equally borne.

Mr. Hamilton.—I do not think the states ought to pay the members, nor am I for a fixed sum. It is a general remark, that he who pays is the master. If each state pays its own members, the burthen would be disproportionate, according to the distance of the states from the seat of government. If a national government can exist, members will make it a desirable object to attend, without accepting any stipend; and it ought to be so organized as to be efficient.

Mr. Wilson.—I move that the stipend be ascertained by the legislature, and paid out of the national treasury.

Mr. Madison.—I oppose this motion. Members are too much interested in the question. Besides, it is indecent that the legislature should put their hands in the public purse to convey it into their own.

Question put on Mr. Wilson's motion, and negatived—7 states against, 2 for, and 2 divided.

Mr Mason moved to change the phraseology of the resolve, that is to say, to receive an adequate compensation for their services, and to be paid out of the treasury. This motion was agreed to.

Mr. Rutledge.—I move that the question be taken on these words, *to be paid out of the national treasury.*

Mr. Hamilton.—It has been often asserted, that the interests of the general and of the state legislatures, are precisely the same. This cannot be true. The views of the governed are often materially different from those who govern. The scienc of policy is the knowledge of human nature. A state government will ever be the rival power of the general government. It is therefore highly improper that the state legislatures should be the paymasters of the members of the national government. All political bodies love power, and it will often be improperly attained.

Judge Elsworth.—If we are so exceedingly jealous of state legislatures, will they not have reason to be equally jealous of us? If I return to my state and tell them, we made such and such regulations for a general government, because we dared not trust you with any extensive powers, will they be satisfied? Nay, will they adopt your government? And let it ever be remembered, that

without their approbation your government is nothing more than a rope of sand.

Mr. Wilson.—I am not for submitting the national government to the approbation of the state legislatures. I know that they and the state officers will oppose it. I am for carrying it to the people of each state.

Mr. Rutledge's motion was then put—4 states for the clause, 5 against, 2 states divided. New-York divided.

The clause, to be ineligible to any office, &c., came next to be considered.

Mr. Mason moved that after the words, *two years*, be added, *and to be of the age of 25 years.*

Question put and agreed to—7 ayes,—3 noes. New-York divided.

Mr. Gorham.—I move that after the words, *and under the national government for one year after its expiration*, be struck out.

Mr. King for the motion. It is impossible to carry the system of exclusion so far; and, in this instance, we refine too much by going to *utopian* lengths. It is a mere cobweb.

Mr. Butler.—We have no way of judging of mankind but by experience. Look at the history of the government of Great Britain, where there is a very flimsy exclusion. Does it not ruin their government? A man takes a seat in parliament to get an office for himself or friends, or both; and this is the great source from which flows its great venality and corruption.

Mr. Wilson.—I am for striking out the words moved for. Strong reasons must induce me to disqualify a good man from office. If you do, you give an opportunity to the dependent or avaricious man to fill it up, for to them offices are objects of desire. If we admit there may be cabal and intrigue between the executive and legislative bodies, the exclusion of one year will not prevent the effects of it. But we ought to hold forth every honorable inducement for men of abilities to enter the service of the public. This is truly a republican principle. Shall talents, which entitle a man to public reward, operate as a punishment? While a member of the legislature, he ought to be excluded from any other office. but no longer. Suppose a war breaks out, and a number of your best military characters were members; must we lose the benefit of their services? Had this been the case in the beginning of the war, what would have been our situation? And what has happened, may happen again.

Mr. Madison. Some gentlemen give too much weight, and others too little to this subject. If you have no exclusive clause, there may be danger of creating offices or augmenting the stipends of those already created, in order to gratify some members if they were not excluded. Such an instance has fallen within my own observation. I am therefore of opinion, that no office ought to be

open to a member, which may be created or augmented while he is in the legislature

Mr. Mason. It seems as if it was taken for granted, that all offices will be filled by the executive, while I think many will remain in the gift of the legislature. In either case, it is necessary to shut the door against corruption. If otherwise, they may make or multiply offices, in order to fill them. Are gentlemen in earnest when they suppose that this exclusion will prevent the first characters from coming forward? Are we not struck at seeing the luxury and venality which has already crept in among us? If not checked we shall have ambassadors to every petty state in Europe; the little republic of St. Marino not excepted. We must in the present system remove the temptation. I admire many parts of the British constitution and government, but I detest their corruption. Why has the power of the crown so remarkably increased the last century? A stranger, by reading their laws, would suppose it considerably diminished; and yet, by the sole power of appointing the increased officers of government, corruption pervades every town and village in the kingdom. If such a restriction should abridge the right of election, it is still necessary, as it will prevent the people from ruining themselves: and will not the same causes here produce the same effects? I consider this clause as the corner stone on which our liberties depend; and if we strike it out, we are erecting a fabric for our destruction.

Mr. Gorham. The corruption of the English government cannot be applied to America. This evil exists there, in the venality of their boroughs: but even this corruption has its advantage, as it gives stability to their government. We do not know what the effect would be if members of parliament were excluded from offices. The great bulwark of our liberty is the frequency of elections, and their great danger is the septennial parliaments.

Mr. Hamiltion. In all general questions which become the subjects of discussion, there are always some truths mixed with falsehoods. I confess there is danger where men are capable of holding two offices. Take mankind in general, they are vicious—their passions may be operated upon. We have been taught to reprobate the danger of influence in the British government, without duly reflecting how far it was necessary to support a good government. We have taken up many ideas upon trust, and at last, pleased with our own opinions, establish them as undoubted truths.—Hume's opinion of the British constitution confirms the remark, that there is always a body of firm patriots, who often shake a corrupt administration. Take mankind as they are, and what are they governed by? Their passions. There may be in every government a few choice spirits, who may act from more worthy motives. One great error is that we suppose mankind more honest than they are. Our prevailing passions are ambition and interest; and it will ever be the duty of a wise government to avail itself of

those passions, in order to make them subservient to the public good—for these ever induce us to action. Perhaps a few men in a state, may, from patriotic motives, or to display their talents, or to reap the advantage of public applause, step forward; but if we adopt the clause we destroy the motive. I am therefore against all exclusion and refinements, except only this case; that when a member takes his seat, he should vacate every other office. It is difficult to put any exclusive regulation into effect. We must in some degree submit to the inconvenience.

The question was then put for striking out—4 ayes—4 noes—3 states divided. New York of the number.

Adjourned till to-morrow morning.

SATURDAY, JUNE 23d, 1787.

Met pursuant to adjournment. Present 11 states.

Mr. Gorham—I move that the question which was yesterday proposed on the clause, *to be paid out of the national treasury*, be now put.

Question put—5 ayes—5 noes—one state divided. So the clause was lost.

Mr. Pinkney moved that that part of the clause which disqualifies a person from holding an office in the state, be expunged, because the first and best characters in a state may thereby be deprived of a seat in the national council.

Mr. Wilson—I perceive that some gentlemen are of opinion to give a bias in favor of state governments. This question ought to stand on the same footing.

Mr. Sherman—By the conduct of some gentlemen, we are erecting a kingdom to act against itself. The legislature ought to be free and unbiassed.

Question put to strike out the words moved for, and carried—8 ayes, 3 noes.

Mr. Madison then moved, that after the word *established*, be added, *or the emoluments whereof shall have been augmented by the legislature of the United States, during the time they were members thereof, and for one year thereafter.*

Mr. Butler—The proposed amendment does not go far enough. How easily may this be evaded. What was the conduct of George the second to support the pragmatic sanction? To some of the opposers he gave pensions, others offices, and some, to put them out of the house of commons, he made lords. The great Montesquieu says, it is unwise to entrust persons with power, which by being abused operates to the advantage of those entrusted with it.

Governor Rutledge was against the proposed amendment. No person ought to come to the legislature with an eye to his own emolument in any shape.

Mr. Mason—I differ from my colleague in his proposed amendment. Let me state the practice in the state where we came from.

There all officers are appointed by the legislature. Need I add, that many of their appointments are most shameful. Nor will the check proposed by this amendment be sufficient. It will soon cease to be any check at all. It is asserted that it will be very difficult to find men sufficiently qualified as legislators without the inducement of emolument. I do believe that men of genius will be deterred unless possessed of great virtues. We may well dispense with the first characters when destitute of virtue. I should wish them never to come forward. But if we do not provide against corruption, our government will soon be at an end; nor would I wish to put a man of virtue in the way of temptation.—Evasions and caballing would evade the amendment. Nor would the danger be less, if the executive has the appointment of officers. The first three or four years we might go on well enough; but what would be the case afterwards? I will add, that such a government ought to be refused by the people—and it will be refused.

Mr. Madison—My wish is that the national legislature be as uncorrupt as possible. I believe all public bodies are inclined, from various motives, to support its members; but it is not always done from the base motives of venality. Friendship, and a knowledge of the abilities of those with whom they associate, may produce it. If you bar the door against such attachments, you deprive the government of its greatest strength and support. Can you always rely on the patriotism of the members? If this be the only inducement, you will find a great indifferency in filling your legislative body. If we expect to call forth useful characters, we must hold out allurements; nor can any great inconveniency arise from such inducements. The legislative body must be the road to public honor; and the advantage will be greater to adopt my motion, than any possible inconvenience.

Mr. King—The intimate association of offices will produce a vigorous support to your government. To check it would produce no good consequences. Suppose connections are formed? Do they not all tend to strengthen the government under which they are formed? Let therefore preferment be open to all men. We refine otherwise too much; nor is it possible we can eradicate the evil.

Mr. Wilson—I hope the amendment will be adopted. By the last vote it appears that the convention have no apprehension of danger of state appointments. It is equally imaginary to apprehend any from the national government. That such officers will have influence in the legislature, I readily admit; but I would not therefore exclude them. If any ill effects were to result from it, the bargain can as well be made with the legislature as with the executive. We ought not to shut the door of promotion against the great characters in the public councils, from being rewarded by being promoted. If otherwise, will not these gentlemen be put in the legislatures to prevent them from holding offices, by those who wish to enjoy them themselves?

Mr. Sherman—If we agree to this amendment, our good intentions may be prostrated by changing offices to avoid or evade the rule.

Mr. Gerry—This amendment is of great weight, and its consequences ought to be well considered. At the beginning of the war we possessed more than Roman virtue. It appears to me it is now the reverse. We have more land and stock-jobbers than any place on earth. It appears to me, that we have constantly endeavored to keep distinct the three great branches of government; but if we agree to this motion, it must be destroyed by admitting the legislators to share in the executive, or to be too much influenced by the executive, in looking up to him for offices.

Mr. Madison—This question is certainly of much moment.—There are great advantages in appointing such persons as are known. The choice otherwise will be chance. How will it operate on the members themselves? Will it not be an objection to become members when they are to be excluded from office? For these reasons I am for the amendment.

Mr. Butler—These reasons have no force. Characters fit for offices will always be known.

Mr. Mason—It is said it is necessary to open the door to induce gentlemen to come into the legislature. This door is open, but not immediately. A seat in the house will be the field to exert talents and when to a good purpose they will in due time be rewarded.

Mr. Jenifer—Our senators are appointed for 5 years, and they can hold no other office. This circumstance gives them the greatest confidence of the people.

The question was put on Mr. Madison's amendment, and lost —8 noes—2 ayes—one state divided.

Question on the clause as amended before. Carried—8 ayes—2 noes—one state divided.

The question was next on the latter part of the clause.

Mr. Mason—We must retain this clause, otherwise evasions may be made. The legislature may admit of resignations and thus make members eligible—places may be promised at the close of their duration, and that a dependency may be made.

Mr. Gerry. And this actually has been the case in congress; a member resigned to obtain an appointment, and had it failed he would have resumed it.

Mr. Hamilton. The clause may be evaded many ways. Offices may be held by proxy—they may be procured by friends, &c.

Mr. Rutledge. I admit, in some cases, it may be evaded; but this is no argument against shutting the door as close as possible.

The question was then put on this clause, to wit: *and for the space of one year after its expiration*—and negatived.

Then adjourned to Monday morning.

MONDAY, JUNE 25th, 1787.

Met pursuant to adjournment. Present 11 states.

Mr. C. Pinckney. On the question upon the second branch of the general legislature, as reported by the committee in the fourth resolve, now under consideration, it will be necessary to enquire into the true situation of the people of this country. Without this we can form no adequate idea what kind of government will secure their rights and liberties. There is more equality of rank and fortune in America than in any other country under the sun; and this is likely to continue as long as the unappropriated western lands remain unsettled. They are equal in rights, nor is extreme of poverty to be seen in any part of the union. If we are thus singularly situated, both as to fortune and rights, it evidently follows, that we cannot draw any useful lessons from the examples of any of the European states or kingdoms; much less can Great Britain afford us any striking institution, which can be adopted to our own situation—unless we indeed intend to establish an hereditary executive, or one for life. Great Britain drew its first rude institutions from the forests of Germany, and with it that of its nobility. These having originally in their hands the property of the state, the crown of Great Britain was obliged to yield to the claims of power which those large possessions enabled them to assert. The commons were then too contemptible to form part of the national councils. Many parliaments were held, without their being represented, until in process of time, under the protection of the crown, and forming distinct communities, they obtained some weight in the British government. From such discordant materials brought casually together, those admirable checks and balances, now so much the boast of the British constitution, took their rise. But will we be able to copy from this original? do not suppose that in the confederation, there are one hundred gentlemen of sufficient fortunes to establish a nobility; and the equatity of others as to rank would never admit of the distinctions of nobility. I lay it therefore down as a settled principle, that equality of condition is a leading axiom in our government. It may be said we must necessarialy establish checks, lest one rank of people should usurp the rights of another. Commerce can never interfere with the government, nor give a complexion to its councils. Can we copy from Greece or Rome? Have we their nobles or patricians? With them offices were open to few—The different ranks in the community formed opposite interests and produced unceasing struggles and disputes. Can this apply to the free yeomanry of America? We surely differ from the whole. Our situation is unexampled, and it is in our power, on different grounds, to secure civil and religious liberty; and when we secure these we secure every thing that is necessary to establish happiness. We cannot pretend to rival the European

nations in their grandeur or power; nor is the situation of any two nations so exactly alike as that the one can adopt the regulations or government of the other. If we have any distinctions they may be divided into three classes.

1. Professional men. 2. Commercial men. 3. The landed interest.

The latter is the governing power of America, and the other two must ever be dependent on them—Will a national government suit them? No. The three orders have necessarially a mixed interest, and in that view, I repeat it again, the United States of America compose in fact but one order. The clergy and nobility of Great Britain can never be adopted by us. Our government must be made suitable to the people, and we are perhaps the only people in the world who ever had sense enough to appoint delegates to establish a general government. I believe that the propositions from Virginia, with some amendments, will satisfy the people. But a general government must not be dependent on the state governments.

The United States include a territory of about 1500 miles in length, and in breadth about 400; the whole of which is divided into states and districts. While we were dependent on the crown of Great Britain, it was in contemplation to have formed the whole into one; but it was found impracticalble. No legislature could make good laws for the whole, nor can it now be done. It would necessarily place the power in the hands of the few, nearest the seat of government. State governments must therefore remain, if you mean to prevent confusion. The general negative powers will support the general government. Upon these considerations I am led to form the second branch differently from the report. Their powers are important and the number not too large, upon the principle of proportion. I have considered the subject with great attention; and I propose this plan [reads it] and if no better plan is proposed, I will then move its adoption.

Mr. Randolph moved that the 4th resolve be divided, in the same manner as the 3d resolve.

Mr. Gorham moved the question on the first resolve. Sixteen members from one state will certainly have greater weight, than the same number of members from different states. We must therefore depart from this rule of appointment in some shape or other—perhaps on the plan Mr. Pinckney has suggested.

Mr. Read. Some gentlemen argue, that the representation must be determined according to the weight of each state—That we have heretofore been partners in trade, in which we all put in our respective proportions of stock—That the articles of our copartnership were drawn in forming the confederation. And that before we make a new co-partnership, we must first settle the old business. But to drop the allusion—we find that the great

states have appropriated to themselves the common lands in their respective states. These lands having been forfeited as heretofore belonging to the king, ought to be applied to the discharge of our public debts. Let this still be done, and then if you please, proportion the representation, and we shall not be jealous of one another. A jealousy, in a great measure, owing to the public property appropriated by individual states--and which, as it has been gained by the united power of the confederation, ought to be appropriated to the discharge of the public debts.

Mr. Gorham. This motion has been agitated often in congress; and it was owing to the want of power, rather than inclination, that it was not justly settled. Great surrenders have been made by the great states, for the benefit of the confederation.

Mr. Wilson. The question now before us is, whether the second branch of the general legislature shall or shall not be appointed by the state legislatures. In every point of view it is an important question. The magnitude of the objects is indeed embarrassing. The great system of Henry the IVth of France, aided by the greatest statesmen, is small when compared to the fabric we are now about to erect—in laying the stone amiss we may injure the superstructure; and what will be the consequence, if the corner stone should be loosely placed? It is improper that the state legislatures should have the power contemplated to be given them. A citizen of America may be considered in two points of view—as a citizen of the general government, and as a citizen of the particular state, in which he may reside. We ought to consider in what character he acts in forming a general government. I am both a citizen of Pennsylvania and of the United States. I must therefore lay aside my state connexions and act for the general good of the whole. We must forget our local habits and attachments. The general government should not depend on the state governments. This ought to be a leading distinction between the one and the other; nor ought the general government to be composed of an assemblage of different state governments—We have unanimously agreed to establish a general government—That the powers of peace, war, treaties, coinage and regulating of *commerce,* ought to reside in that government. And if we reason in this manner, we shall soon see the impropriety of admitting the interference of state governments into the general government. Equality of representation cannot be established, if the second branch is elected by the state legislatures. When we are laying the foundation of a building, which is to last for ages, and in which millions are interested, it ought to be well laid. If the national government does not act upon state prejudices, state distinctions will be lost. I therefore move, *that the second branch of the legislature of the national government be elected by electors chosen by the people of the United States.*

Judge Elsworth. I think the second branch of the general le-

gislature ought to be elected agreeable to the report. The other way, it is said, will be more the choice of the people—The one mode is as much so as the other. No doubt every citizen of every state is interested in the state governments; and elect him in whatever manner you please, whenever he takes a seat in the general government, it will prevail in some shape or other. The state legislatures are more competent to make a judicious choice, than the people at large. Instability pervades their choice. In the second branch of the general government we want wisdom and firmness. As to balances, where nothing can be balanced, it is a perfect *Utopian* scheme. But still great advantages will result in having a second branch endowed with the qualifications I have mentioned. Their weight and wisdom may check the inconsiderate and hasty proceedings of the first branch.

I cannot see the force of the reasoning in attempting to detach the state governments from the general government. In that case, without a standing army, you cannot support the general government, but on the pillars of the state governments. Are the larger states more energetic than the smaller? Massachusetts cannot support a government at the distance of one hundred miles from her capital, without an army; and how long Virginia and Pennsylvania will support their governments it is difficult to say. Shall we proceed like unskilful workmen, and make use of timber, which is too weak to build a first rate ship? We know that the people of the states are strongly attached to their own constitutions. If you hold up a system of general government, destructive of their constitutional rights, they will oppose it. Some are of opinion that if we cannot form a general government so as to destroy state governments, we ought at least to balance the one against the other. On the contrary, the only chance we have to support a general government is to draft it on the state governments. I want to proceed on this ground, as the safest, and I believe no other plan is practicable. In this way, and in this way only, can we rely on the confidence and support of the people.

Mr. Johnson. The state governments must be preserved: but this motion leaves them at the will and pleasure of the general government.

Mr. Madison. I find great differences of opinion in this convention on the clause now under consideration. Let us postpone it in order to take up the 8th resolve, that we may previously determine the mode of representation.

Mr. Mason. All agree that a more efficient government is necessary. It is equally necessary to preserve the state governments, as they ought to have the means of self-defence. On the motion of Mr. Wilson, the only means they ought to have would be destroyed.

The question was put for postponing, in order to take into consideration the 8th resolve, and lost—seven noes—four ayes.

Question on the 1st clause in the 4th resolve—nine states for—two against it.

The age of the senators (30 years) agreed to.

Mr. Gorham proposed that the senators be classed, and to remain four years in office; otherwise great inconveniences may arise if a dissolution should take place at once.

Gov. Randolph. This body must act with firmness. They may possibly always sit—perhaps to aid the executive. The state governments will always attempt to counteract the general government. They ought to go out in classes: therefore I move, *that they go out of office in fixed proportions of time*, instead of the words, *seven years.*

Mr. Read moved (though not seconded) that they ought to continue in office during good behavior.

Mr. Williamson moved that they remain in office for six years.

Mr. Pinkney. I am for four years. Longer time would give them too great attachment to the states, where the general government may reside. They may be induced, from the proposed length of time, to sell their states, and become inhabitants near the seat of government.

Mr. Madison. We are proceeding in the same manner that was done when the confederation was first formed Its original draft was excellent, but in its progress and completion it became so insufficient as to give rise to the present convention. By the vote already taken, will not the temper of the state legislatures transfuse itself into the senate? Do we create a free government?

Question on Gov. Randolph's motion—seven ayes—three noes—one divided.

Motion to fix the term of service at six years—five ayes—five noes—one divided.

Do. for five years—five ayes—five noes—one divided.

The question for four years was not put; and the convention adjourned till to-morrow morning.

TUESDAY, JUNE 26th, 1787.

Met pursuant to adjournment. Present eleven states.

Mr. Gorham. My motion for four years' continuance, was not put yesterday. I am still of opinion that classes will be necessary, but I would alter the time. I therefore move that the senators be elected for six years, and that the rotation be triennial.

Mr. Pinkney. I oppose the time, because of too long a continuance. The members will by this means be too long separated from their constituents, and will imbibe attachments different from that of the state; nor is there any danger that members, by a shorter duration of office, will not support the interest of the union, or that the states will oppose the general interest. The state of South Carolina was never opposed in principle to congress, nor thwarted their views in any case, except in the requisition of money, and

then only for want of power to comply—for it was found there was not money enough in the state to pay their requisition.

Mr. Read moved that the term of *nine years* be inserted, in triennial rotation.

Mr. Madison. We are now to determine whether the republican form shall be the basis of our government. I admit there is weight in the objection of the gentleman from South Carolina; but no plan can steer clear of objections. That great powers are to be given, there is no doubt; and that those powers may be abused is equally true. It is also probable that members may lose their attachments to the states which sent them—Yet the first branch will control them in many of their abuses. But we are now forming a body on whose wisdom we mean to rely, and their permanency in office secures a proper field in which they may exert their firmness and knowledge. Democratic communities may be unsteady, and be led to action by the impulse of the moment. Like individuals they may be sensible of their own weakness, and may desire the counsels and checks of friends to guard them against the turbulency and weakness of unruly passions. Such are the various pursuits of this life, that in all civilized countries, the interest of a community will be divided. There will b debtors and creditors, and an unequal possession of property, and hence arises different views and different objects in government. This indeed is the ground-work of aristocracy, and we find it blended in every government, both ancient and modern. Even where titles have survived property, we discover the noble beggar haughty and assuming.

The man who is possessed of wealth, who lolls on his sofa or rolls in his carriage, cannot judge of the wants or feelings of the day laborer. The government we mean to erect is intended to last for ages. The landed interest, at present, is prevalent; but in process of time, when we approximate to the states and kingdoms of Europe; when the number of landholders shall be comparatively small, through the various means of trade and manufactures, will not the landed interest be overbalanced in future elections, and unless wisely provided against, what will become of your government? In England, at this day, if elections were open to all classes of people, the property of landed proprietors would be insecure. An Agrarian law would soon take place. If these observations be just, our government ought to secure the permanent interests of the country against innovation. Landholders ought to have a share in the government, to support these invaluable interests and to balance and check the other. They ought to be so constituted as to protect the minority of the opulent against the majority. The senate, therefore, ought to be this body; and to answer these purposes, they ought to have permanency and stability. Various have been the propositions; but my opinion is, the longer they continue in office, the better will these views be answered.

Mr. Sherman. The two objects of this body are permanency and safety to those who are to be governed. A bad government is the worse for being long. Frequent elections give security and even permanency. In Connecticut we have existed 132 years under an annual government; and as long as a man behaves himself well, he is never turned out of office. Four years to the senate is quite sufficient, when you add to it the rotation proposed.

Mr. Hamilton. This question has already been considered in several points of view. We are now forming a republican government. Real liberty is neither found in despotism, or the extremes of democracy, but in moderate governments.

Those who mean to form a solid republican government, ought to proceed to the confines of another government. As long as offices are open to all men, and no constitutional rank is established, it is pure republicanism. But if we incline too much to democracy, we shall soon shoot into a monarchy. The difference of property is already great amongst us. Commerce and industry will still increase the disparity. Your government must meet this state of things, or combinations will in process of time, undermine your system. What was the tribunitial power of Rome? It was instituted by the plebians as a guard against the patricians. But was this a sufficient check? No—The only distinction which remained at Rome was, at last, between the rich and poor. The gentleman from Connecticut forgets that the democratic body is already secure in a representation. As to Connecticut, what were the little objects of their government before the revolution? Colonial concerns merely. They ought now to act on a more extended scale, and dare they do this? Dare they collect the taxes and requisitions of congress? Such a government may do well, if they do not tax, and this is precisely their situation.

Mr. Gerry. It appears to me that the American people have the greatest aversion to monarchy, and the nearer our government approaches to it, the less chance have we for their approbation.—Can gentlemen suppose that the reported system can be approved of by them? Demagogues are the great pests of our government, and have occasioned most of our distresses. If four years are insufficient, a future convention may lengthen the time.

Mr. Wilson. The motion is now for nine years, and a triennial rotation. Every nation attends to its foreign intercourse—to support its commerce—to prevent foreign contempt and to make war and peace. Our senate will be possessed of these powers, and therefore ought to be dignified and permanent. What is the reason that Great Britain does not enter into a commercial treaty with us? Because congress has not the power to enforce its observance. But give them those powers, and give them the stability proposed by the motion, and they will have more permanency than a monarchial government. The great objection of many is, that

this duration would give birth to views inconsistent with the interests of the union. This can have no weight, if the triennial rotation is adopted; and this plan may possibly tend to conciliate the minds of the members of the convention on this subject, which have varied more than on any other question.

The question was then put on Mr. Read's motion, and lost 8, noes—3 ayes.

The question on 5 years, and a biennial rotation, was carried—7 ayes—4 noes. New York in the minority.

Mr. Pinkney. I move that the clause for granting stipends be striken out.

Question put--5 ayes—6 noes.

On the amendment to the question, *to receive a compensation*—10 ayes—1 no.

Judge Elsworth. I move that the words, *out of the national treasury,* be stricken out, and the words, *the respective state legislatures,* be inserted.

If you ask the states what is reasonable, they will comply—but if you ask of them more than is necessary to form a good government, they will grant you nothing.

Capt. Dayton. The members should be paid from the general treasury, to make them independent.

The question was put on the amendment, and lost—5 ayes—6 noes.

Mr. Mason.—I make no motion, but throw out for the consideration of the convention, whether a person in the second branch ought not to be qualified as to property?

The question was then put on the clause, and lost—5 ayes—6 noes.

It was moved to strike out the clause, *to be ineligible to any state office.*

Mr. Madison.—Congress heretofore depended on state interests; we are now going to pursue the same plan.

Mr. Wilson.—Congress has been ill managed, because particular states controlled the union. In this convention, if a proposal is made promising independency to the general government, before we have done with it, it is so modified and changed as to amount to nothing. In the present case, the states may say, although I appoint you for six years, yet if you are against the state, your table will be unprovided. Is this the way you are to erect an independent government?

Mr. Butler.—This second branch I consider as the aristocratic part of our government; and they must be controlled by the states or they will be too independent.

Mr. Pinkney.—The states and general government must stand together. On this plan have I acted throughout the whole of this business. I am therefore for expunging the clause. Suppose a

member of this house was qualified to be a state judge, must the state be prevented from making the appointment.

Question put for striking out; 8 ayes, 3 noes.

The 5th resolve, *that each house have the right of originating bills*, was taken into consideration and agreed to.

Adjourned till to-morrow morning.

WEDNESDAY, JUNE 27th, 1787.

Met pursuant to adjournment. Present 11 states.

The 6th resolve was postponed, in order to take into consideration the 7th and 8th resolves. The first clause of the 7th was proposed for consideration, which respected the suffrage of each state in the first branch of the legislature.

[Mr. Martin, the attorney general from Maryland, spoke on this subject upwards of three hours. As his arguments were too diffuse, and in many instances desultory, it was not possible to trace him through the whole, or to methodise his ideas into a systematic or argumentative arrangement. I shall therefore only note such points as I conceive merit most particular notice.—*See pages* 1 *to* 55.]

The question is important, (said Mr. Martin,) and I have already expressed my sentiments on the subject. My opinion is, that the general government ought to protect and secure the state governments; others, however, are of a different sentiment, and reverse the principle.

The present reported system is a perfect medley of confederated and national government, without example and without precedent. Many who wish the general government to protect the state governments, are anxious to have the line of jurisdiction well drawn and defined, so that they may not clash. This suggests the necessity of having this line well detailed: possibly this may be done. If we do this, the people will be convinced that we meant well to the state governments; and should there be any defects, they will trust a future convention with the power of making further amendments.

A general government may operate on individuals in cases of general concern, and still be federal. This distinction is with the states, as states, represented by the people of those states. States will take care of their internal police and local concerns. The general government has no interest, but the protection of the whole. Every other movement must fail. We are proceeding, in forming this government, as if there were no state governments at all. The states must approve, or you will have none at all. I have never heard of a confederacy having two legislative branches. Even the celebrated Mr. Adams, who talks so much of checks and balances, does not suppose it necessary in a confederacy. Public and domestic debts are our great distress. The treaty between Virginia and Maryland, about the navigation of the Chesapeake and Potomac, is no infraction of the confederacy. The corner

stone of a federal government is equality of votes. States may surrender this right; but if they do, their liberties are lost. If I err on this point, it is the error of the head, not of the heart.

The first principle of government is founded on the natural rights of individuals, and in perfect equality. Locke, Vattel, Lord Somers, and Dr. Priestly, all confirm this principle. This principle of equality, when applied to individuals, is lost in some degree, when he becomes a member of a society, to which it is transferred; and this society, by the name of state or kingdom, is with respect to others, again on a perfect footing of equality; a right to govern themselves as they please. Nor can any other state, of right, deprive them of this equality. If such a state confederates, it is intended for the good of the whole; and if it again confederate, those rights must be well guarded. Nor can any state demand a surrender of any of those rights; if it can, equality is already destroyed. We must treat as free states with each other, upon the same terms of equality that men originally formed themselves into societies. Vattel, Rutherford, and Locke, are united in support of the position, that states, as to each other, are in a state of nature.

Thus, says Mr. Martin, have I travelled with the most respectable authorities in support of principles, all tending to prove the equality of independent states. This is equally applicable to the smallest as well as the largest states, on the true principles of reciprocity and political freedom.

Unequal confederacies can never produce good effects. Apply this to the Virginia plan. Out of the number 90, Virginia has 16 votes, Massachusetts 14, Pennsylvania 12; in all 42. Add to this a state having four votes, and it gives a majority in the general legislature. Consequently a combination of these states will govern the remaining nine or ten states. Where is the safety and independency of those states? Pursue this subject farther. The executive is to be appointed by the legislature, and becomes the executive in consequence of this undue influence. And hence flows the appointment of all your officers, civil, military, and judicial. The executive is also to have a negative on all laws. Suppose the possibility of a combination of ten states—he negatives a law—it is totally lost, because those states cannot form two thirds of the legislatures. I am willing to give up private interest to the public good; but I must be satisfied first that it is the public interest: and who can decide this point? A majority only of the union.

The Lacedemonians insisted, in the amphictionic council, to exclude some of the smaller states from a right to vote, in order that they might tyrannise over them. If the plan now on the table be adopted, three states in the union have the controul, and they may make use of their power when they please.

If there exists no separate interests, there is no danger of an equality of votes; and if there be danger, the smaller states can-

not yield. If the foundation of the existing confederation is well laid, powers may be added You may safely add a third story to a house where the foundation is good. Read then the votes and proceedings of congress on forming the confederation. Virginia only was opposed to the principle of equality. The smaller states yielded rights, not the large states. They gave up their claim to the unappropriated lands with the tenderness of the mother recorded by Solomon. They sacrificed affection to the preservation of others. New-Jersey and Maryland rendered more essential services during the war than many of the larger states. The partial representation in congress is not the cause of its weakness, but the want of power. I would not trust a government organized upon the reported plan, for all the slaves of Carolina, or the horses and oxen of Massachusetts. Price says, that laws made by one man or a set of men, and not by common consent, is slavery. And it is so when applied to states, if you give them an unequal representation. What are called human feelings, in this instance, are only the feelings of ambition and the lust of power.

Adjourned till to-morrow morning.

THURSDAY, JUNE 28th, 1787.

Met pursuant to adjournment. Mr. Martin in continuation. On federal grounds, it is said, that a minority will govern a majority; but on the Virginia plan a minority would tax a majority. In a federal government, a majority of states must and ought to tax. In the local government of states, counties may be unequal —still numbers, not property, govern. What is the government now forming, over states or persons? As to the latter, their rights cannot be the object of a general government. These are already secured by their guardians, to state governments. The general government is therefore intended only to protect and guard the rights of the states as states.

This general government, I believe, is the first upon earth which gives checks against democracies or aristocracies. The only necessary check in a general government ought to be a restraint to prevent its absorbing the powers of the state governments. Representation on federal principles can only flow from state societies. Representation and taxation are ever inseparable —not according to the quantum of property, but the quantum of freedom.

Will the representatives of a state forget state interests? The mode of election cannot change it. These prejudices cannot be eradicated. Your general government cannot be just or equal upon the Virginia plan, unless you abolish state interests. If this cannot be done, you must go back to principles purely federal.

On this latter ground, the state legislatures and their constituents will have no interests to pursue different from the general government, and both will be interested to support each other.

Under these ideas can it be expected that the people can approve the Virginia plan? But it is said, the people, not the state legislatures, will be called upon for approbation—with an evident design to separate the interest of the governors from the governed. What must be the consequence? Anarchy and confusion. We lose the idea of the powers with which we are entrusted. The legislatures must approve. By them it must, on your own plan, be laid before the people. How will such a government, over so many great states, operate? Wherever new settlements have been formed in large states, they immediately want to shake off their independency. Why? Because the government is too remote for their good. The people want it nearer home.

The basis of all ancient and modern confederacies is the freedom and the independency of the states composing it. The states forming the amphictionic council were equal, though Lacedemon, one of the greatest states, attempted the exclusion of three of the lesser states from this right. The plan reported, it is true, only intends to diminish those rights, not to annihilate them. It was the ambition and power of the great Grecian states which at last ruined their respectable council. The states as societies are ever respectful. Has Holland or Switzerland ever complained of the equality of the states which compose their respective confederacies? Bern and Zurich are larger than the remaining eleven cantons—so of many of the states of Germany; and yet their governments are not complained of. Bern alone might usurp the whole power of the Helvetic confederacy, but she is contented still with being equal.

The admission of the larger states into the confederation, on the principles of equality, is dangerous. But on the Virginia system, it is ruinous and destructive. Still it is the true interest of all the states to confederate. It is their joint efforts which must protect and secure us from foreign danger, and give us peace and harmony at home.

[Here Mr. Martin entered into a detail of the comparative powers of each state, and stated their probable weakness and strength.]

At the beginning of our troubles with Great Britain, the smaller states were attempted to be cajoled to submit to the views of that nation, lest the larger states should usurp their rights. We then answered them—your present plan is slavery, which, on the remote prospect of a distant evil, we will not submit to.

I would rather confederate with any single state, than submit to the Virginia plan. But we are already confederated, and no power on earth can dissolve it but by the consent of *all* the contracting powers—and four states, on this floor, have already declared their opposition to annihilate it. Is the old confederation dissolved, because some of the states wish a new confederation?

Mr. Lansing—I move that the word *not* be struck out of the resolve, and then the question will stand on its proper ground—and

the resolution will read thus: *that the representation of the first branch be according to the articles of the confederation;* and the sense of the convention on this point will determine the question of a federal or national government.

Mr. Madison—I am against the motion. I confess the necessity of harmonizing, and if it could be shown that the system is unjust or unsafe, I would be against it. There has been much fallacy in the arguments advanced by the gentleman from Maryland. He has, without adverting to many manifest distinctions, considered confederacies and treaties as standing on the same basis. In the one, the powers act collectively, in the other individually. Suppose, for example, that France, Spain and some of the smaller states in Europe, should treat on war or peace, or on any other general concern, it would be done on principles of equality; but if they were to form a plan of general government, would they give, or are the greater states obliged to give, to the lesser, the same and equal legislative powers? Surely not. They might differ on this point, but no one can say that the large states were wrong in refusing this concession. Nor can the gentleman's reasoning apply to the present powers of congress; for they may and do, in some cases, affect property, and in case of war, the lives of the citizens. Can any of the lesser states be endangered by an adequate representation? Where is the probability of a combination? What the inducements? Where is the similarity of customs, manners or religion? If there possibly can be a diversity of interest, it is the case of the three large states. Their situation is remote, their trade different. The staple of Massachusetts is fish, and the carrying trade—of Pennsylvania, wheat and flour—of Virginia, tobacco. Can states thus situated in trade, ever form such a combination?—Do we find those combinations in the larger counties in the different state governments to produce rivalships? Does not the history of the nations of the earth verify it? Rome rivalled Carthage, and could not be satisfied before she was destroyed. The houses of Austria and Bourbon acted on the same view—and the wars of France and England have been waged through rivalship; and let me add, that we, in a great measure; owe our independency to those national contending passions. France, through this motive, joined us. She might, perhaps, with less expense, have induced England to divide America between them. In Greece the contention was ever between the larger states. Sparta against Athens—and these again, occasionally, against Thebes, were ready to devour each other. Germany presents the same prospects—Prussia against Austria. Do the greater provinces in Holland endanger the liberties of the lesser? And let me remark, that the weaker you make your confederation, the greater the danger to the lesser states. They can only be protected by a strong federal government. Those gentlemen who oppose the Virginia plan do not suf-

ficiently analyze the subject. Their remarks, in general, are vague and inconclusive.

Captain Dayton—On the discussion of this question the fate of the state governments depend.

Mr. Williamson—If any argument will admit of demonstration, it is that which declares, that all men have an equal right in society. Against this position, I have heard, as yet, no argument, and I could wish to hear what could be said against it. What is tyranny? Representatives of representatives, if you give them the power of taxation. From equals take equals, and the remainder is equal. What process is to annihilate smaller states, I know not. But I know it must be tyranny, if the smaller states can tax the greater, in order to ease themselves. A general government cannot exercise direct taxation. Money must be raised by duties and imposts, &c. and this will operate equally. It is impossible to tax according to numbers. Can a man over the mountains, where produce is a drug, pay equal with one near the shore?

Mr. Wilson—I should be glad to hear the gentleman from Maryland explain himself upon the remark of Old Sarum, when compared with the city of London. This he has allowed to be an unjust proportion; as in the one place one man sends two members, and in the other one million are represented by four members. I would be glad to hear how he applies this to the larger and smaller states in America: and whether the borough, as a borough, is represented, or the people of the borough.

Mr. Martin rose to explain—Individuals, as composing a part of the whole of one consolidated government, are there represented.

The further consideration of the question was postponed.

Mr. Sherman—In society, the poor are equal to the rich in voting, although one pays more than the other. This arises from an equal distribution of liberty amongst all ranks; and it is, on the same grounds, secured to the states in confederation—for this would not even trust the important powers to a majority of the states. Congress has too many checks, and their powers are too limited. A gentleman from New York thinks a limited monarchy the best government, and no state distinctions. The plan now before us gives the power to four states to govern nine states. As they will have the purse, they may raise troops, and can also make a king when they please.

Mr. Madison. There is danger in the idea of the gentleman from Connecticut. Unjust representation will ever produce it. In the United Netherlands, Holland governs the whole, although she has only one vote. The counties in Virginia are exceedingly disproportionate, and yet the smaller has an equal vote with the greater, and no inconvenience arises.

Governor Franklin read some remarks, acknowledging the difficulties of the present subject. Neither ancient or modern history, (said Gov. Franklin,) can give us light. As a sparrow does

not fall without divine permission, can we suppose that governments can be erected without his will? We shall, I am afraid, be disgraced through little party views. I move *that we have prayers every morning.*

Adjourned till to-morrow morning.

FRIDAY, JUNE 29th 1787.

Met pursuant to adjournment. Present 11 states.

Dr. Johnson. As the debates have hitherto been managed, they may be spun out to an endless length; and as gentlemen argue on different grounds, they are equally conclusive on the points they advance, but afford no demonstration either way. States are political societies. For whom are we to form a government? for the people of America, or for those societies? Undoubtedly for the latter. They must, therefore, have a voice in the second branch of the general government, if you mean to preserve their existence. The people already compose the first branch. This mixture is proper and necessary. For we cannot form a general government on any other ground.

Mr. Gorham. I perceive no difficulty in supposing a union of interest in the different states. Massachusetts formerly consisted of three distinct provinces—they have been united into one, and we do not find the least trace of party distinctions arising from their former separation. Thus it is that the interest of the smaller states will unite in a general government. It is thus they will be supported. Jersey, in particular, situated between Philadelphia and New-York, can never become a commercial state. It would be her interest to be divided, and part annexed to New-York and part to Pennsylvania—or otherwise the whole to the general government. Massachusetts cannot long remain a large state. The province of Maine must soon become independent of her. Pennsylvania can never become a dangerous state—her western country must at some period become separated from her, and consequently her power will be diminished. If some states will not confederate on a new plan, I will remain here, if only one state will consent to confederate with us.

Judge Elsworth. I do not despair but that we shall be so fortunate as to devise and adopt some good plan of government.

Judge Read. I would have no objection, if the government was more national—but the proposed plan is so great a mixture of both, that it is best to drop it altogether. A state government is incompatible with a general government. If it was more national, I would be for a representation proportionate to population. The plan of the gentleman from New-York is certainly the best—but the great evil is the unjust appropriation of the public lands. If there was but one national government, we would be all equally interested.

Mr. Madison. Some gentlemen are afraid that the plan is not sufficiently national, while others apprehend that it is too much so. If this point of representation was once well fixed, we would come nearer to one another in sentiment. The necessity would then be discovered of circumscribing more effectually the state governments and enlarging the bounds of the general government. Some contend that states are sovereign, when in fact they are only political societies. There is a gradation of power in all societies, from the lowest corporation to the highest sovereign. The states never possessed the essential rights of sovereignty. These were always vested in congress. Their voting, as states, in congress, is no evidence of sovereignty. The state of Maryland voted by counties—did this make the counties sovereign? The states, at present, are only great corporations, having the power of making by-laws, and these are effectual only if they are not contradictory to the general confederation. The states ought to be placed under control of the general government—at least as much so as they formerly were under the king and British parliament. The arguments, I observe, have taken a different turn, and I hope may tend to convince all of the necessity of a strong energetic government, which would equally tend to give energy to, and protect the state governments. What was the origin of the military establishment of Europe? It was the jealousy which one state or kingdom entertained of another. This jealousy was always productive of evil. In Rome the Patricians were often obliged to excite a foreign war to divert the attention of the plebians from encroaching on the senatorial rights. In England and France, perhaps this jealousy may give energy to their governments, and contribute to their existence. But a state of danger is like a state of war, and it unites the various parts of the government to exertion. May not our distractions, however, invite danger from abroad? If the power is not immediately derived from the people, in proportion to their numbers, we may make a paper confederacy, but that will be all. We know the effects of the old confederation, and without a general government this will be like the former.

Mr. Hamilton. The course of my experience in human affairs might perhaps restrain me from saying much on this subject. I shall, however, give birth to some of the observations I have made during the course of this debate. The gentleman from Maryland has been at great pains to establish positions which are not denied. Many of them, as drawn from the best writers on government, are become almost self-evident principles. But I doubt the propriety of his application of those principles in the present discussion. He deduces from them the necessity that states entering into a confederacy must retain the equality of votes—this position cannot be correct—Facts plainly contradict it. The parliament of Great Britian asserted a supremacy over the whole empire, and

the celebrated Judge Blackstone labors for the legality of it, although many parts were not represented. This parliamentary power we opposed as contrary to our colonial rights. With that exception, throughout that whole empire, it is submitted to. May not the smaller and greater states so modify their respective rights as to establish the general interest of the whole, without adhering to the right of equality? Strict representation is not observed in any of the state governments. The senate of New-York are chosen by persons of certain qualifications, to the exclusion of others. The question, after all is, is it our interest in modifying this general government to sacrifice individual rights to the preservation of the rights of an *artificial* being, called states? There can be no truer principle than this—that every individual of the community at large has an equal right to the protection of government. If therefore three states contain a majority of the inhabitants of America, ought they to be governed by a minority? Would the inhabitants of the great states ever submit to this? If the smaller states maintain this principle, through a love of power, will not the larger, from the same motives, be equally tenacious to preserve their power? They are to surrender their rights—for what? for the preservation of an artificial being. We propose a free government—Can it be so, if partial distinctions are maintained? I agree with the gentleman from Delaware, that if the state governments are to act in the general government, it affords the strongest reason for exclusion. In the state of New-York, five counties form a majority of representatives, and yet the government is in no danger, because the laws have a general operation. The small states exaggerate their danger, and on this ground contend for an unproportion of power. But their danger is increased, if the larger states will not submit to it. Where will they form new alliances for their support? Will they do this with foreign powers? Foreigners are jealous of our increasing greatness, and would rejoice in our distractions. These who have had opportunities of conversing with foreigners respecting sovereigns in Europe, have discovered in them an anxiety for the preservation of our democratic governments, probably for no other reason, but to keep us weak. Unless your government is respectable—foreigners will invade your rights; and to maintain tranquility it must be respectable—even to observe neutrality you must have a strong government.—I confess our present situation is critical. We have just finished a war which has established our independency, and loaded us with a heavy debt. We have still every motive to unite for our common defence—Our people are disposed to have a good government, but this disposition may not always prevail. It is difficult to amend confederations—it has been attempted in vain, and it is perhaps a miracle that we are now met.—We must therefore improve the opportunity, and render the present system as perfect as possible. Their good sense, and above all, the necessity of their affairs, will induce the people to adopt it.

Mr. Pierce. The great difficulty in congress arose from the mode of voting. Members spoke on the floor as state advocates, and were biassed by local advantages. What is federal? No more than a compact between states; and the one heretofore formed is insufficient. We are now met to remedy its defects, and our difficulties are great, but not, I hope, insurmountable. State distinctions must be sacrificed so far as the general government shall render it necessary—without, however. destroying them altogether. Although I am here a representative from a small state, I consider myself as a citizen of the United States, whose general interests I will always support.

Mr. Gerry. It appears to me that the states never were independent—they had only corporate rights. Confederations are a mongrel kind of government, and the world does not afford a precedent to go by. Aristocracy is the worst kind of government, and I would sooner submit to a monarchy. We must have a system that will execute itself.

The question was then put on Mr. Lansing's motion, and lost—4 ayes—6 noes—one state divided.

Question on the clause—6 ayes—4 noes—and one state divided.

Judge Elsworth. I move that the consideration of the 8th resolve be postponed. Carried—9 ayes—2 noes.

I now move the following amendment to the resolve—*that in the second branch each state have an equal vote.* I confess that the effect of this motion is, to make the general government *partly federal and partly national.* This will secure tranquility, and still make it efficient; and it will meet the objections of the larger states. In taxes they will have a proportional weight in the first branch of the general legislature—If the great states refuse this plan, we will be forever separated. Even in the executive the larger states have ever had great influence. The provinces of Holland ever had it. If all the states are to exist they must necessarily have an equal vote in the general government. Small communities when associating with greater, can only be supported by an equality of votes. I have always found in my reading and experience, that in all societies the governors are ever gradually rising into power.

The large states, although they may not have a common interest for combination, yet they may be partially attached to each other for mutual support and advancement. This can be more easily effected than the union of the remaining small states to check it; and ought we not to regard antecedent plighted faith to the confederation already entered into, and by the terms of it declared to be perpetual? And it is not yet obvious to me that the states will depart from this ground. When in the hour of common danger we united as equals, shall it now be urged by some that we must depart from this principle when the danger is over? Will the world say that this is just? We then associated as free and inde-

pendent states, and were well satisfied. To perpetuate that independence, I wish to establish a national legislature, executive and judiciary, for under these we shall, I doubt not, preserve peace and harmony. Nor should I be surprised, (although we made the general government the most perfect in our opinion,) that it should hereafter require amendment. But at present this is as far as I possibly can go. If this convention only chalk out lines of good government we shall do well.

Mr. Baldwin. It appears to be agreed that the government we should adopt ought to be energetic and formidable, yet I would guard against the danger of being too formidable. The second branch ought not to be elected as the first. Suppose we take the example of the constitution of Massachusetts, as it is commended for its goodness. There the first branch represents the people, and the second its property.

Mr. Madison. I would always exclude inconsistent principles in framing a system of government. The difficulty of getting its defects amended are great and sometimes insurmountable. The Virginia state government was the first which was made; and though its defects are evident to every person, we cannot get it amended. The Dutch have made four several attempts to amend their system without success. The few alterations made in it were by tumult and faction, and for the worse. If there was real danger, I would give the smaller states the defensive weapons. But there is none from that quarter. The great danger to our general government *is the great southern and northern interests of the continent, being opposed to each other. Look to the votes in congress, and most of them stand divided by the geography of the country, not according to the size of the states.*

Suppose the first branch granted money, may not the second branch, from state views, counteract the first? In congress, the single state of Delaware prevented an embargo, at the time that all the other states thought it absolutely necessary for the support of the army. Other powers, and those very essential, besides the legislative, will be given to the second branch—such as the negativing all state laws. I would compromise on this question, if I could do it on correct principles, but otherwise not. If the old fabric of the confederation must be the ground-work of the new, we must fail.

Adjourned till to-morrow morning.

SATURDAY, JUNE 30th, 1787.

Met pursuant to adjournment. Present 11 states.

Judge Brearly moved that the president be directed to write to the executive of New-Hampshire, requesting the attendance of its delegates.

Negatived: 2 ayes, 5 noes, 1 state divided.

The discussion of yesterday resumed.

Mr. Wilson. The question now before us is of so much consequence, that I cannot give it a silent vote. Gentlemen have said, that if this amendment is not agreed to, a separation to the north of Pennsylvania may be the consequence. This neither staggers me in my sentiments or my duty. If a minority should refuse their assent to the new plan of a general government, and if they will have their own will, and without it, separate the union, let it be done; but we shall stand supported by stronger and better principles. The opposition to this plan is as 22 to 90, in the general scale—not quite a fourth part of the union. Shall three fourths of the union surrender their rights for the support of that artificial being, called state interest? If we must join issue I am willing. I cannot consent that one fourth shall controul the power of three fourths.

If the motion is adopted, seven states will controul the whole, and the lesser seven compose 24 out of 90. One third must controul two thirds—24 overrule 66. For whom do we form a constitution; for men, or for *imaginary beings* called states, a mere metaphysical distinction? Will a regard to *state* rights justify the sacrifice of the rights of *men?* If we proceed on any other foundation than the last, our building will neither be solid nor lasting. *Weight and numbers* is the only true principle—every other is local, confined, or imaginary. Much has been said of the danger of the three larger states combining together to give rise to monarchy or an aristocracy. Let the probability of this combination be explained, and it will be found that a rivalship rather than a confederacy will exist among them. Is there a single point in which this interest coincides? Supposing that the executive should be selected from one of the larger states, can the other two be gratified? Will not this be a source of jealousy amongst them; and will they not separately court the interest of the *smaller states*, to counteract the views of a favorite rival? How can an aristocracy arise from this combination, more than amongst the smaller states? On the contrary, the present claims of the smaller states lead directly to the establishment of an aristocracy, which is the government of the few over the many, and the Connecticut proposal removes only a small part of the objection. There are only two kinds of bad governments—the one which does *too much*, and therefore oppressive, and the other which does *too little*, and therefore weak. Congress partakes of the latter, and the motion will leave us in the same situation, and as much fettered as ever we were. The people see its weakness, and would be mortified in seeing our inability to correct it.

The gentleman from Georgia has his doubts how to vote on this question, and wishes some qualification of it to be made. I admit there ought to be some difference as to the numbers in the second branch; and perhaps there are other distinctions which could, with propriety, be introduced; such, for example, as the qualifications

of the elected, &c. However, if there are leading principles in the system which we adopt, much may be done in the detail. We all aim at giving the general government more energy. The state governments are necessary and valuable. No liberty can be obtained without them. On this question depends the essential rights of the general government and of the people.

Judge Elsworth. I have the greatest respect for the gentleman who spoke last. I respect his abilities, although I differ from him on many points. He asserts that the general government must depend on the equal suffrage of the people. But will this not put it in the power of few states to controul the rest? It is a novel thing in politics that the few controul the many. In the British government, the few, as a guard, have an equal share in the government. The house of lords, although few in number, and sitting in their own right, have an equal share in the legislature.—They cannot give away the property of the community, but they can prevent the commons from being too lavish in their gifts.—Where is or was a confederation ever formed, where equality of voices was not a fundamental principle? Mankind are apt to go from one extreme to another, and because we have found defects in the confederation, must we therefore pull down the whole fabric, foundation and all, in order to erect a new building totally different from it ,without retaining any of its materials? What are its defects? It is said equality of votes has embarrassed us. But how? Would the real evils of our situation have been cured, had this not been the case? Would the proposed amendment on the Virginia plan, as to representation, have relieved us? I fancy not. Rhode Island has been often quoted as a small state, and by its refusal once defeated the grant of the impost. Whether she was right in so doing is not the question; but was it a federal requisition? And if it was not, she did not, in this instance, defeat a federal measure.

Ifthe larger states seek security,they have it fully in the first branch of the general government. But can we turn the tables and say that the lesser states are equally secure? In *commercial regulations* they will unite. If policy should require free ports, they would be found at Boston, Philadelphia and Alexandria. In the disposition of *lucrative offices* they would unite. But I ask no surrender of any of the rights of the great states, nor do I plead *duress* in the makers of the old confederation, nor suppose they soothed the danger, in order to resume their rights when the danger was over. No; small states must possess the power of self-defence or be ruined. Will any one say there is no diversity of interests in the states? And if there is, should not those interests be guarded and secured? But if there is none, then the large states have nothing to apprehend from an equality of rights. And let it be remembered, that these remarks are not the result of partial or local views. The state I represent is respectable, and in importance holds a middle rank.

Mr. Madison. Notwithstanding the admirable and close reasoning of the gentleman who spoke last, I am not yet convinced that my former remarks are not well founded. I apprehend he is mistaken as to the fact on which he builds one of his arguments. He supposes that equality of votes is the principle on which all confederacies are formed—that of Lycia, so justly applauded by the celebrated Montesquieu, was different. He also appeals to our good faith for the observance of the confederacy. We know we have found one inadequate to the purposes for which it was made—Why then adhere to a system which is proved to be so remarkably defective? I have impeached a number of states for the infraction of the confederation, and I have not even spared my own state, nor can I justly spare his. Did not Connecticut refuse her compliance to the federal requisition? Has she paid, for the two last years, any money into the continental treasury? And does this look like government, or the observance of a solemn compact? Experience shows that the confederation is radically defective, and we must in a new national government, guard against those defects. Although the large states in the first branch have weight proportionate to their population, yet as the smaller states have an equal vote in the second branch, they will be able to control and leave the larger without any essential benefit. As peculiar powers are intended to be granted to the second branch, such as the negativing state laws, &c. unless the larger states have a proportionate weight in the representation, they cannot be more secure.

Judge Elsworth. My state has always been strictly federal, and I can with confidence appeal to your excellency [the president] for the truth of it, during the war. The muster-rolls will show that she had more troops in the field than even the state of Virginia. We strained every nerve to raise them; and we neither spared money or exertions to complete our quotas. This extraordinary exertion has greatly distressed and impoverished us, and it has accumulated our state debts—We feel the effects of it even to this day. But we defy any gentleman to show that we ever refused a federal requisition. We are constantly exerting ourselves to draw money from the pockets of our citizens, as fast as it comes in; and it is the ardent wish of the state to strengthen the federal government. If she has proved delinquent through inability only, it is not more than others have been, without the same excuse.

Mr. Sherman. I acknowledge there have been failures in complying with the federal requisition. Many states have been defective, and the object of our convention is to amend these defects.

Col. Davie. I have great objection to the Virginia plan as to the manner the second branch is to be formed. It is impracticable. The number may, in time, amount to two or three hundred. This body is too large for the purposes for which we intend to constitute it. I shall vote for the amendment. Some intend a

compromise. This has been hinted by a member from Pennsylvania, but it still has its difficulties. The members will have their local prejudices. The preservation of the state societies, must be the object of the general government. It has been asserted that we were *one* in war, and *one* in peace. Such we were as states; but every treaty must be the law of the land as it affects individuals. The formation of the second branch, as it is intended by the motion, is also objectionable. We are going the same round with the old confederation—No plan yet presents sufficient checks to a tumultuary assembly, and there is none therefore which yet satisfies me.

Mr. Wilson. On the present motion it was not proper to propose another plan. I think the second branch ought not to be numerous. I will propose an expedient—Let there be one member for every 100,000 souls, and the smallest states not less than one member each. This would give about twenty-six members. I make this proposal, not because I belong to a large state, but in order to pull down a rotten house, and lay a foundation for a new building. To give additional weight to an old building is to hasten its ruin.

Gov. Franklin. The smaller states, by this motion, would have the power of giving away the money of the greater states. There ought to be some difference between the first and second branches. Many expedients have been proposed, and I am sorry to remark, without effect. A joiner, when he wants to fit two boards, takes off with his plane, the uneven parts from each side, and thus they fit. Let us do the same—we are all met to do something.

I shall propose an expedient: Let the senate be elected by the states equally—in all acts of sovereignty and authority, let the votes be equally taken—the same in the appointment of all officers, and salaries; but in passing of laws, each state shall have a right of suffrage in proportion to the sums they respectively contribute. Amongst merchants, where a ship has many owners, her destination is determined in that proportion. I have been one of the ministers to France from this country during the war, and we should have been very glad, if they would have permitted us a vote in the distribution of the money to carry on the war.

Mr. Martin. Mr. Wilson's motion or plan would amount to nearly the same kind of inequality.

Mr. King. The Connecticut motion contains all the vices of the old confederation. It supposes an imaginary evil—the slavery of the state governments. And should this convention adopt the motion, our business here is at an end.

Capt. Dayton. Declamation has been substituted for argument. Have gentlemen shewn, or must we believe it, because it is said, that one of the evils of the old confederation, was unequal representation? We, as distinct societies, entered into the compact. Will you now undermine the thirteen pillars that support it?

Mr. Martin. If we cannot confederate on just principles, I will never confederate in any other manner.

Mr. Madison. I will not answer for supporting chimerial objects—but has experience evinced any good in the old confederation? I know it never can answer, and I have therefore made use of bold language against it. I do assert, that a national senate, elected and paid by the people, will have no more efficiency than congress; for the states will usurp the general government. I mean, however, to preserve the state rights with the same care, as I would trials by jury; and I am willing to go as far as my honorable colleague.

Mr. Bedford. That all the states at present are equally sovereign and independent, has been asserted from every quarter of this house. Our deliberations here are a confirmation of the position; and I may add to it, that each of them act from interested, and many from ambitious motives. Look at the votes which have been given on the floor of this house, and it will be found that their numbers, wealth and local views, have actuated their determinations; and that the larger states proceed as if our eyes were already perfectly blinded. Impartiality, with them, is already out of the question—the reported plan is their political creed, and they support it right or wrong. Even the diminutive state of Georgia has an eye to her future wealth and greatness—South Carolina, puffed up with the possession of her wealth and negroes, and North Carolina, are all, from different views, united with the great states. And these latter, although it is said they can never, from interested views, form a coalition, we find closely united in one scheme of interest and ambition, notwithstanding they endeavor to amuse us with the purity of their principles and the rectitude of their intentions, in asserting that the general government must be drawn from an equal representation of the people. Pretences to support ambition are never wanting. Their cry is, where is the danger? and they insist that although the powers of the general government will be increased, yet it will be for the good of the whole; and although the three great states form nearly a majority of the people of America, they never will hurt or injure the lesser states. *I do not, gentlemen, trust you.* If you possess the power, the abuse of it could not be checked; and what then would prevent you from exercising it to our destruction? You gravely allege that there is no danger of combination, and triumphantly ask, how could combinations be effected? "The large states," you say, "all differ in productions and commerce; and experience shews that instead of combinations, they would be rivals, and counteract the views of one another." This, I repeat, is language calculated only to amuse us. Yes, sir, the larger states will be rivals, but not against each other—they will be rivals against the *rest of the states.* But it is urged that such a govarnment would

suit the people, and that its principles are equitable and just. How often has this argument been refuted, when applied to a *federal* government. The small states never can agree to the Virginia plan; and why then is it still urged? But it is said that it is not expected that the state governments will approve the proposed system, and that this house must directly carry it to THE PEOPLE for their approbation! Is it come to this, then, that *the sword* must decide this controversy, and that the horrors of war must be added to the rest of our misfortunes? But what have the people already said? "We find the confederation defective—go, and give additional powers to the confederation—give to it the imposts, regulation of trade, power to collect the taxes, and the means to discharge our foreign and domestic debts."

Can we not then, as their delegates, agree upon these points? As their embassadors, can we not clearly grant those powers? Why then when we are met, must entire, distinct and new grounds be taken, and a government, of which the people had no idea, be instituted? And are we to be told, if we wont agree to it, it is the last moment of our deliberations? I say, it is indeed the last moment, if we do agree to this assumption of power. The states will never again be entrapped into a measure like this. The people will say the *small* states would confederate, and grant further powers to congress; but you, the *large* states, would not. Then the fault will be yours, and all the nations of the earth will justify us. But what is to become of our public debts if we dissolve the union? Where is your plighted faith? Will you crush the smaller states, or must they be left unmolested? Sooner than be ruined, there are *foreign powers who will take us by the hand.*

I say not this to threaten or intimidate, but that we should reflect seriously before we act. If we once leave this floor, and solemnly renounce your new project, what will be the consequence? You will annihilate your federal government, and ruin must stare you in the face. Let us then do what is in our power—*amend and enlarge the confederation, but not alter the federal system.* The people expect this, and no more. We all agree in the necessity of a more efficient government—and cannot this be done? Although my state is small, I know and respect its rights, as much, at least as those who have the honor to represent any of the larger states.

Judge Elsworth. I am asked by my honorable friend from Massachusetts, whether by entering into a national government, I will not equally participate in national security? I confess I should; but I want domestic happiness, as well as general security. A general government will never grant me this, as it cannot know my wants or relieve my distress. My state is only as one out of thirteen. Can they the general government, gratify my wishes? My happiness depends as much on the existence of my state gov-

ernment, as a new born infant depends upon its mother for nourishment. If this is not an answer, I have no other to give.

Mr. King. I am in sentiment with those who wish the preservation of state governments; but the general goverment may be so constituted as to effect it. Let the constitution we are about forming be considered as a *commission* under which the general government shall act, and as such it will be the guardian of the state rights. The rights of Scotland are secure from all danger and encroachments, although in the parliament she has a small representation. May not this be done in our general government? Since I am up, I am concerned for what fell from the gentleman from Delaware—"*Take a foreign power by the hand*"! I am sorry he mentioned it, and I hope he is able to excuse it to himself on the score of passsion. Whatever may be my distress, I never will court a foreign power to assist in releaving myself from it.

Adjourned till Monday next.

MONDAY, JULY 2d, 1787.

Met pursuant to adjournment. Present 11 states.

The question was then put on Mr. Elsworth's motion. 5 ayes—5 noes—one state divided. So the question, as to the amendment, was lost.

Mr. Pinkney—As a professional man, I might say, that there is no weight in the argument adduced in favor of the motion on which we were divided: but candor obliges me to own, that equality of suffrage in the states is wrong. Prejudices will prevail, and they have an equal weight in the larger as in the smaller states.—There is a solid distinction as to interest between the southern and northern states. To destroy the ill effects thereof, I renew the motion which I made in the early stage of this business. [*See the plan, page* 43.]

Gen. Pinkney moved for a select committee, to take into consideration both branches of the legislature.

Mr. Martin—It is again attempted to compromise. You must give each state an equal suffrage, or our business is at an end.

Mr. Sherman—It seems we have got to a point, that we cannot move one way or the other. Such a committee is necessary to set us right.

Mr. Morris—The two branches, so equally poised, cannot have their due weight. It is confessed, on all hands, that the second branch ought to be a check on the first; for without its having this effect it is perfectly useless. The first branch, originating from the people, will ever be subject to *precipitancy*, *changeability* and *excess*. Experience evinces the truth of this remark without having recourse to reading. This can only be checked by *ability* and *virtue* in the second branch. On your present system, can you suppose that one branch will possess it more than the others? The second branch ought to be composed of men of great and established

property—*an aristocracy*. Men, who from pride will support consistency and permanency; and to make them completely independent they must be chosen *for life*, or they will be a useless body. Such an aristocratic body will keep down the turbulency of democracy. But if you elect them for a shorter period, they will be only a name, and we had better be without them. Thus constituted, I hope they will shew us the weight of aristocracy.

History proves, I admit, that the men of large property will uniformly endeavor to establish tyranny. How then shall we ward off this evil? Give them the second branch, and you secure their weight for the *public good*. They become responsible for their conduct, and this lust of power will ever be checked by the democratic branch, and thus form a stability in your government. But if we continue changing our measures by the breadth of democracy, who will confide in our engagements? Who will trust us? Ask any person whether he reposes any confidence in the government of congress, or that of the state of Pennsylvania—he will readily answer you, no. Ask him the reason, and he will tell you, it is because he has no confidence in their stability.

You intend also that the second branch shall be incapable of holding any office in the general government. It is a dangerous expedient. They ought to have every inducement to be interested in your government. Deprive them of this right, and they will become inattentive to your welfare. The wealthy will ever exist; and you never can be safe unless you gratify them as a body, in the pursuit of honor and profit. Prevent them by positive institutions, and they will proceed in some left-handed way. A son may want a place—you mean to prevent him from promotion. They are not to be paid for their services; they will in some way pay themselves; nor is it in your power to prevent it. It is good policy that men of property be collected in one body, to give them one common influence in your government. Let vacancies be filled up as they happen, by the executive. Besides it is of little consequence, on this plan, whether the states are equally represented or not. If the state governments have the division of many of the loaves and fishes, and the general government few, it cannot exist. This senate would be one of the *baubles* of the general government. If you choose them for *seven* years, whether chosen by the people or the states; whether by equal suffrage or in any other proportion, how will they be a check? They will still have local and state prejudices. A government by compact is no government at all. You may as well go back to your congressional federal government, where, in the character of ambassadors, they may form treaties for each state.

I avow myself the advocate of a strong government, still I admit that the influence of the rich must be guarded; and a pure democracy is equally oppressive to the lower orders of the community. This remark is founded on the experience of history. We

are a commercial people, and as such will be obliged to engage in European politics. Local government cannot apply to the general government. These latter remarks I throw out only for the consideration of the committee who are to be appointed.

Gov. Randolph—I am in favor of appointing a committee; but considering the warmth exhibited in debate on Saturday, I have, I confess, no great hopes that any good will arise from it. Cannot a remedy be devised? If there is danger to the lesser states, from an unequal representation in the second branch, may not a check be found in the appointment of one executive, by electing him, by an equality of state votes? He must have the right of interposing between the two branches, and this might give a reasonable security to the smaller states. Not one of the lesser states can exist by itself; and a dissolution of the confederation, I confess, would produce conventions, as well in the larger as in the smaller states. The principle of self-preservation induces me to seek for a government that will be stable and secure.

Mr. Strong moved to refer the 7th resolve to the same committee.

Mr. Wilson—I do not approve of the motion for a committee. I also object to the mode of its appointment—a small committee is the best.

Mr. Lansing—I shall not oppose the appointment, but I expect no good from it.

Mr. Madison—I have observed that committees only delay business; and if you appoint one from each state, we shall have in it the whole force of state prejudices. The great difficulty is to conquer former opinions. The motion of the gentleman from South Carolina can be as well decided here as in committee.

Mr. Gerry—The world at large expect something from us. If we do nothing, it appears to me we must have war and confusion; for the old confederation would be at an end. Let us see if no concession can be made. Accommodation is absolutely necessary, and defects may be amended by a future convention.

The motion was then put to appoint a committee on the 8th resolve, and so much of the 7th as was not agreed to. Carried—9 states against 2.

And, *by ballot*, the following members were appointed:

Massachusetts,	Mr. Gerry.	Maryland,	Mr. Martin.
Connecticut,	Mr. Elsworth.	Virginia,	Mr. Mason.
New York,	Mr. Yates,	N. Carolina,	Mr. Davie.
New Jersey,	Mr. Patterson,	S. Carolina,	Mr. Rutledge.
Pennsylvania,	Mr. Franklin.	Georgia,	Mr. Baldwin.
Delaware,	Mr. Bedford.		

The convention then adjourned to Thursday, the 5th of July.

TUESDAY, JULY 3d, 1787.

The *grand committee* met. Mr. Gerry was chosen chairman. The committee proceeded to consider in what manner they should discharge the business with which they were entrusted. By the

proceedings in the convention they were so equally divided on the important question of *representation in the two branches*, that the idea of a counciliatory adjustment must have been in contemplation of the house in the appointment of this committee. But still how to effect this salutary purpose was the question. Many of the members, impressed with the utility of a general government, connected with it the indispensible necessity of a representation from the states *according to their numbers and wealth*; while others, equally tenacious of the rights of the states, would admit of no other representation but such as *was strictly federal*, or in other words, *equality of suffrage*. This brought on a discussion of the principles on which the house had divided, and a lengthy recapitulation of the arguments advanced in the house in support of these opposite propositions. As I had not openly explained my sentiments on any former occasion on this question, but constantly in giving my vote, *showed my attachment to the national government on federal principles, I took this occasion to explain my motives.*

These remarks gave rise to a motion of Dr. Franklin, which after some modification was agreed to, and made the basis of the following report of the committee.

The committee to whom was referred the eighth resolution, reported from the committee of the whole house, and so much of the seventh as had not been decided on, submit the following report:

That the subsequent propositions be recommended to the convention, on condition that both shall be generally adopted.

That in the first branch of the legislature, each of the states now in the union, be allowed one member for every 40,000 inhabitants, of the description reported in the seventh resolution of the committee of the whole house. That each state, not containing that number, shall be allowed one member.

That bills for raising or apportioning money, and for fixing salaries of the officers of government of the United States, shall originate in the first branch of the legislature, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated in the first branch.

That in the second branch of the legislature, *each state shall have an equal vote.*

THURSDAY, JULY 5th, 1787.

Met pursuant to adjournment. The report of the committee was read.

Mr. Gorham. I call for an explanation of the principles on which it is grounded.

Mr. Gerry, the chairman, explained the principles.

Mr. Martin. The one representation is proposed as an expedient for the adoption of the other.

Mr. Wilson. The Committee has exceeded their powers.

Mr. Martin proposed to take the question on the whole of the report.

Mr. Wilson. I do not choose to take a leap in the dark. I have a right to call for a division of the question on each distinct proposition.

Mr. Madison. I restrain myself from animadverting on the report, from the respect I bear to the members of the committee. But I must confess I see nothing of concession in it.

The originating money bills is no concession on the part of the smaller states, for if seven states in the second branch should want such a bill, their interest in the first branch will prevail to bring it forward. It is nothing more than a nominal privilegé.

The second branch, small in number, and well connected, will ever prevail. The power of regulating trade, imposts, treaties, &c., are more essential to the community than raising money, and no provision is made for those in the report. We are driven to an unhappy dilemma. Two thirds of the inhabitants of the union are to please the remaining one third by sacrificing their essential rights.

When we satisfy the majority of the people in securing their rights, we have *nothing* to fear; in any other way, *every thing*. The smaller states, I hope will at last see their true and real interest. And I hope that the warmth of the gentleman from Delaware will never induce him to yield to his own suggestion of seeking for foreign aid.

[At this period (June 5, 1787,) Messrs. Yates and Lansing left the convention, and the remainder of the session was employed to complete the constitution on the principles already adopted.]

Letter from the honorable ROBERT YATES, *and the honorable* JOHN LANSING, *jun. esquires, to the Governor of New York, containing their reasons for not subscribing to the Federal Constitution.*

SIR, We do ourselves the honor to advise your excellency, that in pursuance to concurrent resolutions of the honorable senate and assembly, we have, together with Mr. Hamilton, attended the convention, appointed for revising the articles of confederation, and reporting amendments to the same.

It is with the sincerest concern we observe, that, in the prosecution of the important objects of our mission, we have been reduced to the disagreeable alternative, of either exceeding the powers delegated to us, and giving assent to measures which we conceive destructive to the political happiness of the citizens of the United States, or opposing our opinions to that of a body of respectable men, to whom those citizens had given the most unequivocal proofs of confidence.—Thus circumstanced, under these impressions, to have hesitated, would have been to be culpable; we, therefore, gave the principles of the constitution, which has received the sanction of a majority of the convention, our decided and unreserved dissent; but we must candidly confess, that we should have been equally opposed to any system, however modified, which had in object the consolidation of the United States into one government.

We beg leave, briefly, to state some cogent reasons, which, among others, influenced us to decide against a consolidation of the state. These are reducible into two heads.

1st. The limited and well-defined powers under which we acted, and which could not, on any possible construction, embrace an idea of such magnitude, as to assent to a general constitution, in subversion of that of the state.

2d. A conviction of the impracticability of establishing a general government, pervading every part of the United States, and extending essential benefits to all.

Our powers were explicit, and confined to the sole and express purpose of revising the articles of confederation, and reporting such alterations and provisions therein, as should render the federal constitution adequate to the exigencies of government, and the preservation of the union.

From these expressions, we were led to believe, that a system of consolidated government could not in the remotest degree, have been in contemplation of the legislature of this state? for that so important a trust, as the adopting measures which tended to deprive the state government of its most essential rights of sovereignty, and to place it in a dependent situation, could not have been confided by implication; and the circumstance, that the acts of the convention were to receive a state approbation in the last resort, forcibly corroborated the opinion, that our powers could not involve the subversion of a constitution, which being immediately derived from the people, could only be abolished by their express consent, and not by a legislature, possessing authority vested in them for its preservation. Nor could we suppose, that if it had been the intention of the legislature, to abrogate the existing confederation, they would, in such pointed terms, have directed the attention of their delegates to the revision and amendment of it, in total exclusion of every other idea.

Reasoning in this manner, we were of opinion, that the leading feature of every amendment, ought to be the preservation of the individual states, in their uncontrouled constitutional rights, and that in reserving these, a mode might have been devised of granting to the confederacy, the monies arising from a general system of revenue; the power of regulating commerce, and enforcing the observance of foreign treaties, and other necessary matters of less moment.

Exclusive of our objections originating from the want of power, we entertained an opinion, that a general government, however guarded by declarations of rights, or cautionary provisions, must unavoidably, in a short time, be productive of the destruction of the civil liberty of such citizens who could be effectually coerced by it; by reason of the extensive territory of the United States, the dispersed situation of its inhabitants, and the insuperable difficulty of controuling or counteracting the views of a set of men (however unconstitutional and oppressive their acts might be) possessed of all the powers of government; and who from their remoteness from

their constituents and necessary permanency of office, could not be supposed to be uniformly actuated by an attention to their welfare and happiness; that however wise and energetic the principles of the general government might be, the extremeties of the United States could not be kept in due submission and obedience to its its laws, at the distance of many hundred miles from the seat of government; that if the general legislature was composed of so numerous a body of men, as to represent the interest of all the inhabitants of the United States, in the usual and true ideas of representation, the expence of supporting it would become intolerably bursome; and that if a few only were vested with a power of legislation, the interests of a great majority of the inhabitants of the United States, must necessarily be unknown; or if known, even in the first stages of the operations of the new government, unattended to.

These reasons were, in our opinion, conclusive against any system of consolidated government: to that recommended by the convention, we suppose most of them very forcibly apply.

It is not our intention to pursue this subject farther, than merely to explain our conduct in the discharge of the trust which the honorable the legislature reposed in us.—Interested, however, as we are, in common with our fellow citizens, in the result, we cannot forbear to declare, that we have the strongest apprehensions, that a government so organized, as that recommended by the convention, cannot afford that security to equal and permanent liberty, which we wished to make an invariable object of our pursuit.

We were not present at the completion of the new constitution; but before we left the convention, its principles were so well established, as to convince us, that no alteration was to be expected to conform it to our ideas of expediency and safety.—A persuasion, that our further attendence would be fruitless and unavailing, rendered us less solicitous to return.

We have thus explained our motives for opposing the adoption of the national constitution, which we conceived it our duty to communicate to your excellency, to be submitted to the consideration of the honorable legislature.

We have the honor to be, with the greatest respect, your excellency's most obedient and very humble servants,

ROBERT YATES,
JOHN LANSING, Jun.

His Excellency Governor Clinton.

A Letter of his excellency EDMUND RANDOLPH, *Esq. on the Federal Constitution, addressed to the honorable the Speaker of the House of Delegates, Virginia.* *Richmond, Oct.* 10, 1787.

SIR, The constitution, which I enclosed to the general assembly in a late official letter, appears without my signature. This circumstance, although trivial in its own nature, has been rendered rather important to myself at least, by being misunderstood by some, and misrepresented by others.—As I disdain to conceal the reasons for withholding my subscription, I have always been, still am, and ever shall be, ready to proclaim them to the world. To the legislature, therefore, by whom I was deputed to the federal convention, I beg leave now to address them: affecting no indifference to public opinion, but resolved not to court it by an unmanly sacrifice of my own judgment.

As this explanation will involve a summary, but general review of our federal situation, you will pardon me, I trust although I should transgress the usual bounds of a letter.

Before my departure for the convention, I believed, that the confederation was not so eminently defective, as it had been supposed. But after I had entered into a free communication with those who were best informed of the condition and interest of each state; after I had compared the intelligence derived from them, with the properties which ought to characterise the government of our union, I became persuaded, that the confederation was destitute of every energy, which a constitution of the United States ought to possess.

For the objects proposed by its institution were, that it should be a shield against foreign hostility, and a firm resort against domestic commotion: that it should cherish trade, and promote the prosperity of the states under its care.

But these are not among the attributes of our present union. Severe experience under the pressure of war—a ruinous weakness manifested since the return of peace; and the contemplation of those dangers, which darken the future prospect, have condemned the hope of grandeur and of safety under the auspices of the confederation.

In the exigencies of war, indeed, the history of its effects is but short; the final ratification having been delayed until the beginning of the year 1781. But however short, this period is distinguished by melancholy testimonies of its inability to maintain in harmony, the social intercourse of the states, to defend congress against encroachments on their rights, and to obtain by requisitions, supplies to the federal treasury, or recruits to the federal armies. I shall not attempt an enumeration of the particular instances; but leave to your own remembrance and the records of congress, the support of the assertions.

In the season of peace too, not many years have elapsed; and yet each of them has produced fatal examples of delinquency, and sometimes of pointed opposition to federal duties. To the various remonstrances of congress, I appeal, for a gloomy, but unexaggerated narrative of the injuries which our faith, honor and happiness, have sustained by the failure of the states.

But these evils are past; and some may be led by an honest zeal to conclude that they cannot be repeated. Yes, sir, they will be repeated as long as the confederation exists, and will bring with them other mischiefs springing from the same source, which cannot be yet forseen in their full array of terror.

If we examine the constitution and laws of the several states, it is immediately discovered that the law of nations is unprovided with sanctions in many cases, which deeply affect public dignity and public justice. The letter however of the confederation does not permit congress to remedy these defects, and such an authority, although evidently deducible from its spirit, cannot without violation of the second article, be assumed. Is it not a political phenomenon, that the head of the confederacy should be doomed to be plunged into war, from its wretched impotency to check offences against this law; and sentenced to witness in unavailing anguish the infraction of their engagements to foreign sovereigns?

And yet this is not the only grievous point of weakness. After a war shall be inevitable, the requisitions of congress for quotas of men or money, will again prove unproductive, and fallacious. Two causes will always conspire to this baneful consequence.

1. No government can be stable, which hangs on human inclination alone, unbiassed by the coercion; and 2, from the very connection between states bound to proportionate contributions, jealousies and suspicions naturally arise, which at least chill the ardor, if they do not excite the murmurs of the whole. I do not forget indeed, that by one sudden impulse, our part of the American continent, has been thrown into a military posture, and that in the earlier annals of the war, our armies marched to the field on the mere recommendations of congress. But ought we to argue from a contest, thus signalized by the magnitude of its stake, that as often as a flame shall be hereafter kindled, the same enthusiasm will fill our legions, or renew them, as they may be filled by losses?

If not, where shall we find protection? Impressions, like those, which prevent a compliance with requisitions of regular forces, will deprive the American republic of the services of militia. But let us suppose that they are attainable, and acknowledge, as I always shall, that they are the natural support of a free government. When it is remembered, that in their absence agriculture must languish; that they are not habituated to military exposures and the rigour of military discipline, and that the necessity of holding in readiness successive detachments, carries the expence far beyond that of enlistments—This resource ought to be adopted with caution.

As strongly too am I persuaded, that the requisitions for money will not be more cordially received. For besides the distrust, which would prevail with respect to them also; besides the opinion, entertained by each state of its own liberality and unsatisfied demands against the United States, there is another consideration not less worthy of attention—the first rule for determining each quota of the value of all lands granted or surveyed, and of the buildings and improvements thereon. It is no longer doubted, that an equitable, uniform mode of estimating that value, is impracticable; and therefore twelve states have substituted the number of inhabitants under certain limitations, as the standard according to which money is to be furnished.

But under the subsisting articles of the union, the assent of the thirteenth state is necessary, and has not yet been given. This does itself lessen the hope of procuring a revenue for federal uses; and the miscarriage of the impost almost rivets our despondency.

Amidst these disappointments, it would afford some consolation, if when rebellion shall threaten any state, an ultimate asylum could be found under the wing of congress. But it is at least equivocal whether they can intrude forces into a state, rent asunder by civil discord, even with the purest solicitude for our federal welfare, and on the most urgent entreaties of the state itself. Nay the very allowance of this power would be pageantry alone, from the want of money and of men.

To these defects of congressional power, the history of man has subjoined others, not less alarming. I earnestly pray, that the recollection of common sufferings, which terminated in common glory, may check the sallies of violence, and perpetuate mutual friendship between the states. But I cannot presume, that we are superior to those unsocial passions, which under like circumstances have infested more ancient nations.—I cannot presume, that through all time, in the daily mixture of American citizens with each other, in the conflicts for commercial advantages, in the discontents which the neighborhood of territory has been seen to engender in other quarters of the globe, and in the efforts of faction and intrigue—thirteen distinct communities under no effective superintending control (as the United States confessedly now are, notwithstanding the bold terms of the confederation) will avoid a hatred to each other deep and deadly.

In the prosecution of this enquiry, we shall find the general prosperity to decline under a system thus unnerved. No sooner is the merchant prepared for foreign ports, with the treasures which this new world kindly offers to his acceptance, than it is announced to him, that they are shut against American shipping, or opened under oppressive regulations. He urges congress to a counter-policy, and is answered only by a condolence on the general misfortune. He is immediately struck with the conviction, that until exclusion shall be opposed to exclusion, and restriction to restriction, the American flag will be disgraced. For who can conceive, that thirteen legislatures, viewing commerce under different legislatures, and fancying themselves discharged from every obligation to concede the smallest of their commercial advantages for the benefit of the whole, will be wrought into a concert of action and defiance of every prejudice? Nor is this all: Let the great improvements be recounted, which have enriched and illustrated Europe: Let it be noted, how few those are, which will be absolutely denied to the United States, comprehending within their boundaries, the choicest blessings of climate, soil, and navigable waters; then let the most sanguine patriot banish, if he can, the mortifying belief, that all these must sleep, until they shall be roused by the vigor of a national government.

I have not exemplified the preceding remarks by minute details; because they are evidently fortified by truth, and the consciousness of the United States of America. I shall, therefore, no longer deplore the unfitness of the confederation to secure our peace; but proceed, with a truly unaffected distrust of my own opinions, to examine what order of powers the government of the United States ought to enjoy? How they ought to be defended against encroachments? Whether they can be interwoven in the confederation, without an alteration of its very essence, or must be lodged in new hands? Shewing at the same time the convulsions, which seem to await us, from a dissolution of the union or partial confederacies.

To mark the kind and degree of authority, which ought to be confided to the government of the United States, is no more than to reverse the description which I have already given, of the defects of the confederation.

From thence it will follow, that the operations of peace and war will be clogged without regular advances of money, and that these will be slow indeed, if dependent on supplication alone. For what better name do requisitions deserve, which may be evaded or opposed without the fear of coercion? But although coercion is an indispensable ingredient, it ought not to be directed against a state, as a state; it being impossible to attempt it except by blockading the trade of the delinquent, or carrying war into its bowels. Even if these violent schemes were eligible, in other respects, both of them might perhaps be defeated by the scantiness of the public chest; would be tardy in their complete effect, as the expence of the land and naval equipments must be first reimbursed; and might drive the proscribed state into the desperate resolve of inviting foreign alliances. Against each of them lie separate unconquerable objections. A blockade is not equally applicable to all the states,

they being differently circumstanced in commerce and in ports; nay, an excommunication from the privilege of the union would be vain, because every regulation or prohibition may be easily eluded under the rights of American citizenship, or of foreign nations. But how shall we speak of the instrusion of troops? Shall we arm citizens against citizens, and habituate them to shed kindred blood? Shall we risk the inflicting of wounds which will generate a rancour never to be subdued? Would there be no room to fear, that an army accustomed to fight for the establishment of authority, would salute an emperor of their own? Let us not bring these things into jeopardy. Let us rather substitute the same process by which individuals are compelled to contribute to the government of their own states. Instead of making requisitions to the legislatures, it would appear more proper, that taxes should be imposed by the federal head, under due modification and guards; that the collectors should demand from the citizens their respective quotas, and be supported as in the collection of ordinary taxes.

It follows too, that, as the general government will be responsible to foreign nations, it ought to be able to annul any offensive measure, or enforce any public right. Perhaps among the topics on which they may be aggrieved or complain, the commercial intercourse, and the manner in which contracts are discharged, may constitute the principal articles of clamor.

It follows too, that the general government ought to be the supreme arbiter, for adjusting every contention among the states. In all their connections, therefore, with each other, and particularly in commerce, which will probably create the greatest discord, it ought to hold the reins.

It follows too, that the general government ought to protect each state against domestic as well as external violence.

And lastly, it follows, that through the general government alone, can we ever assume the rank to which we are entitled by our resources and situation.

Should the people of America surrender these powers, they can be paramount to the constitutions and ordinary acts of legislation, only by being delegated by them. I do not pretend to affirm, but I venture to believe, that if the confederation had been solemnly questioned in opposition to our constitution, or even to one of our laws, posterior to it, it must have given way. For never did it obtain a higher ratification, than a resolution of assembly in the daily form.

This will be one security against encroachment. But another not less effectual is, to exclude the individual states from any agency in the national government, as far as it may be safe, and their interposition may not be absolutely necessary.

But now, sir, permit me to declare, that in my humble judgment, the powers by which alone the blessings of a general government can be accomplished, cannot be interwoven in the confederation, without a change in its very essence, or, in other words, that the confederation must be thrown aside. This is almost demonstrable, from the inefficacy of requisitions, and from the necessity of converting them into acts of authority. My suffrage as a citizen, is also for additional powers. But to whom shall we commit these acts of authority, these additional powers? To congress? When I formerly lamented the defects in the jurisdiction of congress, I had no view to indicate any other opinion, than that the federal head ought not to be so circumscribed. For free as I am at all time to profess my reverence for that body, and the individuals who compose it, I am yet equally free to make known my aversion to repose such a trust in a tribunal so constituted. My objections are not the visions of theory, but the result of my own observations in America, and of the experience of others abroad. 1. The legislative and executive are concentred in the same persons. This, where real power exists, must eventuate in tyranny. 2. The representation of the states bears no proportion to their importance. This is an unreasonable subjection of the will of the majority to that of the minority. 3. The mode of election, and the liability of being recalled, may too often render the delegates rather partizans of their own states than representatives of the union. 4. Cabal and intrigue must consequently gain an ascendancy in a course of years. 5. A single house of legislation will sometimes be precipitate, perhaps passionate. 6. As long as seven states are required for the smallest, and nine for the greatest votes, may not foreign influence at some future day insinuate itself, so as to interrupt every active exertion? 7. To crown the whole, it is scarce within the verge of possibility, that so numerous an assembly should acquire that secrecy, dispatch, and vigour, which are the test of excellence in the executive department.

My inference from these facts and principles, is, that the new powers must be

deposited in a new body, growing out of a consolidation of the union, as far as the circumstances of the states will allow. Perhaps, however, some may meditate its dissolution, and others, partial confederacies.

The first is an idea awful indeed, and irreconcileable with a very early, and hitherto uniform conviction, that without union, we must be undone. For, before the voice of war was heard, the pulse of the then colonies was tried and found to beat in unison. The unremitted labor of our enemies was to divide, and the policy of every congress, to bind us together. But in no example was this truth more clearly displayed, than in the prudence with which independence was unfolded to the sight, and in the forbearance to declare it, until America almost unanimously called for it. After we had thus launched into troubles, never before explored, and in the hour of heavy distress, the remembrance of our social strength, not only forbade despair, but drew from congress the most illustrious repetition of their settled purpose to despise all terms, short of independence.

Behold, then, how successful and glorious we have been, while we acted in fraternal concord. But let us discard the illusion, that by this success, and this glory, the crest of danger has irrecoverably fallen. Our governments are yet too youthful to have acquired stability from habit. Our very quiet depends upon the duration of the union. Among the upright and intelligent, few can read without emotion the future fate of the states, if severed from each other. Then shall we learn the full weight of foreign intrigue. Then shall we hear of partitions of our country. If a prince, inflamed by the lust of conquest, should use one state as the instrument of enslaving others—if every state is to be wearied by perpetual alarms, and compelled to maintain large military establishments—if all questions are to be decided by an appeal to arms, where a difference of opinion cannot be removed by negociation—in a word, if all the direful misfortunes which haunt the peace of rival nations, are to triumph over the land, for what have we to contend? Why have we exhausted our wealth? Why have we basely betrayed the heroic martyrs of the federal cause?

But dreadful as the total dissolution of the union is to my mind, I entertain no less horror at the thought of partial confederacies. I have not the least ground for supposing, that an overture of this kind would be listened to by a single state, and the presumption is, that the politics of the greater part of the states, flow from the warmest attachment to an union of the whole. If, however a lesser confederacy could be obtained by Virginia, let me conjure my countrymen, well to weigh the probable consequences, before they attempt to form it.

On such an event, the strength of the union would be divided in two, or perhaps three parts. Has it so increased since the war as to be divisible—and yet remain sufficient for our happiness?

The utmost limit of any partial confederacy, which Virginia could expect to form would comprehend the three southern states, and her nearest northern neighbour. But they, like ourselves, are diminished in their real force, by the mixture of an unhappy species of population.

Again may I ask, whether the opulence of the United States has been augmented since the war? This is answered in the negative, by a load of debt, and the declension of trade.

At all times must a southern confederacy support ships of war, and soldiery? As soon would a navy move from the forest, and an army spring from the earth, as such a confederacy, indebted, impoverished in its commerce, and destitute of men, could, for some years at least, provide an ample defence for itself.

Let it not be forgotten, that nations, which can enforce their rights, have large claims against the United States, and that the creditor may insist on payment from any of them. Which of them would probably be the victim? the most productive, and the most exposed. When vexed by reprisals of war, the southern states will sue for alliance on this continent or beyond sea. If for the former, the necessity of an union of the whole is decided; if for the latter, America will, I fear, re-act the scenes of confusion and bloodshed, exhibited among most of those nations, which have, too late, repented the folly of relying on auxiliaries.

Two or more confederacies cannot but be competitors for power. The ancient friendship between the citizens of America, being thus cut off, bitterness and hostility will succeed in its place; in order to prepare against surrounding danger, we shall be compelled to vest some where or other power approaching near to military government.

The annals of the world have abounded so much with instances of a divided pee-

ple being a prey to foreign influence, that I shall not restrain my apprehensions of it, should our union be torn asunder. The opportunity of insinuating it, will be multiplied in proportion to the parts into which we may be broken.

In short, sir, I am fatigued with summoning up to my imagination the miseries which will harrass the United States, if torn from each other, and which will not end until they are superseded by fresh mischiefs under the yoke of a tyrant.

I come, therefore to the last, and perhaps only refuge in our difficulties, a consolidation of the union, as far as circumstances will permit. To fulfil this desirable object, the constitution was framed by the federal convention. A quorum of eleven states, and the only member from a twelfth have subscribed it; *Mr. Mason of Virginia, Mr. Gerry of Massachusetts*, and myself having refused to subscribe. Also *Robert Yates, and John Lansing of New York*.

Why I refused, will, I hope, be solved to the satisfaction of those who know me, by saying, that a sense of duty commanded me thus to act. It commanded me, sir, for believe me, that no event of my life ever occupied more of my reflection. To subscribe, seemed to offer no inconsiderable gratification, since it would have presented me to the world as a fellow laborer with the learned and zealous statesmen of America.

But it was far more interesting to my feelings, that I was about to differ from three of my colleagues, one of whom is, to the honor of the country which he has saved, embossomed in their affections, and can receive no praise from the highest lustre of language; the other two of whom have been long enrolled among the wisest and best lovers of the commonwealth; and the unshaken and intimate friendship of all of whom I have ever prized, and still do prize, as among the happiest of all acquisitions. I was no stranger to the reigning partiality for the members who composed the convention, and had not the smallest doubt, that from this cause, and from the ardor for a reform of government, the first applauses at least would be loud and profuse. I suspected, too, that there was something in the human breast which for a time would be apt to construe a temperateness in politics, into an enmity to the union. Nay, I plainly foresaw, that in the dissentions of parties, a middle line would probably be interpreted into a want of enterprize and decision. But these considerations, how seducing soever, were feeble opponents to the suggestion of my conscience. I was sent to exercise my judgment, and to exercise it was my fixed determination; being instructed by even an imperfect acquaintance with mankind, that self approbation is the only true reward which a political career can bestow, and that popularity would have been but another name for perfidy, if to secure it, I had given up the fredom of thinking for myself.

It would have been a peculiar pleasure to me to have ascertained before I left Virginia, the temper and genius of my fellow citizens, considered relatively to a government, so substantially differing from the confederation as that which is now submitted. But this was, for many obvious reasons, impossible; and I was thereby deprived of what I thought the necessary guides.

I saw, however, that the confederation was tottering from its own weakness, and that the sitting of the convention was a signal of its total insufficiency. I was therefore ready to assent to a scheme of goverument, which was proposed, and which went beyond the limits of the confederation, believing, that without being too extensive it would have preserved our tranquility, until that temper and that genius should be collected.

But when the plan which is now before the general assembly, was on its passage through the convention, I moved, that the state conventions should be at liberty to amend, and that a second general convention should be holden, to discuss the amendments, which should be suggested by them. This motion was in some measure justified by the manner in which the confederation was forwarded originally, by congress to the state legislatures, in many of which amendments were proposed, and those amendments were afterwards examined in congress. Such a motion was doubly expedient here, as the delegation of so much more power was sought for. But it was negatived. I then expressed my unwillingness to sign. My reasons were the following:

1. It is said in the resolutions which accompany the constitution, that it is to be submitted to a convention of delegates chosen in each state by the people thereof, for their assent and ratification. The meaning of these terms is allowed universally to be, that the convention must either adopt the constitution in the whole, or reject it in the whole, and is positively forbidden to amend. If therefore, I had signed, I

should have felt myself bound to be silent as to amendments, and to endeavor to support the constitution without the correction of a letter. With this consequence before my eyes, and with a determination to attempt an amendment, I was taught by a regard for consistency, not to sign.

2. My opinion always was, and still is, that every citizen of America, let the crisis be what it may, ought to have a full opportunity to propose, through his representatives, any amendment which in his apprehension, tends to the public welfare.— By signing, I should have contradicted this sentiment.

3. A constitution ought to have the hearts of the people on its side. But if at a future day it should be burthensome after having been adopted in the whole, and they should insinuate that it was in some measure forced upon them, by being confined to the single alternative of taking or rejecting it altogether, under my impressions, and with my opinions, I should not be able to justify myself had I signed.

4. I was always satisfied, as I have now experienced, that this great subject would be placed in new lights and attitudes by the criticism of the world, and that no man can assure himself how a constitution will work for a course of years, until at least he shall have the observations of the people at large. I also fear more inaccuracies in a constitution, than from gross errors in any other composition; because our dearest interests are to be regulated by it; and power, if loosely given, especially where it will be interpreted with great latitude, may bring sorrow in its execution. Had I signed with these ideas, I should have virtually shut my ears against the information which I ardently desired.

5. I was afraid, that if the constitution was to be submitted to the people, to be wholly adopted or wholly rejected by them, they would not only reject it, but bid a lasting farewell to the union. This formidable event I wished to avert, by keeping myself free to propose amendments, and thus, if possible, to remove the obstacles to an effectual government. But it will be asked, whether all these arguments were not well weighed in convention. They were, sir, with great candor. Nay, when I called to mind the respectability of those, with whom I was associated, I almost lost confidence in these principles. On other occasions, I should cheerfully have yielded to a majority; on this, the fate of thousands, yet unborn, enjoined me not to yield until I was convinced.

Again, may I be asked, why the mode pointed out in the constitution for its amendment, may not be a sufficient security against its imperfections, without now arresting it its progress? My answers are—1. That it is better to amend, while we have the constitution in our power, while the passions of designing men are not yet enlisted, and while a bare majority of the states may amend than to wait for the uncertain assent of three fourths of the states. 2. That a bad feature in government, becomes more and more fixed every day. 3. That frequent changes of a constitution, even if practicable, ought not to be wished, but avoided as much as possible. And 4. That in the present case, it may be questionable, whether, after the particular advantages of its operation shall be discerned, three fourths of the states can be induced to amend.

I confess, that it is no easy task, to devise a scheme which shall be suitable to the views of all. Many expedients have occurred to me, but none of them appear less exceptionable than this; that if our convention should choose to amend, another federal convention be recommended: that in that federal convention the amendments proposed by this or any other state be discussed; and if incorporated in the constitution or rejected, or if a proper number of the other states should be unwilling to accede to a second convention, the constitution be again laid before the same state conventions, which shall again assemble on the summons of the executives, and it shall be either wholly adopted, or wholly rejected, without a further power of amendment. I count such a delay as nothing, in comparison with so grand an object; especially too as the privilege of amending must terminate after the use of it once.

I should now conclude this letter, which is already too long, were it not incumbent on me, from having contended for amendments, to set forth the particulars, which I conceive to require correction I undertake this with reluctance: because it is remote from my intentions to catch the prejudices or prepossessions of any man. But as I mean only to manifest that I have not been actuated by caprice, and now to explain every objection at full length would be an immense labour, I shall content myself with enumerating certain heads, in which the constitution is most repugnant to my wishes.

The two first points and the equality of suffrage in the senate, and the submission of commerce to a mere majority in the legislature, with no other check than the revision of the president. I conjecture that neither of these things can be corrected; and particularly the former, without which we must have risen perhaps in disorder.

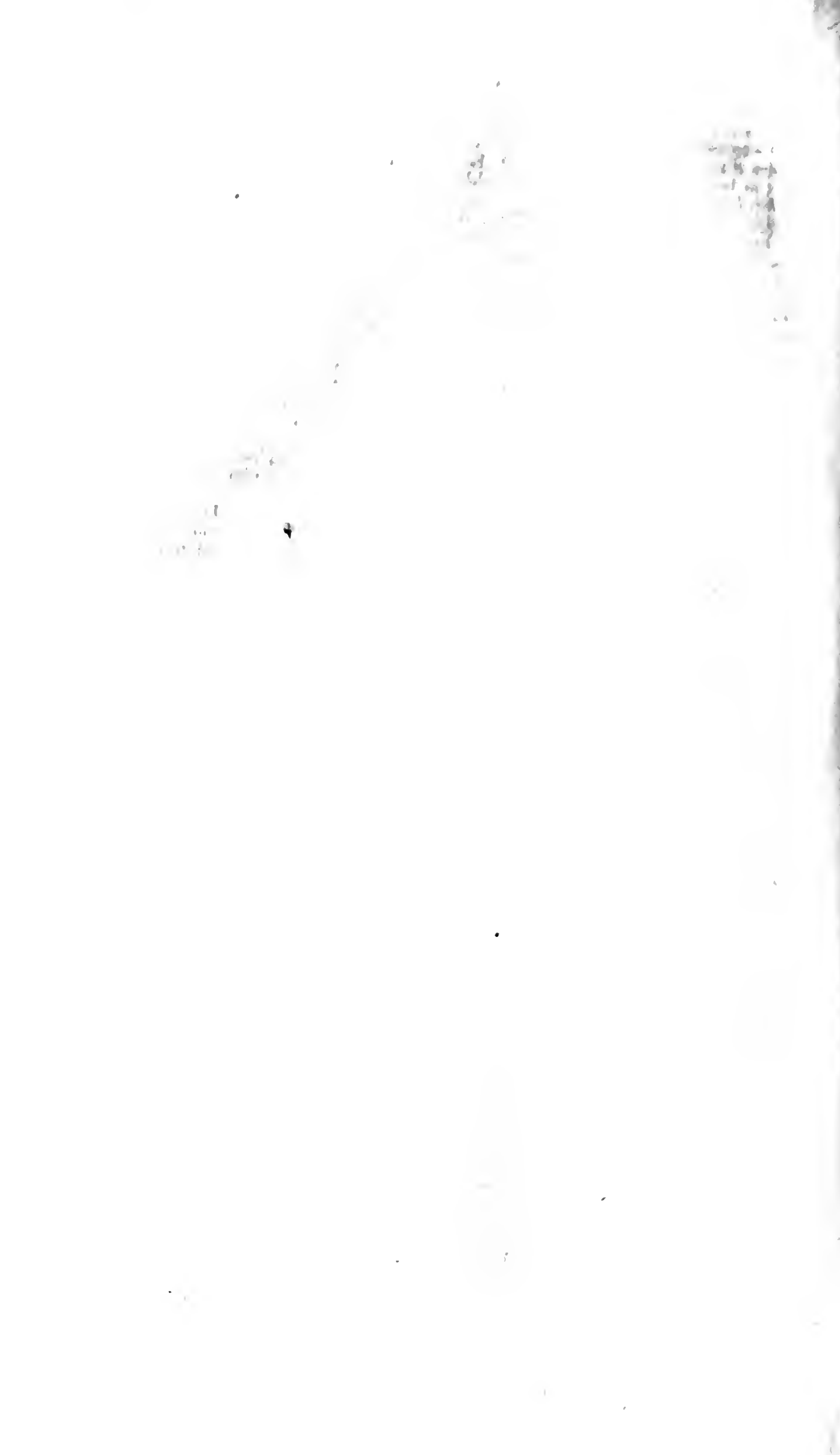
But I am sanguine in hoping that in every other justly obnoxious cause, Virginia will be seconded by a majority of the states. I hope that she will be seconded. 1. In causing all ambiguities of expression to be precisely explained. 2. In rendering the president ineligible after a given number of years. 3. In taking from him the power of nominating to the judiciary officers, or of filling up vacancies which may there happen during the recess of the senate, by granting commissions which shall expire at the end of their next sessions. 4. In taking from him the power of pardoning for treason at least before conviction. 5. In drawing a line between the powers of congress and individual states; and in defining the former, so as to leave no clashing of jurisdictions nor dangerous disputes; and to prevent the one from being swallowed up by the other, under cover of general words, and implication. 6. In abridging the power of the senate to make treaties supreme laws of the land. 7. In incapacitating the congress to determine their own salaries. And 8. In limiting and defining the judicial power.

The proper remedy must be consigned to the wisdom of the convention; and the final step which Virginia shall pursue, if her overtures shall be discarded, must also rest with them.

You will excuse me, sir, for having been thus tedious. My feelings and duty demanded this exposition; for through no other channel could I rescue my omission to sign from misrepresentation, and no more effectual way could I exhibit to the general assembly an unreserved history of my conduct.

I have the honor, sir, to be with great respect, your obedient servant,

EDMUND RANDOLPH.



OPINIONS

SELECTED FROM DEBATES IN CONGRESS,

INVOLVING

Constitutional Principles,

FROM

1789 TO 1830.

OATH.—*On a bill prescribing the oath to support the Constitution. May* 6, 1789.

Mr. GERRY said he did not discover what part of the constitution gave to congress the power of making this provision (for regulating the time, and manner of administering certain oaths,) except so much of it as respects the form of the oath; it is not expressly given by any clause of the constitution, and if it does not exist, must arise from the sweeping clause, as it is frequently termed, in the 8th section of the first article of the constitution, which authorises congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." To this clause there seems to be no limitation, so far as it applies to the extension of the powers vested by the constitution; but even this clause gives no legislative authority to congress, to carry into effect any power not expressly vested by the constitution. In the constitution, which is the supreme law of the land, provision is made, that the members of the legislatures of the several states, and all executive and judicial officers thereof, shall be bound by oath to support the constitution. But there is no provision for empowering the government of the United States, or any officer or department thereof, to pass a law obligatory on the members of the legislatures of the several states, and other officers thereof, to take this oath. This is made their duty already by the constitution, and no such law of congress can add force to the obligation; but, on the other hand, if it is admitted, that such a law is necessary, it tends to weaken the constitution which requires such aid; neither is any law other than to prescribe the form of the oath, necessary or proper to carry this part of the constitution into effect; for the oath required by the constitution being a necessary qualification for the state officers mentioned, cannot be dispensed with by any authority whatever other than the people, and the judicial power of the United States, extending to

all cases arising in law or equity under this constitution. The judges of the United States, who are bound to support the constitution, may, in all cases within their jurisdiction, annul the official acts of state officers, and even the acts of the members of the state legislatures, if such members and officers were disqualified to do or pass such acts, by neglecting or refusing to take this oath.

Mr. BLAND had no doubt respecting the powers of congress on this subject. The evident meaning of the words of the constitution implied, that congress should have the power to pass a law, directing the time and manner of taking the oath prescribed for supporting the constitution. There can be no hesitation respecting the power to direct their own officers, and the constituent parts of congress; beside, if the state legislatures were to be left to direct and arrange this business, they would pass different laws, and the officers might be bound in different degrees to support the constitution. He not only thought congress had the power to do what was proposed by the senate, but he judged it expedient also.

Mr. JACKSON. The states had better be left to regulate this matter among themselves, for an oath that is not voluntary is seldom held sacred. Compelling people to swear to support the constitution, will be like the attempts of Britain, during the late revolution, to secure the fidelity of those who fell within the influence of her arms, and like those attempts they will be frustrated; the moment the party could get from under her wings, the oath of allegiance was disregarded. If the state officers will not willingly pay this testimony of their attachment to the constitution, what is extorted from them against their inclination is not much to be relied on.

Mr. LAWRENCE. Only a few words will be necessary, to convince that congress have this power. It is declared by the constitution, that its ordinance shall be the supreme law of the land; if the constitution is the supreme law of the land, every part of it must partake of this supremacy; consequently, every general declaration it contains is the supreme law, but then these general declarations cannot be carried into effect, without particular regulations adapted to the circumstances: these particular regulations are to be made by congress, who, by the constitution, have power to make all laws necessary or proper, to carry the declarations of the constitution into effect. The constitution likewise declares, that the members of the state legislatures, and all officers, executive and judicial, shall take an oath to support the constitution. This declaration is general, and it lays with the supreme legislature to detail and regulate it.

Mr. SHERMAN.—It appears necessary to point out the oath itself, as well as the time and manner of taking it. No other legislature is competent to all these purposes; but if they were, there is a propriety in the supreme legislature's doing it. At the same time, if the state legislatures take it up, it cannot operate disagreeably upon them, to find all their neighboring states obliged to join them in supporting a measure they approve. What a state legis-

lature may do, will be good as far as it goes: on the same principle, the constitution will apply to each individual of the state officers, they may go, without the direction of the state legislature, to a justice, and take the oath voluntarily. This, I suppose, would be binding upon them; but this is not satisfactory: the government ought to know that the oath has been properly taken, and this can only be done by a general regulation. If it is in the discretion of the state legislatures to make laws to carry the declaration of the constitution into execution, they have the power of refusing, and may avoid the positive injunctions of the constitution. As the power of congress, in this particular, extends over the whole union, it is most proper for us to take the subject up and make the proper provision for carrying it into execution, to the intention of the constitution.

DUTIES.—*Bill laying duties on goods, &c. H. R. May* 15.

Mr. WHITE.—The constitution having authorised the house of representatives alone, to originate money bills, places an important trust in our hands, which as their protectors, we ought not to part with. I do not mean to imply that the senate are less to be trusted than this house; but the constitution, no doubt for wise purposes, has given the immediate representatives of the people, a control over the whole government in this particular, which for their interest they ought not to let out of their hands.

Mr. MADISON.—The constitution places the power in the house of originating money bills. The principal reason why the constitution had made this distinction was, because they were chosen by the people, and supposed to be the best acquainted with their interest and ability. In order to make them more particularly acquainted with these objects, the democratic branch of the legislature consisted of a greater number, and were chosen for a shorter period, that so they might revert more frequently to the mass of the people.

REMOVAL BY THE PRESIDENT. *On the bill for establishing an executive department, to be denominated the department of foreign affairs. H. R. June* 16, 1789.

The first clause, after recapitulating the title of the officer and his duties, had these words; "To be removable from office by the president of the United States."

Mr. WHITE. The Constitution gives the president the power of nominating, and by and with the advice and consent of the senate, appointing to office. As I conceive the power of appointing and dismissing to be united in their natures, and a principle that never was called in question in any government, I am adverse to that part of the clause which subjects the secretary of foreign affairs to be removed at the will of the president. In the constitution special provision is made for the removal of the Judges, that

I acknowledge to be a deviation from my principle; but as it is a constitutional provision, it is to be admitted. In all cases, not otherwise provided for in the constitution, I take it that the principle I have laid down is the governing one. Now the constitution has associated the senate with the president, in appointing the heads of department; for the words of the law declare that there shall be a department established, at the head of which shall be an officer to be so denominated. If then the senate is associated with the president in the appointment, they ought also to be associated in the dismission from office. Upon the justness of this construction, I take the liberty of reviving the motion made in the committee of the whole, for striking out those words, "to be removable from office by the president of the United States."

Mr. SMITH (of South Carolina.) The gentleman has anticipated me in his motion: I am clearly in sentiment with him that the words ought to go out. It is in the recollection of the committee, that when the subject was last before us this power was excepted to; and although the words were then allowed to stand, it was generally understood that it should be further debated. I then was opposed to giving this power to the president, and am still of opinion that we ought not to make this declaration, even if he has the power by the constitution.

I would premise, that one of these two ideas are just, either that the constitution has given the president the power of removal, and therefore it is nugatory to make the declaration here; or it has not given the power to him, and therefore it it is improper o make an attempt to confer it upon him. If it not given to him by the constitution, but belongs conjointly to the president and senate, we have no right to deprive the senate of their constitutional prerogative; and it has been the opinion of sensible men that the power was lodged in this manner. A publication of no inconsiderable eminence, in the class of political writings on the constitution, has advanced this sentiment. The author, or authors (for I have understood it to be the production of two gentlemen of great information) of the work published under the signature of Publius, has these words:

"It has been mentioned as one of the advantages to be expected from the co-operation of the senate, in the business of appointments, that it would contribute to the stability of the administration. The consent of that body would be necessary to displace as well as appoint. A change of the chief magistrate therefore would not occasion so violent or so general a revolution in the offices of the government as might be expected if he were the sole disposer of offices. Where a man in any station has given satisfactory evidence of his fitness for it, a new president would be restrained from attempting a change, in favor of a person more agreeable to him, by the apprehension that the discountenance of the

senate might frustrate the attempt, and bring some degree of discredit upon himself. Those who can best estimate the value of a steady administration will be most disposed to prize a provision, which connects the official existence of public men with the approbation or disapprobation of that body, which from the greater permanency of its own composition, will in all probability be less subject to inconstancy, than any other member of the government."

Here this author lays it down, that there can be no doubt of the power of the senate in the business of removal. Let this be as it may, I am clear that the president alone has not the power. Examine the constitution; the powers of the several branches of government are there defined; the president has particular powers assigned him; the judicial have in like manner powers assigned them; but you will find no such power as removing from office given to the president. I call upon gentlemen to show me where it is said that the president shall remove from office; I know they cannot do it. Now I infer from this, as the constitution has not given the president the power of removability; it meant that he should not have that power; and this inference is supported by that clause in the constitution, which provides that all civil offices of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. Here is a particular mode prescribed for removing; and if there is no other mode directed, I contend that the constitution contemplated only this mode. But let me ask gentlemen if any other mode is necessary? for what other cause should a man be removed from office? Do gentlemen contend that sickness or ignorance would be a sufficient cause? I believe if they will reflect they cannot instance any person who was removed from ignorance: I venture to say there never was an instance of this nature in the United States. There has been instances where a person has been removed for offences; the same may again occur, and are therefore judiciously provided for in the constitution. But in this case, is he removed from his ignorance, or his error which is the consequence of his ignorance? I suppose it is for his error, because the public are injured by it; and not for incapacity. The president is to nominate the officer, and the senate to approve; here is provision made against the appointment of ignorant officers. They cannot be removed for causes which subsisted before their coming into office; their ignorance therefore must arise after they are appointed; but this is an unlikely case, and one that cannot be contemplated as probable.

I imagine, sir, we are declaring a power in the president which may hereafter be greatly abused, for we are not always to expect a chief magistrate in whom such entire confidence can be placed as in the present. Perhaps gentlemen are so much dazzled with the splendor of the virtues of the present president, as not to be able to see into futurity. The framers of the constitution did not

confine their views to the first person who was looked up to, to fill the presidential chair; if they had they might have omitted those checks and guards with which the powers of the executive are surrounded; they knew from the course of human events, that they could not expect to be so highly favored of heaven, as to have the blessing of his administration more than seven or fourteen years; after which, they supposed a man might get into power, who it was possible might misbehave. We ought to follow their example, and contemplate this power in the hands of an ambitious man, who might apply it to dangerous purposes. If we give this power to the president, he may from caprice remove the most worthy men from office; his will and pleasure will be the slight tenure by which an office is to be held, and of consequence you render the officer the mere state dependent, the abject slave of a person who may be disposed to abuse the confidence his fellow citizens have placed in him.

Another danger may result; if you desire an officer to be a man of capacity and integrity, you may be disappointed. A gentleman possessed of these qualities, knowing he may be removed at the pleasure of the president, will be loath to risk his reputation on such insecure ground; as the matter stands in the constitution, he knows if he is suspected of doing any thing wrong, he shall have a fair trial, and the whole of his transactions developed by an impartial tribunal; he will have confidence in himself when he knows he can only be removed for improper behaviour. But if he is subjected to the whim of any man, it may deter him from entering into the service of his country; because if he is not subservient to that person's pleasure, he may be turned out, and the public may be led to suppose for improper behaviour; this impression cannot be removed, as a public enquiry cannot be obtained. Beside this it ought to be considered, that the person who is appointed will probably quit some other office or business in which he is occupied.—Ought he after making this sacrifice in order to serve the public, to be turned out of place without even a reason being assigned for snch behaviour; perhaps the president does not do this with an ill intention; he may have been misinformed; for it is presumable that a president may have round him, men envious of the honors oa emoluments of persons in office, who will insinuate suspicions into his honest breast, that may produce a removal; be this as it may, the event is still the same to the removed officer. The public suppose him guilty of mal-practices—hence his reputation is blasted, his property sacrificed; I say his property is sacrificed, because I consider his office as his property; he is stript of this, and left exposed to the malevolence of the world, contrary to the principles of the constitution, and contrary to the principles of all free governments, which are that no man shall be despoiled of his property, but by a fair and impartial trial.

I have stated that if the power is given by the constitution, the declaration in the law is nugatory, and I will add, if it is not given it will be nugatory also to attempt to vest the power. If the senate participate on any principle whatever in the removal, they will never consent to transfer their power to another branch of the government; therefore they will not pass a law with such a declaration in it.

Upon this consideration alone, if there was no other, the words should be struck out, and the question of right, if it is one, left to the decision of the judiciary. It will be time enough to determine the question when the president shall remove an officer in this way. I conceive it can properly be brought before that tribunal; the officer will have a right to a mandamus to be restored to his office, and the judges would determine whether the president exercised a constitutional authority or not.

Some gentlemen think the constitution takes no notice of this officer, as the head of a department; they suppose him an inferior officer in aid of the executive. This I think is going too far; because the constitution, in the words authorising the president to call on the heads of departments for their opinions in writing, comtemplates several departments; it says "the principal officer in each of the executive departments."

I have seriously reflected on this subject, and am convinced that the president has not this power by the constitution; and that if we had the right to invest him with it, it would be dangerous to do so.

Mr. HUNTINGTON.—I think the clause ought not to stand. It was well observed, that the constitution was silent respecting the removal, otherwise than by impeachment. I would likewise add, that it mentions no other cause of removal, than treason, bribery, or other high crimes and misdemeanors. It does not, I apprehend, extend to cases of infirmity or incapacity. Indeed it appears hard to me, that after an officer has become old in an honorable service he should be impeached for this infirmity. The constitution I think must be the only rule to guide us on this occasion, as it is silent with respect to the removal, congress ought to say nothing about it; because it implies that we have a right to bestow it, and I believe this power is not to be found among the enumerated powers delegated by the constitution to congress.

It was said, if the president had this authority, it would make him more responsible for the conduct of the officer: But if we have a vicious president who inclines to abuse this power, which God forbid, his responsibility will stand us in little stead; therefore that idea does not satisfy me, that it is proper the president should have this power.

Mr. SEDGWICK.—I wish the words to be struck out, because I conceive them to be unnecessary in this place. I do conceive, Mr. Speaker, that this officer will be the mere creature of the law;

and that very little need be said to prove to you that of necessity this ought to be the case. I apprehend likewise that it requires but a small share of abilities to point out certain causes for which a person ought to be removed from office, without being guilty of treason, bribery, or malfeasance; and the nature of things demands that it should be so. Suppose, sir, a man becomes insane by the visitation of God, and is likely to ruin our affairs, are the hands of government to be confined from warding off the evil? Suppose a person in office, not possessing the talents he was judged to have at the time of the appointment, is the error not to be corrected?—Suppose he acquires vicious habits, an incurable indolence, or total neglect of the duties of his office, which forebode mischief to the public welfare, is there no way to arrest the threatened danger? Suppose he becomes odious and unpopular by reason of the measures which he pursues, and this he may do without committing any positive offence against the law, must he preserve his office in despite of the public will? Suppose him grasping at his own aggrandizement, and the elevation of his connections, by every means short of the treason defined by the constitution, hurrying your affairs to the precipice of destruction, endangering your domestic tranquility, plundering you of the means of defence, by alienating the affections of your allies, and promoting the spirit of discord, is there no way suddenly to seize the worthless wretch, and hurl him from the pinnacle of power? Must the tardy, tedious, desultory road, by way of impeachment, be travelled to overtake the man who, barely confining himself within the letter of the law, is employed in drawing off the vital principle of the government? Sir, the nature of things, the great objects of society, the express objects of this constitution require that this thing should be otherwise. Well, sir, this is admitted by gentlemen, but they say the senate is to be united with the president in the exercise of this power. I hope sir, this is not the case; because it would involve us in the most serious difficulty. Suppose a discovery of any of those events which I have just enumerated, were to take place when the senate is not in session, how is the remedy to be applied? This is a serious consideration, and the evil could be avoided no other way than by the senate's sitting always. Surely no gentleman of this house contemplates the necessity of incurring such an expense, I am sure it will be very objectionable to our constituents; and yet this must be done, or the public interest be endangered by keeping an unworthy officer in place until that body shall be assembled from the extremes of the union.

It has been said that there is a danger of this power being abused if exercised by one man: certainly the danger is as great with respect to the senate, who are assembled from various parts of the continent, with different impressions and opinions. It appears to me that such a body is more likely to misuse this power than the man whom the united voice of America calls to the presidential

chair. As the nature of the government requires the power of removal, I think it is to be exercised in this way by a hand capable of exerting itself with effect, and the power must be conferred on the president by the constitution, as the executive officer of the government.

I believe some difficulty will result from determining this question by a mandamus. A mandamus is used to replace an officer who has been removed contrary to law. Now, this officer, being the creature of the law, we may declare that he shall be removed for incapacity; and if so declared, the removal will be according to law.

Mr. MADISON.—If the construction of the constitution is to be left to its natural course, with respect to the executive powers of this government, I own that the insertion of this sentiment in law may not be of material importance, though if it is nothing more than a mere declaration of a clear grant made by the constitution, it can do no harm; but if it relates to a doubtful part of the constitution, I suppose an exposition of the constitution may come with as much propriety from the legislature, as any other department of government. If the power naturally belongs to the government, and the constitution is undecided as to the body which is to exercise it, it is likely that it is submitted to the discretion of the legislature, and the question will depend upon its own merits.

I am clearly of opinion with the gentleman from South Carolina (Mr. Smith,) that we ought in this and every other case to adhere to the constitution, so far as it will serve as a guide to us; and that we ought not to be swayed in our decisions by the splendor of the character of the present chief magistrate; but to consider it with respect to the merit of men who, in the ordinary course of things, may be supposed to fill the chair. I believe the power here declared is a high one, and in some respects a dangerous one; but, in order to come to a right decision on this point, we must consider both sides of the question—the possible abuses which may spring from the single will of the first magistrate, and the abuse which may spring from the combined will of the executive and the senatorial qualification.

When we consider that the first magistrate is to be appointed at present by the suffrages of three millions of people, and in all human probability in a few years time by double that number, it is not to be presumed that a vicious or bad character will be selected. If the government of any country on the face of the earth was ever effectually guarded against the election of ambitious or designing characters to the first office of the state, I think it may with truth be said to be the case under the constitution of the United States. With all the infirmities incident to a popular election, corrected by the particular mode of conducting it, as directed under the present system, I think we may fairly calculate, that the instances will be very rare in which an unworthy man will receive that mark of the

public confidence which is required to designate the president of the United States. Where the people are disposed to give so great an elevation to one of their fellow citizens, I own that I am not afraid to place my confidence in him; especially when I know he is impeachable for any crime or misdemeanor, before the senate, at all times: and that, at all events, he is impeachable before the community at large every four years, and liable to be displaced if his conduct shall have given umbrage during the time he has been in office. Under these circumstances, although the trust is a high one, and in some degree perhaps a dangerous one, I am not sure but it will be safer here than placed where some gentlemen suppose it ought to be.

It is evidently the intention of the constitution that the first magistrate should be responsible for the executive department; so far, therefore, as we do not make the officers who are to aid him in the duties of that department responsible to him, he is not responsible to his country. Again, is there no danger that an officer when he is appointed by the concurrence of the senate, and has friends in that body, may chuse rather to risk his establishment on the favor of that branch, than rest it upon the discharge of his duties to the satisfaction of the executive branch, which is constitutionally authorised to inspect and control his conduct; and if it should happen that the officers connect themselves with the senate, they may mutually support each other, and for want of efficacy reduce the power of the president to a mere vapor, in which case his responsibility would be annihilated, and the expectation of it unjust. The high executive officers, joined in cabal with the senate, would lay the foundation of discord, and end in an assumption of the executive power, only to be removed by a revolution in the government. I believe no principle is more clearly laid down in the constitution than that of responsibility. After premising this I will proceed to an investigation of the merits of the question upon constitutional ground.

I have, since the subject was last before the house, examined the constitution with attention; and I acknowledge that it does not perfectly correspond with the ideas I entertained of it from the first glance. I am inclined to think that a free and systematic interpretation of the plan of government, will leave us less at liberty to abate the responsibility than gentlemen imagine. I have already acknowledged, that the powers of the government must remain as apportioned by the constitution. But it may be contended, that where the constitution is silent it becomes a subject of legislative discretion: perhaps, in the opinion of some, an argument in favor of the clause may be successfully brought forward on this ground: I however leave it for the present untouched.

By a strict examination of the constitution on what appears to be its true principles; and considering the great departments of the government in the relation they have to each other, I have my

doubts whether we are not absolutely tied down to the construction declared in the bill. In the first section of the first article, it is said, that all legislative powers herein granted, shall be vested in a congress of the United States. In the second article it is affirmed, that the executive power shall be vested in a president of the United States of America. In the third article it is declared, that the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as congress may from time to time ordain and establish. I suppose it would be readily admitted, that so far as the constitution has separated the powers of these great departments, it would be improper to combine them together; and so far as it has left any particular department in the entire possession of the powers incident to that department, I conceive we ought not to qualify them farther than they are qualified by the constitution. The legislative powers are vested in congress, and are to be exercised by them uncontrolled by any other department, except the constitution has qualified it otherwise. The constitution has qualified the legislative power by authorising the president to object to any act it may pass, requiring, in this case. two thirds of both houses to concur in making a law; but still the absolute legislative power is vested in the congress with this qualification alone.

The constitution affirms, that the executive power shall be vested in the president. Are there exceptions to this proposition? Yes they are. The constitution says that, in appointing to office, the senate shall be associated with the president, unless in the case of inferior officers, when the law shall otherwise direct. Have we a right to extend this exception? I believe not. If the constitution has invested all executive power in the president, I venture to assert, that the legislature has no right to diminish or modify his executive authority.

The question now resolves itself into this, is the power of displacing an executive power? I conceive that if any power whatsoever is in its nature executive, it is the power of appointing, overseeing, and controling those who execute the laws. If the constitution had not qualified the power of the president in appointing to office, by associating the senate with him in that business, would it not be clear that he would have the right, by virtue of his executive power, to make such appointment? Should we be authorised, in defiance of that clause in the constitution,—"The executive power shall be vested in a president," to unite the senate with the president in the appointment to office? I conceive not. If it is admitted we should not be authorised to do this, I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an executive nature as the other; and the first only is authorised by being excepted out of the general rule established by the constitution, in

these words, "the executive power shall be vested in the president."

The judicial power is vested in a supreme court; but will gentlemen say the judicial power can be placed elsewhere, unless the constitution has made an exception? The constitution justifies the senate in exercising a judiciary power in determining on impeachments. But can the judicial power be farther blended with the powers of that body? They cannot. I therefore say it is incontrovertible, if neither the legislative nor judicial powers are subjected to qualifications, other than those demanded in the constitution, that the executive powers are equally unabateable as either of the other; and inasmuch as the power of removal is of an executive nature, and not affected by any constitutional exception, it is beyond the reach of the legislative body.

If this is the true construction of this instrument, the clause in the bill is nothing more than explanatory of the meaning of the constitution, and therefore not liable to any particular objection on that account. If the constitution is silent,—and it is a power the legislature have a right to confer,—it will appear to the world, if we strike out the clause, as if we doubted the propriety of vesting it in the president of the United States. I therefore think it best to retain it in the bill.

Mr. WHITE. I have no doubt in my mind but an officer can be removed without a public trial. I think there are cases in which it would be improper that his misdemeanors should be publicly known; the tranquility and harmony of the union might be endangered, if his guilt was not secreted from the world. I have therefore no hesitation in declaring as my sentiment, that the president and senate may dismiss him.

The constitution contemplates a removal in some other way besides that by impeachment, or why is it declared in favor of the judges only, that they shall hold their offices during good behaviour? does not this strongly imply that without such an exception there would have been a discretionary power in some branch of the government to dismiss even them?

Several objections have arisen from the inconvenience with which the power must be exercised, if the senate is blended with the executive, and therefore it is inferred that the president ought exclusively to have this power. If we were framing a constitution, these arguments would have their proper weight and I might approve such an arrangement. But at present, I do not consider we are at liberty to deliberate on that subject; the constitution is already formed, and we can go no farther in distributing the powers than the constitution warrants.

It was objected that the president could not remove an officer unless the senate was in session, but yet the emergency of the case might demand an instant dismission. I should imagine that no inconvenience would result on this account; because on my

principle, the same power which can make a temporary appointment can make an equal suspension; the powers are apposite to each other.

The gentlemen says, we ought not to blend the executive and legislative powers farther than they are blended in the constitution. I contend we do not. There is no expression in the constitution which says that the president shall have the power of removal from office; but the contrary is strongly implied; for it is said, that congress may establish offices by law, and vest the appointment, and consequently the removal, in the president alone, in the courts of law, or heads of departments. Now, this shews that congress are not at liberty to make any alteration by law in the mode of appointing superior officers; and consequently that they are not at liberty to alter the manner of removal.

Mr. BOUDINOT. This is a question, Mr. Speaker, that requires full consideration, and ought only to be settled on the most candid discussion; it certainly involves the right of the senate to a very important power. At present I am so impressed with the importance of the subject, that I dare not absolutely decide on any principle, although am firmly persuaded we ought to retain the clause in the bill; and, so far asit has been examined, I agree that it is a legislative construction of the constitution necessary to be settled for the direction of your officers. But if it is deviation from the constitution, or in the least degree an infringement upon the authority of the other branch of the legislature, I shall most decidedly be against it. But I think it will appear, on a full consideration of this business, that we can do no otherwise than agree to this construction, in order to preserve to each department the full exercise of its powers, and to give this house security for the proper conduct of the officers who are to execute the laws.

The arguments adduced are to show, that the power of removal lies either in the president and senate, or the president alone, except in cases of removal by impeachment. There is nothing I take it in the constitution, or the reason of the thing, that officers should be only removable by impeachment: Such a provision would be derogatory to the powers of government, and subversive of the rights of the people. What says the constitution on the point? (I fear, sir, it has not been rightly apprehended.) That the house of representatives shall have the sole power of impeachment; that the senate shall have the sole power to try all impeachments; and judgment shall not extend further than to removal from office, and disqualification to hold them in future; then comes the clause declaring absolutely, that he shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes or misdemeanors. It is this clause which guards the right of the house, and enables them to pull down an improper officer, although he should be supported by all the power of the executive. This then is a necessary security to the people, and one that is

wisely provided in the constitution. But I believe it is no where said, that officers shall never be removed but by impeachment; but it says they shall be removed on impeachment. Suppose the secretary of foreign affairs shall misbehave, and we impeach him; notwithstanding the clearest proof of guilt the senate might only impose some trifling punishment and retain him in office, if it was not for this declaration in the constitution.

Neither this clause nor any other goes so far as to say it shall be the only mode of removal; therefore we may proceed to enquire what the other is. Let us examine whether it belongs to the senate and president. Certainly, sir, there is nothing that gives the senate this right in express terms; but they are authorized in express words to be concerned in the appointment: And does this necessarily include the power of removal? If the president complains to the senate of the misconduct of an officer, and desires their advice and consent to the removal, what are the senate to do? Most certainly they will enquire if the complaint is well founded. To do this they must call the officer before them to answer: Who then are the parties? The supreme executive officer against his assistant, and then the senate are to set judges to determine whether sufficient cause of removal exists. Does not this set the senate over the head of the president? But suppose they shall decide in favor of the officer, what a situation is the president then in, surrounded by officers with whom by his situation he is compelled to act, but in whom he can have no confidence, reversing the privilege given him by the constitution, or prevent his having officers imposed upon him who do not meet his approbation?

But I have another more solid objection, which places the question in a more important point of view. The constitution has placed the senate as the only security and barrier between the house of representatives and the president. Suppose the president has desired the senate to concur in removing an officer, and they have declined; or suppose the house have applied to the president and senate to remove an officer obnoxious to them, and they determine against the measure, the house can have recourse to nothing but an impeachment, if they suppose the criminalty of the officer will warrant such proceedure. Will the senate then be that upright court which they ought to appeal to on this occasion, when they have prejudged your cause? I conceive the senate will be too much under the control of their former decision, to be a proper body for this house to apply to for impartial justice.

As the senate are the denier resort, and the only court of judicature which can determine on cases of impeachment, I am for preserving them free and independent, both on account of the officer and this house. I therefore conceive that it was never the intention of the constitution to vest the power of removal in the president and senate; but as it must exist somewhere, it rests on the

president alone. I conceive this point was made fully to appear by the honourable gentleman from Virginia (Mr. Madison); inasmuch as the president is the supreme executive officer of the United States.

It was asked if ever we knew a person removed from office by reason of sickness or ignorance? If there never was such a case, it is perhaps nevertheless proper that they should be removed for those reasons; and we shall do well to establish the principle.

Suppose your secretary of foreign affairs rendered incapable of thought or action by a paralytic stroke: I ask whether there would be any propriety in keeping such a person in office, and whether the salus populi the first object of republican governments does not absolutely demand his dismission? Can it be expected that the president is responsible for an officer under these circumstances, although when he went into office he might have been a wise and virtuous man, and the president well inclined to risk his own reputation upon the integrity and abilities of the person?

I conceive it will be improper to leave the determination of this question to the judges. There will be some indelicacy in subjecting the executive action in this particular to a suit at law; and there may be much inconvenience if the president does not exercise this prerogative until it is decided by the courts of justice.

From these considerations, the safety of the people, the security of this house, and adherence to the spirit of the constitution, I am disposed to think the clause proper; and as some doubts respecting the construction of the constitution has arisen, I think it also necessary; therefore, I hope they will remain.

Mr. SMITH, of South Carolina. The gentleman from Virginia has said, that the power of removal is executive in its nature. I do not believe this to be the case. I have turned over the constitutions of most of the states, and I do not find that any of them have granted this power to the governor.—In some instances I find the executive magistrate suspends, but none of them have the right to remove officers; and I take it that the constitution of the United States has distributed the powers of government on the same principles which most of the state constitutions have adopted. For it will not be contended but the state governments furnished the members of the late convention with the skeleton of this constitution.

The gentlemen have observed, that it would be dangerous if the president had not this power. But is there not danger in making your secretary of foreign affairs dependent upon the will and pleasure of the president? Can gentlemen see the danger on one side only? Suppose the president averse to a just and honorable war which congress have embarked in, can he not countenance the secretary at war, (for it is in contemplation to establish such an officer,) in the waste of public stores, and misapplication of the supplies? Nay, cannot he dragoon your officers into a compliance with his designs, by threatening him with a removal by which his repu-

tation and property would be destroyed? If the officer was established on a better tenure he would dare to be honest; he would know himself invulnerable in his integrity, and defy the shafts of malevolence, though aimed with Machaevilian policy. He would be a barrier to your executive officer, and save the state from ruin.

But, Mr. Chairman, the argument does not turn upon the expediency of the measure. The great question is with respect to its constitutionality. And as yet I have heard no argument advanced sufficiently cogent to prove to my mind that the constitution warrants such a disposition of the power of removal; and until I am convinced that it is both expedient and constitutional, I cannot agree to it.

Mr. GERRY. Some gentlemen consider this as a question of policy; but to me it appears a question of constitutionality, and I presume it will be determined on that point alone. The best arguments I have heard urged on this occasion, came from the honorable gentleman from Virginia (Mr. Madison). He says the constitution has vested the executive power in the president; and that he has a right to exercise it under the qualifications therein made. He lays it down as a maxim, that the constitution vesting in the president the executive power, naturally vests him with the power of appointment and removal. Now I would be glad to know from that gentleman, by what means we are to decide this question. Is his maxim supported by precedent drawn from the practice of the individual states? The direct contrary is established. In many cases the executive are not in particular vested with the power of appointment; and do they exercise that power by virtue of their office. It will be found that other branches of the government make appointments. How then can gentlemen assert that the powers of appointment and removal are incident to the executive department of the government? To me it appears at best but problematical. Neither is it clear to me that the power that appoints naturally possesses the power of removal. As we have no certainty on either of these points, I think we must consider it as established by the constitution.

It has been argued that if the power of removal vests in the president alone, it annuls or renders nugatory the clause in the constitution, which directs the concurrence of the senate in the case of appointment; it behoves us not to adopt principles subversive of those established by the constitution. It has been frequently asserted on former occasions, that the senate is a permanent body, and was so constructed in order to give durability to public measures. If they are not absolutely permanent, they are formed on a renovating principle which gives them a salutary stability. This is not the case either with the president or house of representatives; nor is the judiciary equally lasting, because the officers are subject to natural dissolution. It appears to me that a permanency was expected in the magistracy; and therefore the senate were

combined in the appointment to office. But if the president alone has the power of removal, it is in his power at any time to destroy all that has been done. It appears to me that such a principle would be destructive of the intention of the constitution expressed by giving the power of appointment to the senate. It also subverts the clause which gives the senate the sole power of trying impeachments, because the president may remove the officer in order to screen him from the effects of their judgment on an impeachment. Why should we construe any part of the constitution in such a manner as to destroy its essential principles, when a more consonant construction can be obtained?

It appears very clear to me that however this power may be distributed by the constitution, the house of representatives have nothing to do with it. Why then should we interfere in the business? Are we afraid that the president and senate are not sufficiently informed to know their respective duties? Our interposition argues that they want judgment, and are not able to adjust their powers without the wisdom of this house to assist them; to say the least on this point, it must be deemed indelicate for us to intermeddle with them. If the fact is as we seem to suspect, that they do not understand the constitution, let it go before the proper tribunal; the judges are the constitutional umpires on such questions. Why, let me ask gentlemen, shall we commit an infraction of the constitution for fear the senate or president should not comply with its directions?

It has been said by my colleague, that these officers are the creatures of the law; but it seems as if we were not content with that, we are making them the mere creatures of the president; they dare not exercise the privilege of their creation, if the president shall order them to forbear; because he holds their thread of life, his power will be sovereign over them, and will soon swallow up the small security we have in the senate's concurrence to the appointment, and we shall shortly need no other than the authority of the supreme executive officer to nominate, appoint, continue, or remove.

Mr. AMES. When this question was agitated at a former period, I took no part in the debate. I believe it was then proposed, without any idea or intention of drawing on a lengthy discussion, and to me it appeared to be well understood and settled by the house; but since it has been reiterated and contested again, I feel it my bounden duty to deliver the reasons for voting in the manner I then did and shall now do. Mr. Chairman, I look upon every question which touches the constitution as serious and important, and therefore worthy of the fullest discussion, and the most solemn decision. I believe on the present occasion we may come to something near certainty, by attending to the leading principles of the constitution. In order that the good purposes of a federal government should be answered, it was necessary to delegate considera-

ble powers, and the principle upon which the grant was made, intended to give sufficient power to do all possible good, but to restrain the rulers from doing mischief.

The constitution places all executive power in the hands of the president, and could he personally execute all the laws, there would be no occasion for establishing auxiliaries; but the circumscribed powers of human nature in one man, demands the aid of others. When the objects are widely stretched out, or greatly diversified, meandering through such an extent of territory as what the United States possess, a minister cannot see with his own eyes every transaction, or feel with his hands the minutiæ that passes through his department; he must therefore have assistants. But in order that he may be responsible to his country, he must have a choice in selecting his assistants, a control over them, with power to remove them when he finds the qualifications which induced their appointment cease to exist. There are officers under the constitution who hold their office by a different tenure—your judges are appointed during good behavior; and from the delicacy and peculiar nature of their trust it is right it should be so, in order that they may be independent and impartial in administering justice between the government and its citizens. But the removability of the one class, or immovability of the other are founded on the same principle, the security of the people against the abuse of power. Does any gentleman imagine that an officer is entitled to his office as to an estate? Or, does the legislature establish them for the convenience of an individual? For my part I conceive it intended to carry into effect the purposes for which the constitution was intended.

The executive powers are delegated to the president, with a view to have a responsible officer to superintend, control, inspect and check the officers necessarily employed in administering the laws. The only bond between him and those he employs is the confidence he has in their integrity and talents; when that confidence ceases, the principal ought to have the power to remove those whom he can no longer trust with safety. If an officer shall be guilty of neglect or infidelity, there can be no doubt but he ought to be removed; yet there may be numerous causes for removal which do not amount to a crime. He may propose to do a mischief, but I believe the mere intention would not be cause of impeachment: he may lose the confidence of the people upon suspicion, in which case it would be improper to retain him in service; he ought to be removed at any time, when, instead of doing the greatest possible good, he is likely to do an injury to the pubiic interest by being combined in the administration.

I presume gentlemen will generally admit, that officers ought to be removed when they become obnoxious; but the question is, how shall this power be exercised? It will not I apprehend be contended, that all officers hold their offices during good behaviour. If

this is the case it is a most singular government, I believe there is not another in the universe that bears the least semblance to it in this particular; such a principle, I take it, is contrary to the nature of things. But the manner how to remove is the question. If the officer misbehaves he can be removed by impeachment. But in this case is impeachment the only mode of removal? It would be found very inconvenient to have a man continued in office after being impeached, and when all confidence in him was suspended or lost. Would not the end of impeachment be defeated by this means? If Mr. Hastings, who was mentioned by the gentleman from Virginia (Mr. Vining,) preserved his command in India, could he not defeat the impeachment now pending in Great Britain? If that doctrine obtains in America we shall find impeachments come too late; while we are preparing the process the mischief will be perpetrated, and the offender escaped. I apprehend it will be as frequently necessary to prevent crimes as to punish them; and it may often happen that the only prevention is by removal. The superintending power possessed by the president will perhaps enable him to discover a base intention before it is ripe for execution It may happen that the treasurer may be disposed to betray the public chest to the enemy, and so injure the government beyond the possibility of reparation; should the president be restrained from removing so dangerous an officer, until the slow formality of an impeachment was complied with, when the nature of the case rendered the application of a sudden and decisive remedy indispensible?

But it will, I say, be admitted, that an officer may be removed; the question then is, by whom? Some gentlemen say by the president alone; and others, by the president, by and with the advice of the senate. By the advocates of the latter mode it is alleged, that the constitution is in the way of the power of removal being by the president alone. If this is absolutely the case there is an end to all further enquiry. But before we suffer this to be considered an insuperable impediment we ought to be clear, that the constitution prohibits him the exercise of what, on a first view, appears to be a power incident to the executive branch of the government. The gentleman from Virginia (Mr. Madison,) has made so many observations to evince the constitutionality of the clause, that it is unnecessary to go over the ground again. I shall therefore confine myself to answer only some remarks made by the gentleman from South Carolina, (Mr. Smith.) The powers of the president are defined in the constitution; but it is said, that he is not expressly authorised to remove from office. If the constitution is silent also with respect to the senate, the argument may be retorted. If this silence proves that the power cannot be exercised by the president, it certainly proves that it cannot be exercised by the president, by and with the advice and consent of senate. The power of removal is incident to government; but

not being distributed by the constitution, it will come before the legislature, and, like every other omitted case, must be supplied by law.

Gentlemen have said, when the question was formerly before us, that all powers not intended to be given up to the general government were retained. I beg gentlemen, when they undertake to argue from implication, to be consistent, and admit the force of other arguments drawn from the same source. It is a leading principle in every free government, it is a prominent feature in this, that the legislative and executive powers should be kept distinct; yet the attempt to blend the executive and legislative departments in exercising the power of removal, is such a maxim as ought not to be carried into practice or arguments grounded on implication. And the gentleman from Virginia, (Mr. White's) reasoning is wholly drawn from implication. He supposes, as the constitution qualifies the president's power of appointing to office, by subjecting his nomination to the concurrence of the senate, that the qualification follows of course in the removal.

If this is to be considered as a question undecided by the constitution, and submitted on the footing of expediency, it will be well to consider where the power can be most usefully deposited for the security and benefit of the people. It has been said by the gentleman on the other side of the house (Mr. Smith,) that there is an impropriety in allowing the exercise of this power; that it is a dangerous authority, and much evil may result to the liberty and property of the officer, who may be turned out of business without a moment's warning. I take it the question is not whether such power shall be given or retained; because it is admitted on all hands, that the officer may be removed; so that it is no grant of power, it raises no new danger. If we strike out the clause, we do not keep the power, nor prevent the exercise of it, so the gentleman will derive none of the security he contemplates by agreeing to the motion for striking out. It will be found that the nature of the business requires it to be conducted by the head of the executive; and I believe it will be fonnd even there, that more injury will arise from not removing improper officers, than from displacing good ones. I believe experience has convinced us that it is an irksome business; and officers are more frequently continued in place after they become unfit to perform the duties, than turned out while their talents and integrity are useful. But advantages may result from keeping the power of removal, in terrorum, over the heads of the officers; they will be stimulated to do their duty to the satisfaction of the principal, who is to be responsible for the whole executive department.

The gentleman has supposed there will be great difficulty in getting officers of abilities to engage in the service of their country upon such terms. There has never yet been any scarcity of

proper officers in any department of the government of the United States, even during the war; when men risked their lives and property by engaging in such service, there were candidates enough. But why should we connect the senate in the removal? Their attention is taken up with other important business, and they have no constitutional authority to watch the conduct of the executive officers; and therefore cannot use such authority with advantage. If the president is inclined to shelter himself behind the senate with respect to having continued an improper person in office, we lose the responsibility which is our greatest security; the blame among so many will be lost. Another reason occurs to me against blending these powers: An officer who superintends the public revenue will naturally acquire a great influence. If he obtains support in the senate, upon an attempt of the president to remove him, it will be out of the power of the house, when applied to by the first magistrate, to impeach him with success; for the very means of proving charges of mal-conduct against him will be under the power of the officer; all the papers necessary to convict him may be withheld while the person continues in his office.—Protection may be rendered for protection; and as this officer has such extensive influence it may be exerted to procure the re-election of his friends. These circumstances, in addition to those stated by the gentleman from Jersey, (Mr. Boudinot) must clearly evince to every gentleman the impropriety of connecting the senate with the president in removing from office.

I do not say these things will take effect now, and if the question only related to what might take place in a few years, I should not be uneasy on this point, because I am sensible the gentlemen who form the present senate are above corruption, but in future ages, (and I hope this government may be perpetuated to the end of time), such things may take place, and it is our duty to provide against evils which may be foreseen, but if now neglected will be irremediable.

I beg to observe further, that there are three opinions entertained by gentlemen on this subject. One is, that the power of removal is prohibited by the constitution; the next is, that it requires it by the president; and the other is, that the constitution is totally silent. It therefore appears to me proper for the house to declare what is their sense of the constitution. If we declare justly on this point it will serve for a rule of conduct to the executive magistrate; if we declare improperly the judiciary will revise our decision; so that at all events I think we ought to make the declaration.

Mr. LIVERMORE. I am for striking out this clause, Mr. Chairman, upon the principles of the constitution, from which we are not at liberty to deviate. The honourable gentleman from Massachusetts (Mr. Sedgwick), calls the minister of foreign affairs the creature of the law, and that very properly; because the law

establishes the office and has the power of creating him in what shape the legislature pleases. This being the case, we have a right to create the office under such limitations and restrictions we think proper, provided we can obtain the consent of the senate; but it is very improper to draw as a conclusion from having the power of giving birth to a creature, that we should therefore bring forth a monster, merely to shew we had such power. I call that creature a monster that has not the proper limbs and features of its species: I think the creature we are forming is unatural in its proportions. It has been often said, that the constitution declares the president, by and with the advice and consent of the senate, shall appoint this officer. This, to be sure, is very true, and so is the conclusion which an honorable gentleman (Mr. White) from Virginia drew from it, that an officer must be discharged in the way he was appointed.

I believe, Mr. Chairman, this question depends upon a just construction of a short clause in the constitution, "The president shall have power, by and with the advice and consent of the senate, to appoint ambassadors, other public ministers, and consuls, judges of the supreme court, and all other officers of the United States." Here is no difference with respect to the power of the president to make treaties and appoint officers, only it requires in the one case a larger majority to concur than in the other. I will not by any means suppose that gentlemen mean, when they argue in favor of removal by the president alone, to contemplate the extension of the power to the repeal of treaties; because if they do, there will be little occasion for us to sit here. But let me ask these gentlemen, as there is no real or imaginary distinction between the appointment of ambassadors and ministers, or secretaries of foreign affairs, whether they mean that the president should have the power of recalling or discarding ambassadors and military officers, for the words in the constitution are "all other officers"—as well as he can remove your secretary of foreign affairs. To be sure they cannot extend it to the judges; because they are secured under a subsequent article, which declares they shall hold their offices during good behaviour; they have an inheritance which they cannot be divested of, but on conviction of some crime. But I presume gentlemen mean to apply it to all those who have not an inheritance in their offices. In this case, it takes the whole power of the president and senate to create an officer; but half the power can uncreate him. Surely a law passed by the whole legislature, cannot be repealed by one branch of it; so I conceive in the case of appointments it requires the same force to supercede an officer as to put him in office.

I acknowledge that the clause relative to impeachment, is for the benefit of the people; it is intended to enable their representatives to bring a bad officer to justice, who is screened by the president: but I do not conceive with the honourable gentleman from

South Carolina (Mr. Smith), that it by any means excludes the usual ways of superceding officers. It is said in the constitution, that the house shall have the power of chusing their own officers. We have chosen a clerk, and I am satisfied a very capable one; but will any gentleman contend that we may not discharge him and choose another and another as often as we see cause? And so it is in every other instance, where they have the power to make they have likewise the power to unmake. It will be said by gentlemen, that the power to make does not imply the power of unmaking; but I believe they will find very few exceptions in the United States.

Were I to speak of the expedieney, every one of my observations would be against it. When an important and confidential trust is placed in a man, it is worse than death to him to be displaced without cause; his reputation depends upon the single will of the president, who may ruin him on bare suspicion: Nay, a new president my turn him out on mere caprice, or in order to make room for a favorite. This contradicts all my notions of propriety, every thing of this sort should be done with due deliberation; every person ought to have a hearing before they are punished. It is on these considerations that wish the general principle laid down by the gentleman from Virginia (Mr. White) may be adhered to.

I will add one word more and I have done. This seems Mr. chairman, altogether to be aimed at the senate: What have they done to chagrin us? or why should we attempt to abridge their powers because we can reach them by our regulations in the shape of a bill? I think we had better let alone. If the constitution has given them this power, they will reject this part of the bill, and they will exercise that one privilege judiciously, however they may the power of removal: If the constitution has not given it to them it has not vested it any where else; consequently this house would have no right to confer it.

Mr. HARTLEY. I apprehended, Mr. Chairman, that this officer cannot be considered as appointed during good behaviour even in point of policy; but with respect to the constitutionality, I am pretty confident he cannot be viewed in that light. The constitution declares the tenure of the officers it recognizes, and says one class of them shall hold their offices during good behaviour, they are the judges of your supreme and other courts; but as to any other officer being established on this firm tenure the constitution is silent. It then necessarily follows, that we must consider every other according to its nature; and regulate it in a corresponding manner. The business of the secretary of foreign affairs is of an executive nature, and must consequently be attached to the executive department.

I think the gentleman from South Carolina goes too far, in saying, that the clause respecting impeachments implies, that there is

no other mode of removing an officer. I think it does not follow, that because one mode is pointed out by the constitution there is no other, especially if that provision is intended for nothing more than a punishment for a crime. The fourth section of the second article, says, that all civil officers shall be removed on conviction of certain crimes. But it cannot be the intention of the constitution to prevent by this a removal in every other way: Such a principle if once admitted, would be attended with very inconvenient and mischievous consequences.

The gentleman farther contends, that every man has a property in his office, and ought not to be removed but for criminal conduct; he ought not to be removed for inability. I hope this doctrine will never be admitted in this country. A man when in office ought to have abilities to discharge the duties of it; if he is discovered to be unfit, he ought to be immediately removed, but not on principles like what that gentleman contends for. If he has an estate in his office his right must be purchased, and a practice like what obtains in England will be adopted here; we shall be unable to dismiss an officer without allowing him a pension for the interest he is deprived of. Such doctrine may suit a nation which is strong in proportion to the number of dependants upon the crown, but will be very pernicious in a republic like ours. When we have established an office, let the provision for the support of the officer be equal to compensate his services; but never let it be said, that he has an estate in his office when he is found unfit to perform his duties. If offices are to be held during good behaviour, it is easy to foresee that we shall have as many factions as heads of departments; the consequence would be corruption in one of the great departments of government; and if the balance is once destroyed the constitution must fall amidst the ruins. From this view of the subject, I have no difficulty to declare, that the secretary of foreign affairs is an officer during pleasure, and not during good behaviour as contended for.

One gentleman, (Mr. White,) holds the same principles, but differs with respect to the power which ought to exercise the privilege of removal. On this point we are reduced to a matter of construction; but it is of high importance to the United States that a construction should be rightly made. But gentlemen say it is inconsistent with the constitution to make this declaration, that as the constitution is silent we ought not to be too explicit. The constitution has expressly pointed out several matters which we can do, and some which we cannot; but in other matters it is silent, and leaves them to the discretion of the legislature. If this is not the case, why was the last clause of the 8th section of the 1st article inserted? It gives power to congress to make all laws necessary and proper to carry the government into effect.

I look upon it that the legislature have therefore a right to exercise their discretion on such questions; and however attentively

gentlemen may have examined the consitution on this point, I trust they have discovered no clause which forbids this house interfering in business necessary and proper to carry the government into effect.

The constitution grants expressly to the president the power of filling all vacancies during the recess of the senate. This is a temporary power like that of removal, and liable to very few of the objections which have been made. When the president has removed an officer, another must be appointed; but this cannot be done without the advice and consent of the senate: Where then is the danger of a system of favoritism? The president, notwithstanding the supposed depravity of mankind, will hardly remove a worthy officer, to make way for a person whom the senate may reject.—Another reason why the power of removal should be lodged with the president rather than the senate, arises from their connection with the people. The president is the representative of the people in a near and equal manner, he is the guardian of his country. The senate are the representatives of the state legislatures; but they are very unequal in that representation; each state sends two members to that house, although their proportions are as ten to one. Hence arises a degree of insecurity to an impartial administration; but if they possessed every advantage of equality, they cannot be the proper body to inspect into the behaviour of officers, because they have no constitutional powers for this purpose. It does not always imply criminality to be removed from office, because it may be proper to remove for other causes; neither do I see any danger which can result from the exercise of this power by the president, because the senate is to be consulted in the appointment which is afterwards to take place. Under these circumstances, I repeat it, that I have no doubt in my own mind that this office is during pleasure, and that the power of removal which is a mere temporary one, ought to be in the president, whose powers, taken together, are not very numerous, and the success of this government depends upon their being unimpaired.

Mr LAWRENCE. It has been objected against this clause, that the granting of this power is unconstitutional; it was also objected, if it is not unconstitutional it is unnecessary; that the constitution must contain in itself the power of removal, and have given it to some body or person of the government to be exercised; that therefore the law could make no disposition of it, and the attempt to grant it was unconstitutional; or the law is unnecessary—for if the power is granted in the way the clause supposes, the legislature can neither add to nor diminish the power by making the declaration.

With respect to the unconstitutionality of the measure, I observe that if it is so the constitution must have given the power expressly to some person or body other than the president; otherwise it cannot be said with certainty that it is unconstitutional in us to declare that he shall have the power of removal. I believe it is not con-

tended that the constitution expressly gives this power to any other person; but it is contended that the objection is collected from the nature of the body which has the appointment, and the particular clause in the constitution which declares that all officers shall be removed on conviction. It will be necessary to examine the expressions of that clause; but I believe it will be found not to comprehend the case we have under consideration. I suppose the constitution contemplates somewhere the power of removal for other causes beside those expressed as causes of impeachment. I take it that the clause in the constitution respecting impeachments, is making a provision for removal against the will of the president; because the house can carry the offender before a tribunal which shall remove him notwithstanding the desire of the chief magistrate to keep him in office. If this is not to be the construction, then a particular clause in the constitution will be nugatory. The constitution declares that the judges shall hold their offices during good behavior. This implies that other officers shall hold their offices during a limited time, or according to the will of some person; because if all persons are to hold their offices during good behavior, and to be removed only by impeachment, then this particular declaration in favor of the judges will be useless. We are told that an officer must misbehave before he can be removed. This is true with respect to those officers who hold their commissions during good behavior; but it cannot be true of those who are appointed during pleasure, they may be removed for incapacity, or, if their want of integrity is suspected; but the question is to find where this power of removal resides.

It has been argued, that we are to find this in the construction arising from the nature of the authority which appoints. Here I would meet the gentlemen if it was necessary to rest it entirely on that ground. Let me ask the gentleman, who appoints? The constitution gives an advisory power to the senate, but it is considered that the president makes the appointment. The appointment and responsibility are actually his; for it is expressly declared, that he shall nominate and appoint, though their advice is required to be taken. If from the nature of the appointment we are to collect the authority of removal, then I say the latter power is lodged in the president; because by the constitution he has the power of appointment; instantly as the senate have advised the appointment, the act is required to be executed by the president. The language is explicit: "He shall nominate, and by and with the advice and consent of the senate, appoint;" so that if the gentlemen's general principle, that the power appointing shall remove also—it is true, it follows that the removal is to be by the president.

It has been stated as an objection, that we should extend the powers of the president if we give him the power of removal; and we are not to construe the constitution in such way as to enlarge the

executive power to the injury of any other; that as he is limited in the power of appointment by the control of the senate he ought to be equally limited in the removal.

If there is any weight in this argument it implies as forcibly against vesting the power conjointly in the president and senate; because if we are not to extend the powers of the executive beyond the express detail of duties found in the constitution, neither are we at liberty to extend the duties of the senate beyond those precise points fixed in the same instrument, of course if we cannot say the president alone shall remove, we cannot say the president and senate may exercise such power.

It is admitted, that the constitution is silent on this subject; but it is also silent with respect to the appointments it has vested in the legislature. The constitution declares, that congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or heads of departments, yet says nothing with respect to the removal. Now, let us suppose the legislature to have vested the power of appointment in the president in cases of inferior officers, can the intention of the constitution in this, contemplating this mode of appointment for the sake of convenience, be ever carried into effect? If we say nothing respecting the removal, what would be the consequence if the legislature should not make the declaration? could it be supposed that he would not have the authority to dismiss the officer he had so appointed? To be sure he could; then of course, in those cases in which the constitution has given the appointment to the president, he must have the power of removal for the sake of consistency. For no person will say that if the president should appoint an inferior officer he should not have the power to remove him when he thought proper, if no particular limitation was determined by the law. Thus stands the matter with respect to the constitution. There is no express prohibition of the power nor positive grant. If then we collect the power by inference from the constitution, we shall find it pointed strongly in favor of the president, much more so than in favor of the senate combined with him.

This is a case omitted, or it is not; if it is omitted, and the power is necessary and essential to the government, and to the great interest of the United States, who are to make the provision and supply the defect? Certainly the legislature is the proper body. It is declared they shall establish officers by law. The establishment of an officer implies every thing relative to its formation, constitution, and termination; consequently the congress are authorised to declare their judgment on each of these points. But if the arguments of the gentleman from South Carolina (Mr. Smith) prevail, that as the constitution has not meditated the removal of an officer in any other way than by impeachment, it would be an assumption in congress to vest the president, courts of law,

or heads of department with power to dismiss their officers in any other manner. Would a regulation of this kind be effectual to carry into effect the great objects of the constitution? I contend it would not: Therefore the principle which opposes the carrying of the constitution into effect, must be rejected as dangerous and incompatible with the general welfare. Hence all those suppositions, that because the constitution is silent the legislature must not supply the defect, are to be treated as chimeras and illusory inferences.

I believe it is possible that the constitution may be misconstrued by the legislature; but will any gentleman contend, that it is more probable that the senate, one branch only of the legislature, should make a more upright decision on any point than the whole legislature, especially on a point in which they are supposed by some gentlemen to be so immediately interested, even admitting that honorable body to have more wisdom and more integrity than this house—Such an inference can hardly be admitted; But I believe it seldom or ever was so contended that there was more wisdom or security in a part than in the whole.

But supposing the power to vest in the senate, is it more safe in their hands than where we contended it should be? Would it be more satisfactory to our constituents for us to make such a declaration in their favor? I believe not.

With respect to this and every case omitted, but which can be collected from the other provisions made in the constitution, the people look up to the legislature, the concurrent opinion of the two branches, for their construction; they conceive those cases proper subjects for legislative wisdom; they naturally suppose where provisions are to be made, they ought to spring from this source, and this source alone.

From a view of these circumstances, we may be induced to meet the question in force. Shall we now venture to supply the defect? For my part I have no hesitation. We should supply the defect; we should place the power of removal in the great executive officer of the government.

In the constitution the heads of departments are considered as the mere assistants of the president, in the performance of his executive duties. He has the superintendance, the control and the inspection of their conduct; he has an intimate connexion with them; they must receive from him his orders and directions; they must answer his enquiries in writing, when he requires it. Shall the person having these superior powers to govern, with such advantages of discovering and defeating the base intentions of his officers, their delinquencies, their defective abilities, or their negligence, be restrained from applying these advantages to the most useful, nay, in some cases the only useful purpose which can be answered by them?

It appears to me that the power can be safely lodged here. But it has been said by some gentlemen, that if it is lodged here it will be subject to abuse; that there may be a change of officers, and a complete revolution throughout the whole executive department, upon the election of every new president. I admit this may be the case, and contend that it should be the case if the president thinks it necessary. I contend that every president ought to have those men about him in whom he can place the most confidence, provided the senate approve his choice. But we are not from hence to infer that changes will be made in a wanton manner, and from capricious motives; because the presidents are checked and guarded in a very safe manner with respect to the appointment of their successors; from all which it may be fairly presumed that changes will be made on principles of policy and propriety only.

Will the man, chosen by three millions of his fellow-citizens, be such a wretch as to abuse them in a wanton manner? For my part I should think with the gentleman from Virginia (Mr. Madison) that a president thus selected and honored by his country, is entitled to my confidence: and I see no reason why we should suppose he is more inclined to do harm than good. Elected as he is, I trust we are secure. I do not draw these observations from the safety I conceive under the present administration, or because our chief magistrate is possessed of irradiated virtues, whose lustre brightens this western hemisphere, and incites the admiration of the world! but I calculate upon what our mode of election is likely to bring forward, and the security which the constitution affords. If the president abuses his trust, will he escape the popular censure when the period which terminates his elevation arrives? and would he not be liable to impeachment for displacing a worthy and able man, who enjoyed the confidence of the people?

We ought not to consider one side alone, we should consider the benefit of such an arrangement as well as the difficulties. We ought also to consider the difficulties arising from the exercise of the power of removing by the senate. It was well observed by an honorable gentleman (Mr. Sedgwick) on this point, that the senate must continue in session the whole year, or be hastily assembled from the extremes and all parts of the continent whenever the president thinks a removal necessary. Suppose an ambassador or minister plenipotentiary negotiating or intriguing contrary to his instructions, and to the injury of the United States, before the senate can be assembled to accede to his recall, the interest of his country may be betrayed, and the evil irrevocably perpetrated. A great number of such instances could be enumerated, but I will not take up the time of the committee, gentlemen may suggest them to their own minds; and I imagine they will be sufficient to convince them that, with respect to the expediency, the power of removal ought not to be in the senate.

I take it, Mr. Chairman, that it is proper for the legislature to speak their sense upon those points on which the constitution is silent. I believe the judges will never decide that we are guilty of a breach of the constitution, by declaring a legislative opinion in cases where the constitution is silent. If the laws shall be in violation of any part of the constitution, the judges will not hesitate to decide against them: where the power is incident to the government, and the constitution is silent, it can be no impediment to a legislative grant: I hold it necessary in such cases to make provision. In the case of removal the constitution is silent: the wisdom of the legislature should therefore declare in what place the power resides.

Mr. JACKSON. As a constitutional question, it is of great moment, and worthy of full discussion. I am, sir, a friend to the full exercise of all the powers of government, and deeply impressed with the necessity there exists of having an energetic executive. But, friend as I am to the efficient government, I value the liberties of my fellow-citizens beyond every other consideration, and where I find them endangered, I am willing to forego every other blessing to secure them. I hold it as good a maxim as it is an old one, of two evils to choose the least.

It has been mentioned, that in all governments the executive magistrate had the power of dismissing officers under him. This may hold good in Europe, where monarchs claim their powers *jure divino*, but it never can be admitted in America under a constitution delegating only enumerated powers. It requires more than a mere ipsi dixit to demonstrate that any power is in its nature executive, and consequently given to the president of the United States by the present constitution. But if this power is incident to the executive branch of government, it does not follow that it vests in the president alone, because he alone does not possess all executive powers. The constitution has lodged the power of forming treaties, and all executive business, I presume, connected therewith in the president, but it is qualified by and with the advice and consent of the senate, provided two thirds of the senate agree therein. The same has taken place with respect to appointing officers. From this I infer, that those arguments are done away which the gentleman from Virginia (Mr. Madison,) used to prove, that it was contrary to the principles of the constitution that we should blend the executive and legislative powers in the same body. It may be wrong that the great powers of government should be blended in this manner, but we cannot separate them: the error is adopted in the constitution, and can only be eradicated by weeding it out of that instrument. It may therefore be a proper subject for amendment, when we come to consider that business again.

It has been observed, that the president ought to have this power to remove a man when he becomes obnoxious to the people or dis-

agreeable to himself. Are we then to have all the officers the mere creatures of the president? This thirst of power will introduce a treasury bench into the house, and we shall have ministers obtrude upon us to govern and direct the measures of the legislature, and to support the influence of their master: and shall we establish a different influence between the people and the president? I suppose these circumstances must take place, because they have taken place in other countries. The executive power falls to the ground in England, if it cannot be supported by the parliament; therefore a high game of corruption is played, and a majority secured to the ministry by the introduction of placemen and pensioners.

The gentlemen have brought forward arguments drawn from possibility. It is said, that our secretary of foreign affairs may become unfit for his office by a fit of lunacy, and therefore a silent remedy should be applied. It is true such a case may happen, but it may also happen in cases where there is no power of removing. Suppose the president should be taken with a fit of lunacy, would it be possible by such arguments to remove him? I apprehend he must remain in office during his four years. Suppose the senate should be seized with a fit of lunacy, and it was to extend to the house of representatives, what could the people do but endure this mad congress till the term of their election expired? We have seen a king of Great Britain in an absolute fit of lunacy, which produced an interregnum in the government. The same may happen here with respect to our president; and although it is improbable that the majority of both houses of congress may be in that situation, yet it is by no means impossible! But gentlemen have brought forward another argument with respect to the judges: it is said they are to hold their offices during good behaviour. I agree that ought to be the case. But is not a judge liable to the act of God as well as any other officer of government? However great his legal knowledge, his judgment and integrity, it may be taken from him at a stroke, and he rendered the most unfit of all men to fill such an important office. But can you remove him? Not for this cause: it is impossible; because madness is no treason, crime, or misdemeanor. If he does not choose to resign, like Lord Mansfield he may continue in office for ninety or one hundred years, for so long have some men retained their faculties.

But let me ask gentlemen if it is possible to place their officers in such a situation as to deprive them of their independency and firmness; for I apprehend it is not intended to stop with the secretary of foreign affairs. Let it be remembered that the constitution gives the president the command of the military. If you give him complete power over the man with the strong box, he will have the liberty of America under his thumb. It is easy to see the evil which may result. If he wants to establish an arbitrary authority, and finds the secretary of finance not inclined to second his endeavors, he has nothing more to do than to remove him, and get one

appointed of principles more congenial with his own. Then, says he, I have got the army; let me have but the money, and I will establish my throne upon the ruins of your visionary republic. Let no gentleman say I am contemplating imaginary dangers,—the mere chimeras of a heated brain. Behold the baleful influence of the royal prerogative! All officers till lately held their commissions during the pleasure of the crown.

At this moment see the king of Sweden, aiming at arbitrary power, shutting the doors of his senate, and compelling by the force of arms his shuddering councillors to acquiesce in his despotic mandates. I agree that this is the hour in which we ought to establish our government; but it is an hour in which we should be weary and cautions, especially in what respects the executive magistrate; with him every power may be safely lodged. Black indeed is the heart of that man who even suspects him to be capable of abusing them. But, alas! he cannot be with us forever; he is liable to the vicissitudes of life: he is but mortal, and though I contemplate it with great regret, yet I know the period must come which will separate him from his country; and can we know the virtues or vices of his successor in a very few years? May not a man with a Pandora's box in his breast come into power, and give us sensible cause to lament our present confidence and want of foresight?

A gentleman has declared, that as the constitution has given the power of appointment, it has consequently given the power of removal. I agree with him in all that the constitution expressly grants, but I must differ in the constructive reasoning. It was said by the advocates of this constitution, that the powers not given up in that instrument, were reserved to the people. Under this impression it has been proposed as a favorite amendment to the constitution, that it should be declared that all powers not expressly given should be retained. As to what gentlemen have said of its giving satisfaction to the people, I deny it. They never can be pleased that we should give new and extraordinary powers to the executive. We must confine ourselves to the powers described in the constitution; and the moment we pass it we take an arbitrary stride toward a despotic government.

The gentleman from New-York (Mr. Lawrence,) contends that the president appoints, and therefore he ought to remove. I shall agree to give him the same power in cases of removal, as he has in appointing; but nothing more. Upon this principle, I would agree to give him the power of suspension during the recess of the senate. This, in my opinion, would effectually provide against those inconveniences which have been apprehended; and not expose the government to the abuses we have to dread from the wanton and uncontrolled authority of removing officers at pleasure. I am the friend of an energetic government; but while we are giving vigor to the executive arm, we ought to be careful not to lay

the foundation of future tyranny. For my part I must declare, that I think this power too great to be safely trusted in the hands of a single man; especially in the hands of a man who has so much constitutional power. I believe if those powers had been more contracted, the system of government would have been more generally agreeable to our constituents: that is, at present it would conform more to the popular opinion at least. For my part, though I came from a state where the energy of government can be useful, and where it is at this moment wanting, I cannot agree to extend this power; because I conceive it may, at some future period, be exercised in such a way as to subvert the liberties of my country; and no consideration shall ever induce me to put them in jeopardy. It is under this impression that I shall vote decidedly against the clause.

Mr. CLYMER. If I was to give my vote merely on constitutional ground, I should be totally indifferent whether the words were struck out or not; because I am clear that the executive has the power of removal, as incident to his department; and if the constitution had been silent with respect to the appointment, he would have had that power also. The reason, perhaps, why it was mentioned in the constitution, was to give some further security against the improper introduction of improper men into office. But in cases of removal there is not such necessity for this check. What great danger would arise from the removal of a worthy man, when the senate must be consulted in the appointment of his successor? Is it likely that they will consent to advance an improper character? The presumption therefore is, that he would not abuse this power; or if he did, only one good man would be changed for another.

If the president is divested of this power, his responsibility is destroyed; you prevent his efficiency, and disable him from affording that security to the people which the constitution contemplates. What use will it be of, to call the citizens of the union together every four years to obtain a purified choice of a representative, if he is to be a mere cypher in the government? The executive must act by others; but you reduce him to a mere shadow, when you control both the power of appointment and removal; if you take away the latter power, he ought to resign the power of superintending and directing the executive parts of government into the hands of the senate at once, and then we become a dangerous aristocracy, or shall be more destitute of energy than any government on earth. These being my sentiments, I wish the clause to stand as a legislative declaration, that the power of removal is constitutionally vested in the president.

Mr. PAGE.—I venture to assert, that this clause of the bill contains in it the seeds of royal prerogative. If gentlemen lay such stress on the energy of the government, I beg them to consider how far this doctrine may go. Every thing which has been

said in favor of energy in the executive may go to the destruction of freedom, and establish despotism. This very energy so much talked of, has led many patriots to the bastile, to the block, and to the halter. If the chief magistrate can take a man away from the head of a department without assigning any reason, he may as well be invested with power, on certain occasions, to take away his existence. But will you contend, that this idea is consonant with the principles of a free government, where no man ought to be condemned unheard, nor till after a solemn conviction of guilt on a fair and impartial trial. It would, in my opinion, be better to suffer for a time the mischief arising from the conduct of a bad officer, than admit principles which would lead to the establishment of despotic prerogatives.

There can be little occasion for the president to exercise this power unless you suppose that the appointments will be made in a careless manner, which by no means is likely to be the case; if then you have a good officer why should he be made dependent upon the will of a single man? Suppose a colonel in your army should disobey his orders, or cowardly flee before the enemy, what would the general do? Would he be at liberty to dismiss the officer? No: he would suspend him until a court martial was held to decide the degree of guilt. If gentlemen had been content to say that the president might suspend, I should second their motion, and afterward the officer might be removed by and with the advice and consent of the senate; but to make every officer of the government dependent on the will and pleasure of one man, will be vesting such arbitrary power in him as to occasion every friend to liberty to tremble for his country. I confess it seems to me a matter of infinite concern, and I should feel very unhappy if I supposed the clause would remain in the bill.

Mr. SHERMAN.—I consider this as a very important subject in every point of view, and therefore worthy of full discussion.—In my mind it involves three questions. First, whether the president has by the constitution the right to remove an officer appointed by and with the advice and consent of the senate? No gentleman contends but the advice and consent of the senate is necessary to make the appointment in all cases, unless in inferior offices where the contrary is established by law, but then they allege that although the consent of the senate is nesessary to the appointment, the president alone by the nature of his office has the power of removal. Now it appears to me, that this opinion is ill founded, because this provision was intended for some useful purpose, and by that construction would answer none at all. I think the concurrence of the senate as necessary to appoint an officer as the nomination of the president; they are constituted as the mutual checks, each having a negative upon the other.

I consider it as an established principle, that the power which appoints can also remove, unless there are express exceptions

made. Now the power which appoints the judges cannot displace them, because there is a constitutional restriction in their favor, otherwise the president, by and with the advice and consent of the senate, being the power which appointed them, would be sufficient to remove them. This is the construction in England, where the king had the power of appointing judges; it was declared to be during pleasure, and they might be removed when the monarch thought proper. It is a general principle in law as well as reason, that there should be the same authority to remove as to establish. It is so in legislation, where the several branches whose concurrence was necessary to pass a law, must concur in repealing it.—Just so I take it to be in cases of appointment, and the president alone may remove when he alone appoints, as in the case of inferior offices to be established by law.

Here another question arises, whether this officer comes within the description of inferior officers? Some gentlemen think not, because he is the head of the department of foreign affairs. Others may perhaps think that as he is employed in the executive department in aid of the president, he is not such an officer as is understood by the term heads of departments; because the president is the head of the executive department, in which the secretary of foreign affairs serves. If this is the construction which gentlemen put upon the business, they may vest the appointment in the president alone, and the removal will be in him of consequence. But if this reasoning is not admitted, we can by no means vest the appointment or removal either in the chief magistrate alone. As the officer is the mere creature of the legislature, we may form it under such regulations as we please, with such powers and duration as we think good policy requires; we may say he shall hold his office during good behaviour, or that he shall be annually elected; we may say he shall be displaced for neglect of duty, and point out how he should be convicted of it, without calling upon the president or senate.

The third question is, if the legislature has the power to authorise the president alone to remove this officer, whether it is expedient to invest him with it? I do not believe it is absolutely necessary that he should have such power, because the power of suspending would answer all the purposes which gentlemen have in view by giving the power of removal. I do not think that the officer is only to be removed by impeachment, as is argued by the gentleman from South Carolina (Mr. Smith,) because he is the mere creature of the law, and we can direct him to be removed on conviction of mismanagement or inability, without calling upon the senate for their concurrence. But I believe if we make no such provision, he may constitutionally be removed by the president, by and with the advice and consent of the senate, and I believe it would be most expedient for us to say nothing in the clause on the subject.

Mr. STONE.—I think it necessary, Mr. Chairman, to determine the question before us: I do not think it would do to leave it to the determination of courts of law hereafter. It should be our duty in cases like the present to give our opinion on the construction of the constitution.

When the question was brought forward I felt unhappy, because my mind was in doubt; but since then I have deliberately reflected upon it, and have made up an opinion perfectly satisfactory to myself. I consider that in general every officer who is appointed should be removed by the power that appoints him. It is so in the nature of things. The power of appointing an officer arises from the power over the subject on which the officer is to act. It arises from the principal who appoints having an interest in, and a right to conduct the business, which he does by means of an agent; therefore this officer appears to be nothing more than an agent appointed for the convenient dispatch of business. This is my opinion on this subject, and the principle will operate from a minister of state down to a tide waiter. The constitution, it is admitted by every gentleman, recognizes the principle: Because it has not been denied, whenever general appointments are made under the constitution, that they are to be at will and pleasure; that where an appointment is made during good behaviour, it is an exception to the general rule, there you limit the exercise of the power which appoints; it is thus in the case of the judges.

Let us examine then, whence originates the power of congress with respect to the officer under consideration. I presume it is expressly contained in the constitution, or clearly deducible from that instrument, that we have a right to erect the department of foreign affairs. No gentleman will consent to a reduction or relinquishment of that power. The constitution has given us the power of laying and collecting taxes, duties, imposts and excises; this includes the power of organizing a revenue board. It gives us power to regulate commerce; this includes the power of establishing a board of trade. To make war, and organize the militia; this enables us to establish a minister at war; and generally to make all laws necessary to carry these powers into effect. Now, it appears to me, that the erection of this department is expressly within the constitution: Therefore, it seems to me. as congress, in their legislative capacity, have an interest in, and power over this whole transaction, that they consequently appoint and displace their officers. But there is a provision in the constitution which takes away from us the power of appointing officers of a certain description; they are to be appointed by the president, by and with the advice and consent of the senate; then the constitution limits the legislature in appointing certain officers, which would otherwise be within their power.

It will then become a considerable question, as it has been in my mind, that as, in the nature of things, the power which ap-

points removes also; and as the power of appointment by the constitution is placed in the president and senate, whether the removal does not follow as incidental to that power? But I am averse to that construction, as the terms of the constitution are sufficient to invest the legislature with complete power for performing its duties: and as it has given the power of making treaties, and judging of them, to the senate and president, I should be inclined to believe, that as they have an immediate concern in, and control over this business, that therefore they ought to have the power of removal. It may be said, with respect to some other officers, that agreeable to this principle, the president alone ought to have the sole power of removal, because he is interested in it, and has the control over the business they manage: for example, the minister at war. The president is the commander-in-chief of the army and militia of the United States; but the ground is narrowed by the senate being combined with him in making treaties: though even here again the ground is reduced, because of the power combined in the whole legislature to declare war and grant supplies. If it is considered, that congress have a right to appoint these officers, or dictate the mode by which they shall be appointed; and I calculate in my own opinion the manner of dismission from the mode of appointment, I should have no doubt but we might make such regulations as we may judge proper. If the constitution had given no rule by which officers were to be appointed, I should search for one in my own mind. But as the constitution has laid down the rule, I consider the mode of removal as clearly defined as by implication it can be: it ought to be the same with that of the appointment. What quality of the human mind is necessary for the one, that is not necessary for the other? Information, impartiality, and judgment, in the business to be conducted, are necessary to make a good appointment. Are not the same properties requisite for a dismission? It appears so to me.

I cannot subscribe to the opinion delivered by some gentlemen, that the executive in its nature implies the power to appoint the officers of government. Why does it imply it? The appointment of officers depend upon the qualities that are necessary for forming a judgment on the merits of men; and the displacing of them, instead of including the idea of what is necessary for an executive officer, includes the idea necessary for a judicial one; therefore it cannot exist in the nature of things, that an executive power is either to appoint or displace the officers of government. Is it a political dogma? Is it founded in experience? If it is, I confess it has been very long wrapped up in mysterious darkness. As a political rule, it is not common in the world, excepting monarchies, where this principle is established, that the interest of the state is included in the interest of the prince; that whatever injures the state is an injury to the sovereign; because he has a property in the state and the government, and is to take care that nothing of that kind

is to be injured or destroyed, he being so intimately connected with the well-being of the nation, it appears a point of justice only to suffer him to manage his own concerns. Our principles of government are different, and the president, instead of being master of the people of America, is only their great servant. But, if it arises from a political dogma, it must be subject to exceptions, which hold good as they are applied to governments which give greater or lesser proportions of power to their executive. I shall only remark that the constitution in one part of it so far as I can see, supposes that the president is the sole judge of the merits of an appointment; it is very forcible to my mind, that the constitution has confined his sole appointment to the case of inferior officers. It also strikes me, from the clause that gives the president the power to grant reprieves and pardons for offences against the U. States, except in cases of impeachment, that the constitution reposes a confidence in the senate which it has not done in this officer—and therefore there is no good reason for destroying that participation of power which the system of government has given to them.

Whether it would be expedient to give the power of removal to the president alone depends on this consideration—they are both bodies chosen with equal care and propriety—the people show as much confidence in the one as in the other—the best president and the best senate, it is to be presumed, will always be chosen that they can get. All the difficulties and embarrassments that have been mentioned can be removed by giving to the president the power of suspension during the recess of the senate—and I think, that an attention to the constitution will lead us to decide, that this is the only proper power to be vested in the president of the United States.

Mr. MADISON. I feel the importance of the question, and know that our decision will involve the decision of all similar cases. The decision that is at this time made *will become the permanent exposition of the constitution*; and on a *permanent exposition of the constitution will depend the genius and character of the whole government.* It will depend, perhaps, on this decision, whether the government shall retain that equilibrium which the constitution intended, or take a direction toward aristocracy, or anarchy among the members of the government. Hence how careful ought we to be to give a true direction to a power so critically circumstanced. It is incumbent on us to weigh with particular attention the arguments which have been advanced in support of the various opinions with cautious deliberation. I own to you, Mr. Chairman, that I feel great anxiety upon this queetion; I feel an anxiety, because I am called upon to give a decision in a case that may affect the fundamental principles of the govevnment under which we act, and liberty itself. But all that I can do on such an occasion is to weigh well every thing advanced on both sides, with the purest desire to find out the true meaning of the

constitution, and to be guided by that, and an attachment to the true spirit of liberty, whose influence I believe strongly predominates here.

Several constructions have been put upon the constitution relative to the point in question. The gentleman from Connecticut (Mr. Sherman) has advanced a doctrine which was not touched upon before. He seems to think (if I understood him right), that the power of displacing from office is subject to legislative discretion; because it having a right to create, it may limit or modify as is thought proper. I shall not say but at first view this doctrine may seem to have some plausibility: But when I consider, that the constitution clearly intended to maintain a marked distinction between the legislative, executive, and judicial powers of government; and when I consider, that if the legislature has a power, such as contended for, they may subject, and transfer at discretion, powers from one department of government to another; they may, on that principle, exclude the president altogether from exercising any authority in the removal of officers; they may give it to the senate alone, or the president and senate combined; they may vest it in the whole congress, or they may reserve it to be exercised by this house. When I consider the consequences of this doctrine, and compare them with the true principles of the constitution, I own that I cannot subscribe to it.

Another doctrine which has found very respectable friends, has been particularly advocated by the gentleman from South Carolina (Mr. Smith). It is this; when an officer is appointed by the president and senate, he can only be displaced from malfeasance in his office by impeachment: I think this would give a stability to the executive department so far as it may be described by the heads of departments, which is more incompatible with the genius of republican governments in general, and this constitution in particular, than any doctrine which has yet been proposed. The danger to liberty, the danger of mal-administration has not yet been found to lay so much in the facility of introducing improper persons into office, as in the difficulty of displacing those who are unworthy of the public trust. If it is said that an officer once appointed shall not be displaced without the formality required by impeachment, I shall be glad to know what security we have for the faithful administration of the government. Every individual in the long chain which extends from the highest to the lowest link of the executive magistracy, would find a security in his situation which would relax his fidelity and promptitude in the discharge of his duty.

The doctrine, however, which seems to stand most in opposition to the principles I contend for, is that the power to annul an appointment is in the nature of things incidental to the power which makes the appointment. I agree that if nothing more was said in the constitution than that the president, by and with the advice

and consent of the senate, should appoint to office, there would be great force in saying that the power of removal resulted by a natural implication from the power of appointing. But there is another part of the constitution no less explicit than the one on which the gentleman's doctrine is founded, it is that part which declares, that the executive power shall be vested in a president of the United States. The association of the senate with the president in exercising that particular function, is an exception to this general rule; and exceptions to general rules, I conceive, are ever to be taken strictly. But there is another part of the constitution which inclines in my judgment, to favor the construction I put upon it; the president is required to take care that the laws be faithfully executed. If the duty to see the laws faithfully executed be required at the hands of the executive magistrate, it would seem that it was generally intended he should have that species of power which is necessary to accomplish that end. Now if the officer when once appointed, is not to depend upon the president for his official existence, but upon a distinct body (for where there are two negatives required either can prevent the removal,) I confess I do not see how the president can take care that the laws be faithfully executed. It is true by a circuitous operation, he may obtain an impeachment, and even without this it is possible he may obtain the concurrence of the senate for the purpose of displacing an officer; but would this give that species of control to the executive magistrate which seems to be required by the constitution? I own if my opinion was not contrary to that entertained by what I suppose to be the minority on this question, I should be doubtful of being mistaken, when I discovered how inconsistent that construction would make the constitution with itself. I can hardly bring myself to imagine the wisdom of the convention who framed the constitution, contemplated such incongruity.

There is another maxim which ought to direct us in expounding the constitution, and is of great importance. It is laid down in most of the constitutions or bills of rights in the republics of America, it is to be found in the political writings of the most celebrated civilians, and is every where held as essential to the preservation of liberty. That the three great departments of government be kept separate and distinct; and if in any case they are blended, it is in order to admit a partial qualification, in order more effectually to guard against an entire consolidation. I think, therefore, when we review the several parts of this constitution, when it says that the legislative powers shall be vested in a congress of the United States under certain exceptions, and the executive power vested in the president with certain exceptions, we must suppose they were intended to be kept separate in all cases in which they are not blended, and ought consequently to expound the constitution so as to blend them as little as possible.

Every thing relative to the merits of the question as distinguished from a constitutional question, seems to turn on the danger of such a power vested in the president alone. But when I consider the checks under which he lies in the exercise of this power, I own to you I feel no apprehensions but what arise from the dangers incidental to the power itself; for dangers will be incidental to it, vest it where you please. I will not reiterate what was said before with respect to the mode of election, and the extreme improbability that any citizen will be selected from the mass of citizens who is not highly distinguished by his abilities and worth; in this alone we have no small security for the faithful exercise of this power. But, throwing that out of the question, let us consider the restraints he will feel after he is placed in that elevated station. It is to be remarked, that the power in this case will not consist so much in continuing a bad man in office, as in the danger of displacing a good one. Perhaps the great danger, as has been observed of abuse in the executive power, lies in the improper continuance of bad men in office. But the power we contend for will not enable him to do this; for if an unworthy man be continued in office by an unworthy president, the house of representatives can at any time impeach him, and the senate can remove him, whether the president chooses or not. The danger then consists merely in this, the president can displace from office a man whose merits require that he should be continued in it. What will be the motives which the president can feel for such abuse of his power, and the restraints that operate to prevent it? In the first place, he will be impeachable by this house, before the senate, for such an act of mal-administration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust. But what can be his motives for displacing a worthy man? It must be that he may fill the place with an unworthy creature of his own. Can he accomplish this end? No; he can place no man in the vacancy whom the senate shall not ap-approve; and if he could fill the vacancy with the man he might choose, I am sure he would have little inducement to make an improper removal.

Let us consider the consequences. The injured man will be supported by the popular opinion; the community will take side with him against the president; it will facilitate those combinations, and give success to those exertions which will be pursued to prevent his re-election. To displace a man of high merit, and who from his station may be supposed a man of extensive influence, are considerations which will excite serious reflections before hand in the mind of any man who may fill the presidential chair: the friends of those individuals, and the public sympathy will be against him. If this should not produce his impeachment before the senate, it will amount to an impeachment before the community, who will have the power of punishment by refusing to re-elect him. But

suppose this persecuted individual, cannot obtain revenge in this mode, there are other modes in which he could make the situation of the president very inconvenient, if you suppose him resolutely bent on executing the dictates of resentment. If he had not influence enough to direct the vengeance of the whole community, he may probably be able to obtain an appointment in one or other branch of the legislature; and being a man of weight, talents and influence in either case, he may prove to the president troublesome indeed. We have seen examples in the history of other nations, which justifies the remark I now have made: though the prerogatives of the British king are great as his rank, and it is unquestionably known that he has a positive influence over both branches of the legislative body, yet there have been examples in which the appointment and removal of ministers has been found to be dictated by one or other of those branches. Now if this is the case with an hereditary monarch, possessed of those high prerogatives and furnished with so many means of influence, can we suppose a president elected for four years only dependent upon the popular voice impeachable by the legislature, little if at all distinguished for wealth, personal talents, or influence from the head of the department himself: I say, will he bid defiance to all these considerations, and wantonly dismiss a meritorious and virtuous officer? Such abuse of power exceeds my conception: If any thing takes place in the ordinary course of business of this kind, my imagination cannot extend to it on any rational principle. But let us not consider the question on one side only: there are dangers to be contemplated on the other. Vest the power in the senate jointly with the president, and you abolish at once the great principle of unity and responsibility in the executive department, which was intended for the security of liberty and the public good. If the president should possess alone the power of removal from office, those who are employed in the execution of the law will be in their proper situation, and the chain of dependence be preserved; the lowest officer, the middle grade, and the highest, wili depend, as they ought, on the president, and the president on the community. The chain of dedependence therefore terminates in the supreme body, namely, in the people; who will possess besides, in aid of their original power, the decisive engine of impeachment. Take the other supposition, that the power should be vested in the senate, on the principle that the power to displace is necessarily connected with the power to appoint. It is declared by the constitution, that we may by law vest the appointment of inferior officers, in the heads of departments, the power of removal being incidental, as stated by some gentlemen. Where does this terminate? If you begin with the subordinate officers, they are dependent on their superior, he on the next superior, and he on whom?—on the senate, a permanent body, by its peculiar mode of election, in reality existing forever; a body possessing that proportion of aristocratic power which the

constitution no doubt thought wise to be established in the system, but which some have strongly excepted against: And let me ask gentlemen, is there equal security in this case as in the other? Shall we trust the senate, responsible to individual legislatures, rather than the person who is responsible to the whole community? It is true the senate do not hold their offices for life, like aristocracies, recorded in the historic page; yet the fact is they will not possess that responsibility for the exercise of executive powers which would render it safe for us to vest such powers in them. What an aspect will this give to the executive? Instead of keeping the departments of government distinct, you make an executive out of one branch of the legislature; you make the executive a two-headed monster, to use the expression of the gentleman from New-Hampshire (Livermore;) you destroy the great principle of responsibility, and perhaps have the creature divided in its will, defeating the very purposes for which an unity in the executive was instituted.

These objections do not lie against such an arrangement as the bill establishes. I conceive that the president is sufficiently accountable to the community; and if this power is vested in him, it will be vested where its nature requires it should be vested; if any thing in its nature is executive it must be that power which is employed in superintending and seeing that the laws are faithfully executed; the laws cannot be executed but by officers appointed for that purpose; therefore those who are over such officers naturally possess the executive power. If any other doctrine be admitted, what is the consequence? You may set the senate at the head of the executive department, or you may require that the officers hold their places during the pleasure of this branch of the legislature, if you cannot go so far as to say we shall appoint them; and by this means you link together two branches of the government which the preservation of liberty requires to be constantly separated.

Another species of argument has been urged against this clause. It is said, that it is improper, or at least unnecessary to come to any decision on this subject. It has been said by one gentleman, that it would be officious in this branch of the legislature to expound the constitution, so far as it relates to the division of power between the president and senate; it is incontrovertibly of as much importance to this branch of the government as to any other, that the constitution should be preserved entire. It is *our duty*, so far as it depends upon us, to take care that the powers of the constitution be preserved entire to *every* department of government; the breach of the constitution in one point, will facilitate the breach in another; a breach in this point may destroy that equilibrium by which the house retains its consequence and share of power, therefore we are not chargeable with an officious interference; besides, the bill, before it can have effect, must be submitted to both those branches who are particularly interested in it; the senate may negative, or the president may object if he thinks it unconstitutional.

But the great objection drawn from the source to which the last arguments would lead us is, that the legislature itself has no right to expound the constitution; that wherever its meaning is doubtful, you must leave it to take its course, until the judiciary is called upon to declare its meaning. I acknowledge, in the ordinary course of government, that the exposition of the laws and constitution devolves upon the judicial. But, I beg to know, upon what principle it can be contended, that any one department draws from the constitution greater powers than another, in marking out the limits of the powers of the several departments. The constitution is the charter of the people to the government: it specifies certain great powers as absolutely granted, and marks out the departments to exercise them. If the constitutional boundary of either be brought into question, I do not see that any one of these independent departments has more right than another to declare their sentiments on that point.

Perhaps this is an admitted case. There is not one government on the face of the earth, so far as I recollect there is not one in the United States, in which provision is made for a particular authority to determine the limits of the constitutional division of power between the branches of the government. In all systems there are points which must be adjusted by the departments themselves, to which no one of them is competent. If it cannot be determined in this way, there is no resource left but the will of the community, to be collected in some mode to be provided by the constitution, or one dictated by the necessity of the case. It is therefore a fair question, whether this great point may not as well be decided, at least by the whole legislature, as by a part—by us, as well as by the executive as judicial? As I think it will be equally constitutional, I cannot imagine it will be less safe, that the exposition should issue from the legislative authority, than any other: and the more so, because it involves in the decision the opinions of both those departments whose powers are supposed to be affected by it. Beside, I do not see in what way this question could come before the judges, to obtain a fair and solemn decision; but even if were the case that it could, I should suppose, at least while the government is not led by passion, disturbed by faction, or deceived by any discolored medium of sight; but while there is a desire in all to see, and be guided by the benignant ray of truth, that the decision may be made with the most advantage by the legislature itself.

My conclusion from these reflections is, that it will be constitutional to retain the clause; that it expresses the meaning of the constitution as must be established by fair construction, and a construction which, upon the whole, not only consists with liberty, but is more favorable to it than any one of the interpretations that have been proposed.

Mr. GERRY.—I am clearly of opinion with the gentleman last up, that it is of importance to decide this question on its true principles; and am free to declare, that I shall be as ready to oppose, every innovation or encroachment upon the rights of the executive as upon those of the legislative. I conceive myself bound to do this, not only by oath, but by an obligation equally strong—I mean the obligation of honor.

I wish, sir, to consider this question so far as to ascertain, whether it is or is not unconstitutional. I have listened with attention to the arguments which have been urged on both sides; and it does appear to me that the clause is as inconsistent with the constitution as any set of words which could possibly be inserted in the bill.

There are two questions relative to this clause: the first, whether the sovereignty of the union has delegated to the government the power of removal? And the second, to whom? That they have delegated such power has been clearly proved by the gentlemen who advocate the clause; who justly say, if the power is not delegated, the clause in the constitution, declaring the appointment of judges to be during good behaviour, would be nugatory, unless some branch of government could otherwise have removed them from office. As to the second question it depends upon the first; if the power is delegated, it must vest in some part of the government. The gentlemen will agree, that this house has not the power of removal: they will also agree, that it does not vest in the judicial: then it must vest in the president, or the president, by and with the advice and consent of the senate: in either of these cases, the clause is altogether useless and nugatory. It is useless if the power vests in the president; because, when the question comes before him, he will decide upon the provision made in the constitution, and not on what is contained in this clause. If the power vests in the president and senate, the senate will not consent to pass the bill with this clause in it; therefore the attempt is nugatory: but, if the senate will assent to the exercise of the power of removal by the president alone, whenever he think proper to use it so, then in that case the clause is, as I said before, both useless and nugatory.

The second question which I proposed to examine, is to whom the power of removal is committed. The gentlemen in favor of this clause have not shewn that, if the construction that the power vests in the president and senate, is admitted, it will be an improper construction. I call on gentlemen to point out the impropriety, if they discover any. To me it appears to preserve the unity of the several clauses of the constitution; while their construction produces a clashing of powers, and renders of none effect some powers the senate by express grants possess. What becomes of their power of appointing; when the president can remove at discretion? Their power of judging is rendered vain by the president's dismission; for the power of judging implies the power of

dismissing, which will be totally insignificant in its operation, if the president can immediately dismiss an officer whom they have judged and declared innocent.

It is said that the president will be subject to an impeachment for dismissing a good man. This in my mind involves an absurdity. How can the house impeach the president for doing an act which the legislature has submitted to his discretion?

But what consequence may result from giving the president the absolute control over all officers? Among the rest, I presume he is to have an unlimited control over the officers of the treasury. I think, if this is the case, you may as well give him at once the appropriation of the revenue; for of what use is it to make laws on this head, when the president by looking at the officer can make it his interest to break them? We may expect to see institutions arising under the control of the revenue, and not of the law.

Little then will it answer to say we can impeach the president, when he can cover all his crimes by an application of the revenue to those who are to try him. This application would certainly be made in case of a corrupt president. And it is against corruption in him that we must endeavor to guard: not that we fear any thing from the virtuous character who now fills the executive chair. He is perhaps to be safer trusted with such a power than any man on earth; but it is to secure us against those who may hereafter obtrude themselves into power.

But if we give the president the power to remove, (though I contend if the constitution has not given it him, there is no power on earth that can except the people by an alteration of the constitution, though I will suppose it for argument sake,) you virtually give him a considerable power over the appointment, independent of the senate; for if the senate should reject his first nomination, which will probably be his favorite, he must continue to nominate until the senate concur: then, immediately after the recess of the senate, he may remove the officer, and introduce his own creature, as he has this power expressly by the constitution. The influence created by this circumstance, would prevent his removal from an office which he held by a temporary appointment from his patron.

This has been supposed by some gentlemen to be an omitted case, and that congress have the power of supplying the defect. Let gentlemen consider the ground on which they tread. If it is an omitted case, an attempt in the legislature, to supply the defect, will be in fact an attempt to amend the constitution. But this can only be done in the way pointed out by the fifth article of that instrument, and an attempt to amend it in any other way may be a high crime or misdemeanor, or perhaps something worse. From this view of our situation, gentlemen may perhaps be lead to consent to strike out the clause.

In Great Britain there are three estates, kings, lords, and commons. Neither of these can be represented by the other; but they

conjointly can form constructions upon the rights of the people which have been obtained sword in hand from the crown. These, with the legislative acts, form the British constitution; and if there is an omitted case, parliament has a right to make provision for it. But this is not the case in America, consisting of a single estate. The people have expressly granted certain powers to congress; and they alone had the right to form the constitution. In doing so, they directed a particular mode of making amendments, which we are not at liberty to depart from.

The system, it cannot be denied, is in many parts obscure: if congress are to explain and declare what it shall be, they certainly will have it in their power to make it what they please. It has been a strong objection to the constitution, that it was remarkably obscure; nay, some have gone so far as to assert, that it was studiously obscure, that it might be applied to every purpose by congress. By this very act, the house are assuming a power to alter the constitution. The people of America can never be safe, if congress have a right to exercise the power of giving constructions to the constitution different from the original instrument. Such a power would render the most important clause in the constitution nugatory; and one without which, I will be bold to say, this system of government never would have been ratified. If the people were to find that congress meant to alter it in this way, they would revolt at the idea: it would be repugnant to the principles of the revolution, and to the feelings of every freeman in the United States.

It is said, that the power to advise the president in appointing officers is an exception to a general rule. To what general rule? That the president, being an executive officer, has the right of appointing. From whence is this general rule drawn? Not from the constitution, nor from custom, because the state governments are generally against it. Before the gentleman had reasoned from this general rule, he ought to have demonstrated that it was one. He ought to have shewn that the president ex officio, had the power to appoint and remove from office; that it was necessarily vested in the executive branch of the government.

It is said to be the duty of the president to see the laws faithfully executed, and he could not discharge this trust without the power of removal. I ask the gentleman, if the power of suspension, which we are willing to give, is not sufficient for that purpose? In case the senate should not be sitting, the officer could not be suspended, and at their next session the causes which require his removal might be enquired into.

It is said to be incumbent on us to keep the departments distinct. I agree to this; but then, I ask, what department is the senate of, when it exercises its power of appointment or removal? If legislative, it shows that the power of appointment is not an executive power; but if it exercises the power as an executive

branch of government, there is no mixing of the departments, and therefore the gentleman's objections fall to the ground.

The dangers which lie against investigating this power jointly in the senate and president have been pointed out; but I think them more than counter balanced by the dangers arising from investing it in the president alone. It was said, that the community would take part with the injured officer against the president, and prevent his re-election. I admit that the injured officer may be a man of influence and talents, yet it is fifty to one against him, when he is opposed by such a powerful antagonist. It is said, that if the senate should have this power, the government would contain a two headed monster; but it appears to me, that if it consists in blending the power of making treaties and appointing officers, as executive powers, with their legislative powers, the senate is already a two headed monster. If it is a two-headed monster, let us preserve it a consistent one; for surely it will be a very inconsistent monster, while it has the power of appointing, if you deprive it of the power of removing. It was said, that the judges could not have the power of deciding on this subject because the constitution was silent; but I ask, if the judges are ex officio, judges of the law? And whether they would not be bound to declare the law a nullity, if this clause is continued in it, and is inconsistent with the constitution? There is a clause in this system of government that makes it their duty; I allude to that which authorises the president to obtain the opinions of the heads of departments in writing; so the president and senate may require the opinion of the judges respecting this power if they have any doubts concerning it.

View the matter in any point of light, and it is utterly impossible to admit this clause, it is both useless and unnecessary, it is inconsistent with the constitution, and is an officious interference of the house in a business which does not properly come before them. We expose ourselves to most dangerous innovations by future legislatures, which may finally overturn the constitution itself.

Mr. BENSON.—I will not repeat what has been said to prove that the true construction is, that the president alone has the power of removal, but will state a case to shew the embarrassment which must arise by a combination of the senatorial and legislative authority in this particular. I will instance the officer to which the bill relates. To him will necessarily be committed negociations with the ministers of foreign courts. This is a very delicate trust. The supreme executive officer, in superintending this department, may be entangled with suspicions of a very delicate nature, relative to the transactions of the officer; and such as from circumstances would be injurious to name: indeed he may be so situated that he will not, cannot give the evidence of his suspicion. Now, thus circumstanced, suppose he should propose to the senate to remove

the secretary of foreign affairs, are we to expect the senate will, without any reason being assigned, implicitly submit to his proposition? They will not. Suppose he should say he suspected the man's fidelity, they would say we must proceed farther, and know the reasons for this suspicion; they would insist on a full communication. Is it to be supposed that this man will not have a single friend in the senate who will contend for a fair trial and full hearing? The president then becomes the plaintiff, and the secretary the defendant. The senate are sitting in judgment between the chief magistrate of the United States, and a subordinate officer. Now, I submit to the candor of the gentlemen, whether this looks like good government? Yet in every instance when the president thinks proper to have an officer removed, this absurd scene must be displayed. How much better, even on principles of expediency, will it be that the president alone have the power of removal?

But, suppose the senate to be joined with the president in the exercise of the power of removal, what mode will they proceed in? Shall the president always propose the removal, or shall the senate undertake this part of the business? If so, how are they to act?— There is no part of the constitution which obliges the president to meet them, to state his reasons for any measure he may recommend. Are they to wait upon the president? In short, it appears to me, that introducing this clashing of the powers, which the constitution has given to the executive, will be destructive of the great end of the government. So far will restraining the powers of that department be from producing security to the liberties of the people, that they would inevitably be swallowed up by an aristocratic body.

Mr. SEDGWICK. It will be agreed on all hands, that this officer, without observing on the subject at large, is merely to supply a natural incompetency in man; in other words, if we could find a president capable of executing this and all other business assigned him, it would be unnecessary to introduce any other officer to aid him. It is then merely from necessity that we institute such an office; because all the duties detailed in the bill are, by the constitution, pertaining to the department of the executive magistrate. If the question respected the expediency, I should be content to advocate it on that ground; if expediency is at all to be considered, gentlemen will perceive that this man is as much an instrument in the hands of the president, as the pen is the instrument of the secretary in corresponding with foreign courts. If then the secretary of foreign affairs is the mere instrument of the president, one would suppose, on the principle of expediency, this officer should be dependant upon him. It would seem incongruous and absurd, that an officer who, in the reason and nature of things, was dependant on his principal, and appointed merely to execute such business as was committed to the charge of his superior (for this business, I contend, is committed solely to his charge;) I say

it would be absurd in the highest degree to continue such a person in office contrary to the will of the president, who is responsible that the business be conducted with propriety, and for the general interest of the nation. The president is made responsible; and shall he not judge of the talents, abilities and integrity of his instruments? Will you depend on a man who has imposed upon the president, and continue him in office when he is evidently disqualified, unless he can be removed by impeachment? If this idea should prevail, which God forbid, what would be the result? Suppose even that he should be removable, by and with the advice and consent of the senate, what a wretched situation might not our public councils be involved in? Suppose the president has a secretary, in whom he discovers a great degree of ignorance, or a total incapacity to conduct the business he has assigned him; suppose him inimical to the president, or suppose any of the great variety of cases which would be good cause for removal, and impress the propriety of such a measure strongly on the mind of the president, without any other evidence than what exists in his own ideas from a contemplation of the man's conduct and character day by day: What, let me ask, is to be the consequence if the senate are to be applied to? If they are to do any thing in this business, I presume they are to deliberate, because they are to advise and consent: if they are to deliberate, you put them between the officer and the president; they are then to inquire into the causes of removal; the president must produce his testimony: How is the question to be investigated? because, I presume, there must be some rational rule for conducting this business. Is the president to be sworn to declare the whole truth, and to bring forward facts? or they to admit suspicion as testimony? or is the word of the president to be taken at all events? If so, this check is not of the least efficacy in nature. But if proof is necessary, what is then the consequence? why, in nine cases out of ten, where the case is very clear to the mind of the president that the man ought to be removed, the effect cannot be produced; because it is absolutely impossible to produce the necessary evidence. Are the senate to proceed without evidence? Some gentlemen contend not; then the object will be lost. Shall a man, under these circumstances, be saddled upon the president, who has been appointed for no other purpose in the creation, but to aid the president in performing certain duties? Shall he be continued, I ask again, against the will of the president? If he is, where is the responsibility? Are you to look for it in the president, who has no control over the officer, no power to remove him if he acts unfeelingly or unfaithfully? Without you make him responsible, you weaken and destroy the strength and beauty of your system. What is to be done in cases which can only be known from a long acquaintance with the conduct of an officer? But so much has been said on this subject, that I will add no farther observations upon it.

Let me ask, what will be the consequence of striking out these words? Is the officer to be continued during an indefinite time? For it has been contended that he cannot be removed but by impeachment; others have contended that he is always in the power of those who appoint him. But who will undertake to remove him? Will the president undertake to exercise an authority which has been so much doubted here, and which will appear to be determined against him if we consent to strike out the words? Will the senate undertake to exercise this power? I apprehend they will not. But if they should, would they not also be brought before the judges, to show by what authority they did it? because it is supposed by one gentleman, that the case might go before that tribunal, if the president alone removed the officer. But how is this to be done? Gentlemen tell you, the man who is displaced must apply for a mandamus to admit him to his office. I doubt much if this would be adequate to the purpose. It would de difficult to say whether the mandamus should be directed to the president, to the president and senate, to the legislature, or to the people. Could the president be compelled to answer in a civil suit, for exercising the powers vested in him by law, and by the constitution? The question upon either of those points would be involved in doubts and difficulty.

If these observations strike the committee in the same point of light, and with the same force as they have struck my mind, they will proceed to determine the present question, and I have no doubt but they will determine right.

Mr. LEE.—I contend we have the power to modify the establishment of offices; so ought we, Mr. Chairman, to modify them in such a way as to promote the general welfare; which can only be done by keeping the three branches distinct; by informing the people where to look, in order to guard against improper executive acts. It is our duty, therefore, to vest all executive power, belonging to the government, where the convention intended it should be placed. It adds to the responsibility of the most responsible branch of the government; and without responsibility, we should have little security against the depredations and gigantic strides of arbitary power. I say it is necessary, sir, to hold up a single and specific object to the public jealousy to watch; therefore it is necessary to connect the power of removal with the president. The executive is the source of all appointments; is his responsibility complete unless he has the power of removal? If he has this power, it will be his fault if any wicked or mischievous action is committed; and he will hardly expose himself to the resentment of three millions of people, of whom he holds his power, and to whom he is accountable every four years.

If the power of removal is vested in the senate, it is evident at a single view, that the responsibility is dissipated, because the fault cannot be fixed on any individual; beside the members of

the senate are not accountable to the people, they are the representatives of the state legislatures; but even if they were, they have no powers to enable them to decide with propriety in the case of removals, and therefore are improper persons to exercise such authority.

Mr. BOUDINOT.—Sir, the efficacy of your government may depend upon the determination of this house respecting the present question. For my part I shall certainly attend to the terms of the constitution in making a decision; indeed I never wish to see them departed from or construed, if the government can possibly be carried into effect in any other manner. But I do not agree with the gentlemen, that congress have no right to modify principles established by the constitution; for, if this doctrine be true, we have no business here. Can the constitution be executed if its principles are not modified by the legislature. A supreme court is established by the constitution; but do gentlemen contend, that we cannot modify that court, direct the manner in which its functions shall be performed, and assign and limit its jurisdiction. I conceive, notwithstanding the ingenious arguments of the gentleman from Virginia (Mr. White,) and the gentleman from South Carolina (Mr. Smith,) that there has not been, nor can be, any solid reason adduced to prove, that this house has not power to modify the principles of the constitution. But is the principle now in dispute to be found in the constitution? If it is to be found there, it will serve as a line to direct the modification by congress. But we are told, that the members of this house appear to be afraid to carry the principles of the constitution into effect. I believe, sir, we were not sent here to carry into effect every principle of the constitution; but I hope, whenever we are convinced it is for the benefit of the United States to carry any of them into effect, we shall not hesitate.

The principle of the constitution is generally to vest the government in three branches. I conceive this to be completely done, if we allow for one or two instances, where the executive and legislative powers are intermixed, and the case of impeachment. These cases I take to be exceptions to a principle which is highly esteemed in America. Let gentlemen attend to what was said by some of the conventions when they ratified the constitution. One great objection was, that the powers were not totally separated. The same objection is, I believe, to be found among the amendments proposed by the state of North Carolina. Now I conceive if we do any thing to conciliate the minds of people to the constitution, we ought not to modify the principle of the government, so as to encrease the evil complained of, by a further blending of the executive and legislative powers, and that too upon construction, when gentlemen deny that we ought to use construction in any case.

Now let us take up the constitution, and consider from the terms and principles of it, in whom this power is vested. It is said by some gentlemen to be an omitted case. I shall take up the other principle, which is easier to be maintained, that it is not an omitted case, and say the power of removal is vested in the president. I shall also take up the principle laid down by the gentleman from Virginia, (Mr. White,) at the the beginning of this argument, that agreeably to the nature of all executive powers, it is right and proper that the person who appoints should remove. This leads me to consider in whom the appointment is vested by the constitution. The president nominates and appoints; he is farther expressly authorised to commission all officers. Now, does it appear from this distribution of power, that the senate appoints? Does an officer exercise powers by authority of the senate? No; I believe the president is the person from whom he derives his authority. He appoints, but under a check: it is necessary to obtain the consent of the senate; but after that is obtained, I ask who appoints? who vests the officer with authority? who commissions him? The president does these acts by his sole power, but they are exercised in consequence of the advice of another branch of government. If therefore, the officer receives his authority and commission from the president, surely the removal follows as coincident.

Now let us examine whether this construction consists with the true interest of the United States, and the general principles of the constitution. It consists with the general principles of the constitution, because the executive power is given to the president, and it is by reason of his incapacity that we are called upon to appoint assistants. Mention, to be sure, is made of principal officers in departments, but it is from construction only that we derive our power to constitute this particular office. If we were not at liberty to modify the principles of the constitution, I do not see how we could erect an office of foreign affairs. If we establish an office avowedly to aid the president, we leave the conduct of it to his discretion. Hence the whole executive is to be left with him, agreeably to this maxim, all executive power shall be vested in a president. But how does this comport with the true interest of the United States? Let me ask gentlemen where they suspect danger? Is it not made expressly the duty of the secretary of foreign affairs, to obey such orders as shall be given to him by the president? And would you keep in office a man who should refuse or neglect to do the duties assigned him? Is not the president responsible for the administration? He certainly is. How then can the public interest suffer?

Then, if we find it to be naturally inferred from the principles of the constitution, coincident with the nature of his duty, that this officer should be dependent upon him, and to the benefit of the United states, for what purpose shall congress refuse a legislative declaration of the constitution, and leave it to remain a doubtful

point? Because, if congress refuses to determine, we cannot conceive that others will be more entitled to decide upon it than we are. This will appear to give ground for what the gentlemen have asserted, that we are afraid to carry the constitution into effect. This I apprehend would not be doing our duty.

Gentlemen say they have a sufficient remedy for every evil likely to result from connecting the senate with the president. This they propose to do by allowing the power of suspension. This, in the first place, does not answer the end; because there is a possibility that the officer may not be displaced after a hearing before the senate: and, in the second place, it is entirely inconsistent with the whole course of reasoning pursued by the gentlemen in opposition. I would ask them, if the constitution does not give to the president the power of removal, what part is it that gives the power of suspension? If you will in one case construe the constitution, you may do it in another; for I look upon it as dangerous to give the power of suspension by implication, as to give the full power of removal. Gentlemen observe, that I take it for granted that the president has no express right to the power of suspension; and that, if he is to exercise it, it must be drawn by constructive reasoning alone from the constitution. If we are to exercise our authority, we had better at once give a power that would answer two valuable purposes, than one altogether nugatory. In the first place, it would entirely separate the legislative and executive departments, conformably to the great principles of the constitution; and, in the second place, it would answer the end of government better, and secure real benefits to the union.

The great evil, as was stated by the gentleman from Virginia (Mr. Madison) yesterday is, that bad officers shall continue in office, and not that good ones be removed; yet this last is all that is in the power of the president. If he removes a good officer, he cannot appoint his successor without the consent of the senate; and it is fairly to be presumed, that if at any time he should be guilty of such an oversight, as to remove a useful and valuable officer, the evil will be small, because another as valuable will be placed in his stead. If it is said, that this is an injury to the individual, I confess that it is possible that it may be so: But ought we not in the first place to consult the public good? But on mature consideration I do not apprehend any very great injury will result to the individual from this practice; because, when he accepts of the office, he knows the tenure by which he is to hold it, and ought to be prepared against every contingency.

These being the principles on which I have formed my opinion, in addition to what was stated, I do conceive that I am perfectly justified to my constituents and to my oath to support this construction. And when I give my vote that the president ought to have the power of removal from office, I do it on principle; and gentlemen in the opposition will leave us to the operation of our

judgments on this as well as every other question that comes before us. For my part, I conceive it is impossible to carry into execution the powers of the president in a salutary manner, unless he has the power of removal vested in him. I do not mean, that if it was not vested in him by the constitution, it would be proper for congress to confer it, though I do believe the government would otherwise be very defective, yet we would have to bear this inconvenience until it was rectified by an amendment of the constitution.

Mr. GERRY.—The parliament of England is one of the most important bodies on earth: but they can do nothing without the concurrence of the executive magistrate. The congress of the United States are likely to become a more important body; the executive magistrate has but a qualified negative over them. The parliament of England, with the consent of the king, can expound their constitution; in fact, they are the constitution itself. But congress may, if once the doctrine of constitution is established, make the constitution what they please, and the president can have no control over them.

It has been said by my colleague (Mr. Sedgwick,) that the president not only nominates but appoints the officers; and infers from hence, that as the power of removal is incidental to the power of appointing, the president has the power of removal also. But I should be glad to know how it can with justice be said that the president appoints. The constitution requires the consent of the senate; therefore they are two distinct bodies, and intended to check each other. If my colleague's is a true construction, it may be extended further, and said, that in the act of nominating, the assent of the senate is virtually given, and therefore he has a right to make the whole appointment himself without any interference on the part of the senate. I contend, sir, that there is just as much propriety in the one construction as in the other. If we observe the enacting stile of the statutes of Britain, we shall find pretty near the same words as what are used in the constitution, with respect to appointments. Be it enacted by the king's most excellent majesty, by and with the advice and consent of parliament; here it might be said that the king enacts all laws; but I believe the truth of this fact will be disputed in that country. I believe no one will pretend to say that the king is the three branches of parliament; and unless my colleague will do all this, I never can admit that the president in himself has the power of appointment.

My colleague has gone further, to shew the dependence of this officer on the president. He says the necessity of appointing a secretary of foreign affairs arises from a natural defect in man; that if the president was able to administer all these departments, there would be no occasion of making provision by law. If the president had power superior to the limits of humanity, he might render his country great services; but we are not likely to have

any such presidents; the constitution itself contemplates none; it makes provision for the infirmaties of human nature; it authorises us to establish offices by law; and this is the ground upon which we stand; indeed this is the ground that was assumed yesterday by my colleague, when he said, that this officer was the creature of the law. If he is the creature of the law, let him conduct according to law, and let it not be contended that he is the creature of the president, because he is no further the creature of the president, than that he is obliged to give his opinion in writing when required. But it is said the president is responsible for the conduct of this officer. I wish to know what this responsibility is? Does it mean if a subordinate executive officer commits treason, that the president is to suffer for it? This is a strange kind of responsibility. Suppose in the case of the secretary of the treasury there should he a defalcation of the public revenue, is he to make good the loss? Or if the head of the army should betray his trust, and sacrifice the liberties of his country, is the president's head to be the devoted sacrifice? The constitution shows the contrary by the provision made for impeachment; and this I take to be one of the strongest arguments against the president, having the power of removing one of the principal officers of government, that he is to bear his own responsibility.

The question before the committee must be decided on one of these two grounds. Either they must suppose this power is delegated particularly to the president by the constitution, or it is not. Let us examine these two cases. If gentlemen say that it is delegated by the constitution, then there is no use for the clause; but if it is not particularly delegated to the president by the constitution and we are inclined to authorise him to exercise this power, I would ask, gentlemen, whether this is the proper way to do it? Whether a little clause hid in the body of a bill can be called a declaratory act? I think it cannot. It looks as if we were afraid of avowing our intentions. If we are determined upon making a declaratory act, let us do it in such a manner as to indicate our intention. But perhaps gentlemen may think we have no authority to make declaratory acts. They may be right in this opinion, for though I have examined the constitution with attention, I have not been able to discover any clause which vests congress with that power. But if the power of making declaratory acts really vests in congress, and the judges are bound by our decisions, we may alter that part of the constitution which is secured from being amended by the fifth article; we may say, that the ninth section of the constitution, respecting the migration or importation of persons, does not extend to negroes; that the word persons means only white men and women. We then proceed to lay a duty of twenty or thirty dollars per head on the importation of negroes. The merchant does not construe the constitution in the manner that we have done. He therefore institutes a suit and brings it before the

supreme judicature of the United States for trial. The judges, who are bound by oath to support the constitution, declare against this law; they would therefore give judgment in favor of the merchant. But, say congress, we are the constitutional expounders of this clause, and your decision in this case has been improper.—Shall the judges, because congress have usurped power, and made a law founded in construction, be impeached by one branch, and convicted by the other, for doing a meritorious act, and standing in opposition to their usurpation of power? If this is the meaning of the constitution, it was hardly worth while to have had so much bustle and uneasiness about it. I would ask gentlemen, if the constitution has given us power to make declaratory acts, where is the necessity of inserting the fifth article for the purpose of obtaining amendments? The word amendment implies a defect; a declaratory act conceives one. Where then is the difference between an amendment and a declaratory act? I call upon the gentleman to point out what part of the constitution says we shall correct that instrument by a declaratory act. If gentleman once break through the constitutional limits of their authority, they will find it very difficult to draw a boundary, which will secure to themselves and their posterity that liberty which they have so well contended for.

Mr. SHERMAN. The convention, who formed this constitution thought it would tend to secure the liberties of the people, if they probibited the president from the sole appointment of all officers. They knew that the crown of Great Britian, by having that prerogative, has been enabled to swallow up the whole administration; the influence of the crown upon the legislature subjects both houses to its will and pleasure; perhaps it may be thought by the people of that kingdom, that it is best for the executive magistrate to have such kind of influence; if so, it is very well, and we have no right to complain that it is injurious to them, while they themselves consider it beneficial. But this government is different, and intended by the people to be different. I have not heard any gentleman produce an authority from law or history which proves, that where two branches are interested in the appointment, that one of them has the power of removal. I remember that the gentleman from Massachusetts (Mr. Sedgwick) told us, that the two houses, notwithstanding the partial negative of the president, possessed the whole legislative power; but will the gentleman infer from that, that because the concurrence of both branches is necessary to pass a law, that a less authority can repeal it? This is all we contend for.

Some gentlemen suppose, if the president has not the power by the constitution, we ought to vest it in him by law. For my part I very much doubt if we have the power to do this. I take it we would be placing the heads of departments in a situation inferior to what the constitution contemplates; but if we have the power, it will be better to exercise it than attempt to construe the constitu-

tion: But it appears to me, that the best way will be to leave the constitution to speak for itself whenever occasion demands.

It has been said, that the senate are merely an advisory body. I am not of this opinion, because their consent is expressly required; if this is not obtained, an appointment cannot be made. Upon the whole, I look upon it necessary, in order to preserve that security which the constitution affords to the liberty of the people, that we avoid making this declaration, especially in favor of the president, as I do not believe the constitution vests the authority in him alone.

Mr. AMES. I believe there are very few gentlemen on this floor who have not made up their opinions; therefore it is particularly disagreeable to solicit their attention, especially when their patience is already exhausted, and their curiosity sated; but still I hope to be of some use in collecting the various arguments and bringing them to a point. I shall rather confine myself to this task, than attempt to offer any thing that is new. I shall just observe, that the arguments of the gentleman from Pennsylvania (Mr. Scott,) which are complained of as being ridiculous, were arguments addressed to the understandings of the committee; my own understanding was enlightened by them, although they wore the garb of pleasantry. But to proceed to my main object.

The question, so far as it relates to the constitution, is this, whether it has vested the sole power of removing in the president alone, or whether it is to take place by and with the advice and consent of the senate? If the question of constitutionality was once dispatched, we should be left to consider of the expediency of the measure. I take it to be admitted on all hands, though it was at first objected to by a worthy gentleman from South Carolina, that the power of removal from office, at pleasure, resides somewhere in the government. If it does not reside in the president, or the president and senate, or if the constitution has not vested it in any particular body, it must be in the legisluture; for it is absurd to suppose that officers once appointed cannot be removed. The argument tending to prove, that the power is in the president alone by an express declaration, may not be satisfactory to the minds of those gentlemen who deem the constitution to be silent on that head. But let those gentlemen revert to the principles, spirit and tendency of the constitution, and they will be compelled to acknowledge, that there is the highest degree of probability that the power does vest in the president of the United States. I shall not undertake to say, that the arguments are conclusive on this point: I do not suppose it is necessary that they should be so; for I believe nearly as good conclusions may be drawn from the refutations of an argument as from any other proof. For it is well said that *destructio unius est generatio alterius.*

It has been said, and addressed with solemnity to our consciences, that we ought not to destroy the constitution, to change

or modify it; nay, it has been infered, that it is unnecessary and dangerous for us to proceed in this enquiry. It is true, we may decide wrong, and therefore there may be danger; but it is not unnecessary: we have entered too far into the discussion to retreat with honor to ourselves, or security to our country: we are sworn as much to exercise constitutional authority, for the general good, as to refrain from assuming powers that are not given to us: we are as responsible for forbearing to act, as we are for acting. Are we to leave this question undetermined, to be contended between the president and senate? Are we to say, that the question to us is indissoluble, and therefore throw it upon the shoulders of the president to determine? If it is complex and difficult, it is certainly disingenuous in us to throw off the decision; besides, after so long a debate has been had, a decision must be made, for it never would do to strike out the words; as that would be deciding, and deciding against the power of the president.

It must be admitted, that the constitution is not explicit on the point in contest; yet the constitution strongly infers, that the power is in the president alone It is declared, that the executive power shall be vested in the president. Under these terms all the powers properly belonging to the executive department of the government are given, and such only taken away as are expressly excepted. If the constitution had stopt here, and the duties had not been defined, either the president had had no powers at all, or he would acquire from that general expression all the powers properly belonging to the executive department. In the constitution the president is required to see the laws faithfully executed. He cannot do this without he has a controul over officers appointed to aid him in the performance of his duty. Take this power out of his hands, and you virtually strip him of his authority; you virtually destroy his responsibility, the great security which this constitution holds out to the people of America.

Gentlemen will say, that, as the constitution is not explicit, it must be matter of doubt where the power vests. If gentlemen's conciences will not let them agree with us, they ought to permit us to exercise the like liberty on our part. But they tell us wemust meet them on the ground of accommodation, and give up a declaration, that the power of removal is in the president, and they will acquiesce in declaring him to have the power of suspension; but they should recollect, that in so doing we sacrifice the principles of the constitution.

It has been frequently said, that the power of removing is incidental to the power of appointing; as the constitution implies, that all officers, except the judges, are appointed during pleasure so; the power of removal may, in all cases, be exercised. But suppose this general principle true, yet it is an arbitrary principle, I take it, and one that cannot be proved; if it was denied, it could not be established; and if it was established, it is still doubtful

whether it would make for the adverse side of this question or not; because it is dubious whether the senate do actually appoint or not. It is admitted, that they may check and regulate the appointment by the president, but they can do nothing more; they are merely an advisory body, and do not secure any degree of responsibility, which is one great object of the present constitution; they are not answerable for their secret advice; but if they were, the blame divided among so many would fall upon none.

Certainly this assumed principle is very often untrue ; but if it is true, it is not favorable to the gentlemen's doctrine. The president, I contend, has expressly the power of nominating and appointing, though he must obtain the consent of the senate : He is the agent : the senate may prevent his acting, but cannot act themselves. It may be difficult to illustrate this point by examples which will exactly correspond ; but suppose the case of an executor, to whom is devised lands, to be sold with the advice of a certain person, on certain conditions ; the executor sells with the consent, and upon the conditions required in the will ; the conditions are broken ; may the executor re-enter for the breach of them? or has the person whom he was obliged to consult with in the sale, any power to restrain him? The executor may remove the wrongful possessor from the land, though, perhaps, by the will, he may hold it in trust for another person's benefit. In this manner the president may remove from office, though, when vacant, he cannot fill it without the advice of the senate. We are told it is dangerous to adopt constructions ; and that what is not expressly given is retained. Surely it is as improper in this way to confer power upon the senate as upon the president ; for if the power is not in the president solely by the constitution, it never can be in the president and senate by any grant of that instrument: any arguments, therefore, that tend to make the first doubtful, operate against the other, and make it absurd : If gentlemen, therefore, doubt with respect to the first point, they will certainly hesitate with respect to the other. If the senate have not the power, and it is proved that they have it not, by the arguments on both sides, the power either vests with the president or the legislature ; if it is in the disposal of the latter, and merely a matter of choice with us, clearly we ought not to bestow it on the senate : for the doubt, whether the president is not already entitled to it, is an argument against placing it in other hands : besides the exercise of it by the senate would be inconvenient : they are not always sitting : it would be insecure, because they are not responsible : it would be subversive of the great principles of the constitution, and destructive to liberty : because it tends to intermingle executive and legislative powers in one body of men, and this blending of powers ever forms a tyranny. The senate are not to accuse offenders, they are to try them : they are not to give orders, but on complaint to judge of the breach of them. We are warned against betraying

the liberties of our country: we are told that all power tends to abuse: it is our duty, therefore, to keep them single and distinct. Where the executive swallows up the legislature, it becomes a despotism: where the legislature trenches upon the executive, it approaches towards despotism: and where they have less than is necessary, it approximates towards anarchy. We should be careful, therefore, to preserve the limits of each authority in the present question: As it respects the power of the people, it is but of little importance: it is not pretended that the people have reserved the power of removing bad officers. It is admitted on all hands, that the government is possessed of such power; consequently the people can neither lose nor gain power by it. We are the servants of the people, we are the watchmen, and we should be unfaithful in both characters, if we should so administer the government as to destroy its great principles, and most essential advantages. The question now among us is, which of these servants shall exercise a power already granted? Wise and virtuous as the senate may be, such a power lodged in their hands will not only tend to abuse, but cannot tend to any thing else. Need I repeat the inconveniences which will result from vesting it in the senate? No. I appeal to that maxim, which has the sanction of experience, and is authorized by the decision of the wisest men: to prevent an abuse of power, it must be distributed into three branches, who must be made independent, to watch and check each other: the people are to watch them all. While these maxims are pursued, our liberties will be preserved. It was from neglecting or despising these maxims, the ancient commonwealths were destroyed: A voice issues from the earth which covers their ruins, and proclaims to mankind the sacredness of the truths that are at this moment in controversy. It is said, that the constitution has blended these powers which we advise to keep separate, and therefore we ought to follow in completing similar regulations; but gentlemen ought to recollect, that has been an objection against the constitution: and if it is a well founded one, we ought to endeavor all that is in our power to restrain the evil rather than to encrease it. But, perhaps, with the sole power of removal in the president, the check of the senate in appointments, may have a salutary tendency: in removing from office, their advice and consent is liable to all the objections that have been stated. It is very proper to guard the introduction of a man into office by every check that can properly be applied: but after he is appointed there can be no use in exercising a judgment upon events which have heretofore taken place. If the senate are to possess the power of removal, they will be enabled to hold the person in office, let the circumstances be what they may that point out the necessity or propriety of his removal: it creates a permanent connexion: it will nurse faction: it will promote intrigue to obtain protectors, and to shelter tools. Sir, it is infusing poison into the constitution: it is an impure and

unchaste connexion: there is ruin in it: it is tempting the senate with forbidden fruit: it ought not to be possible for a branch of the legislature even to hope for a share of the executive power: for they may be tempted to increase it, by a hope to share the exercise of it. People are seldom jealous of their own power: and if the senate become part of the executive, they will be very improper persons to watch that department: so far from being champions for liberty, they will become conspirators against it.

The executive department should ever be independent, and sufficiently energetic to defeat the attempts of either branch of the legislative to usurp its prerogative. But the proposed control of the senate, is setting that body above the president: it tends to establish an aristocracy. And at the moment we are endangering the principles of our free and excellent constitution, gentlemen are undertaking to amuse the people with the sound of liberty. If their ideas should succeed, a principle of mortality will be infused into a government which the lovers of mankind have wished might last to the end of the world. With a mixture of the executive and legislative powers in one body, no government can long remain uncorrupt. With a corrupt executive, liberty may long retain a trembling existence. With a corrupt legislature, it is impossible: the vitals of the constitution would be mortified, and death must follow on every step. A government thus formed would be the most formidable curse that could befall this country. Perhaps an enlightened people might timely foresee and correct the error: but if a season was allowed for such a compound to grow and produce its natural fruit, it would either banish liberty, or the people would be driven to exercise their unalienable right, the right of uncivilized nature, and destroy a monster whose voracious and capacious jaws could crush and swallow up themselves and their posterity.

The principles of this constitution, while they are adhered to, will perpetuate that liberty which it is the honor of Americans to have well contended for. The clause in the bill is calcalated to support those principles; and for this, if there was no other reason, I should be inclined to give it my support.

Mr. LIVERMORE.—The decision of this question depends upon the construction of a short clause in the constitution, in which is designated the power of the president. It is said he shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur. He shall nominate, and by and with the advice and consent of the senate, appoint ambassadors, other public ministers, and consuls, justices of the supreme court, and all other officers of the United States. Such strange constructions have been given to this advice and consent of the senate, which if agreed to will make the whole constitution nothing, or any thing, just as we please. If we can deprive the senate of their power in making treaties, and say with

truth that they have no authority in the business, the legislature will become a dangerous branch of the government So in the case of appointing officers, if it can be truly said that these heads of departments are the servants of the president alone, we shall make the executive department a dangerous one.

I do not admit that any man has an estate in his office. I conceive all officers to be appointed during pleasure, except where the constitution stipulates for a different tenure, unless indeed the law should create the office, or officer, for a term of years. After observing this, I must contend that the power of removal is incidental to the power of appointment. If it was the president alone that appointed, he alone could displace. If the president and senate, by a joint agreement, appoint an officer, they alone have the power to supercede him ; and however any gentleman may say he doubts, or does not understand the force of this principle, yet to me it appears as clear and demonstrable as any principle of law or justice that I am acquainted with. There is another method to displace officers expressly pointed out by the constitution ; and this implies, in the clearest manner, that in all other cases officers may be removed at pleasure ; and if removed at pleasure, it must be at the pleasure of the parties who appointed them.

Congress are enabled, by the constitution, to establish offices by law. In many cases they will, no doubt, vest the power of appointing inferior officers in the president alone. They have no express right, by the constitution, to vest in him the power of removing these at pleasure : yet no gentlemen will contend but inferior officers ought to be removable at pleasure. How then can the president acquire this authority, unless it be on the principle, that the power of removal is incidental, and the natural consequence of the power of appointing. If gentlemen will maintain consistency, they will be compelled to acknowledge the force of this principle ; and if they acknowledge the principle, they must agree to strike out the words.

Mr. MADISON. The question now seems to be brought to this, whether it is proper or improper to retain these words in the clause, provided they are explanatory of the constitution. I think this branch of the legislature is as much interested in the establishment of the true meaning of the constitution, as either the president or senate : and when the constitution submits it to us to establish offices by law, we ought to know by what tenure the office should be held ; and whether it should depend upon the concurrence of the senate with the president, or upon the will of the president alone : because gentlemen may hesitate in either case, whether they will make it for an indefinate or precise time. If the officer can be removed at discretion by the president, there may be safety in letting it be for an indefinite period. If he cannot exert his prerogative, there is no security even by the mode of impeachment ; because the officer may intrench himself behind the authori-

ty of the senate, and bid defiance to every other department of government. In this case, the question of duration would take a different turn. Hence it is highly proper that we and our constituents should know the tenure of the office. And have we not as good a right as any branch of the government to declare our sense of the meaning of the constitution.

Nothing has yet been offered to invalidate the doctrine, that the meaning of the constitution may as well be ascertained by the legislative as by the judicial authority. When a question emerges, as it does in this bill,—and much seems to depend upon it,—I should conceive it highly proper to make a legislative construction. In another point of view, it it proper that this interpretation should now take place, rather than at a time when the exigency of the case may require the exercise of the power of removal. At present the disposition of every gentlemen is to seek the truth, and abide by its guidance when it is discovered. I have reason to believe the same disposition prevails in the senate. But will this be the case when some individual officer of high rank draws into question the capacity of the president, with the senate, to effect his removal? If we leave the constitution to take this course, it can never be expounded until the president shall think it expedient to exercise the right of removal, if he supposes he has it. Then the senate may be induced to set up their pretensions: and will they decide so calmly as at this time, when no important officer in any of the great departments is appointed to influence their judgments? The imagination of no member here, or of the senate, or of the president himself, is heated or disturbed by faction If ever a proper moment for decision should offer, it must be one like the present.

I do not conceive that this question has been truly stated by some gentlemen. In my opinion it is not, whether we shall take the power from one branch of the government and give it to another; but the question is, to which branch has the constitution given it. Some gentlemen have said that it resides in the people at large; and that, if it is necessary to the government, we must apply to the people for it, and obtain it by way of amendment to the constitution. Some gentlemen contend, that although it is given in the constitution as a necessary power to carry into execution the other powers vested by the constitution, yet it is vested in the legislature. I cannot admit this doctrine either; because it is setting the legislature at the head of the executive branch of the government. If we take the other construction, of the gentleman from South Carolina, that all officers hold their places by the firm tenure of good behaviour, we shall find it still more improper. I think gentlemen will see, upon reflection, that this doctrine is incompatible with the principles of free government. If there is no removability but by way of impeachment, then all the executive officers of government hold their offices by the firm tenure of good behaviour, from the chief justice down to the tide-waiter.

[Mr. Smith interrupted Mr. Madison; and said that he had admitted that inferior officers might be removed; because the constitution had left in it the power of the legislature to establish them on what terms they pleased; consequently, to direct their appointment and removal.]

Mr. MADISON had understood the gentleman as he now explained himself. But still he contended that the consequences he had drawn would necessarily follow: because there was no express authority given to the legislature in the constitution, to enable the president, the courts of law, or heads of departments, to remove an inferior officer. All that was said on that head was confined solely to the power of appointing them. If the gentleman admits, says he, that the legislature may vest the power of removal, with respect to inferior officers, he must also admit that the constitution vests the president with the power of removal in the case of superior officers; because both powers are implied in the same words: the president may appoint the one class, and the legislature may authorise the courts of law or heads of departments to appoint in the other case. If, then, it is admitted, that the power of removal vests in the president, or president and senate, the arguments which I urged yesterday, and those which have been urged by honorable gentlemen on this side of the question for these three days past, will fully evince the truth of the construction which we give, that the power is in the president alone. I will not repeat them, because they must have full possession of every gentleman's mind. I am willing, therefore, to rest the decision here; and hope that it will be made in such a manner as to perpetuate the blessings which this constitution was intended to embrace.

Mr. BALDWIN.—I have felt an unusual anxiety during the debate upon this question. I have attentively listened to the arguments which have been brought forward, and have weighed them in my mind with great deliberation; and as I consider a proper decision upon it of almost infinite importance to the government, I must beg the indulgence of the house while I submit a few observations.

The main ground on which the question is made to rest is, that, if we adopt this clause, we violate the constitution. Many of the gentlemen who advocate the present motion for striking out, would, if they could do it with consistence to the constitution, be in favor of the clause. We have been reminded of our oaths, and warned not to violate the solemn obligation. This injunction has come from so many parts of the house, that it arrested my whole attention for a few minutes; and then they produced us the clause in the constitution, which directed that officers should be appointed by and with the advice and consent of the senate. They then tell us, that he should be removable in the same manner. We see the clause by which it is directed that they should be appointed in that manner; but we do not see the clause respecting their removal in

the same way. Gentlemen have only drawn it as an inference from the former; they construe that to be the meaning of the constitution, as we construe the reverse. I hope, therefore, gentlemen will change their expression, and say, we shall violate their construction of the constitution, and not the constitution itself. This will be a very different change; unless the gentlemen pretend to support the doctrine of infallibility, as it respects their decisions; and that would perhaps be more than the house are willing to admit, and more than the people in this country are accustomed to believe.

I have said the gentlemen rest their principal opposition on this point, that the constitution plainly means that the officers must be removed in the way they are appointed. Now, when gentlemen tell me that I am going to construe the constitution, and may interpret it in a manner which was never intended, I am very cautious how I proceed. I do not like to construe over much. It is a very delicate and critical branch of our duty; and there is not, perhaps, any part of the constitution on which we should be more cautious and circumspect than on the present.

I am well authorised to say, that the mingling the powers of the president and senate was strongly opposed in the convention which had the honor to submit to the consideration of the United States, and the different states, the present system for the government of the union. Some gentlemen opposed it to the last; and finally it was the principal ground on which they refused to give it their signature and assent. One gentleman called it a monstrous and unnatural connection; and did not hesitate to affirm, it would bring on convulsions in the government. This objection was not confined to the walls of the convention; it has been the subject of newspaper declamation, and perhaps justly so. Ought not we, therefore, to be careful not to extend this unchaste connection any farther?

Gentlemen who undertake to construe, say that they see clearly that the power which appoints must also remove. Now, I have reviewed this subject with all the application and discernment my mind is capable of, and have not been able to see any such thing. There is an agency given to the president in making appointments, to which the senate are connected. But how it follows that the connection extends to the removal, positively I cannot see. They say that it follows as a natural, inseparable consequence. This sounds like logic. But if we consult the premises, perhaps the conclusion may not follow. The constitution opposes this maxim more than it supports it. The president is appointed by electors chosen by the people themselves, or by the state legislatures. Can the state legislatures, either combined or separate, effect his removal? No. But the senate may, on impeachment by this house. The judges are appointed by the president, by and with the advice and consent of the senate; but they are only removable by im-

peachment; the president has no agency in the removal. Hence, I say, it is not a natural consequence, that the power which appoints should have the power of removal also. We may find it necessary that subordinate officers should be appointed in the first instance by the president and senate. I hope it will not be contended that the president and senate shall be applied to in all cases when their removal may be necessary. This principle, sir, is not pursued by the senate themselves, in the very bill that is now before this house, sent down by the senate, to establish the judicial courts of the United States. It is directed, that a marshal shall be appointed for each district, who shall have power to appoint one or more deputies; and these deputies are to be removable from office by the judge of the district court, or the circuit court sitting within the district, at the pleasure of either. It is not said they shall be appointed by the marshal, who may remove them at pleasure; which ought to be the case, if the maxim is true, that the power which appoints necessarily has the power of removal. But I dispute the maxim altogether; for though it is sometimes true, it is often fallacious; but by no means is it that kind of conclusive argument which they contend for.

Gentlemen proceed in their constructions, and they ask why did not the convention insert a clause in the constitution, declaring the removal to be in a manner different from the appointment? They tell us, that it must naturally have occurred to them, and that here and there was the proper place to insert such a clause. Now, let me ask them also, if their's is the natural construction? Why the convention, after declaring that officers should be appointed by and with the advice and consent of the senate, did not add, to be removed in like manner? It must have as naturally occurred to insert the one as the other: It is very possible that such a clause might have been moved and contended for; but it is hardly probable it would meet with success from those who opposed giving the senate any check or controul whatsoever over the powers of the president, much less was it probable that those gentlemen who opposed it there should wish to enlarge it by construction; for my part I hope never to see it increased in this way. What of this nature is brought in by the letter of the constitution, let it be there; but let us never increase evils of which we have some right to complain.

A gentlemen asks, where is the danger of mixing these powers, if the constitution has already done it. That gentleman knows, that it has always been viewed as an evil, and an association of the legislative and executive powers in one body have been found to produce tyranny. It is a maxim among the wisest legislators not to blend the branches of government, further than is necessary to carry their separate powers into more complete operation. It was found necessary to blend the powers to a certain degree, so far we must acquiesce. The senate must concur with the president in

making appointments, but with respect to the removal they are not associated; no such clause is in the constitution; and therefore I should conclude that the convention did not choose they should have the power. But what need was there that such a clause should be there? What is the evil it was intended to guard against? Why, we are afraid the president will unnecessarily remove a worthy man from office; and we say it is a pity the poor man should be turned out of service without a hearing; it is injurious to his reputation; it is his life, says the gentleman from New Hampshire (Mr. Livermore); it is cruelty in the extreme. But why are we to suppose this? I do not see any well grounded apprehension for such an abuse of power. Let us attend to the operation of this business. The constitution provides for what? That no bad man should come into office: This is the first evil. Hence we have nothing to dread from a system of favoritism; the public are well secured against that great evil; therefore the president cannot be influenced by a desire to get his own creatures into office; for it is fairly presumable that they will be rejected by the senate. But suppose that one such could be got in, he can be got out again in despite of the president; we can impeach him, and drag him from his place, and then there will be some other person appointed.

Some gentlemen seem to think there should be another clause in the constitution, providing that the president should not turn out a good officer, and then they would not apprehend so much danger from that quarter. There are other evils which might have been provided against, and other things which might have been regulated; but if the convention had undertaken to have done them, the constitution, instead of being contained in a sheet of paper, would have swelled to the size of a folio volume. But what is the evil of the president's being at liberty to exercise this power of removal? Why we fear that he will displace not one good officer only, but, in a fit of passion, all the good officers of the government, by which, to be sure, the public would suffer: but I venture to say, he would suffer himself more than any other man. But I trust there is no dearth of good men. I believe he could not turn out so many, but that the senate would still have some choice, out of which to supply a good one. But, if even he was to do this, what would be the consequence? He would be obliged to do the duties himself; or, if he did not, we would impeach him, and turn him out of office, as he had done others. I must admit though, that there is a possibility of such an evil, but it is a remote possibility indeed.

I think gentlemen must concede, that, if there should be such a passion, such resentment as I have supposed between the president and the heads of departments, the one or the other ought to be removed; they must not go on pulling different ways, for the public will receive most manifest injury; therefore it mitigates the ap-

pearance of the evil by suffering the public business to go on which, from their irreconcileable difference, would otherwise be at a stand.

Mr. GERRY.—The judges are the expositors of the constitution and the acts of congress. Our exposition, therefore, would be subject to their revisal. In this way the constitutional balance would be destroyed. The legislature, with the judicial, might remove the head of the executive branch. But a further reason, why we are not the expositors, is, that the judiciary may disagree with us, and undo what all our efforts have labored to accomplish. A law is a nullity, unless it can be carried into execution: in this case, our law will be suspended. Hence all construction of the meaning of the constitution is dangerous, or unnatural, and therefore ought to be avoided.

This is our doctrine, that no power of this kind ought to be exercised by the legislature. But we say, if we must give a construction to the constitution, it is more natural to give the construction in favor of the power of removal vesting in the president, by and with the advice and consent of the senate; because it is in the nature of things, that the power which appoints removes also. If there are deviations from this general rule, the instances are few, and not sufficient to warrant our departure on this occasion. We say our construction is superior also, because it does not militate against any clause of the constitution; whilst their construction militates against several, and, in some respects, renders them mere nullities.

There is a consistency under a monarchy of the king's exercising the power of appointment and removal at pleasure. In Great Britain this is the prerogative of the throne; where it is likewise held a maxim, that the king can do no wrong. The chief magistrate under this constitution is a different character. There is a constitutional tribunal, where he may be arraigned, condemned and punished, if he does wrong. The reason of this distinction I take to be this: the majesty of the people receives an injury when the president commits an improper act, for which they are to receive satisfaction. Kings have a property in government, and when a monarch acts unwisely he injures his own interest, but is accountable to none, because satisfaction is due to himself alone. He is established in his office for life; it is an estate to him which he is interested to transmit to his posterity unimpaired; the good of the people upon principles of interest will be his peculiar study; he ought therefore to have power to act in such a manner as is most likely to secure to him this object, then necessarily he must have the right of choosing or displacing his agents. There can be no difficulty on this point, but in a confederated republic the chief magistrate has no such trust, he is elected but for four years, after which the government goes into other hands, he is not stimulated to improve a patrimony, and therefore has no occasion for complete

power over the officers of the government. If he has such power, it can only be made useful to himself by being the means of procuring him a re-election, but can never be useful to the people by inducing him to appoint good officers or remove bad ones. It appears to me, that such unbounded power, vitiates the principles of the constitution, and the officers instead of being the machinery of the government, moving in regular order prescribed by the legislature, will be the mere puppets of the president to be employed or thrown aside as useles lumber according to his prevailing fancy.

If gentlemen will take this step they must take another, and secure the public good by making it the interest of the president to consult it; they must elect him for life, or what will be more consistent still, they must make his office hereditary. Then gentlemen may say with some degree of truth, that he ought to have the power of removol, to secure in his hands a balance in the government. But if gentlemen are willing to remain where they are, and abide by the constitution, regarding its true principles, they will not contend that there is a necessity, or even a propriety in vesting this power in the president alone.

Gentlemen tell us, they are willing to consider this as a constitutional question, and yet the bill shews that they consider the constitution silent, for the clause grants the power in express terms; this also implies that the legislature have a right to interfere with the executive power contrary to their avowed principles. If the legislature has not the power of removal, they cannot confer it upon others; if they have it, it is a legislative power, and they have no right to transfer the exercise of it to any other body; so view this question in whatever point of light you please, it is clear the words ought to be struck out.

The call for the question being now very general, it was put, shall the words "to be removable by the president," be struck out?

It was determined in *the negative*; being yeas 20, noes 34.

AMENDMENTS *to the Constitution. H. R. Aug.* 13, 1789.

Mr. GERRY. The constitution of the United States was proposed by a convention met at Philadelphia, but with all its importance it did not possess as high authority as the president, senate, and house of representatives of the union: For that convention was not convened in consequence of any express will of the people, but an implied one, through their numbers in the state legislatures. The constitution derived no authority from the first convention; it was concurred in by conventions of the people, and that concurrence armed it with power, and invested it with dignity. Now the congress of the United States are expressly authorised by the sovereign and uncontrolable voice of the people, to propose amendments whenever two thirds of both houses shall think fit: Now if this is the fact, the propositions of amendment will be found to originate with a higher authority than the original system. The conven-

tions of the states respectively have agreed for the people, that the state legislatures shall be authorised to decide upon these amendments in the manner of a convention. If these acts of the state legislatures are not good because they are not specifically instructed by their constituents, neither were the acts calling the first and subsequent conventions.

Mr. AMES. It is not necessary to increase the representation, in order to guard against corruption: because no one will presume to think that a body composed like this, and increased in a ratio of 4 to 3, will be much less exposed to sale than we are. Nor is a greater number necessary to secure the rights and liberties of the people, for the representative of a great body of people, is likely to be more watchful of its interests than the representative of a lesser body.

Mr. MADISON. Suppose they the people instruct a representative by his vote to violate the constitution, is he at liberty to obey such ins' uctions? Suppose he is instructed to patronize certain measure and from circumstances known to him, but not to his constitu ts, he is convinced that they will endanger the public good, is he obliged to sacrifice his own judgment to them? is he absolutely bound to perform what he is instructed to do? Suppose he refuses, will his vote be the less valid, or the community be disengaged from that obedience which is due from the laws of the union? If his vote must inevitably have the same effect, what sort of a right is this in the constitution to instruct a representative who has a right to disregard the order, if he pleases? In this sense the right does not exist, in the other sense it does exist, and is provided largely for.

DOMESTIC DEBT.—*H. R. February* 22, 1790.

Mr. SMITH, (S. C.)—The constitution itself was opposed to the measure, (discrimination of the domestic debt,) for it was an ex post facto law, which was prohibited in express terms. The transference of public securities was lawful at the time these alienations were made; an attempt therefore to punish the transferrees, is an attempt to make an expost facto law, by making that unlawful which was lawful at the time it was done; it alters the nature of the transaction, and annexes the idea of guilt to that which, at the moment of commission, was not only perfectly innocent, but was explicitly authorised and encouraged by a public act of congress. By that act those who had money were invited to purchase of those who held securities: and now they were called upon to punish the purchasers who bought under that invitation. The constitution restrains the states from passing any law impairing the force of contracts: *a fortiori*, is the legislature of the union restrained. What an example to hold up to the judiciary of the United States! How could they annul a state law, when the state would be able to plead a precedent on the part of congress: The

right of property was a sacred right, no tribunal on earth, nor even legislative body, could deprive a citizen of his property unless by a fair equivalent, for the public welfare. The purchaser was vested by the sale, with an absolute right to the full amount of the security, and it was beyond their authority to divest him of it. They might indeed, by an act of power, declare that he should be paid only half; but his right to the other moiety would not be extinguished.

The present constitution, which is a mild one, met with considerable opposition; had it been rejected the public securities would never have been paid.

It was the surest policy of governments to adhere strictly to their plighted faith, when it was in their power to do so, even shuold such strict adherence work an injury to some part of the community; this was the practice of nations in the case of a treaty, which, when made by competent authority, they considered themselves bound to observe, although they deemed it disadvantageous to them, lest a refusal should deter other nations from treating with them in future: it is by this line of conduct that public credit can alone be supported.

Mr. MADISON. The constitutionality of the proposition had been drawn into question. He, Mr. Madison, asked whether words could be devised that would place the new government more precisely in the same relation to the real creditors with the old?— The power was the same; the objection was the same: the means only were varied.

If the gentlemen persisted, however in demanding precedents, he was happy in being able to gratify them with two, which though not exactly parallel, were on that account of the greater force since the interposition of government had taken place, where the emergencies could less require them. The first was the case of the Canada bill— During the war, which ended in 1763, and which was attended with a revolution in the government of Canada, the supplies obtained for the French army in that province were paid for in bills of exchange and certificates; this paper depreciated, and was bought up chiefly by British merchants. The sum and the depreciations were so considerable as to become a subject of negotiation between France and Great Britain at the peace.— The negotiation produced a particular article by which it was agreed by France that the paper ought to be redeemed, and admitted by Great Britain that it should be redeemed at a stipulated value. In the year 1766, this article was accordingly carried into effect by ministers from the two courts, who reduced the paper in the hands of the British holders, in some instances as much as 75 per cent below its nominal value. It was stated, indeed, by the reporter of the case, that the holders of the paper had themselves concurred in the liquidation; but it was not probable that the concurrence was voluntary. If it was voluntary it shews that they

themselves were sensible of the equity of the sacrifice. The other case was of still greater weight, as it had no relation to war or to treaty, and took place in the nation which had been held up as a model with respect to public credit. In the year 1715 the civil list of Great Britain had fallen in arrears to the amount of £500,000. The creditors who had furnished supplies to the government had instead of money, received debentures only from respectable offices. These had depreciated. In that state they were assigned in some instances, in others, covenanted to be assigned, when the parliament appropriated funds for satisfying these arrears, they inserted an express provision in the act, that the creditors who had been obliged by the defaults of government, to dispose of their paper at a loss, might redeem it from the assignees by repaying the actual price with an interest of 6 per cent, and that all agreements and covenants to assign, should be absolutely void. Here then was an interposition, on the very principle, that a government ought to redress the wrongs sustained by its default, and on an occasion, trivial when compared with that under consideration, yet it does not appear that the public credit of its nation was injured by it.

SLAVE TRADE.—*On committing the Memorial of the Quakers on the Slave Trade. H. R. March,* 1790.

Mr. TUCKER said he conceived the memorial to be so glaring an interference with the constitution, that he had hoped the house would not have given so much countenance to a request so improper in itself. He was sorry that the society had discovered so little prudence in their memorial, as to wish that congress should intermeddle in the internal regulations of the particular states.—He hoped the petition would not be committed, as it would operate directly against the interest of those it was designed to benefit; this is a business that may be attended with the most serious consequences—it may end in a subversion of the government, being a direct attack on the rights and property of the southern states. He then enquired what satisfaction was to be made to the proprietors of slaves—he believed it was not in the power of the states to make indemnification for the loss that would attend emancipation: he reprobated the interposition of the society, and denied that they possessed any more humanity than other denominations.

Mr. GERRY replied to Mr. Tucker, and desired the gentleman to point out any part of the memorial which proposed that the legislature should infringe on the constitution. For his part he heard nothing read that had such a tendency; its only object was, that congress should exert their constitutional authority to abate the horrors of slavery so far as they could. He hoped the petition would be committed—indeed he considered that all altercation on the subject of commitment was at an end, as the house had essentially determined that it should be committed.

Mr. BURKE reprobated the commitment, as subversive of the constitution, as sounding an alarm, and blowing the trumpet of sedition in the southern states. He should oppose the business totally, and if chosen on the committee he should decline serving.

Mr. SCOTT was in favor of the commitment.

Mr. JACKSON was opposed to it, and painted in strong colors the alarming consequences to be apprehended from taking up the business; revolt, insurrection, and devastation, and concluded by an observation similar to Mr. Burke's.

Mr. SHERMAN could see no difficulty in committing the memorial; the committee may bring in such a report as may prove satisfactory to gentlemen on all sides.

Mr. BALDWIN referred to the principles of accommodation which prevailed at the time of forming the government. Those mutual concessions which then took place, gave us a constitution which was to ensure the peace and the equal rights and properties of the various states; and to prevent all infraction of the rights in this particular instance, they precluded themselves by an express stipulation from all interposition in the slave trade. Congress are not called upon to declare their sentiments upon this occasion; they cannot constitutionally interfere in the business. He deprecated the consequences of such a measure in very forcible terms, and hoped the house would proceed no further in the investigation of the subject.

Mr. SMITH, (S. C.) recurring to the memorials, observed, that congress could not constitutionally interfere in the business, upon the prayer of the memorialists, as that went to an entire abolition of slavery: it could not, therefore, with propriety, be referred to a committee.

In the southern states, difficulties on this account had arisen in respect to the ratification of the constitution, and except their apprehensions on this head had been dissipated by their property being secured and guaranteed to them by the constitution itself, they never could have adopted it. He then depicted the miseries that would result from the interference of congress in the southern governments—he asserted as his opinion, that if there were no slaves in the southern states, they would be entirely depopulated; from the nature of the country it could not be cultivated without them: their proprietors are persons of as much humanity as the inhabitants of any part of the continent: they are as conspicuous for their morals as any of their neighbors.

He then asserted, that the quakers are a society not known to the laws; that they stand in exactly the same situation with other religious societies: their memorial relates to a matter in which they are no more interested than any other sect whatever; and it must therefore be considered in the light of advice: and is it customary to refer a piece of advice to a committee? He then contrasted this memorial with one which might be presented from the

sect called shaking quakers, whose principles and practices are represented in a very exceptional point of light; and asked whether congress would pay any attention to such a memorial. He hoped the memorial would not be committed.

Mr. PAGE was in favor of the commitment. He hoped that the benevolent designs of the respectable memorialists would not be frustrated at the threshold, so far as to preclude a fair discussion of the prayer of their memorial. He observed, that they do not apply for a total abolition of slavery. They only request that such measures may be taken, consistent with the constitution, as may finally issue in the total abolition of the slave trade. He could not conceive that the apprehensions entertained by the gentlemen from Georgia and South Carolina, were well founded, as they respected the proposed interference of congress.

Mr. MADISON observed that it was his opinion yesterday, that the best way to proceed in the business was to commit the memorial without debate on the subject. From what has taken place, he was more convinced of the propriety of the idea; but, as the business has engaged the attention of many members, and much has been said by gentlemen, he would offer a few observations for the consideration of the house. He then entered into a critical review of the circumstances respecting the adoption of the constitution; the ideas upon the limitation of the powers of congress to interfere in the regulations of commerce in slaves, and shewing that they were not precluded from interposing in their importation; and generally, to regulate the mode in which every species of business shall be transacted. He averted to the western country, and the cession of Georgia, in which congress have certainly the power to regulate the subject of slavery; which shews that gentlemen are mistaken in supposing that congress cannot constitutionally interfere in the business in any degree whatever. He was in favor of committing the petition, and justified the measure, by repeated precedents in the proceedings of the house.

Mr. GERRY entered into a justification of the interference of congress, as being fully compatible with the constitution. He descanted on the miseries to which the Africans are subjected by this traffic, and said that he never contemplated this subject without reflecting what his own feelings would be in case himself, his children, or friends, were placed in the same deplorable circustances. He then adverted to the flagrant acts of cruelty which are committed in carrying on that traffic, and asked whether it can be supposed that congress has no power to prevent such transactions as far as possible. He then referred to the constitution, and pointed out the restrictions laid on the general government respecting the importation of slaves. It is not, he presumed, in the contemplation of any gentleman in this house, to violate that part of the constitution; but, that we have a right to regulate this business, is as clear as that we have any rights whatever; nor has the

contrary been shewn by any person who has spoke on the occasion. Congress can, agreeably to the constitution, lay a duty of ten dollars a head on slaves: they may do this immediately. He made a calculation of the value of the slaves in the southern states. He supposed they might be worth about ten million of dollars. Congress have a right, if they see proper, to make a proposal to the Southern states to purchase the whole of them; and their resources in the western country may furnish them with means. He did not mean to suggest a measure of this kind: he only instanced these particulars to show that congress certainly have a right to intermeddle in this business. He thought that no objections had been offered of any force to prevent the committing of the memorial.

Mr. BOUDINOT was in favour of the commitment and enlarged on the idea suggested by Mr. Gerry, and observed that the memorial contained only a request, that congress would interfere their authority in the cause of humanity and mercy.

Mr. GERRY and Mr. STONE severally spoke again on the subject, the latter gentleman in opposition to the commitment said, that this memorial was a thing of course, for there never was a society of any considerable extent which did not interfere with the concerns of other people, and this interference has at one time or other deluged the world with blood—on this principle he was opposed to the commitment.

Mr. TUCKER moved to modify the first paragraph by striking out all the words after the word opinion, and to insert the following: that the several memorials proposed to the consideration of this house, a subject on which its interference would be unconstitutional, and even its deliberations is highly injurious to some of the states in the union.

Mr. JACKSON rose and observed that he had been silent on the subject of the reports coming before the committee, because he wished the principles of the resolutions to be examined fairly, and to be decided on their true grounds. He was against the propositions generally, and would examine the policy, the justice and use of them, and he hoped if he could make them appear in the same light to others as they did to him by fair argument, that the gentlemen in opposition were not so determined in their opinions as not to give up their present sentiments.

With respect to the policy of the measure, the situation of the slaves here. Their situation in their native states, and the disposal of them in case of emancipation should be considered. That slavery was an evil habit he did not mean to controvert; but that habit was already established, and there were peculiar situations in countries which rendered that habit necessary. Such situations the states of South Carolina and Georgia were in—large tracts of the most fertile lands on the continent remained uncultivated for the want of population. It was frequently advanced on the floor of congress how unhealthy those climates were, and how impossible

it was for northern constitutions to exist there. What, he asked, is to be done with this uncultivated territory? Is it to remain a waste? Is the rice trade to be banished from our coasts, are congress willing to deprive themselves of the revenue arising from that trade, and which is daily increasing, and to throw this great advantage into the hands of other countries.

Let us examine the use or the benefit of the resolutions contained in the report. I call upon gentlemen to give me one single instance in which they can be of service. They are of no use to congress. The powers of that body are already defined, and those powers cannot be amended, confirmed or diminished by ten thousand resolutions. Is not the first proposition of the report fully contained in the constitution? Is not that the guide and rule of this legislature. A multiplicity of laws is reprobated in any society, and tend but to confound and to perplex. How strange would a law appear which was to confirm a law; and how much more strange must it appear for this body to pass resolutions to confirm the constitution under which they sit. This is the case with others of the resolutions.

A gentleman from Maryland (Mr. Stone) very properly observed that the union had received the different states with all their ill habits about them. This was one of these habits established long before the constitution and could not now be remedied. He begged congress to reflect on the number on the continent who were opposed to this constitution, and on the number which yet remained in the southern states. The violation of this compact they would seize on with avidity, they would make a handle of it to cover their designs against the government, and many good federalists who would be injured by the measure, would be induced to join them, his heart was truly federal and it had always been so, and he wished those designs frustrated. He begged congress to beware before they went too far, he called on them to attend to the interest of two whole states, as well as to the memorials of a society of quakers, who came forward to blow the trumpet of sedition, and to destroy that constitution which they had not in the least contributed by personal service or supply to establish.

He seconded Mr. Tucker's motion.

Mr. SMITH, of S. C., said, the gentleman from Massachusetts (Mr. Gerry,) had declared that it was the opinion of the select committee of which he was a member, that the memorial from the Pennsylvania society required congress to violate the constitution. It was not less astonishing to see Dr. Franklin taking the lead in a business which looks so much like a persecution of the Southern inhabitants, when he recollected the parable he had written some time ago with a view of shewing the impropriety of one set of men persecuting others for a difference of opinion. The parable was to this effect, an old traveller, hungry and weary, applied to the patriarch Abraham for a night's lodging. In conversation

Abraham discovered that the stranger differed with him on religious points, and turned him out of doors. In the night God appeared unto Abraham, and said, where is the stranger? Abraham answered, I found that he did not worship the true God, and so I turned him out of doors. The Almighty thus rebuked the patriarch, Have I borne with him three score and ten years, and couldst thou not bear with him one night? Has the Almighty, said Mr. Smith, borne with us for more than three score years and ten; he has even made our country opulent and shed the blessings of affluence and prosperity on our land, notwithstanding all its slaves, and must we now be ruined on account of the tender consciences of a few scrupulous individuals who differ from us on this point?

Mr. BOUDINOT agreed with the general doctrines of Mr. S., but could not agree that the clause in the constitution relating to the want of power in congress to prohibit the importation of such persons as any of the states, *now existing*, shall think proper to admit, prior to the year 1808, and authorising a tax or duty on such importation not exceeding ten dollars for each person, did not extend to negro slaves. Candor required that he should acknowledge that this was the express design of the constitution, and therefore congress could not interfere in prohibiting the importation or promoting the emancipation of them, prior to that period. Mr. Boudinot observed, that he was well informed that the tax or duty of ten dollars was provided, instead of the 5 per cent. ad valorum, and was so expressly understood by all parties in the convention; that therefore it was the interest and duty of congress to impose this tax, or it would not be doing justice to the states, or equalizing the duties throughout the union. If this was not done, merchants might bring their whole capitals into this branch of trade, and save paying any duties whatever. Mr. Boudinot observed, that the gentleman had overlooked the prophecy of St. Peter, where he foretells that among other damnable heresies, "Through covetousness shall they with feigned words make merchandise of you." [*Memorial rejected.*]

ON THE ESTABLISHMENT OF A NATIONAL BANK.—
H. R. February 2, 1791.

Mr. GILES said he was disposed to consider the plan as containing a principle not agreeable to the constitution, and in itself not altogether expedient.

To show its unconstitutionality, he read the first section of the bill which established the subscribers of the bank into a corporation, to do which, he conceived the constitution had given congress no power. He read the clause in the constitution which had been adduced as sanctioning the exercise of such a power. This clause only respects, he said, all the necessary powers to carry into effect such as were expressly delegated; that of forming corporations was not expressly granted. He then adverted to the power of borrow-

ing money, vested in congress by the constitution, and controverted the idea, that a bank was necessary to carry it into execution; it might, he granted, conduce to a greater facility in exercising that power, but that it was expedient or necessary he denied, either to effect loans or establish the government.

If congress in this instance, he observed, exercised the power of erecting corporations it was no where limited, and they might, if they thought fit, extend it to every object, and in consequence thereof monopolies of the East and West India trade be established; and this would place us, he said, in the precise situation of a nation without a free constitution.

He referred to the clause in the constitution which prohibits congress from giving a preference to one part of the United States over another. This he considered, together with his other objections, fully sufficient to justisy a rejection of the plan.

He then offered some observations relative to the expediency of the measure. If it is problematical only, whether the establishment of this national bank is agreeable to the constitution, this ought to be, he thought, sufficient to prevent an an adoption of the system. He shewed the consequences which will result from a doubt of the legality of the measure.

He noticed the objection which had been originally made by the people to the constitution, and the pains which were taken to obviate their fears and apprehensions. The adoption of this plan, he said, would realize many of their disagreeable anticipations. He denied the *necessity* of a bank for the *preservation* of government. The only object as the subject struck his mind was to raise stock: but it was certainly not expedient, he conceived, to kindle the flame of discontent, and rouse the fears and jealousies of the people in many states to raise stock.

He took notice of some observations which had fallen from a gentleman from Connecticut respecting incidental powers, and denied that congress possessed those powers. The general government, he said, was not a consolidated government, but a federal government, possessed of such powers as the states or the people had expressly delegated: but to support these incidental powers ceded to congress, was to make it not a federal, not even a republican consolidated government, but a despotic one. If this idea was contemplated, the people would be alarmed, they would be justly alarmed, and he hoped they would be alarmed.

Mr. VINING observed that he had endeavored to give the subject a full and dispassionate consideration, and so far from thinking the plan contrary to the constitution, he considered it perfectly consonant to it.

He adverted to the principles, design and operations of the bank systems. Their usefulness he deduced from the experience of those countries which had been the longest in the use of those institutions. The constitutionality of the measure he urged from a

fair construction of those powers, expressly delegated, and from a necessary implication, for he insisted, that the constitution was a dead letter if implied powers were not to be exercised.

Mr. MADISON did not oppose all the banking systems, but did not approve of the plan now under consideration.

Upon the general view of banks he recapitulated the several advantages which may be derived from them. The public credit, he granted, might be raised for a time, but only partially. Banks, he conceived tended to diminish the quantity of precious metals in a country; and the articles received in lieu of a portion of them which was banished, conferred no substantial benefit on the country. He dwelt on the casualties that banks are subject to.

To be essentially useful in so extensive a country, banks, he said, should be fixed in different parts of the United States, and in this view the local banks of the several states, he said, could be employed with more advantage than if any other banking system was substituted. Circumstances, in Great Britain, he observed, required that there should be one bank, as the object there is to concentrate the wealth of the country to a point, as the interest of their peblic debt is all paid in one place. Here a difference in circumstances called for another kind of policy; the public debt is paid in all the different states.

He then expressly denied the power of congress to establish banks. And this, he said, was not a novel opinion; he had long entertained it. All power, he said, had its limits; those of the general government were ceded from the mass of general power inherent in the people, and were consequently confined within the bounds fixed by their act of cession. The constitution was this act; and to warrant congress in exercising the power, the grant of it should be pointed out in that instrument; this, he said, had not been done; he presumed it could not be done. If we ventured to construe the constitution, such construction only was admissible as it carefully preserved entire the idea on which that constitution is founded.

He adverted to the clauses in the constitution which had been adduced as conveying this power of incorporation. He said he could not find it in that of laying taxes. He presumed it was impossible to deduce it from the power given to congress to provide for the general welfare. If it is admitted that the right exists there, every guard set to the powers of the constitution is broken down, and the limitations become nugatory.

The present congress, it was said, had all the powers of the old confederation, and more; under the old government a bank had been established; and thence it was deduced that the present legislature had indubitably that power. The exigencies of government were such, he answered, under the old confederation as to justify almost any infraction of parchment rights; but the old congress were conscious they had not every power necessary for the

complete establishment of a bank, and recommended to the individual states to make sundry regulations for the complete establishment of the institution.

To exercise the power included in the bill was an infringement on the rights of the several states ; for they could establish banks within their respective jurisdictions, and prohibit the establishment of any others. A law existed in one of the states prohibiting of cash notes of hand payable on demand. The power of making such a law could not, he presumed be denied to the states ; and if this was granted, and such laws were in force, it certainly would effectually exclude the establishment of a bank.

This power of establishing a bank, had been, he said, deduced from the right granted in the constitution of borrowing money ; but this, he conceived, was not a bill to borrow money. It was said that congress had not only this power to borrow money, but to enable people to lend. In answer to this, he observed, that if congress had a right to enable those people to lend who are willing but not abie, it might be said that they have a right to compel those to lend who were able and not willing.

He adverted to that clause in the constitution which empowers congress to pass all the laws necessary to carry its powers into execution, and observing on the diffusive and ductile interpretation of these words and the boundless latitude of construction given them, by the friends of the bank, said that by their construction. every possible power might be exercised.

The government would then be paramount in all public cases, charters, incorporations, and monopolies might be given and every limitation effectually swept away, and could supercede the establishment of every bank in the several states. The doctrine of implication, he warned the friends to this system, was a dangerous one which multiplied and combined, in the manner some gentlemen appeared to contemplate, would form a chain reaching every object of legislation of the United States. This power to incorporate, he contended was of primary importance, and could by no means be viewed, as a subaltern, and therefore ought to be laid down in the constitution, to warrant congress in the exercise of it; and ought not to be considered as resulting from any other power.

Incorporation he said, is important as the power of naturalization, and congress he presumed would not exercise the power of naturalizing a foreigner, unless expressly authorised by the constitution. He read a sentence in the bill respecting the power of making such regulations as were not contrary to law. What law—was it the law of the United States, there were so few, that this was allowed a very considerable latitude to the power of making regulations, and more than any member he conceived would wish to grant, were the laws of the individual states, contemplated by this provision? Then it would be in the power of the separate states to defeat an institution of the union. He asked by what

authority congress empowered a corporation, to possess real estate, he reprobated this idea. To establish this bank was he said establishing a monopoly guaranteed in such a manner, that no similar privilege, could be granted to any other number of persons whatever. He denied the necessity of instituting a bank at the present time, the constitution ought not to be violated, without urgent necessity indeed. There were banks in several of the states from which some advantages could be derived, which could not be gained from an institution on the plan proposed.

In confirmation of his sentiments, he adduced certain passages from *speeches* made in several of the *state conventions* by those in favor of adopting the constitution. These passages were fully in favor of this idea, that the general government could *not* exceed the *expressly* delegated powers. In confirmation also of this sentiment he adduced the amendments proposed by congress to the constitution.

He urged from a variety of considerations, the postponement of the business to the next session of congress.

Mr. AMES. For his own part, he never doubted the constitutionality of the plan; and if the public sense was to be regarded on the occasion, their approbation of the measures taken by the old confederation, respecting the bank of North America, and their total silence on the constitutionality of the plan before congress at this day, were to him sufficient proofs of their opinion on the subject.

The first question that occurred on this subject was, whether the powers of the house were confined to those expressly granted by the letter of the constitution. or whether the doctrine of implication was safe ground to procced upon. If the letter of the constitution was to be adhered to, the question, he deemed, determined; but if a more rational plan was adopted, and the sense of the constitution upon strict examination, appeared even doubtful, every member must then appeal to his conscience and understanding. If the powers of the house where circumscribed by the letter of the constitution, much expense might have been saved to the public, as their hands would have been completely tied. But by the very nature of government the legislature had an implied power of using every means not positively prohibited by the constitutien, to execute the ends for which that government was instituted. Every constitutional right should be so liberally construed as to effect the public good. This it has been said, was taking too great a latitude; but certainly to promote the ends of government, was the end of its existence; and by the ties of conscience each member was bound to exercise every lawful power which would have a tendency to promote the general welfare; It had been said that the doctrine of implication was dangerous, and would alarm the people, he thought it would not unless the alarm was founded.

Suppose, he said, the power of raising armies was not expressly

granted to the general government, would it be inferred from hence, that the power of declaring war, without the means of carrying it on had been ceded to them; would it be said that the blood of fellow-citizens was crying for vengeance, though their lives and property called for protection from the hand of government, would it be said, that they had not a constitutional right to be protected, would it be urged that the constitution by not expressly granting to the general government the power of levying armies, had put it out of their power to protect its citizens. This he conceived would be a very dangerous doctrine.

Suppose the power of borrowing money had not been expressly given to the federal government would it not in emergencies be inferred from the nature of the general powers granted to it. Suppose the power to lend had not been mentioned, and a surplus of revenue in the public coffers, should it not be distributed among the people, or locked up and suffered to remain unproductive in the treasury; he imagined not. Suppose the question of redeeming the prisoners in captivity at Algiers was before the house, would it be urged that nothing could be done in their favor by the general government. because no power was specially granted—no—every person, he conceived, that felt as a man, would not think his hands tied when they were to be extended to the relief of suffering fellow citizens. The power of buying certificates was particularly mentioned in the constitution, yet it had been exercised by the general government, and was inferred from that of paying the public debt, and from the reason of the case. The power of establishing banks, he conceived, could be deduced from the same source: From their utility in the ordinary operations of government, and their indispensible necessity in cases of sudden emergencies. It was said that the state banks would serve all these purposes; but why deprive the general government, he asked, of the power of self defence?

Mr. AMES proceeded to prove that the power of incorporating the subscribers to the bank could be deduced from that clause in the constitution which had been termed the sweeping clause. Unless a reasonable latitude of construction of this part of the constitution was allowed, he did not see upon what authority several acts of congress would rest. Whence did the general government draw the authority they had exercised over the western territory? That authority, he answered, must of necessity belong to congress; it could not rest with the individual states.

The power here was derived by implication, and was deduced from the reason and necessity of the case: and the power contended for in the present case might, for the same reasons, be exercised, and was drawn from the same source. The government of the western territory was a species of corporation,—a corporation in its nature the most important: and would it be said that congress had acted unconstitutionally when they established it; and would

the territory be left under the control of the individual states? He presumed not.

By the constitution a power of regulating trade was specially given to congress, and under this clause they had established regulations affecting ships, seamen, light-houses, &c. By parity of reasoning he conceived, that as the power of collecting taxes was specified among the rights granted by the constitution to congress, they undoubtedly were entitled to make regulations affecting the instruments by means of which those taxes were to be collected.

Some opposition to the system arose from the idea that it was an infringement on the rights of the individual states. This objection he answered. It could not be denied, he said, that congress had the right to exercise complete and exclusive jurisdiction over the district of ten miles square, ceded for the seat of permanent residence, and over such spots as were ceded for the establishment of light-houses, &c. In these places, then, it must be granted that congress had authority to establish a bank. If this was allowed, (and he could not see how it could be denied,) then the question became a question of place, and not of principle. He adverted to the preamble of the constitution, which declares that it is established for the general welfare of the union. This vested congress with the authority over all objects of national concern, or of a general nature. A national bank undoubtedly came under this idea, and though not specially mentioned, yet the general design and tendency of the constitution proved more evidently the constitutionality of the system, than its silence in this particular could be construed to express the contrary. He deduced the power also from those clauses in the constitution which authorise congress to lay and collect taxes. This, he said, could not be done from every corner of so extended an empire without the assistance of paper. In the power of borrowing money, he saw that of providing the means, by the establishment of a bank. But it has been said, that if congress could exercise the power of making those who were willing, able to lend, they might carry their authority to creating the will in those who were able. This would be, he said an abuse of power, and reasonings drawn from it could not be just.

Gentlemen had noticed the amendment proposed by congress to the constitution, as conveying the sense of the legislature on the nature of the powers vested by that instrument. The amendment stated, that it should be declared, that the powers not expressly delegated to the general government, and such as could be exercised by the states, should be considered as belonging to the states. But the power of establishing a national bank, he said, could not be exercised by the states, and therefore rested no where but in the federal legislature.

The doctrine of implication, it had been said, would excite alarms. It had been resorted to, and alarms had not been excited. He conceived it a necessary doctrine in many cases.

He had no desire to extend the powers granted by the constitution beyond the limits prescribed them. But in cases where there was doubt as to its meaning and intention, he thought it his duty to consult his conscience and judgment to solve them; and, even if doubts did still remain on two different interpretations of it, he would constantly embrace that the least involved in doubt.

Mr. SEDGWICK expressed his surprise at the objections made to the constitutionality of the bill.

A gentleman from Virginia (Mr. Madison,) had taken some pains to convince the house that he had uniformly been opposed to seeing the general government exercise the power of establishing banks. He did not wish to dispute with the honorable member the merit of consistency, but only begged leave to remark, that the same gentleman had not always been averse to the exercise of power by implication. Witness the proceedings on the propriety of vesting the president of the United States with the authority of removing officers. But in this case he was willing to take up the question solely on its own merits, without reference to former opinions.

In the present case, he conceived the determination of the question rested in a great measure on the meaning of the words *necessary* and *proper*.

Mr. MADISON.—Those two words had been by some, taken in a very limited sense, and were thought only to extend to the passing of such laws as were indispensably necessary to the very existence of the government. He was disposed to think that a more liberal construction should be put on them, indeed the conduct of the legislature had allowed them a fuller meaning, for very few acts of the legislature could be proved essentially necessary to the absolute existence of government. He wished the words understood so as to permit the adoption of measures the best calculated to attain the ends of government, and produce the greatest *quantum* of public utility.

In the constitution the great ends of government were particularly enumerated, but all the means were not, nor could they all be pointed out, without making the constitution a complete code of laws: some discretionary power, and reasonable latitude, must be left to the judgment of the legislature. The constitution he said, had given power to congress to lay and collect taxes, but the quantum, nature, means, of collecting, &c. were of necessity left to the honest and sober discretion of the legislature.

It authorized congress to borrow money, but of who, on what terms, and in what manner it had not ventured to determine, these points of secondary importance were also left to the wisdom of the legislature. The more important powers are specially granted, but the choice from the known and useful means of carrying the power into effect is left to decision of the legislature. He enumerates from other powers which are specified in the constitution as

belonging to congress, and of which the means of execution are not mentioned: and concluded this part of his argument by observing, that if the bank which it was proposed to establish by the bill before the house could be proven necessary and proper to carry into execution any one of the powers given to congress by the constitution, this would at once determine the constitutionality of the measure.

He would not, he said, dwell any longer on the constitutionality of the plan under consideration, but would only observe that no power could be exercised by congress, if the letter of the constitution was strictly adhered to, and no latitude of construction allowed, and all the good that might be reasonably expected from an efficient government entirely frustrated.

Mr. LAWRENCE.—The principles of the government, and ends of the constitution, he remarked, were expressed in its preamble; it is established for the common defence and general welfare; the body of that instrument contained provisions the best adapted to the intention of these principles and attainment of those ends. To these ends, principles and provisions, congress was to have, he conceived, a constant eye, and then by the sweeping clause, they were vested with the powers to carry the ends into execution.

Mr. JACKSON. From the power given the general government of making all necessary laws concerning the property of the United States, a right to establish a national bank had been deduced, and it was asked if bank notes were not property. He said they were a property of a peculiar nature. They were not property as well as an ox or an ass, so they could not be taxed.

It had been asked whether congress could not establish a bank within the ten miles square granted to the general government for the permanent residence of the federal legislature. Congress could not, because they had no authority to force the circulation of this paper beyond the limits of the ten miles. The fiscal administration of the union was said to be vested in Congress. But this did not authorize their adoption of any measures they should not think fit for the regulation of the finances. The very constitution which granted these fiscal powers, restricted them by particular clauses, for example, congress could not without control lay a poll tax, and could not in any shape, impose duties on exports, yet they were undoubtedly fiscal operations.

Gentlemen, he said, had deduced this power from various parts of the constitution; the preamble and context had been mentioned; the clause that provides for laying taxes had been particularly dwelt upon; but surely the bill before the house did neither lay an excise, direct tax, or any other, and could therefore not come within the meaning of the clause.

February 5, 1791.

Mr. BOUDINOT. But gentlemen say that the constitution does not expressly warrant the establishment of such a corporation. If by expressly, express words are meant, it is agreed that there are no express words, and this is the case with most of the powers exercised by congress, for if the doctrine of necessary implication is rejected, he did not see what the supreme legislature of the union could do in that character, if this power is not clearly given in the constitution by necessary implication; then it is a necessary end proposed and directed, while the common and useful necessary means to attain that end are refused, or at least not granted. Mr. Boudinot was firmly of opinion that the national bank was the necessary means, without which the end could not be obtained.

Mr. STONE thought that the friends of the bill were not willing to confine themselves to such means as were *necessary* and *proper*; but had extended their views to those *convenient* and *agreeable.* If in the plan before the house, he said, a provision had been made to secure a certainty that money could be procured by the government on loan from this bank, there would be more plausibility, he thought, in urging its establishment by a construction of the power of borrowing money. But the bank could, and whenever it was their interest, certainly would refuse lending to government. If the power in this case was deduced by implication, and was exercised because it was thought *necessary* and *proper*, it might be the opinion of a future congress that monopolies in certain cases might be useful, and a door would then be open for their establishment.

February 7, 1791.

Mr. GERRY. The gentlemen on different sides of the question do not disagree with respect to the meaning of the terms, *taxes, duties, imposts, excises, &c.* or of *borrowing money,* but of the word *necessary*: and the question is, what is the general and popular meaning of the term? Perhaps the answer to the question will be truly this; that in a general and popular one, the word does not admit of a definite meaning, but that this varies according to the *subject* and *circumstances.* With respect to the subject for instance, if the people speaking of a garrison besieged by a superior force, and without provisions or a prospect of relief, should say it was under the *necessity* of surrendering, they would mean a physical necessity; for troops cannot subsist long without provisions. But if speaking to a debtor, the people should say he was frightened by his creditor, and then reduced to the necessity of paying his debts, they would mean a *legal*, which is very different from a physical necessity; for although the debtor, by refusing payment, might be confined, he would be allowed sustenance, and the

necessity he was under to pay his debts would not extend beyond his confinement. Again, if it should be said that a *client* is under the necessity of giving to his lawyer more than legal fees, the general and popular meaning of *necessity* would in this case be very different from that in the other cases. The necessity would neither be physical nor legal, but *artificial*, or if I may be allowed the expression, a long-robed necessity. The meaning of the word "*necessary*" varies also according to circumstances, for although congress have power to levy and collect taxes, duties, &c. to borrow money, and to determine the time, quantum, mode, and every regulation *necessary* and proper for supplying the treasury; yet the people would apply a different meaning to the word *necessary*, under different circumstances: For instance,, without a sufficiency of precious metals for a medium, laws creating an artificial medium would be generally thought necessary for carrying into effect the power to levy and collect taxes; but if there was a sufficiency of such metals, those laws would not generally be thought necessary. Again, if specie was scarce, and the credit of the government low, collateral measures would be by the people thought necessary for obtaining public loans: but not so if the case was reversed. Or if parts of the states should be invaded and overrun by an enemy, it would be thought necessary to levy on the rest heavy taxes, and collect them in a short period, and to take stock, grain, and other articles from the citizens without their consent, for common defence: but in a time of peace and safety such measures would be generally supposed unnecessary. Instances may be multiplied in other respects, but it is conceived that these are sufficient to shew that the popular and general meaning of the word "necessary," varies according to the subject and circumstances.

The constitution in the present case is the great law of the people, who are themselves the sovereign legislature: and the preamble is in these words—"We the people of the United States, in "order to form a more perfect union, establish justice, insure do-"mestic tranquility, provide for the common defence, promote the "general welfare, and secure the blessing of liberty to ourselves "and our posterity, *do* ordain and establish this *constitution* for "the United States of America."

These are the great objects for which the constitution was established, and in administering it, we should always keep them in view. And here it is remarkable, that although common defence and general welfare are held up in the preamble amongst the primary objects of attention, they are again mentioned in the 8th section of the first article, whereby we are enjoined, in laying taxes, duties, &c. particularly to regard the common defence and general welfare. Indeed, common sense dictates the measure, for the security of our property, families and liberties, of every thing dear to us, depends on our ability to defend them. The means, there-

fore, for attaining this object we ought not to omit a year, a month, or even a day, if we could avoid it, and we are never provided for defence unless prepared for sudden emergencies.

In the present case the gentlemen in the opposition generally, as well as the gentleman first up, from Virginia, gives the whole clause by which congress are authorised "to make all laws necessary and proper, &c.," no meaning whatever, for they say the former congress had the same power under the confederation, without this clause, as the present congress have with it. The Federalist is qoted on this occasion, but although the author of it discovered great ingenuity, this part of his performance I consider as a political heresy. His doctrine, indeed, was calculated to lull the consciences of those who differed in opinion with him at that time, and having accomplished his object he is probably desirous that it may die with the opposition itself. The rule in this case says, that where the words bear no signification, we must deviate a little, and as this deviation cannot be made by giving the words less than no meaning, it must be made by a more liberal construction than is given by gentlemen in the opposition. Thus their artillery is turned against themselves, for their own interpretation is an argument against itself.

The last rule mentioned relates to the spirit and reason of the law, and the judge is of opinion, "that the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it—of the cause which moved the legislature to enact it." The causes which produced the constitution were an imperfect union, want of public and private confidence, internal commotions, a defenceless community, neglect of the public welfare, and danger to our liberties. These are known to be the causes, not only by the preamble of the constitution, but also from our own knowledge of the history of the times which preceded the establishment of it. If these weighty causes produced the constitution, and it not only gives power for removing them, but also authorises congress to make all laws necessary and proper for carrying these powers into effect, shall we listen to assertions, that these words have no meaning, and that the new constitution has not more energy than the old? Shall we thus unnerve the government, leave the union as it was, under the confederation, defenceless against a banditti of Creek Indians, and thus relinquish the protection of its citizens? Or shall we, by a candid and liberal construction of the powers expressed in the constitution, promote the great and important objects thereof? Each member must determine for himself. I shall, without hesitation, choose the latter, and leave the people and states to determine whether or not, I am pursuing their true interest. If it is enquired where we are to draw the line of a liberal construction, I would also enquire, where is the line of restriction to be drawn?

The interpretation of the constitution, like the prerogative of a sovereign, may be abused; but from hence the disabuse of either cannot be inferred. In the exercise of prerogative, the minister is responsible for his advice to his sovereign, and the members of either house are responsible to their constituents for their conduct in construing the constitution. We act at our peril: if our conduct is directed to the attainment of the great objects of government, it will be approved, and not otherwise. But this cannot operate as a reason to prevent our discharging the trusts reposed in us.

Let us now compare the different modes of reasoning on this subject, and determine which is right, for both cannot be.

The gentleman from Virginia (Mr. Madison,) has urged the dangerous tendency of a liberal construction; but which is most dangerous, a *liberal* or a *destructive* interpretation? The liberty we have taken in interpreting the constitution, we conceive to be *necessary*, and it cannot be denied to be *useful* in attaining the objects of it; but whilst he denies us this liberty he grants to himself a right to annul part, and a very important part, of the constitution. The same principle that will authorise a destruction of part, will authorise the destruction of the whole of the constitution; and if gentlemen have a right to make such rules, they have an equal right to make others for enlarging the powers of the constitution, and indeed, of forming a despotism. Thus, if we take the gentleman for our pilot, we shall be wrecked on the reef which he cautions us to avoid.

The gentleman has referred us to the last article of the amendment proposed to the constitution by congress, which provides, that the powers not delegated to congress, or prohibited to the states, shall rest in them or the people: and the question is, what powers are *delegated?* Does the gentleman conceive that such only are delegated as are *expressed?* If so, he must admit that our whole code of laws are unconstitutional. This he disavows, and yields to the necessity of interpretation, which, by a fair and candid application of established rules of construction to the constitution, authorised, as has been shown, the measure under consideration.

The *usage* of congress, has also been referred to; and if we look at their acts under the existing constitution, we shall find they are generally the result of a liberal construction. I will mention but two. The first relates to the establishment of the executive departments, and gives to the president the power of removing officers. As the construction is silent on this subject, the power mentioned, by the gentleman's own reasoning, is vested in the states or the people; he, however, contended for an *assumption* of the power, and when assumed urged that it should be vested in the president, although, like the power of appointment, it was by a respectable minority in both houses, conceived that it should have been vested in the president and senate. His rule of interpreta-

tion *then*, was therefore more liberal than it is *now*. In the other case congress determined by law, with the sanction of the president, when and where they should hold their next session, although the constitution provides that this power shall rest solely in the two houses. The gentleman also advocated this measure, and yet appears to be apprehensive of the consequences that *may* result from a construction of the constitution which admits of a national bank. But from which of these measures is danger to be apprehended? The *only* danger from our interpretation would be the exercise by congress of a general power to form corporations; but the dangers resulting from the gentleman's interpretation are very different; for what *may* we not apprehend from the precedent of having *assumed* a power on which the constitution was silent, and from having annexed it to the supreme executive? If we have this right in one instance, we may extend it to others, and make him a despot.

MILITIA BILL. *Dec.* 22, 1790.

Mr. BLOODWORTH moved to strike out the words in the first section, "except as herein after exempted," and to insert in lieu thereof, except such as shall be exempted by *the legislatures* of the particular states.

Mr. SHERMAN wished the gentleman would consent to alter his motion, and let it be all between certain ages and who are not exempted from militia duty by the respective states.

Mr. MADISON said, the motion ought to go still further and exempt the judges of the federal courts; because some states having no militia laws, could not have exempted them, and the propriety of exonerating them from militia duty was too apparent to need any arguments to prove it.

Mr. SHERMAN thought the motion was simple as it stood, and would decide a question upon which the house seemed to be divided: it would afterwards be open for amendment, so far as to add the exemptions.

Mr. MADISON said, if the gentleman would vary his motion, so as to embrace his idea, he would have no objection to the adoption of that part which was first moved.

Mr. LIVERMORE declared, that he had several objections. The first was, that the expression in the motion was of a doubtful import. It could not be readily ascertained, whether it had relation to the militia laws at this time existing in the several, states or to the existing and future laws. If it opens a door to future laws it is impossible for us to foresee where it will end. It destroys that certainty which is necesary in a government of laws, and renders us incapable of judging of the propriety of our own act. Some states may exempt all persons above 30 years of age; some may exempt all mechanics; and others all husbandmen, or any general description of persons. And this uncertainty will be productive

of inconceivable inconveniencies, hence it will be improper to adopt the amendment in the present form.

Mr. SHERMAN observed, that most of the powers delegated to the government of the United States by the constitution, were altogether distinct from the local powers, restrained by the individual states. But in the case of the militia it was different. Both governments are combined in the authority necessary to regulate that body. The national government is to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States. But then it is to be observed, that the states do respectively and expressly reserve out of such power, the right of appointing officers and the authority of training the militia, so that the concurrence of both governments is evidently necessary, in order to form and train them. Now, in governing the militia, the states have at times, other than when they are in the actual service of the United States, an indisputable title to act as their discretion shall dictate. And here it was an allowable supposition, that the particular states would have the greatest advantage of judging of the disposition of their own citizens, and who are the most proper characters to be exempted from their government. He admitted, however, that the general government had (under that clause of the constitution, which gave the authority to exercise all powers necessary the particularly enumerated powers into effect) a right to make exemptions of such officers of the government, whose duties were incompatible with those of militia men. Every, thing, besides this, he believed, was vested in the particular states: and he would ask the gentleman, whether it was not a desirable thing to give satisfaction on these points? and whether they ought not to avoid stretching the general power, which he had mentioned, beyond what was absolutely necessary to answer the end designed?

An accommodation (continues Mr. Sherman) on this point took place between the gentlemen, and the two motions were blended and made into one; whereupon Mr. GILES rose and said he had now greater objections to the motion than before, and was well persuaded that if the gentleman (Mr. Sherman) attended to its consequences he would find that it was not only extremely dissimilar in its principles, but tended to overthrow the very doctrine laid down in the first proposition which was intended to decide whether under the division of the authority for forming and raising the militia, the power of making exemptions remained in the state governments or was granted by the constitution to the government of the United States. Now in the compromised proposition, there appears to be a mixture of power; the first part seems to declare that the states ought to make the exemptions; yet the subsequent absolutely exercises it on the part of the United States. If then the power of exemption be either ceded to the general government, or reserved to the state governments, the amendment must fall to the ground.

But this was not his only objection. He conceived that whether the power of exemption was in the state or federal government, there was one description of men mentioned in the proposition which could not be exempted or further privileged by the house. He alluded to the members of the legislature of the United States: the privilege of these persons was taken up and duly considered by the convention, who then decided what privileges they were entitled to. It is under this, clause said he, that every thing, necessary or proper to be doue for the menbers of congress, was done. "The senators and representatives shall receive a commpensation for their services, to be ascertained by law and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place." Now, if the convention took up this subject (as it is plain from the foregoing clause that they did) it is reasonable to presume, that they made a full declaration of all our privileges; and it is improper to suppose, that we are possessed of similar powers with the convention, and able to extend our own privileges. I conceive, that every inconvenience, which would attend the want of an exemption in the bill, is completely remedied by the constitution; and therefore it is impolitic to make a useless regulation.

Mr. WILLIAMSON. When we departed from the straight line of duty, marked out for us by the first principles of the social compact, we found ourselves involved in difficulty. The burthen of militia duty lies equally upon all persons; and when we contemplate a departure from this principle, by making exemptions, it involved us in our present embarrassment. I wish therefore, that, before we proceed any further in considering the propriety of the amendment, we should consider the intention of the constitution. When it speaks of regulating the militia, was it for organizing, arming and disciplining the militia of the several states, that congress ought to provide? I think it was not the militia of the nation, but that, which existed in the several states. It is impossible the convention could have had any thing else in contemplation; because the constitution says, that congress shall have the power of such parts of them, as may be employed in the service of the United States. If we are then to govern the militia, it must be such men, as the particular states have declared to be militia.

Mr. BOUDINOT. With respect to the power of exempting from militia duty, I believe little doubt will remain on the mind of any gentleman after a candid examination of the constitution, but that it is vested in congress—This then reduces the question to the doctrine of expediency. It is more expedient that, the general government should make the exemptions, or leave it to the state legislatures; for my part I think we ought to exercise the power

ourselves; because I can see neither necessity, propriety nor expediency, in leaving that to be done by others which we ourselves can do without inconvenience.

Mr. JACKSON, a gentleman of superior talents who had been an active member of the federal convention in framing the general constitution, and who is one of the judges of of the Supreme Court of the U. States: was likewise a member of the late convention of Pennsylvania; and it is in evidence that he gave his assent to the present constitution of this state, one article of which declares, that persons conscientiously scrupulous of bearing arms shall be exempted from performing militia duty, upon the condition of their paying an equivalent. Is not this a declaration of the sense of the people of Pennsylvania, that they, and they only, had the right to determine exemptions so far as relates to their own citizens? And it is observable, that this constitution has been framed whilst the federal government was in full operation. If this privilege belongs to the state, as they have declared it does, why shall congress attempt to wrest it from them, first by undertaking exemptions for them, and then depriving them of a tax, which they contemplate to receive into the state treasury, as an equivalent for such exemption? Certainly such conduct must excite, alarm and occasion no inconsiderable degree of jealousy. These circumstances and considerations are forcible arguments with me to desist.

December 24, 1790.

Mr. LIVERMORE. He saw no reason, why congress should grant an exemption to those who are conscientiously scrupulous of of bearing arms, more than to any other description of men. They ought, in his opinion, to be exempted by the state legislatures: As to the money accruing from such exemptions, he could not conceive that congress was authorised to raise a revenue for the United States by the militia bill: Nor was any such thing ever intended by the constitution.

Bill to determine the time when the Electors of President and Vice President shall be chosen. H. R. Jan. 14, 1791.

Mr. SHERMAN showed from the constitution that congress possess the power of appointing the time of choosing the electors, and the time when they should meet to give in their votes. He was in favour of congress exercising this power in order to guard against all intrigue, and this he conceived was agreeable to the people, for in none of the conventions was an amendment of this article ever moved for.

On the POST OFFICE BILL.—*On a motion to authorise the President to choose the Mail Route. H. R. Dec.* 6, 1791.

Mr. SEDGWICK.—As to the constitutionality of this delegation, (of power to establish post roads) it was admitted by the committee themselves, who brought in the bill: for if the power

was altogether indelegable, no part of it could be delegated; and if a part of it could, he saw no reason why the whole could not—the second section was as unconstitutional as the first, for it is there said, that "it shall be lawful for the post master general to establish such other roads as post roads, as to him may seem necessary."

Congress, he observed, are authorized not only to establish post-offices and post-roads, but also to borrow money; but is it understood that congress are to go in a body, to borrow every sum that may be requisite? Is it not rather their office to determine the principle on which the business it to be conducted, and then delegate the power of carrying their resolves into execution?

Mr. GERRY observed, that since the words of the constitution expressly vested in congress the power of establishing post-offiees and post-roads, and since the establishing of post roads cannot possibly mean any thing else, but to point out what roads the post shall follow, the proposed amendment cannot take effect without altering the constitution: the house could not transfer the power which the constitution had vested in them; supposing even they could, still it must be allowed that they assembled from every quarter of the union, must collectively possess more of that kind of information which the present subject required, than could be obtained by any executive officer. If it was thought necessary in the present instance, to transfer the power from their own to other hands, with what degree of propriety could they be said to have undertaken to determine the ports of entry throughout the United States, since the constitution mentions nothing farther on that subject, than the power of laying *duties*, *imposts* and *excises?* According to the arguments now advanced, the legislature might have contented themselves with simply determining the amount of the duties and excises, and left the rest to the executive; but if such conduct would have been improper in that instance, much more so would it appear in the present case; since on the one hand there is no provision in congress that should establish ports of entry, whereas there is no other for the establishment of post roads.

Mr. B. BOURNE was in favor of the amendment, which he thought both expedient and constitutional. In speaking of *post offices and post roads*, the constitution, he observed, speaks in general terms, as it does of *a mint*, *excises*, &c. &c. In passing the excise law, the house, not thinking themselves possessed of sufficient information, empowered the president to mark out the districts and surveys; and if they had a right to delegate such power to the executive, the further delegation of the power of marking out the roads for the conveyance of the mail, could hardly be thought dangerous; the constitution meant no more than that congress should possess the exclusive right of doing that by themselves, or by any other person, which amounts to the same thing: the business he thought much more likely to be well executed by the president or the postmaster general, than by congress.

POST OFFICES AND POST ROADS.—*H. R. Jan.* 3, 1792.

On a motion of Mr. FITZIMONS, to allow stage proprietors who transport the mail to carry passengers also, it was argued—

That clause of the constitution, which empowers the federal government to establish post offices and post roads, cannot (it was said) be understood to extend farther than the conveyance of intelligence, which is the proper subject of the post-office establishment; it gives no power to send men and baggage by post. The state governments have always possessed the power of stopping or taxing passengers; that power they have never given up, and the proposition now made to wrest it from them, might be viewed as an attempt to lay the state legislatures prostrate at the feet of the general government, and will give a shock to every state in the union.

If by the construction of that clause of the constitution, which authorises congress to make all laws necessary for carrying into execution the several powers vested in them, they should establish the proposed regulations for the conveyance of the mail; they may proceed farther, and so regulate the post roads, as to prevent passengers from travelling on them; they may say what weights shall be carried on those roads and at what seasons of the year; they may remove every thing that stands in the way; they may level buildings to the ground, under pretence of making more convenient roads: they may abolish tolls and turnpikes; they may, where an established ferry has been kept for an hundred years past in the most convenient place for crossing a river, give the post rider authority to set up a new one beside it, and ruin the old establishment; they may say, that the person, who carries the mail, shall participate in every privilege that is now exclusively enjoyed by any man or body of men, and allege, as a reason for these encroachments, that they are only necessary encouragements to carry the mail of the United States; in short, the ingenuity of man cannot devise any new proposition so strange and inconsistent, as not to be reducible within the pale of the constitution, by such a mode of construction. If this were once admitted, the constitution would be an useless and dead letter; and it would be to no purpose, that the states, in convention assembled, had framed that instrument, to guide the steps of congress: as well might they at once have said, "there shall be a congress, who shall have full power and authority to make all laws, which to their wisdom shall seem meet and proper."

On the COD FISHERY BILL, *granting bounties. H. R. February* 3, 1792.

Mr. GILES. The present section of the bill (he continued) appears to contain a direct bounty on occupations; and if that be its object, it is the *first* attempt as yet made by this government to exercise such authority;—and its constitutionality struck him in a

doubtful point of view; for in no part of the constitution could he, in express terms, find a power given to congress to grant bounties on occupations;—the power is neither directly granted, nor (by any reasonable construction that he could give) annexed to any other power specified in the constitution.

February 7, 1792.

Mr. WILLIAMSON. In the constitution of this government, there are two or three remarkable provisions which seem to be in point. It is provided that direct taxes shall be apportioned among the several states according to their respective numbers. It is also provided that "all duties, imposts, and excises shall be uniform throughout the United States:" and it is provided that no preference shall be given by any regulation of commercial revenue to the ports of one state over those of another. The clear and obvious intention of the articles mentioned was, that congress might not have the power of imposing unequal burdens—that it might not be in their power to gratify one port of the union by oppressing another. It appeared possible and not very improbable, that the time might come, when by greater cohesion, by more unanimity, by more address, the representatives of one port of the union might attempt to impose unequal taxes, or to relieve their constituents at the expense of the people. To prevent the possibility of such a combination, the articles that I have mentioned were inferred in the constitution.

I do not hazard much in saying that the present constitution had never been adopted, without those preliminary guards on the constitution. Establish the general doctrine of bounties, and all the provisions I have mentioned become useless. They vanish into air, and like the baseless fabric of a vision, leave not a trace behind. The common defence and general welfare, in the hands of a good politician, may supersede every part of our constitution, and leave us in the hands of time and chance. Manufactures in general are useful to the nation, they prescribe the public good and general welfare; how many of them are springing up in the northern states? Let them be properly supported by bounties, and you will find no occasion for unequal taxes. The tax may be equal in the beginning, it will be sufficiently unequal in the end.

The object of the bounty, and the amount of it, are equally to be disregarded in the present case; we are simply to consider whether bounties may safely be given under the present constitution; for myself, I would rather begin with a bounty of one million per annum, than one thousand; I wish that my constituents may know, whether they are to put any confidence in that paper, called the constitution.

Unless the southern states are protected by the constitution, their valuable staple, and their visionary wealth, must occasion their destruction. Three short years has this government existed; it is not three years, but we have already given serious alarms to

many of our fellow citizens; establish the doctrine of bounties; set aside that part of the constitution, which requires equal taxes, and demand similar distributions; destroy this barrier, and it is not a few fishermen that will enter, claiming ten or twelve thousand dollars, but all manner of persons—people of every trade and occupation may enter at the breach until they have eaten up the bread of our children.

Mr. MADISON. It is supposed by some gentlemen, that congress have authority not only to grant bounties in the sense here used; merely as a commutation for drawback, but even to grant them under a power by virtue of which they may do any thing which they may think conclusive to the general welfare! This, sir, in my mind, raises the important and fundamental question, whether the general terms which have been cited, are to be considered as a sort of caption or general description of the specified powers, and as having no further meaning, and giving no further powers than what is found in that specification, or as an abstract and indefinite delegation of power extending to all cases whatever; to all such at least as will admit the application of money, which is giving as much latitude as any government could well desire.

I, sir, have always conceived—I believe those who proposed the constitution conceived—it is still more fully known, and more material to observe, that those who ratified the constitution conceived, that this is not an indefinite government, deriving its powers from the general terms prefixed to the specified powers—but, a limited government tied down to the specified powers, which explain and define the general terms.

It is to be recollected, that the terms "common defence and general welfare," as here used, are not novel terms first introduced into this constitution. They are terms familiar in their construction, and well known to the people of America. They are repeatedly found in the old articles of confederation, where, although they are susceptible of as great a latitude as can be given them by the context here, it was never supposed or pretended that they conveyed any such powers as is now assigned to them. On the contrary, it was always considered clear and certain, that the old congress was limited to the enumerated powers; and that the enumeration limited and explained the general terms. I ask the gentlemen themselves, whether it ever was supposed or suspected, that the old congress could give away the money of the states in bounties to encourage agriculture or for any other purpose they pleased. If such a power had been possessed by any body, it would have been much less impotent, or have borne a very different character from that universally ascribed to it.

The novel idea now annexed to those terms, and never before entertained by the friends or enemies of the government, will have a further consequence which cannot have been taken into the view of the gentleman. Their construction would not only give congress

the complete legislative power I have stated; it would do more; it would supersede all the restrictions understood at present to lie on their power with respect to a judiciary. It would put it in the power of congress to establish courts throughout the United States with cognizance of suits between citizen and citizen, and in all cases whatsoever. This, sir, seems to be demonstrable; for if the clause in question really authorizes congress to do whatever they think fit, provided it be for the general welfare, of which they are to judge, and money can be applied to it, congress must have power to create and support a judiciary establishment, with a jurisdiction extending to all cases, favorable, in their opinion, to the general welfare, in the same manner as they have power to pass laws; and apply money providing in any other way for the general welfare. I shall be reminded, perhaps, that, according to the terms of the constitution, the judicial power is to extend to certain cases only, not to all cases. But this circumstance can have no effect in the argument, it being presupposed by the gentlemen, that the specification of certain objects does not limit the import of the general terms. Taking these terms as an abstract and indefinite grant of power, they comprise all the objects of legislative regulations, as well as such as fall under the judiciary article in the constitution, as those falling immediately under the legislative article; and if the partial enumeration of objects in the legislative article does not, as these gentlemen contend, limit the general power, neither will it be limited by the partial enumeration of objects in the judiciary article.

There are consequences, sir, still more extensive which, as they follow clearly from the doctrine combatted, must either be admitted, or the doctrine must be given up. If congress can employ money indefinitely to the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may appoint teachers in every state, county and parish, and pay them out of their public treasury: they may take into their own hands the education of children, establishing in like manner schools throughout the union; they may assume the provision for the poor; they may undertake the regulation of all roads other than post roads; in short, every thing from the highest object of state legislation, down to the most minute object of police, would be thrown under the power of congress; for every object I have mentioned would admit of the application of money, and might be called, if congress pleased, provisions for the general welfare.

The language held in various discussions of this house is a proof that the doctrine in question was never entertained by this body. Arguments, wherever the subject would permit, have constantly been drawn from the peculiar nature of this government as limited to certain enumerated powers, instead of extending, like other governments, to all cases not particularly excepted. In a very late

instance, I mean the debate on the representation bill, it must be remembered that an argument much used, particularly by gentlemen from Massachusetts against the ratio of 1 for 30,000, was that this government was unlike the state governments, which had an indefinite variety of objects within their power, that it had a small number of objects only attended to, and therefore that a smaller number of representatives would be sufficient to administer it.

Arguments have been advanced to shew, that because, in the regulation of trade, indirect and eventual encouragement is given to manufactures, therefore congress have power to give money in direct bounties, or to grant it in any other way that would answer the same purpose. But surely, sir, there is a great and obvious difference, which it cannot be necessary to enlarge upon ; a duty laid on imported implements of husbandry, would in its operation be an indirect tax on exported produce ; but will any one say that by virtue of a mere power to lay duties on imports, congress might go directly to the produce or implements of agriculture, or to the articles exported? It is true, duties on exports are expressly prohibited ; but if there were no article forbidding them, a power directly to tax exports could never be deduced from a power to tax imports, although such a power might indirectly and incidentally affect exports.

In short, sir, without going farther into the subject, which I should not have here touched on at all, but for the reasons already mentioned, I venture to declare it as my opinion, that were the power of congress to be established in the latitude contended for, it would subvert the very foundation, and transmute the very nature of the limited government established by the people of America : and what inferences might be drawn, or what consequences ensue from such a step, it is incumbent on us all to consider.

On the proposition introduced by Mr. Fitzsimons, that provision should be made for the reduction of the Public Debt. H. R., November 20, 1792.

Mr. MERCER. The constitution permits the head of the treasury to propose plans. It may be proper then, that the different secretaries may prepare such plans as are within their respective departments, which the chief magistrate may propose to the legislatures if he sees fit; and when so done, it is constitutional, and the legislature may or may not, at their discretion, take them up : any other exposition is unconstitutional and idle. They are also the expositions of the documents and information that arise in the administration of government, which this house may require of the executive magistrate, and which he will communicate as he sees fit. The house may go too far in asking information ; he may constitutionally deny such information of facts there deputed as are unfit to be communicated, and may assist in the legislation I always wish for ; but I want no opinions resulting from. If they are to influ-

ence us they are wrong; if not to influence, they are useless. This mode of procedure of *originating* laws with the secretary, destroys the responsibility; it throws it on a man not elected by the people, and over whom they have no control.

November 21, 1792.

Mr. AMES. What is the clause of the constitution, opposed to the receiving a plan of a sinking fund from the secretary? Bills for raising revenue shall originate in this house. I verily believe the members of this house, and the citizens at large, would be very much surprised to hear this clause of the constitution formally and gravely stated, as repugnant to the reference to the treasury department for a plan, if they and we had not been long used to hear it.

To determine the force of this amazing constitutional objection, it will be sufficient to define terms:

What is a bill? It is a term of technical import, and surely it cannot need a definition: it is an act in an inchoate state, having the form but not the authority of the law.

What is originating a bill? Our rules decide it. Every bill shall be introduced by a motion for leave, or by a committee.

It may be said, the plan of a sinking fund, reported by the secretary, is not in technical, or even in popular language, a bill—not, by the rules of the house or those of common sense, is this motion the originating a bill. By resorting to the spirit of the constitution, or by adopting any reasonable construction of the clause, is it possible to make it appear repugnant to the proposition for referring to the secretary? The opposers of this proposition surely will not adopt a construction of the constitution. They have often told us, we are to be guided by a strict adherence to the letter; that there is no end to the danger of the constructions.

The letter is not repugnant; and will it be seriously affirmed, that, according to the spirit and natural meaning of the constitution, the report of the secretary will be a revenue bill, or any other bill, and that this proposition is originating such a bill? If it be, where shall we stop? If the idea of such a measure, which first passes through the mind, be confounded with the measure subsequent to it, what confusion will ensue? The president, by suggesting the proposition, may as well be pretended to originate a revenue bill; even a newspaper plan would be a breach of the exclusive privilege of this house; and the liberty of the press, so justly dear to us, would be found unconstitutional. Yet if, without any order of the house, the draft of an act were printed, and a copy laid before every member in his seat, no person will venture to say that it is a bill; that it is originated, or can be brought under cognizance of the house, unless by a motion.

I rely upon it, that neither the letter of the constitution, nor any meaning that it can be tortured into, will support the objection

which has been so often urged with solemn emphasis and persevering zeal.

We may repeat it, what color is there for saying that the secretary *legislates?* Neither my memory nor my understanding can discern any I am well aware that no topic is better calculated to make popular impressions; but I cannot persuade myself, that they will charge us with neglect or violation of duty, for putting ourselves into a situation to discharge it in the best and most circumspect manner.

Mr. MADISON. I insisted that a reference to the secretary of the treasury on subjects of loans, taxes, and provision for loans, &c., was in fact a delegation of the authority of the legislature, although it would admit of much sophistical argument on the contrary.

On the MEMORIAL *of the Relief Committee of Baltimore, for the* RELIEF *of* St. DOMINGO REFUGEES. *H. R. January* 10, 1794.

Mr. MADISON remarked, that the government of the United States is a definite government, confined to specified objects. It is not like the state governments whose powers are more general. Charity is no part of the legislative duty of the government; it would puzzle any gentleman to lay his finger on any part of the constitution which would authorise the government to interpose in the relief of the St. Domingo sufferers; the report of the committee he observed, involved this constitutional question—whether the money of our constituents can be appropriated to any other than specific purposes, though he was of opinion that the relief contemplated could not be granted in the way proposed; yet he supposed a mode might be adopted which would answer the purpose without infringing the constitution.

Mr. NICHOLAS concurred in the sentiment with Mr. Madison. He considered the constitution as defining the duty of the legislature so expressly, as that it left them no option in the present case.

Mr. BOUDINOT supported the question on constitutional grounds; he instanced several cases which had occurred and might occur, in which relief must necessarily be granted, and that without occasioning any doubt of the constitutionality of the business; such as granting pensions, affording relief to the Indians, supporting prisoners, &c. He alluded to the circumstance of the alliance between the United States and France, the connection between the citizens of the United States and that country, &c.

Mr. DEXTER stated sundry objections from the constitution. It will not be pretended, he supposed, that the grant of monies, on this occasion, was for the general welfare; it is merely a private charity: he was in favor of going into a committee on the subject,

but wished a short delay, that he might revolve the question more fully in his own mind.

Mr. MADISON, in reply to Mr. Boudinot, who had stated several cases as in point, observed that those cases came within the law of nations, of which this government has express cognizance; the support of prisoners, in a case provided for by the law of nations, but the present question, he remarked, could not be considered in any such point of view. *(Motion lost.)*

COMMERCIAL RESTRICTIONS—*H. R. Jan.* 31, 1794.

Mr. MADISON insisted, that trade ought to be left free to find its proper channels, under the conduct of merchants; that the mercantile opinion was the best guide, in the case now depending; and that that opinion was against the resolutions.

In answer to this objection, he said it was obvious to remark, that in the very terms of the proposition, trade ought to be *free* before it could find its *proper* channel. It was not free at present, it could not, therefore, find the channels in which it would most advantageously flow. The dykes must be thrown down, before the waters could pursue their natural course. Who would pretend, that the trade with the British West Indies, or even with Great Britain herself, was carried on, under the present restrictions, as it would go on of itself, if unfettered from restrictions on her part, as it is on ours? Who would pretend, that the supplies to the West Indies, for example, would not flow thither in American bottoms, if they flowed freely? Who would pretend that our whea our flour, our fish, &c. would not find their way to the British market, if the channels to it were open for them?

It seemed to have been forgotten, that the principle of this objection struck at every regulation in favor of manufactures, as much, or even more, than at regulations on the subject of commerce. It required that every species of business ought to be left to the sagacity and interest of those carrying it on, without any interference whatever of the public authority. He was himself in general, a friend to this theory; but there were a variety of exceptions to it, arising out of particular situations, as must be admitted by all who would mingle practical with theoretric views, and as has been already decided by a number of our laws.

The interest of the mercantile class may happen to differ from that of the whole community. For example, it is, generally speaking, the interest of the merchant to import and export every thing; the interest of manufactures to lessen imports in order to raise the price of domestic fabrics, and to check exports, where they might enhance the price of raw materials. In this case it would be as improper to allow the one for the other, as to allow either to judge for the whole.

It may be the interest of the merchant, under particular circumstances, to confine the trade to its established channels, when the

national interest would require those channels to be enlarged or changed. The best writers on political economy have observed, that the regulations most unfriendly to the national wealth of Great Britain, have owed their birth to mercantile counsels. It is well known, that in France, the greatest opposition to that liberal policy which was as favorable to the true interest of that country as of this, proceeded from the interests which merchants had, in keeping the trade in its former course.

If, in any country, the mercantile opinion ought not be implicitly followed, there were the strongest reasons why it ought not, in this. The body of merchants who carry on the American commerce is well known to be composed of so great a proportion of individuals who are either British subjects, or trading on British capital, or enjoying the profits of British consignments, that the mercantile opinion here might not be an American opinion; nay, it might be the opinion of the very country, of which, in the present instance, at least, we ought not to take counsel. What the genuine mercantile American opinion would be, if it could be collected apart from the general one, Mr. M. said he did not undertake positively to decide. His belief was that it would be in favor of the resolutions.

DIRECT TAXES.—*May* 6, 1794.

Mr. SEDGWICK said, that in forming a constitution for a national government to which was intrusted the preservation of that government and of the existence of the society itself, it was reasonable to suppose that every mean necessary to those important ends should be granted. This was in fact the case in the constitution of the United States. To congress it was expressly granted to impose "taxes, duties, imposts, and excises." It had been universally concluded, and never to his knowledge denied, but that the legislature, by those comprehensive words had authority to impose taxes on every subject of revenue. If this position was just, a construction which limited their operation of this power, (in its nature and by the constitution illimitable,) could not be the just construction.

He observed, that to obviate certain mischief, the constitution had provided that capitation and other *direct* taxes should be proportioned according to the ratio prescribed in it. If then the legislature was authorized to impose a tax on every subject of revenue, (and surely pleasure carriages as an object of luxury, and in general owned by those to whom contributions would not be inconvenient, were fair and proper subjects of taxation,) and a tax on them could not be proportioned by the constitutional ratio, it would follow irresistibly that such a tax in this sense of the constitution was not "direct." On this idea he enlarged his reasoning, and shewed that such a tax was incapable of apportionment.

He said that so far as he had been able to form an opinion, there had been a general concurrence in a belief that the ultimate sources of public contributions were labor, and the subjects and effects of

labor. That taxes being permanent, had a tendency to equalize and to diffuse themselves through a community. According to these opinions, a capitation tax, and taxes on land, and on property and income generally, were a direct charge, as well in the immediate as ultimate sources of contribution. He had considered those, and those only as direct taxes in their operation and effects. On the other hand, a tax imposed on a specific article of personal property, and particularly of objects of luxury, as in the case under consideration, he had never supposed had been considered a direct tax within the meaning of the constitution. The exaction was indeed directly of the owner, but by the equalizing operation, of which all taxes more or less partook, it created an indirect charge on others besides the owners.

The bill for authorizing the President to lay, regulate and revoke EMBARGOES.—*H. R. May 29th,* 1794.

Mr. MADISON did not accede to the principle of the bill; He did not see any such immediate prospect of a war, as could induce the house to violate the constitution. He thought that it was a wise principle in the constitution, to make one branch of government raise an army and another conduct it. If the legislature had the power to conduct an army, they might embody it for that end. On the other hand, if the president was empowered to raise an army, as he is, to direct its motions when raised, he might wish to assemble it for the sake of the influence to be acquired by the command. The constitution had wisely guarded against the danger on either side. Upon the whole, he could not venture to give his consent for violating so salutary a principle of the constitution, as that upon which this bill encroached.

On the motion of Mr. Tazewell to strike out a complimentary reply to the French Republic, S. January 6, 1796.

Mr. ELLSWORTH combatted the resolution as originally offered, as unconstitutional. Nothing, he contended, could be found in the constitution to authorise *either* branch of the legislature to keep up any kind of correspondence with a foreign nation, To congress were given the powers of legislation and the right of declaring war; if authority beyond this is assumed, however, trifling the encroachment at first where will it stop?

Mr. BUTLER. There was nothing in the constitution, he contended, that could prevent the legislature from expressing their sentiments; it was not an executive act, but a mere complimentary reply to a complimentary presentation. If this right was denied them, where would the principle stop, the senate might be made in time mere automata.

INTERNAL IMPROVEMENT.—*H. R. February* 11, 1796.

Mr. MADISON moved that the resolution laid on the table some days ago, to be taken up, relative to the survey of the post roads between the province of Maine and Georgia, which being read, he

observed that two good effects would arise from carrying this resolution into effect; the shortest route from one place to another, would be determined upon, and persons, having a stability of the roads, would not hesitate to make improvements upon them.

Mr. BALDWIN was glad to see this business brought forward, the sooner it could be carried into effect the better. In many parts of the country, he said, there were no improved roads, nothing better than the original indian track. Bridges and other improvements are always made with reluctance whilst roads remain in this state; because it is known, as the country increases in population and wealth, better and shorter roads will be made. All expense of this sort, indeed is lost. It was properly *the business of the general government,* he said, *to undertake the improvement of the roads;* for the different states are incompetent to the business, their different designs clashing with each other. It is enough for them to make good roads to the different sea ports; the cross roads should be left to the government of the whole. The expense he thought, would not be very great. Let a surveyor point out the shortest and best track, and the money will soon be raised. There was nothing in this country, he said, of which we ought to be more ashamed, than our public roads.

Mr. BOURNE thought very valuable effects would arise from the carrying of this resolution into effect. The present may be much shortened, he observed. The eastern states, he said, had made great improvements in their roads, and he trusted the best effects would arise from having regular mails from one end of the union to the other.

Mr. WILLIAMS did not think it right for the revenues of the post office to be applied to this end. He acknowledged the propriety of extending the post roads to every part of the union; he thought the house had better wait for the report of the committee, to which business relative to the post office had been referred, which was preparing to be laid before the house.

Mr. MADISON explained the nature and object of the resolution. He said it was the commencement of an extensive work.—He wished not to extend it at present. The expense of the survey would be great. The post office, he believed, would have no objection to the intended regulation.

After some observations from Mr. THACHER, on the obtaining of the shortest distance from one place to another, and the comparing old with new roads, so as to come at the shortest and best, the resolution was agreed to, and referred to a committee of five to prepare and bring in a bill.

Treaty making Power.—[Jay's Treaty.] H. R., March 23, 1796.

Mr. MURRAY said, in construing our constitution in ascertaining the metes and bounds of its various grants of power, nothing at the presant day is left for expedience or sophistry to new model or to mistake. The explicitness of the instrument itself, the con-

temporaneous opinions still fresh from the recency of its adoption; the journals of that convention which formed it, still existing, though not public, all tend to put this question in particular, beyond the reach of mistake. Many who are now present, were in the convention; and on this question, he learned a vote was actually taken.

That the paper upon the table issued by the president's proclamation, as a treaty, was a treaty in the eye of the constitution, and the law of nations. That as a treaty it is the supreme law of the land, agreeably to the constitution; that if it is a treaty nothing that we can rightfully do, or refuse to do, will add or diminish, its validity, under the constitution and law of nations.

March 24, 1796.

Mr. GALLATIN said, the only cotemporaneous opinions which could have any weight in favor of the omnipotence of the treaty making power, were those of gentlemen who had advocated the adoption of the constitution; and recourse had been had to the debates of the state conventions in order to show that such gentlemen had conceded that doctrine. The debates of Virginia had first been partially quoted for that purpose, yet when the whole was read and examined, it had clearly appeared that, on the contrary, the general sense of the advocates of the constitution there, was similar to that now contended for by the supporters of the motion. The debates of the North Carolina convention had also been partially quoted, and it was not a little remarkable, that whilst gentlemen from that state had declared on this floor, during the present debate, that they were members of the convention which *ratified and adopted* the constitution, that they had voted for it, and that their own, and the general impression of that convention was, that the treaty making power was limited by the other parts of the constitution, in the manner now mentioned; it was not a little remarkable, that in opposition to those declarations, a gentleman from Rhode Island had quoted partial extracts of the debates of a convention in North Carolina, who rejected the constitution.

A gentleman from New-York (Mr. Williams,) had read to them an amendment proposed in the convention of that state, by which it was required that a treaty should abrogate a law of the United States, from whence he inferred, that that convention understood the treaty making powers would have that effect, unless the amendment was introduced.

The gentleman however forgot to inform the committee, that the amendment did not obtain, and therefore that the inference was the reverse of what he stated; leaving, however, to other gentlemen to make further remarks on the debates of the convention of their respective states. He would conclude what he had to say on that ground, by adverting to the debates of the Pennsylvania convention:

The only part of those debates which had been printed contained the speeches of the advocates of the constitution; and although the subject was but slightly touched, yet what was said on the subject by the ablest advocate of the constitution in Pennsylvania, by the man who had been most efficient to enforce its adoption in this state, would be found to be in point. He then read the following extracts from Judge Wilson's speech, (pages 280 and 293 debate of Pennsylvania convention:) "There is no doubt, but under this constitution, treaties will become the supreme law of the land; nor is there doubt but the senate and president possess the power of making them."

Mr. Wilson then proceeds to show the propriety of that provision, and how unfit the legislature were to conduct negotiations, and then expresses himself in the following words: "It well deserves to be remarked, that though the house of representatives possess no active part in making treaties, yet their *legislative authority will be found to have strong restraining influence upon both president and senate.* In England, if the king and his ministers find themselves, during their negotiation, to be embarrassed, because an existing law is not repealed, or a new law enacted, they give notice to the legislature of their situation, and inform them that *it will be necessary, before the treaty can operate, that some law be repealed, or some be made. And will not the same thing take place here?*"

April 15, 1796.

Mr. MADISON. The proposition immediately before the committee was, that the treaty with Great Britain ought to be carried into effect by such provisions as depended on the house of representatives. This was the point immediately in question.

If the propositions for carrying the treaty into effect be agreed to, it must be from one of three considerations: either that the legislature is bound by a constitutional necessity to pass the requisite laws, without examining the merits of the treaty; or that, on such examination, the treaty is deemed in itself a good one; or that there are good extraneous reasons for putting it into force, although it be in itself a bad treaty.

The first consideration being excluded by the decision of the house, that they have a right to judge of the expediency or inexpediency of passing laws relative to treaties, the question first to be examined must relate to the merits of the treaty.

He mentioned the permission to aliens to hold land in perpetuity as a very extraordinary feature in this part of the treaty. He would not enquire how far this might be authorised, by constitutional principles; but he would continue to say, that no example of such a stipulation was to be found in any treaty that ever was made, either where territory was ceded, or where it was acknowledged

by one nation or another; although it was common and right, in such regulation in favor of the property of the inhabitants, yet he believed, that in every case that ever had happened, the owners of landed property were universally required to swear allegiance to the new sovereign, or to dispose of their landed property within a reasonable time. With respect to the great points in law of nations, comprehended in the stipulations of the treaty, the same want of real reciprocity, and the same sacrifice of the interests of the United States, were conspicuous.

It is well known to have been a great and favorite object with the United States, "that free ships make free goods," they had established the principle in their other treaties. They had witnessed with anxiety the general efforts and the successful advances towards incorporating this principle into the law of nations, a principle friendly to all neutral nations and particularly interesting to the United States. He knew that at a former period it had been conceded on the part of the United States, that the law of nations stood as the present treaty regulates it. But it did not follow that more than acquiescence in that doctrine was improper. There was an evident distinction between silently acquiesing in it, and giving it the support of a formal and positive stipulation. The former was all that could have been required, and the latter was more than ought to have been unnecessarily yielded.

Mr. LYMAN. I have no doubt of its constitutionality notwithstanding all the arguments which I have either seen or heard. Many arguments might be adduced in support of this opinion; but I will dispense with all but one, and that I consider as conclusive, and that is this: The stipulations in this treaty are nearly all of such nature, as not to respect objects of legislation; they respect objects which lay beyond the bounds of our sovereignty, and beyond these limits our laws cannot extend, as rules to regulate the conduct of subjects of foreign powers; and although some of these stipulations respect objects which are within the reach of our sovreignty, yet it is in such manner as to be not only pertinent but perhaps absolutely necessary in forming the treaty. This conclusion I think is the natural and necessary result of a fair construction of the principles of the constitution, and especially of that paragraph, which vests the power of making treaties in the supreme executive with the advice of the senate.

In acts of the smallest importance we see daily, that after they have undergone any possible chance of fair and impartial discussion in this house they are transmitted to another, who equally proceed to correct and amend them: and even this not being deemed sufficient to secure a it were, against all possibility of danger, they are sent to the president, who has ten days to consider, and who may return them with his objections. These we are bound respectfully to inscribe on our journals, and if we disagree in opinion

with the president, the majority of two thirds of both branches is requisite to give validity to the law. Do we not discover in all this infinite caution, and a wish rather not to act at all, by the difference of the branches among each other, than to act imprudently or precipitantly, and can we imagine that a constitution thus guarded with respect to laws of little consequence, hath left without a check the immense power of making treaties, embracing as in the instrument before us, all our greatest interests, whether they be of territory, of agriculture, commerce, navigation, or manufacture. and this for an infinite length of time? No; by one of the guards of that constitution, relative to appropriations of money, this treaty hath in the last stage of its progress come before us.

"We have resolved," according to our best judgment of the constitution, and as we have seen above, according to the meaning of it, that we have a right to judge of the expediency, or inexpediency of carrying it into effect. This will depend on its merits, and this is the discussion that is now before us.

Our duty requires of us before we vote 90,000 dollars of the people's money, the sum required to carry this treaty into effect, to pause and enquire as to the why and wherefore? But is it merely the sum of 90,000 dollars that is in question if it was, we ought to proceed slowly and cautiously to vote away the money of our constituents; but it is in truth a sum indefinite, for British debts, the amount of which we know not: and we are to grant this in the moment our treasury is empty: when we are called upon to pay five millions to the bank, and when no gentleman hath resources to suggest, but those of borrowing; at a time when borrowing is unusually difficult and expensive. But is it merely a question of money? No. It is the regulation of our commerce, the adjustment of our limits, the restraint in many respects, of our own faculties of obtaining good or avoiding bad terms with other nations. In short, it is all our greatest and most interesting concerns that we are more or less involved in this question.

I must confess, Mr. Chairman, that the first point of view in which this treaty struck me with surprise, was the attitude Great Britain assumes in it of dictating laws and usages of reception and conduct different towards us, in every different part of her empire, while the surface of our country is entirely laid open to her in one general and advantageous point of admission. In Europe we are told we may freely enter her ports. In the West Indies we were to sail in canoes of 70 tons burden. In the East Indies we are not to settle or reside without leave of the local government. In the sea ports of Canada and Nova Scotia, we are not to be admitted at all, while all our rivers and countries are opened without the least reserve; yet surely our all was as dear to us as the all of any other nation, and ought not to have been parted with but on equivalent terms

On the Bill for organizing, arming, and disciplining the Militia of the United States. H. R. Dec. 1796.

Mr. RUTHERFORD said, he believed the government of the United States had nothing to do with the militia in the several sovereign states; this was his opinion, and it was the opinion of the people at large, however, of nine-tenths of them. The constitution is express upon this subject: it says when the militia is called into actual service, it shall be under the direction of the general government; but until that takes place the several states shall have command over their own children—their own families. If the United States take it up, they will defeat the end in view—they grasp too much.

With respect to the unconstitutionality, Mr. R. joined in opinion with the gentleman from New Jersey, (Mr. Henderson,) this law would tend to alienate the minds of the people of the eastern states, whose militia were already well disciplined.

He hoped nothing more would be done in that house, than to advise those states who had neglected their militia, to revise and amend their laws, and make them more effectual; this is all this house can do—all they have a right to do.

APPROPRIATIONS OF MONEY *for fitting out Vessels of War. H. R. Feb.* 25, 1797.

Mr. GALLATIN conceived the power of granting money to be vested solely in the legislature, and though according to the opinion of some gentlemen, (though not in his) the president and senate could so bind the nation as to oblige the legislature to appropriate money to carry a treaty into effect, yet, in all other cases, he did not suppose there had been any doubt with respect to the powers *of the legislature in this respect.*

March 2, 1797.

Mr. NICHOLAS.—The powers of this house to control appropriations has been settled. It was indeed an absurdity to call a body a legislature, and at the same time deny them a control over the public purse; if it were not so, where would be the use of going through the forms of that house with a money bill? The executive might as well draw upon the treasury at once for whatever sums he might stand in need of. A doctrine like this would be scouted even in despotic countries.

PATRONAGE—*During the discussion of the Foreign Intercourse Bill, H. R. Jan.* 18. 1798,

Mr. GALLATIN said, he believed, upon the whole, our government was in a great degree pure. Patronage was not very extensive, nor had it any material effect upon the house, or any other part of the government, yet he could suppose our government to be liable to abuse in this way. By the nature of the government, the different powers were divided; the power of giving offices was

placed in the executive, an influence which neither of the branches possessed; and if too large grants of money were made, it might give to that power an improper weight.

Our government, he said, was in its childhood, and if patronage had any existence, it could not, of course, be as yet alarming; but he desired gentlemen to look at all governments where this power was placed in the executive, and see if the greatest evil of the government was not the excessive influence of that department. Did not this corruption exist in the government which was constituted most similar to ours, to such a degree, as to have become a part of the system itself, and without which, it is said, the government could not go on? Was it not, therefore, prudent to keep a watchful eye in this respect?

He did not, however, speak against the power itself: it was necessary to be placed somewhere. The constitution had fixed it in the executive. If the same power had been placed in the legislature, he believed they would have been more corrupt than the executive. He thought, therefore, the trust was wisely placed in the executive.

January 19, 1798.

On the same occasion, Mr. PINKNEY said, all commercial regulations might be as well carried on by consuls as by ministers, and if any differences should arise betwixt this country and any of the European governments, special envoys might be sent to settle them, as heretofore.

January 22, 1798.

Mr. BAYARD.—It had been supposed by gentlemen, that he might appoint an indefinite number of ministers, and were the house, in that case, he asked, blindly to appropriate for them? This question was predicated upon an abuse of power, whilst the constitution supposed it would be executed with fidelity. Suppose he were to state the question in an opposite light. Let it be imagined that this country has a misunderstanding with a foreign power, and that the executive should appoint a minister, but the house, in the plenitude of its power, should refuse an appropriation. What might be the consequence? Would not the house have contravened the constitution by taking from the president the power which by it is placed in him? It certainly would. So that this supposition of the abuse of power, would go to the destruction of all authority. The legislature was bound to appropriate for the salary of the chief justice of the United States, and though the president might appoint a *chimney sweeper* to the office, they would still be bound. The constitution had trusted the president, as well as it had trusted that house. Indeed it was not conceivable that the house could act upon the subject of foreign ministers. Our interests with foreign countries came wholly under the jurisdiction of the executive. The duties of that house related to the internal affairs of the country, but what related to foreign countries and foreign agents.

was vested in the executive. The president was responsible for the manner in which this business was conducted. He was bound to communicate, from time to time, our situation with foreign powers, and if plans were carried on abroad for dividing or subjugating us, if he were not to make due communication of the design, he would be answerable for the neglect.

RETALIATION FOR AGGRESSIONS.—*May* 23, 1798.

Mr. SITGREAVES said, it is a principle as well settled as any in the law of nations, that when a nation has received aggressions, from another nation, it is competent for the injured nation, to pursue its remedy by reprisal before a declaration of war takes place, and these reprisals shall be perfectly warrantable, whilst they are commensurate only with the injuries received, and are not under such circumstances justifiable cause of war. It is even clear that these reprisals may be made during the pendency of a negociation. and cannot, according to the law of nations, be justifiable ground for the rupture of any such negociations.

ALIEN and SEDITION LAWS.—*June*, 1798.

Mr. LIVINGSTON. By this act the president alone is empowered to make the law, to fix in his own mind what acts, what words, what thoughts, or looks shall constitute the crime contemplated by the bill; that is, the crime of being "suspected to be dangerous to the peace and safety of the United States."—— This comes completely within the definition of despotism—an union of legislative, executive, and judicial powers. My opinions on this subject, are explicit—they are, that wherever our laws manifestly infringe the constitution under which they were made, the people ought not to hesitate which to obey: if we exceed our powers we become tyrants, and our acts have no effect.

Mr. TAZEWELL opposed the bill. He knew but of one power given to congress by the constitution which could exclusively apply to aliens, and that was the power of naturalization, whether this was a power which excluded the states from its exercise, o r gave to congress only a concurrent authority over the subjects, he would not now pretend to say; it neither authorised congress to prohibit the migration of foreigners to any state, nor to banish them when admitted. It was a power which could only authorise congress to give or withhold citizenship. The states notwithstanding this power of naturalization could impart to aliens the rights of suffrage. The right to purchase and hold lands. There was in this respect, no restraints upon the states. The states Mr. T. said had not parted from their power of admitting foreigners to their society, nor with that of preserving the benefit which their admission gave them in the general government, otherwise than that by which they would be deprived of a citizen. [The bill passed the senate by yeas 16—nays 7.]

On the same subject—1799.

From a Report of Congress.—"The right of removing aliens, as an incident to the power of war and peace, according to the theory of the constitution belongs to the government of the United States. By the 4th sect. of the 4th art. of the constitution, congress is required to protect each state from invasion; and is vested by the 8th sect of the 5th art. with powers to make all laws, which shall be proper to carry into effect all powers vested by the constitution in the government of the United States, or any department or officer thereof; and to remove from the country, in times of hostility, dangerous aliens, who may be employed in preparing the way for invasion, is a measure necessary for the purpose of preventing invasion, and of course a measure it is empowered to adopt."

In relation to the sedition act, the committee report that, "a law to punish false, scandalous and malicious writings against the government with intent to stir up sedition, is a law necessary for carrying into effect the power vested by the constitution, in the government of the United States, and in the departments and offices thereof, and, consequently such a law as congress may pass."

Further—"Although the committee believe that each of the measures [alien and sedition laws] adopted by congress susceptible of an analytical justification, on the principles of the constitution and national policy, yet they prefer to rest their vindication on the same ground of considering them as parts of a general system of defence, adapted to a crisis of extraordinary difficulty and danger."

REDUCTION of the STANDING ARMY, *H. R. Jan.* 5, 1800.

Mr. RANDOLPH. I suppose the establishment of a standing army in the country, not only a useless, and enormous expense, but upon the ground of the constitution, the spirit of that instrument and the genius of a free people are equally hostile to this dangerous institution, which ought to be resorted to (if at all) only in extreme cases of difficulty and danger; yet let it be remembered that usage, that immemorial custom is paramount in every written obligation; and let us beware of engrafting this abuse upon the constitution: a people who mean to continue free, must he prepared to meet danger in person: Not to rely upon the fallacious protection of mercenary armies.

AMENDMENT to the CONSTITUTION.—*Election of President of the United States. Senate, Jan.* 23, 1800.

Mr. C. PINCKNEY (of South Carolina) thought it a very dangerous practice to endeavor to amend the constitution by making laws for the purpose. The constitution was a sacred deposit put into their hands, they ought to take great care not to violate or destroy the essential provisions made by this instrument. He remembered very well that *in the federal convention great care was*

used to provide for the election of the president of the United States independently of congress, and to take the business as far as possible out of THEIR *hands.*

On an ACT LAYING DUTIES on LICENSES, &c. *H. R. Dec.* 31, 1800.

Mr. BIRD said, that he considered congress as incompetent to transfuse into the state governments, the right of judging on cases that occurred under the constitution and laws of the federal government, as they were to transfuse executive or legislative power, derived from that constitution, into the hands of the executive and legislative organs of the state government.

JUDICIARY.—*On Mr. Breckrenridge's motion to repeal the act passed for a new organization of the Judiciary System. Senate, January* 8, 1802.

Mr. J. MASON. It will be found that the people, in forming their constitution, meant to make the judges as independent of the legislature as of the executive; because the duties they have to perform call upon them to expound not only the laws, but the constitution also; in which is involved the power of checking the legislature, in case it should pass any laws in violation of the constitution. For this reason it was more important that the judges in this country should be placed beyond the control of the legislature, than in other countries where no such power attaches to them.

Mr. Mason knew that a legislative body was occasionally subject to the dominance of violent passions. He knew that they might pass unconstitutional laws; and that the judges, sworn to support the constitution, would refuse to carry them into effect; and he knew that the legislature might contend for the execution of their statutes. Hence the necessity of placing the judges above the influence of these passions; and for these reasons the constitution had put them out of the power of the legislature.

January 13, 1802.

Mr. MASON, (Va.) When I view the provisions of the constitution on this subject, I observe a clear distinction between the supreme court and other courts. With regard to the institution of the supreme court, the words are imperative; while with regard to inferior tribunals, they are discretionary. The first *shall*, the last *may* be established. And surely we are to infer from the wise sages that formed that constitution, that nothing was introduced into it in vain. Not only sentences, but words, and even points, elucidate its meaning. When, therefore, the constitution, using this language, says, a supreme court *shall* be established, are we not justified in considering it a constitutional creation; and on the other, from the language applied to inferior courts, are we not equally justified in considering their establishment as dependent upon the legislature, who *may* from time to time, ordain them, as

the public good requires. Can any other meaning be applied to the words "from time to time?" And nothing can be more important on this subject than that the legislature should have power, from time to time, to create, to annul, or to modify the courts, as the public good may require—not merely to-day, but forever; and whenever a change of circumstances may suggest the propriety of a different organization. On this point, there is great force in the remark, that among the enumerated powers given to congress, while there is no mention made of the supreme court, the power of establishing inferior courts is expressly given. Why this difference, but that the supreme court was considered by the framers of the constitution as established by the constitution; while they considered the inferior courts as dependent upon the will of the legislature.

January 13, 1802.

Mr. STONE, (N. C.) No part of the constitution expressly gives the power of removal to the president; but a construction has been adopted, and practised upon from necessity, giving him that power in all cases in which he is not expressly restrained from the exercise of it. The judges afford an instance in which he is expressly restrained from removal. It being declared by the 1st section of the 3d article of the constitution, that the judges both of the supreme and inferior courts, shall hold their offices during good behaviour. They doubtless shall (as against the president's power to retain them in office,) in common with other officers of the appointment, be removed from office by impeachment and conviction; but it does not follow that they may not be removed by other means They shall hold their offices during good behaviour, and they shall be removed from office upon impeachment and conviction of treason, bribery, and other high crimes, and other misdemeanors. If the words, *impeachment of high crimes and misdemeanors,* be understood according to any construction of them hitherto received and established, it will be found that although a judge, guilty of high crimes and misdemeanors, is always guilty of misbehaviour in office; yet that of the various species of misbehaviour in office, which may render it exceedingly improper that a judge should continue in office, many of them are neither treason, nor bribery, nor can they properly be dignified by the appellation of high crimes and misdemeanors. And for the impeachment of which no precedent can be found; nor would the words of the constitution justify such impeachment.

To what source then shall we resort for a knowledge of what constitutes this thing called misbehaviour in office? The constitution did not intend that a circumstance, as a tenure by which the judges hold their offices, should be incapable of being ascertained. *Their misbehaviour* certainly is not an impeachable offence; still it is the ground by which the judges are to be removed from office. The process of impeachment, therefore, cannot be

the only one by which the judges may be removed from office, under and according to the constitution. I take it, therefore, to be a thing undeniable that there resides somewhere in the government a power that shall amount to misbehaviour in office by the judges, and to remove them from office for the same without impeachment.

The constitution does not prohibit their removal by the legislature, who have the power to make all laws necessary and proper for carrying into execution the powers vested hy the constitution in the government of the United States.

Mr. BRECKENRIDGE. To make the constitution a practical system, the power of the courts to annul the laws of congress cannot possibly exist. My idea of the subject, in a few words, is: That the constitution intended a separation only of the powers vested in the three great departments, giving to each the exclusive authority of acting on the subjects committeed to each: That each are intended to revolve within the sphere of their own orbits; are responsible for their own motion only; and are not to direct or control the course of others: That those for example who make the laws, are presumed to have an equal attachment to, and interest in the constitution; are equally bound by oath to support it, and have an equal right to give a construction to it: That the construction of one department of the powers particularly vested in that department is of as high authority at least, as the construction given to it by any other department: that it is in fact *more* competent to that department to which powers are exclusively confided, to decide upon the proper exercise of those powers, than any other department, to which such powers are not entrusted, and who are not consequently under such high and responsible obligations for their constitutional exercise; and that therefore, the legislature would have an equal right to annul the decisions of the courts founded on their construction of the constitution, as the courts would have, to annul the acts of the legislature, founded on their construction.

Although therefore, the courts may take upon them to give decisions which go to impecah the constitutionality of a law, and which for a time may obstruct its operation; yet I contend, that such law is not the less obligatory, because the organ, through which it is to be executed, has refused its aid. A pertinacious adherence of both departments to their opinions would soon bring the question to an issue which would decide, in whom the sovereign power of legislation resided, and whose construction of the constitution as to the law making power ought to prevail.

Mr. HEMPHILL. I have ever understood, that there was difference in opinion on this point; that the general opinion was, that the words in the constitution rendered the judges independent of both the other branches of the government. This appears from the debates in the convention in Virginia to have been their opinion—

it appears also from the strongest implication to have been the opinion of the author of the Notes on Virginia.

What is the meaning of the words *from time to time?* They are used but in three other parts of the constitution, and when used they do not convey the idea of what may be done. Indeed they are used in cases where it is impracticable to undo what shall have been done. [Mr. Hemphill here read 5th sec. 1st art. No. 3, 9th sec. 1st art. No. 6, and 3d sec. 2d art.] What do these words mean in that part of the constitution under discussion? The supreme court had been mentioned in 2d and 3rd art.; *the* supreme court, which implies that there should be but one. They were not used to give congress power to constitute inferior courts, for that power had been previously given, and if the inferior courts, together with the offices of the judges, are, as is contended, subjects of ordinary legislation, these words were unnecessary to enlarge the powers of congress on them, for on all subjects of ordinary legislation, congress have an unquestionable right to enact and repeal at pleasure.

It is not said in the eighth section, first article, that congress shall have the power to borrow money from time to time; to regulate commerce from time to time, or to establish post offices and post roads from time to time; yet no body doubts that congress have a right to enact and repeal laws on these subjects, when it may appear expedient; and the same power would have extended to the clause giving power to constitute inferior tribunals if there had been no restriction in any other part of the constitution. As these words are unnecessary to give the power contended for, they must have some other meaning. The plain meaning is this, that these words, together with the first part of the section were not used to give a power to constitute courts, for that power had been expressly given; they were merely introduced to dispose of judiciary power, and to declare where it should reside; the judiciary 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, meaning the power before given, which was discretionary as to number; the clause in the 8th sect. of the 1st article is brought here into view, and in the very next sentence the offices are positively fixed and limited. Here then is an express and positive provision, uncontradicted by any express declaration or by any violent implication.

Mr. BAYARD. The 2d section of the 3d article of the constitution expressly extends the judicial power to all cases arising under the constitution, the laws, &c. The provision in the 2d clause of the 6th article leaves nothing to doubt. This constitution *and the laws of the United States which shall be made in pursuance thereof, &c.* shall be the supreme law of the land. The constitution is absolutely the supreme law. Not so of the acts of the legislature. Such only are the laws of the land as are made *in pursuance of the constitution.*

As early as the year 1789, among the first acts of the government, the legislature explicitly recognized the right of a state court to declare a treaty, a statute, and an authority exercised under the United States void, subject to the revision of the supreme court of the United States, and it has expressly given the final power to the supreme court to affirm a judgment which is against the validity either of a treaty, statute or an authority of the government.

LOUISIANA TREATY.—*H. R. October* 25, 1803.

Mr. ELLIOTT. The constitution is silent on the subject of the acquisition of territory: therefore the treaty is unconstitutional. 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. 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 law of nations alone.

Dr. MITCHELL. The 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 people of the United States, in common with all other nations, possess the power and right of making acquisitions of territory by congress, cession, or purchase.

Mr. SMILIE. We are obliged to admit the inhabitants *according to the principles of the constitution.* Suppose those principles forbid their admission; then we are not obliged to admit them.—This followed as an absolute consequence from the premises. There, however existed, a remedy for this case, if it should occur; for if the prevailing opinion shall be that the inhabitants of the ceded territory cannot be admitted under the constitution, as it now stands, the people of the United States can, if they see fit, apply a remedy, by amending the constitution so as to authorise their admission. And if they do not choose to do this, the inhabitants may remain in a colonial state.

Mr. RODNEY. In the view of the constitution the union is composed of two corporate bodies; of states and territories. A recurrence to the constitution will show that it is predicated on the principle of the United States territory either by war, treaty, or purchase. There was one part of that instrument within whose capacious grasp all these modes of acquisition were embraced. By

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the constitution congress have power to "lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." *To provide for the general welfare.* The import of these terms is very comprehensive indeed. If this general delegation of authority be not at variance with other particular powers specially granted, nor restricted by them; if it be not in any degree comprehended in those subsequently delegated, I cannot perceive why, within the fair meaning of this general provision is not included the power of increasing our territory, if necessary for the *general welfare or common defence.*

Mr. TRACY, among other objections said that, the 7th 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 44 cents on tonnage, and 10 per cent on duties are paid by all foreign 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 7th 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 to those of Louisiana, so that the preference by any regulation of commerce or revenue, which the constitution expressly forbids from being given to the ports of one state over those of another, would be given by this treaty, in *violation* of the constitution.

We can hold territory; but to admit the inhabitants into the union, to make citizens of them and states, by treaty, we cannot constitutionaly do, and no subsequent act of legislation, or even ordinary amendment to our constitution can legalise such measures.

Mr. ADAMS. It has been argued that the bill ought not to pass, because the treaty itself is an unconstitutional, or to use the words of the gentleman from Connecticut, (Mr Tracy) 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 even 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, they say, 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 hers. 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 in my mind follow, that the treaty is a nullity, or that its obliga-

tions 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 espcially 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 negociations 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 the states competent to amend the constitution in other cases, could not amend it in this, without exceeding their powers; and this is the extremeest 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 favour attending the transaction which commenced by the negociation 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. France can never have a right to come and say—"I am discharged from the obligation of this treaty, because your president and senate in ratifying, exceeded their powers;" for this would be interfering in the internal arrangements of our government. It would be intermeddling in questions with which she has no concern, and which must be settled altogether by ourselves. The only question for France is, whether she has contracted with the department of our government, authorised to make treaties; and this being clear, her only

right is to require that the conditions stipulated in our name be punctually and faithfully performed. I trust they will be so performed, and will cheerfully lend my hand to every act necessary to the purpose. For I consider the object as of the highest advantage to us; and the gentleman from Kentucky himself, who has displayed with so much eloquence the immense importance to this union, of the possession of the ceded country, cannot carry his ideas further on the subject than I do.

With these impressions, sir, perceiving in the first objection no substantial reason, requiring the postponement, and in the second, no adequate argument for the rejection of this bill, I shall give my vote in its favor.

Mr. TRACY.—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.

Dr. MITCHELL.—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, and 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 for this important purpose, the president shall be empowered.

DISTRICT of COLUMBIA—*On the Report of the Committee of Elections, on the Case of John P. Van Ness, H. R. January* 17, 1803.

Mr. VAN NESS said, the reasons he should offer to the committee for retaining his seat were few and simple. He thought the fair, liberal, and sound construction did not affect his case: that the incapacitating provision, only applied to *civil* offices. The constitution was only a digest of the most approved principles of the constitutions of the several states, in which the spirit of those constitutions were combined. Not one of those constitutions excluded from office those who had accepted military appointments, except in the regular service. He, therefore, felt a full conviction that it never was the intention of the framers of the constitution of the United States to exclude militia officers from holding a seat in congress. And however important it might be to adhere to the letter of the constitution, yet when the spirit of it was so clear as it appeared to him, it ought to have weight in the decision of the question before the committee, which might affect objects of great importance. The right of every portion of the union to a repre-

sentation in that house was very important, and ought to be respected in all cases which may either directly or indirectly affect it.

Mr. BACON observed, though the first part of the section of the constitution referred to *civil* officers, yet the latter part used the expression *any office*, which was more comprehensive, and appeared to them to have been intended to have an universal affect.

[The question was then taken on the report of the committee of elections, which was agreed to without a division.]

On Mr. BACON'S RESOLUTION *to recede the District of Columbia, H. R. Feb.* 9, 1803.

Mr. BAYARD.—Now the states of Maryland and Virginia have made this cession, with the consent and approbation of the people in the ceded territory, and congress has accepted the cession and assumed the jurisdiction. Are they then at liberty, or can they relinquish it without the consent of the other parties? It is presumed they cannot. In his opinion they were constitutionally and morally bound to proceed in the exercise of that power regularly assumed, either immediately by themselves, or by the intervention of a territorial legislature, chosen and acting under a special act of congress for that purpose. To relinquish the jurisdiction at this time, and recede the territory, would in his view, exhibit a surprising inconsistency of conduct in the legislature; it would discover such a versatility, such a disposition to change, as could not fail to unsettle the minds of the people, and shake their confidence in the government.

DUELLING—*On a Resolution for rendering all Persons concerned in a Duel incapable of holding any Office under the general Government of the United States. H. R. Dec.* 31, 1803.

Mr. DAVIS said, if the house could be made sensible that the resolution embraced a subject on which it could not constitutionally act, they would reject it. To him it was plain, that if the house pursued the object of the resolution, it lead them on forbidden ground. In the first place it took from the citizens a right which by their constitution, they had secured themselves, to wit: the right of free elections—do what the resolution contemplates, and no man can hold a seat here who ever fought a duel, or gave, or carried a challenge, although he may be the choice of the people. No such thing is said in the constitution. The people in that instrument has already defined the disqualification to office—that charter of their rights, declares that no person, who has been impeached and found guilty, shall hold an office. And I contend, that congress cannot impeach a person for any offence done by him as an individual; two things are requisite to ground an impeachment. First, the person must be an officer of the United States: secondly, he must have been guilty of some malfeasance in the discharge of the duties imposed on him by that office. If an individual who

does not hold an office under the United States commits murder, I deny the rights of congress to impeach him: he is made amenable to the state laws: while we were busy in impeaching him, he might be executed by the statute laws of the states. My observations disclaim the right we have to act on it.

The resolution was negatived.

On the AMENDMENT to the CONSTITUTION, *H. R. Dec.* 9, 1804,

Mr. JACKSON.—The fate of the other little republics, warranted the idea that the smaller members would be swallowed up by the larger ones, who would in turn attack each other; and thus the liberty achieved by the blood of some of the bravest men that ever lived, would pass away without leaving a trace behind it.—They therefore yielded every thing to the little states, knowing they were not numerous, and naturally jealous of the large ones. If we examine the constitution we shall find the whole of the great powers of the government centred *in* the senate.

On the IMPEACHMENT *of Judge Chase. H. R. Feb.* 21, 1805

Mr. HOPKINSON. What part of the constitution 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 also be applied to "*misdemeanors*." If my construction of this part of the constitution be not admitted, and the adjective "high" be given exclusively to "crimes," and denied to "misdemeanors," this strange absurdity must ensue. That when an officer of the government is impeached for a crime, he cannot be convicted, unless it proves to be a high crime—but he may, nevertheless, be convicted of a misdemeanor of the most petty grade. 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 an 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 words their legal significations. A misdemeanor, or a crime, for in their just and proper acceptation they are synonymous, is an act committed, or omitted, in the violation of a *public* law, either forbidding or commanding it.

Mr. MADISON'S MOTION *for Commercial Restrictions, in Committee of the Whole House, on the Report of the Secretary of State,* (Mr. Jefferson,) *on the privileges and restrictions on the commerce of the United States, in foreign countries.—Made January* 3, 1794. *H. R. Feb.* 14, 1806.

Resolved, as the opinion of this committee, that the interest of the United States would be promoted, by 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.

1. *Resolved,* as the opinion of this committee, that an additional duty ought to be laid on the following articles, manufactured by European nations, having no commercial treaty with the United States:

On articles, of which leather is the material of chief value, an additional duty of per cent. ad valorem.

On all manufactured iron, steel, tin, pewter, copper, brass, or other articles, of which either of these metals is the material of chief value, an additional duty of per cent. ad valorem.

On all articles of which cotton is the material of chief value, an additional duty of per cent. ad valorem.

On all cloths of which wool is the material of chief value, where the estimated value on which the duty is payable is above , an additional duty of per cent. ad valorem; where such value is below an additional duty of per cent. ad valorem.

On all other articles of which wool is the material of chief value, an additional duty of per cent. ad valorem.

On all cloths of which hemp or flax is the article of chief value, and of which the estimated value on which the duty is payable is below , an additional duty of per cent. ad valorem.

On all manufactures of which silk is the article of chief value, an additional duty of per cent. ad valorem.

2. *Resolved,* as the opinion of this committee, that an additional duty of per ton, ought to be laid on the vessels belonging to nations having no commercial treaty with the United States.

3. *Resolved,* as the opinion of this committee, that the duty on vessels belonging to nations having commercial treaties with the United States, ought to be reduced to per ton.

4. *Resolved,* as the opinion of this committee, that where any nation may refuse to consider as vessels of the United States any

vessels not built within the United States, the foreign built vessels of such nation ought to be subjected to a like refusal, unless built within the United States.

5. *Resolved*, as the opinion of this committee, that where any nation may refuse to admit the produce and manufactures of the United States, unless in vessels belonging to the United States, or to admit them in vessels of the United States, if last imported from any place not within the United States, a like restriction ought, after the day of , to be extended to the produce and manufactures of such nation; and that, in the mean time, a duty of per ton extraordinary, ought to be imposed on vessels so importing any such produce or manufacture.

6. *Resolved*, as the opinion of this committee, that where any nation may refuse to the vessels of the United States a carriage of the produce and manufactures thereof, while such produce or manufactures are admitted by it in its own vessels, it would be just to make the restriction reciprocal: but, inasmuch as such a measure, if suddenly adopted, might be particularly distressing in cases which merit the benevolent intention of the United States, it is expedient for the present, that a tonnage extraordinary, only of being imposed on the vessels so employed; and that all distilled spirits imported therein, shall be subject to an additional duty of one part of the existing duty.

7. *Resolved*, as the opinion of this committee, that provision ought to be made for liquidating and ascertaining the losses sustained by citizens of the United States, from the operation of particular regulations of any country, contravening the law of nations; and that such losses be reimbursed, in the first instance, out of the additional duties on manufactures, productions, and vessels of the nation establishing such unlawful regulations.

March 28, 1806.

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.

Mr. EPPES. I do not believe Congress 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 enquire 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 enquiry 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.

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 government to furnish supplies. He certainly is not an officer, according to the common and known acceptation 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 depend on the executive.

PUBLIC LANDS.—*On the Resolution for investing a certain portion of the Public Lands in shares of the Chesapeake Canal. Senate—Feb.* 13, 1807.

Mr. BAYARD. It is admitted that the constitution does not expressly give the power to cut canals, but we possess and are in the daily exercise of the power to provide for the protection and safety of commerce, and the defence of the nation. It has never been contended that no power exists which has not been expressly delegated.

There is no express power given to erect a fort or magazine, though it is recognized in the delegation of exclusive legislative powers in certain cases. The power to erect light houses and piers, to survey and take the soundings on the coast, or to erect public buildings, is neither expressly given nor recognized in the constitution, but it is embraced by a liberal and just interpretation of the clause in the constitution, which legitimates all laws necessary and *proper* for carrying into execntion the powers expressly delegated. On a like principle the bank of the United States was incorporated. Having a power to provide for the safety of commerce and the defence of the nation, we may fairly infer a power to cut a canal, a measure unquestionably *proper* with a view to either subject.

TO SUSPEND the EMBARGO.—*H. R. April* 19, 1808.

Mr. QUINCY. The constitution of the United States, as I understand it has in every part reference to the nature of things and necessities of society. No portion of it was intended as a mere ground for the trial of technical skill, or of 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 unquestionnbly 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 discretion shall be exercised.

Mr. KEY said, 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 co-extensive 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 suppose 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 will 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 this 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.

RENEWAL of the CHARTER *of the United States'* BANK, *H. R. April* 13, 1810.

Mr. LOVE.—The question of the constitutionality of the bank solely depends on the question, whether it is necessary and proper for conducting the monied operations of government. So great a change has taken place on that subject within 20 years past, that it is supposed the question is now settled. Not only the monied transactions of the United States, but it is believed, of all the state governments, are carried on through the state banks, as well as commercial transactions, and other monied negociations.

Mr. TROUP said, gentlemen might pass the bill, but for the constitutional question. If they did pass it, he hoped they would not permit themselves to become the retailing hucksters of the community for the sale of bank charters. There is a power in the constitution to sell the public property; but there is certainly no power to sell privileges of any kind. I therefore move to strike

out the *bribe,* the douceur, the bonus, as gentlemen call it, of 1,250,000 dollars.

Mr. KEY said that, to him, it clearly appeared within the power and limit of the constitution to establish a bank, if necessary for the collection of the revenue.

Mr. TROUP observed, that some gentlemen had said that the power to incorporate a bank was derived from the power to lay and collect revenue; and that the power ought to be exercised, because banks give a facility to the collection of the revenue. If the power be exercised, it must be necessary and proper. If it be necessary to the collection of the revenue, the revenue cannot be collected without it. The gentleman from Maryland might say a bank institution was useful. He might say it would give facility to the collection of the revenue, but facility and necessity are wholly different, and the constitution says that a power, to be incidental, must be *necessary* and *proper.*

Mr. ALSTON.—In the 10th article, 1st section of the constitution, it is said: no state shall coin money, emit bills of credit, or make any thing but gold and silver coin a legal tender in payment of debts: the interpretation which I give to it is, that the United States possesses power to make any thing, besides gold and silver, a legal tender. If what I conceive to be a fair interpretation be admitted, it must follow that they have a right to make bank paper a legal tender. Much more, then, sir, have they the power of causing it to be received by themselves, in payment of taxes.

January 16, 1811.

Mr. BURWELL.—It is my most deliberative conviction, that the constitution of the country *gives* no authority to congress to incorporate a bank, and endow the stockholders with chartered immunities.

The power to establish a bank cannot be deduced from the general phrases, "to provide for the common defence and general welfare," because they merely announce the object for which the general government was instituted; the *only* means by which this object is to be attained, are specifically enumerated in the costitution, and if they are not ample, it is a defect which congress are incompetent to supply.

P. B. PORTER.—The constitution is a specification of the powers, or means, themselves, by which certain objects are to be accomplished. The powers of the constitution carried into execution according to the strict terms and import of them, are the appropriate means, and the *onuy* means within the reach of this government, for the attainment of its ends. It is true, as the constitution declares, and it would be equally true if the constitution did not declare it, that congress have a right to pass all laws necessary and proper for executing the delegated powers; but this gives no *lati tude* of discretion in the selection of means or powers.

Mr. KEY.—The end, or power given, is to lay and collect taxes, and pay the public debt; the power to make laws necessary and proper to affect that end is also given, and consists in devising and establishing the *means* of accomplishing it. *The means to accomplish the end are no where restricted.*

If a bank is useful and necessary in the collection of taxes and imposts, and payment of the public debt, and is the best mode of effecting it, the creation of a bank for such purposes, is definitely within the power of congress; and more, it is the bounden duty of congress to establish it, because they are bound to adopt the best practicable, or, in other words, necessary and proper means to collect the tax and imposts.

Mr. EPPES. The constitution of the United States has universally been considered as a grant of *particular*, and not of *general*, powers. Those powers are the primary or expressly delegated, and the derivative or implied. The character of the instrument precluded the necessity of a "bill of rights," because the question never could arise, *what was reserved, but what was granted.* The framers of the constitution were well aware of this, and so were the people who adopted it. It is therefore fairly to be inferred, that whenever there appears a limitation or restriction, in the shape of a negative clause, congress might have exercised the power interdicted, had such clause not been made part of the instrument.

Mr. CRAWFORD. If the state governments are restrained from exercising this right to incorporate a bank, it would appear *ex necessitate rei*, that this right is vested in the government of the United States. The entire sovereignty of this nation is vested in the state governments, and in the federal government, except that part of it which is retained by the people, which is solely the right of electing their public functionaries.

The right to create a corporation is a right inherent in every sovereignty: the people of the United States cannot exercise this right. If then the states are restrained from creating a bank with authority to emit bills of credit, it appears to be established that the federal government does possess this right. If, however, it is still believed, that the law by which this bank has been created, was the result of a forced construction of the constitution, yet I must contend, that that construction is entitled to some weight in the decision of this question. The time and state of the public mind, when this construction was given, gives it a strong claim to consideration upon this occasion. This construction was given shortly after the government was organized, when first impressions had not been effaced by lapse of time, or distorted by party feelings or individual animosity. The parties which then existed, were literally federal and anti federal. Those who were friendly to the federal constitution, and those who were inimical to it, formed the only party then known in this nation.

Mr. CLAY. What is the nature of this government? It is emphatically federal, vested with an aggregate of specified powers for general purposes, conceded by existing sovereignties, who have themselves retained what is not so conceded. It is said there are cases in which it must act on implied powers. This is not controverted, but the implication must be necessary, and obviously flow from the enumerated power with which it is allied. The power to charter companies is not specified in the grant, and I contend is of a nature not transferrable by mere implication. It is one of the most exalted attributes of sovereignty.

Is it to be imagined that a power so vast would have been left by the wisdom of the constitution to doubtful inference? It has been alleged that there are many instances, in the constitution, where powers in their nature incidental, and which would have necessarily been vested along with the principal, are nevertheless expressly enumerated; and the power "to make rules and regulations for the government of the land and naval forces," which it is said is incidental to the power to raise armies and provide a navy, is given as an example. What does this prove? How extremely cautious the convention were to leave as little as possible to implication. In all cases where incidental powers are acted upon, the principal and incidental ought to be congenial with each other, and partake of a common nature. The incidental power ought to be strictly subordinate, and limited to the end proposed to be attained by the specified power. In other words, under the name of accomplishing one object which is specified, the power implied ought not to be made to embrace other objects, which are not specified in the constitution. If, then, you could establish a bank to collect and distribute the revenue, it ought to be expressly restricted to the purpose of such collection and distribution.

I contend that the states have the exclusive power to regulate contracts, to declare the capacities and incapacities to contract, and to provide as to the extent of responsibility of debtors to their creditors. If congress have the power to erect an artificial body and say it shall be endowed with the attributes of an individual—if you can bestow on this object of your own creation the ability to contract, may you not, in contravention of state rights, confer upon slaves, infants and femes covert the ability to contract? And if you have the power to say that an association of individuals shall be responsible for their debts only in a certain limited degree, what is to prevent an extension of a similar exemption to individuals? Where is the limitation upon this power to set up corporations? You establish one in the heart of a state, the basis of whose capital is money. You may erect others, whose capital shall consist of land, slaves, and personal estates, and thus the whole property within the jurisdiction of a state might be absorbed by these political bodies. The existing bank contends that it is beyond the power of a state to tax it; and if this pretension be well founded,

it is in the power of congress, by chartering companies, to dry up all the sources of state revenue.

On the bill for raising a Volunteer Corps. H. R., Jan. 10, 1812.

Mr POINDEXTER. Can we constitutionally employ volunteer militia, without the jurisdiction of the United States, in the prosecution of hostilities, in the enemies' country? He was of opinion, that no legislative act of congress could confer such a power on the president.

Mr. GRUNDY. If the constitution forbids the president from sending the militia out of the United States, how can we authorise him to do so by law? We cannot; we should legislate to no purpose. Whether he had the authority or not, would depend upon the construction the president himself shall give to the constitution. Nor could he see how this proposition gets over the difficulty.

It provides that a militia man may authorise the president to send him beyond the limits of the United States. He had always understood, that in framing the constitution of this government, there was great jealousy exhibited lest the general government should swallow up the powers of the state governments; and when the power of making war and raising armies was given to congress, the militia was retained by the states, except in cases mentioned by the constitution. How, then, can you permit militia men to engage in the service of the United States, contrary to the provisions of the constitution, and by that means leave the state unprotected?

Mr. PORTER. He did not agree with the gentleman, (Mr. Poindexter,) that the militia could, in no case, be employed without the limits of the United States. He did not think their services were to be confined by geographical limits. If it became ncessary for the executive to call out the militia to repel invasion, he thought they might pursue the enemy beyond the limits, until the invaders were effectually dispersed.

Mr. CHEVES. Though the gentleman from New-York says, the service of the militia is not to be bounded by geographical limits, I cannot, said Mr. C., discover the premises by which he comes to this conclusion, if the general government has no other power of the militia than is given to it in this clause of the constitution. If they may cross the line, why not go to the walls of Quebec? The principle is trampled upon the instant they pass beyond the territorial limits of the United States; nor, if this be a correct construction, said he, can the consent of the individual add any thing to the powers or the rights of the general government, while he remains a member of the militia of the state?

Mr. CLAY. In one of the amendments it is declared, that a well-regulated militia is necessary to the security of a free state." But if you limit the use of the militia to executing the laws, sup-

pressing insurrections, and repelling invasions; if you deny the use of the militia to make war, can you say they are "the security of a state"? He thought not.

Mr. CHEVES. It is said that the powers of the general government were not sovereign but limited. This was to deny the existence of any sovereignty which was limited as to its objects, than which nothing is, however, more common. But there is an authority on this point which Mr. C. supposed would not be controverted. He meant Mr. Hamilton's argument on the constitutionality of the Bank of the United States.

[Here Mr. C. read the following extract from that work: "The circumstance that the powers of the sovereignty are, in this country, between the national and state governments, does not afford the distinction required. It does not follow from this, that each of the portions of power, delegated to the one or the other, is not sovereign with *regard to its proper objects.* It will only follow from it, that each has sovereign power with regard to *certain things*, and not as to *other things*. To deny that the government of the United States has sovereign power as to its declared purposes and trusts, because its power does not extend to all laws, would be equally to deny that the state governments have sovereign power in *any* case, because their power does not extend to *every* case."]

It was said by the same gentleman, that the writers cotemporaneous with the adoption, and the debates of the several conventions on the adoption of the constitution, repelled the construction now contended for; but that gentleman had not produced, nor had any other gentleman produced a sentence to that effect, except the gentleman from Tennessee, (Mr. Grundy) who read from the Virginia debates, in the argument of Mr. Nicholas, a detached sentence, in which, speaking of that article of the constitution, which gives power to congress "to provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions," he says *they cannot call them forth for any other purpose* than to execute the laws; suppress insurrections and repel invasions." But Mr. Madison, in the same debate, says "the most effectual way to render it unnecessary is *to give the general government full power to call forth the militia, and exert the whole natural strength of the union when necessary.*" He (Mr. C.) was opposed to the latitude of the bill.

SEAMEN'S BILL.—*For the regulation of Seamen on board the public vessels and in the Merchant service of the United States, H. R.—February*, 1813.

Mr. SEYBERT. The constitution of the United States declares congress shall have power "to establish an *uniform* rule of naturalization, and *uniform laws* on the subject of bankruptcies throughout the United States." Sir, the *rule* only relates to the *mode*, it is only operative during the *nascent state* of the political conver

sion, and it *ceases* to have effect, the moment after the process has been *completed.* Your constitution only recognises the *highest grade* of citizenship that can be conferred—the *alien* is thus made a *native* as it were, and is fully vested with every right and privilege attached to the native, with the *exception* impressed on the constitution—your statutes cannot deprive any *particular species* of citizens of the right of *personal liberty*, or the *locomotive faculty*, because the constitution does not *characterise* the citizens of the United States as *native* and *naturalized*—our great family is composed of a class of men forming a single *genus*, who, to all intents and purposes are equal, except in the instance specified, that of not being eligible to the Presidency of the United States. The only exception to the rule is expressed in the constitution; if other exceptions had been contemplated by the framers of that instrument, they would also have been expressed; none other having been expressed, he said, it followed that your legislative acts could not make individual exceptions touching the occupation of a citizen—all freemen—citizens of the United States may pursue their happiness in *any manner* and in *any situation* they please, provided they do not *violate* the rights of *others*—you cannot deny to any portion of your citizens, who desire to plough the deep, the *right* to do so, whilst you permit another portion of them the *enjoyment* of that right.

Mr. ARCHER. The framers of our constitution did not intend to confine congress to the technical meaning of the word naturalization in the exercise of that power, the more especially when the comprehensive word *rule* was made use of. The principle upon which the power was to be exercised was left to the judicious exercise of congress; all that was required was, that the *rule* should be uniform throughout the states. In the grant there is no other specification as to the exercise of it than that of its uniformity.—The term naturalization was borrowed from England. It must be understood here in the sense and meaning which was there attached to it. Whether it was *absolute* or *qualified* it was still a naturalization. But the grant of a power in general terms necessarily implied the right to exercise that power in all its gradations. It was in the political, as it was in the natural world: the genus included the species. Besides, the power to naturalize was an attribute to sovereignty. It was either absolute or qualified; and if the grant to congress only implied a power of unlimited naturalization, the power to qualify existed in the states or in the people, for what was not specifically granted was reserved.

In treating of the executive power, the constitution defines the qualifications of the president. It declares that he should be a natural born citizen, or a citizen at the adoption of the consititution. This article is unquestionably no limitation of the power of congress upon the subject of naturalization. It was impossible to abridge a specific grant of power without a specific limitation, and

the article alluded to could not be tortured by the most ingenious mind to diminish even by implication the authority of congress upon a subject to which it was totally irrelevant.

On the COMMERCIAL TREATY *with Great Britain, H. R. Jan.* 8, 1816.

Mr. HOPKINSON.—In the nature of things there cannot exist at the same time, under the same authority, two contradictory, inconsistent laws, and rules of action. One or the other must give way; both cannot be obeyed; and if. in this case, this [commercial] treaty has no constitutional supremacy over an ordinary act of legislation, it at best has the admitted advantage of being earlier in point of time, of being the last constitutional expression of the will of the nation on this subject. It is worthy of remark, that the general power of legislation is given to congress in one part of the constitution; the special power of making treaties, to the president and senate in another part; and then, the acts of both, if done constitutionally, are declared, in the same sentence in another part of the constitution, to be the supreme law of the land, and placed upon the same footing of authority.

Mr. CALHOUN. From the whole complexion of the case, said MrC. the bill before the house was mere form, and not supposed to be necessary to the validity of the treaty. It would be proper, however, he observed, to reply to the arguments which have been urged on the general nature of the treaty-making power, and as it was a subject of great importance, he solicited the attentive hearing of the house.

It is not denied, he believed, that the president with the concurrence of two thirds of the senate, has a right to make commercial treaties; it is not asserted that this treaty is couched in such general terms as to require a law to carry the details into execution. Why then is this bill necessary? Because, say gentlemen, that the treaty of itself, without the aid of this bill, cannot exempt British tonnage and goods imported in their bottoms, from the operation of the law, laying additional duties on foreign tonnage and goods imported in foreign vessels; or, giving the question a more general form, because a treaty cannot annul a law. The gentleman from Virginia (Mr. Barbour) who argued this point very distinctly, though not satisfactorily, took as his general position, that to repeal a law is a legislative act, and can only be done by law; that in the distribution of the legislative and treaty-making power the right to repeal a law fell exclusively under the former. How does this comport with the admission immediately made by him, that the treaty of peace repealed the act declaring war? If he admits the fact in a single case, what becomes of his exclusive legislative right? He indeed felt that his rule failed him, and in explanation assumed a position entirely new; for he admitted that when the treaty did that which was not authorised to be done by law, it did

not require the sanction of congress, and might in its operation repeal a law inconsistent with it. He said, congress is not authorised to make peace; and for this reason a treaty of peace repeals the act declaring war. In this position, he understood his colleague substantially to concur. He hoped to make it appear that, in taking this ground, they have both yielded to the point in discussion. He would establish, he trusted, to the satisfaction of the house, that the treaty-making power, when it was legitimately exercised, always did that which could not be done by law; and that the reasons advanced to prove that the treaty of peace repealed the act making war, so far from being peculiar to that case, apply to all treaties. They do not form an exception, but in fact constitute the rule. Why then, he asked, cannot congress make peace? They have the power to declare war. All acknowledge this power. Peace and war are opposite. They are the positive and negative terms of the same proposition: and what rule of construction more clear, than that when a power is given to do an act, the power is also given to repeal it? By what right do you repeal taxes, reduce your army, lay up your navy, or repeal any law but by the force of this plain rule of construction? Why cannot congress then repeal the act declaring war? He acknowledged with the gentleman, they cannot, consistently with reason. The solution of this question explained the whole difficulty. The reason is plain; one power may make war; it requires two to make peace. It is a state of mutual amity succeeding hostility; it is a state that cannot be created but with the consent of both parties. It required a contract or a treaty between the nations at war. Is this peculiar to a treaty of peace? No; it is common to all treaties. It arises out of their nature, and not from any incidental circumstance attaching itself to a particular class. It is no more or less than that congress cannot make a contract with a foreign nation. Let us apply it to a treaty of commerce, to this very case. Can congress do what this treaty has done? It has repealed the discriminating duties between this country and England. Either could by law repeal its own. But by law they could go no farther; and for the same reason that peace cannot be made by law. Whenever then an ordinary subject of legislation can only be regulated by contract, it passes from the sphere of the ordinary power of making laws, and attaches itself to that of making treaties, wherever it is lodged.***

The treaty-making power has many and powerful limits; and it will be found when he came to discuss what those limits are, that it cannot destroy the constitution, our personal liberty, involve us without the assent of this house in war, or grant away our money. The limits he proposed to this power, are not the same, it is true, but they appeared to him much more rational and powerful than those which were supposed to present effectual guards for its abuse. Let us now consider what they are?

The grant of the power to make treaties, is couched in the most general terms. The words of the constitution are,

that the president shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur. In a subsequent part of the constitution, treaties are declared to be the supreme law of the land. Whatever limits are imposed on those general terms ought to be the result of the sound construction of the instrument. There appeared to him but two restrictions on its exereise: the one derived from the nature of our government, and the other from that of the power itself. Most certainly all grants of power under the constitution must be controled by the instrument; for, having their existence from it, they must of necessity assume that form which the constitution has imposed. This is acknowledged to be true of the legislative power, and it is doubtless equally so of the power to make treaties. The limits of the former are exactly marked; it was necessary to prevent collision with similar co-existing state powers. This country within is divided into two distinct sovereignties. Exact enumeration here is necessary to prevent the most dangerous consequences. The enumeration of legislative powers in the constitution has relation then not to the treaty power, but to the powers of the states. In our relation to the rest of the world the case is reversed. Here the states disappear. Divided within, we present, without, the exterior of undivided sovereignty. The wisdom of the constitution appears conspicuous. When enumeration was needed, there we find the powers enumerated and exactly defined: when not, we do not find what would be vain and pernicious to attempt. Whatever then concerns our foreign relations, whatever requires the consent of another nation, belongs to the treaty power; can only be regulated by it: and it is competent to regulate all such subjects; provided, and here are its true limits: such regulations are not inconsistent with the constitution. If so they are void. No treaty can alter the fabric of our government, nor can it do that which the constitution has expressly forbid to be done: nor can it do that differently which is directed to be done in a given mode, and all other modes prohibited. For instance, the constitution says, no money "shall be drawn out of the treasury but by an appropriation made by law." Of course no subsidy can be granted without an act of law: and a treaty of alliance could not involve the country in war without the consent of this house. Besides these constitutional limits, the treaty power, like all others, has other limits derived from its object and nature. It has for its object, contracts with foreign nations: as the powers of congress have for their object whatever can be done in relation to the powers delegated to it without the consent of foreign nations. Each in its proper sphere operates with genial influence: but when they become erratic, then they are portentous and dangerous. A treaty never can legitimately do that which can be done by law: and the converse is also true. Suppose the discriminating duties repealed on both sides by law, yet what is effected by this treaty would not

even then be done: the plighted faith would be wanting. Either side might repeal its law without a breach of contract. It appeared to him that gentlemen are too much influenced on this subject by the example of Great Britain. Instead of looking to the nature of our government they have been swayed in their opinion by the practice of that government to which we are but too much in the habit of looking for precedents.

January 10, 1816.

Mr. TUCKER.—It is contended by the gentleman from South Carolina (Mr. Calhoun) that a treaty is superior to the law, because it is a contract between our nation and another power. I am ready to admit, Mr. Speaker, the ingenuity of the gentleman in drawing this distinction. It is what may well be expected from his ingenious and active mind. But I think it will appear that it is more ingenious than solid, more true than applicable to the subject.

I admit that where a contract has been entered into, and completed by all the necessary powers under our constitution, it is binding upon the nation But the question still recurs, *when* is it complete? In the case of a treaty containing stipulations merely executive, it is complete when the ratifications are exchanged. In the case of a treaty which requires a legislative act to give it operation, we contend that the legislative sanction must be given before it is complete. Until then it is not a binding contract, and the rights of the third party (the foreign power) do not exist. Is it not the "petitio principi," or (if the gentleman will permit me to use the vulgar translation) is it not begging the question to contend, that *before* the legislative saction the contract is binding, when the very question between us is, whether that sanction *be* necessary to make it binding.

Mr. PINKNEY. I lay it down as an incontrovertible truth, that the constitution has assumed (and indeed how could it do otherwise) that the government of the United States might and would have occasion, like the other governments of the civilized world, to enter into treaties with foreign powers, upon the various subjects, involved in their mutual relations; and further, that it might be, and was proper to designate the department of the government in which the capacity to make such treaties should be lodged. It has said accordingly, that the president, with the concurrence of of the senate, shall possess this part of the national sovereignty: It has, furthermore, given to the same magistrate, with the same concurrence, the exclusive creation and control of the whole machinery of diplomacy. He only, with the approbation of the senate, can appoint a negociator, or take any step towards a negociation. The constitution does not, in any part of it, even intimate that any other department shall possess either a constant or an occasional right to interpose in the preparation of any treaty, or in the final per-

fection of it. The president and senate are explicitly pointed out as the sole actors in that sort of transaction.

The prescribed concurrence of the *Senate*, and that too by a majority greater than the ordinary legislative majority, plainly excludes the necessity of congressional concurrence. If the consent of congress to any treaty had been intended, the constitution would not have been guilty of the absurdity of putting a treaty for ratification to the president and senate exclusively, and again to the same president and senate, as portions of the legislature. It would have submitted the whole matter at once to Congress; and the more especially, as the ratification of a treaty by the Senate, as a branch of the legislature, may be by a smaller number than a ratification of it by the same body, as a branch of the executive government. If the ratification of any treaty by the President, with the consent of the Senate, must be followed by a legislative ratification, it is a mere nonentity. It is good for all purposes, or for none. And if it be nothing in effect, it is a mockery by which nobody would be bound. The president and senate would not themselves be bound by it; and the ratification would at last depend, not upon the will of the president and two-thirds of the senate, but upon the will of a bare majority of the two branches of the legislature, subject to the qualified legislative control of the president.

Upon the power of the president and senate, therefore, there can be no doubt. The only question is, as to the extent of it; or, in other words, as to the subject upon which it may be exerted. The *effect* of the power, when exerted within its lawful sphere, is beyond the reach of controversy. The constitution has declared, that whatsoever amounts to a treaty made under the authority of the United States, shall immediately be supreme law. It has contradistinguished a *treaty* as law, from an *act of congress* as law. It has erected treaties, so contradistinguished, into a binding judicial rule. It has given them to our courts of justice, in defining their jurisdiction, as a portion of the *lex terra*, which they are to interpret and enforce. In a word, it has communicated to them, if ratified by the department which it has specially provided for the making of them, the rank of law—or it has spoken without meaning. And, if it has elevated them to that rank, it is idle to attempt to raise them to it by ordinary legislation.

It is clear, that the power of congress, as to foreign commerce, is only what it professes to be in the constitution, a legislative power—to be exerted municipally, without consultation or agreement with those with whom we have an intercourse of trade. It is undeniable, that the constitution meant to provide for the exercise of another power relatively to commerce, which should exert itself in concert with the analogous power in other countries; and should bring about its results, not by statute enacted by itself, but by an international compact called a treaty; that it is manifest,

that this other power is vested by the constitution in the president and senate, the only department of the government which it authorizes to make any treaty, and which it enables to make all treaties; that if it be so vested, its regular exercise must result in that which, as far as it reaches, is law in itself—and, consequently, repeals such municipal regulations as stand in its way; since it is expressly declared by the constitution, that treaties regularly made, shall have, as they ought to have, the force of law.

Mr. PICKERING. To a just understanding of the question before the house, a distinction should be taken; that is, between the *validity* and the *execution* of a treaty. While gentlemen on the other side, (with a single exception,) admit that some treaties made by the president and senate are valid, without any act to be done on the part of this house, such as simple treaties of peace, and even of alliance; seeing no special power is granted to congress by the constitution, to make peace and form alliances—yet, it is said, that when the intervention of this house is necessary, as in providing and making appropriations of money to carry treaties into execution, then the sanction of this house is requisite, to give them a binding force.

But shall treaties operate a repeal of a law of the United States? Yes; because treaties being, equally with acts of congress, the law of the land, they must repeal all the provisions of prior laws contravening their stipulations—according to the well known maxim, that the latter laws repeal all antecedent laws containing contrary provisions: and, so long as treaties exist, so long the government and nation are bound to observe them; and the decisions of the judges must conform to their stipulations. But as treaties may thus annul the laws of congress, so may these laws annul treaties; and when congress shall, by a formal act, declare a treaty no longer obligatory on the United States, the judges must abandon the treaty, and obey the law. And why? Because the *whole authority*, on our part, which gave *existence* and *force* to the treaty, is *withdrawn* by the annulling act.

Mr. PINKNEY. Such is the effect of a law of congress declaring war against a nation, between whom and the United States any treaties had been made: Take, for example, the case of France, with whom we had a treaty of amity and commerce, a treaty of alliance, and a consular convention. These treaties having been repeatedly violated on the part of the French government, and the just claims of the United States for repairing the injuries so committed having been refused—and their attempts to negociate an amicable adjustment of all complaints between the two nations, having been repelled with indignity—and as the French persisted in their system of predatory violence, infracting those treaties, and hostile to the rights of a free and independent nation—for these causes, explicitly, congress, in July 1798, passed a law, enacting that those treaties should not, thenceforth, be re-

garded as legally obligatory on the government or citizens of the United States. And two days afterwards, congress passed another law, authorizing the capture of all French armed vessels, to which the commerce of the United States long had been, and continued to be a prey. And, as in this, so in every other case in which congress shall judge there existed good and sufficient cause for declaring a treaty void, they will so pronounce; either because they intend to declare war, or because they are willing the United States should meet a war, to be declared on the other side, as less injurious to the country than an adherence to the treaty. But should congress, without adequate cause, declare a treaty no longer obligatory, they must be prepared to meet the reproach of perfidy, besides exposing the United States to the evils of war, should the offended nation think fit to avenge the wrong, by making war upon them.

INTERNAL IMPROVEMENT, *Bonus Bill, &c. H. R. Feb.* 4, 1817.

Mr. PICKERING. He remembered, that the supposition that Congress might, under that clause, exercise the power of *making* roads in any State, and where they pleased, was offered as a serious objection to the adoption of the constitution, in the convention of Pennsylvania, of which Mr. P. (then living in that State,) was a member. And his recollection was probably the more perfect, because *he* answered the objection; observing, that the power "to establish post offices and post roads," could intend no more than the power to direct *where* post offices should be kept, and *on what roads* the mails should be carried: and this answer appeared, then, to be entirely satisfactory.

Mr. CLAY. As to the constitutional point which had been made, he had not a doubt on his mind. It was a sufficient answer to say, that the power was not now to be exercised. It was proposed merely to designate the fund; and, from time to time, as the proceeds of it came in, to invest them in the funded debt of the United States. It would thus be accumulating; and congress could, at some future day, examine into the constitutionality of the question; and, if it has the power, it would exercise it; if it has not, the constitution, there could be very little doubt, would be so amended as to confer it. It was quite obvious, however, that congress might so direct the application of the fund, as not to interfere with the jurisdiction of the several states, and thus avoid the difficulty which had been started. It might distribute it among those objects of private enterprize, which called for national patronage, in the form of subscriptions to the capital stock of incorporated companies, such as that of the Delaware and Chesapeake canal, and other similar institutions. Perhaps that might be the best way to employ the fund; but, he repeated, that this was not the time to go into that inquiry.

Mr. PICKERING. It has been said that the last clause but one, in the eighth section of the first article, expressly mentions "the erection of forts, arsenals, dock yards, magazines, and other needful buildings;" but whoever will examine that clause, will perceive, that it does not give Congress any *power to erect those works*, but simply *to exercise exclusive legislation over the places where they are erected*; such place having been previously purchased *with the consent of the states* in which the same shall be—the *power* to erect such works and buildings, is no where *expressed* in the constitution. It is, then, an *implied* power, whose existence is recognized by the constitution itself. But where can it be found, unless it is involved in the *express* powers to regulate commerce, and provide for the common defence? Without navigation, without commerce by sea, we should need no light houses, beacons, or piers.

If, then, it was constitutional to erect the works which have been mentioned, to give facility, safety, and expedition to commerce by sea, will any one deny the constitutional power of Congress to erect similar works on our interior waters on the great lakes?

INTERNAL IMPROVEMENTS.—*Senate, Feb.* 27, 1817.

A Bill *to set apart and pledge, as a permanent fund for Internal Improvements, the Bonus of the National Bank, and the United States' share of its dividends.*

Be it enacted, &c. That the Bonus secured to the United States, by the "act to incorporate the subscribers to the Bank of the United States," and the dividends which shall arise from their shares in its capital stock, during the present term of twenty years, for which the proprietors thereof have been incorporated, be, and the same are hereby set apart and pledged, as a fund for constructing roads and canals, and improving the navigation of water courses, in order to facilitate, promote, and give security to internal commerce among the several states, and to render more easy and less expensive, the means and provisions necessary for their common defence.

Sec. 2. *And be it further enacted,* That the monies constituting the said fund shall, from time to time, be applied in constructing such roads or canals, or in improving the navigation of such water courses, or both, in each state, as congress, with the assent of such state, shall by law direct, and in the manner most conducive to the general welfare; and the proportion of the said money to be expended on the objects aforesaid, in each state, shall be in the ratio of its representation, at the time of such expenditure, in the most numerous branch of the national legislature.

Sec. 3. *And be it further enacted,* That, the said fund be put under the care of the Secretary of the Treasury, for the time being; and that it shall be his duty, unless otherwise directed, to vest the said dividend, if not specifically appropriated by congress, in the stock of the United States, which stock shall accrue to, and is hereby constituted a part of, the said fund.

Sec. 4. *And be it further enacted,* That it shall also be the duty of the said Secretary, unless otherwise directed, to vest the bonus for the charter of said bank as it may fall due in the stock of the United States; and also to lay before congress, at their usual session, the condition of said fund.

Message of the President, transmitting to the House of Representatives his OBJECTIONS *to the* [*above*] BANK BONUS BILL.

To the House of Representatives of the United States:

Having considered the bill this day presented to me, entitled "An act to set apart and pledge certain funds for internal improvements;" and,

which sets and pledges funds "for constructing roads and canals, and improving the navigation of water courses, in order to facilitate, promote, and give security to internal commerce among the several states, and to render more easy and less expensive the means and provisions for the common defence;" I am constrained, by the insuperable difficulty I feel in reconciling the bill with the constitution of the United States to return it, with *that objection*, to the House of Representatives, in which it originated.

The legislative powers vested in congress are specified and enumerated in the 8th section of the first article of the constitution; and it does not appear that the power, proposed to be exercised by the bill, is among the enumerated powers; or that it falls, by any just interpretation, within the power to make laws necessary and proper for carrying into execution those or other powers vested by the constitution in the government of the United States.

"The power to regulate commerce among the several states," cannot include a power to construct roads and canals, and to improve the navigation of water courses, in order to facilitate, promote, and secure, such a commerce, without a latitude of construction, departing from the ordinary import of the terms, strengthened by the known inconveniences which doubtless led to the grant of this remedial power to congress. To refer the power in question to the clause "to provide for the common defence and general welfare," would be contrary to the established and consistent rules of interpretation; as rendering the special and careful enumeration of powers which follow the clause, nugatory and improper. Such a view of the constitution would have the effect of giving to congress a general power of legislation, instead of the defined and limited one hitherto understood to belong to them, the terms "the common defence and general welfare," embracing every object and act within the purview of a legislative trust. It would have the effect of subjecting both the constitution and laws of the several states, in all cases not specifically exempted, to be superseded by laws of congress; it being expressly declared, "that the constitution of the United States, and laws made in pursuance thereof, shall be the supreme law of the land, and the judges of every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."—Such a view of the constitution, finally, would have the effect of excluding the judicial authority of the United States from its participation in guarding the boundary between the legislative powers of the general and the state governments; inasmuch as questions relating to the general welfare, being questions of policy and expediency, are unsusceptible of judicial cognizance and decision.

A restriction of the power "to provide for the common defence and general welfare," to cases which are to be provided for by the expenditure of money, would still leave within the legislative power of congress all the great and most important measures of government; money being the ordinary and necessary means of carrying them into execution.

If a general power to construct roads and canals, to improve the navigation of water courses, with the train of powers incident thereto, be not possessed by congress, the assent of the states, in the mode provided in the bill, cannot confer the power. The only cases in which the consent and cession of particular states can extend the power of congress, are those specified and provided for in the constitution.

I am not unaware of the great importance of roads and canals, and the improved navigation of water courses; and that a power in the national legislature to provide for them, might be exercised with signal advantage to the general prosperity. But, seeing that such a power is not expressly given by the constitution, and believing that it cannot be deduced from any part of it, without an inadmissible latitude of construction, and a reliance on insufficient precedents; believing also, that the permanent success of the constitution depends on a definitive partition of powers between the general and state governments, and that no adequate land marks would be left, by the constructive extension of the powers of congress, as proposed in the bill, I have no option but to withhold my signature from it; cherishing the hope, that its beneficial objects may be obtained, by a resort for the necessary powers, to the same wisdom and virtue in the nation, which established the constitution in its actual form, and providently marked out in the instrument itself, a safe and practicable mode of improving it, as experience might suggest.

March 3, 1817. JAMES MADISON.

[It is understood that Mr. Calhoun, who reported the *Bonus* bill, did not touch the constitutional question involved in it, as he did not propose to make an appropria-

tion, but simply to set aside the Bonus as a fund for Internal Improvement, leaving it to a future congress to determine the extent of its powers; or if it should be determined that it did not possess power over the subject, to obtain an amendment of the constitution, as recommended by Mr. Madison in his message at the opening of the session. Under these impressions, Mr. C. declined arguing the constitutional question in his speech on the bill, and limited his objections to the question of expediency.]

BANKRUPT BILL. *H. R., February* 16, 1818.

Mr. HOPKINSON. The subject seems to have been considered in this light by the framers of the constitution; who have therefore, among the enumerated powers of congress, expressly granted the power "to establish uniform laws on the subject of bankruptcies."

Mr. H. said he considered this as a declaration of the will of the people, that congress should act on this subject at least, so far as to establish an uniform rule. It binds us to no particular system, it is true, but it does enjoin on us most impressively to provide some one which shall be uniform in its operations on the different states, giving a certain known rule, and preventing those numerous and obvious evils that must arise from various and conflicting systems in the different states, by which the relation between debtor and creditor, so interesting to all classes of our citizens, must forever be changing, be imperfectly understood, and be daily producing inequality and injustice between the creditors and debtors residing in the different states. Mr. H. insisted that when the several states parted with this power, it was only to attain that uniformity of system, which could be established only by the general government; and that the states, having surrendered the power for this purpese, had a fair claim on the general government not to disappoint this expectation; but to apply the power to the uses intended by the grant of it.

February 17, 1818.

Mr. TYLER, (Va.) The honorable gentleman yesterday demanded of this house, to carry all the powers of the government, and represented it as our bounden duty, in every instance, in which the constitution gave power, to exercise it. The gentleman's position leaves us no alternative. Our discretion is taken from us—our volition is gone. If the gentleman be correct, we are stopped at the threshold of this enquiry; for inasmuch as the constitution confers on congress the power to adopt a uniform system of bankruptcy, according to his doctrine, we are not to enquire into the expediency of adopting such system, but must yield it our support. Here, sir, I join issue with that gentleman. What, sir, is the end of all legislation? Is it not the public good? Do we come here to legislate away the rights and happiness of our con-

stituents, or to advance and secure them? Suppose, then, by carrying into effect a specified power in the constitution, we inflict serious injury upon the political body, will gentlemen contend that we are bound by a blind fatality and compelled to act? Sir, such a doctrine cannot be supported even by the distinguished talents of that gentleman. The powers of this constitution are all addressed to the sound discretion of congress. You are not imperatively commanded, but authorised to act, if by so acting the good of the country will be promoted.

Mr. SERGEANT, (Pa.) Why, it is said, why not extend the provisions to all classes of the community? Why confine them to a single class? The answer is a very plain one. The design of the constitution was to vest in the government of the United States such powers as were necessary for national purposes, and to leave to the states all other powers. Trade, commercial credit, and public or national credit, which is intimately allied to it, were deemed, and rightly deemed, to be national concerns of the highest importance. In the adjustment of our government, at once national and federal, they were intended to be confided, and were confided to the care of the public authority of the nation.

It does not appear to me that we need enquire, whether the term "bankruptcy" had a definite meaning, to which we are limited, nor whether we are bound to follow the model of the statutes of England, or any state bankrupt laws that may have existed here before the constitution was formed. For the present purpose, the general spirit and scope of the constitution furnish a sufficient guide. The design of that instrument was to occupy national ground, and leave the rest to the states.

February 19, 1818.

Mr. MILLS, (Mass.) Once establish the principle, that the situation of the country is such as to require the exercise of that power with which the constitution has vested you upon this subject, and whether the prominent features of your system shall be drawn from the commercial code of Napoleon, or the acts of the British parliament, will be a mere question of expediency, to be determined by their relative merits, and their analogy to your habits and institutions. Sir, I shall not stop here to enquire into the *extent* of the *obligation* imposed on you by the constitution. It is enough for me to find the power "to establish uniform laws on the subject of bankruptcies throughout the United States," expressly delegated to congress by that instrument, and to satisfy myself that the exigencies of the country require its exercise, to appreciate the weight of this obligation. Too long already has this delegation of authority remained a mere dead letter in that compact; and too long have those for whose benefit it was introduced, called upon you to give it life, and energy, and action.

Are you sure that, since the adoption of the federal constitution,

the state legislatures have any legitimate authority to pass those laws? By that instrument it is contended, congress alone have power to establish an uniform system of bankruptcy, and the states are expressly prohibited from passing "any laws impairing the obligation of contracts." So far, therefore, as these laws impugn either of these provisions, so far they transcend the powers retained by the states. Upon this subject, however, I wish not to be understood as giving an opinion, or attempting to sustain an argument.

Mr. HOPKINSON. I have never contended that there is an absolute, indisputable, constitutional obligation on congress to pass a bankrupt law; but I do contend, that it comes so recommended by the constitution, and by the people who speak in and by that constitution, that we may not disregard it; that it is our duty to exercise that power, to execute the trust unless, on a full and fair investigation of the subject, it shall be unwise and injurious to the nation to do so. I do contend that this high and general duty ought to be dispensed with on doubtful reasons; on hypothetical arguments, drawn altogether from a presumed abuse of the law; much less from an indulgence of old prejudices or local views and interests. It is a great national object of legislation; it should be decided on national principles; it is deeply interesting to a vast and valuable portion of the people of this country; it should, therefore, be considered in relation to those interests, and determined on a fair comparison between the good it will certainly produce to this class, and the evil it may inflict if any, on the rest of the community. This government is founded on a compromise of interests, and every one has a fair claim to attention and regard.

MILITARY APPROPRIATION BILL.—*H. R. Jan.* 4, 1819.

Mr LOWNDES. He thought there was no inconsistency in denying the general power of constructing internal improvement, and yet voting an appropriation for making any road where there should be a temporary encampment, &c. There was, he conceived, no inconsistency between the expressed opinion of the executive respecting the general power, and the conduct of the executive on this subject. The propriety of making specific appropriations for all objects, where it could well be done, he did not deny; but he was also apprehensive that it might be pushed to an improper extent. All appropriations could not be specific; but, after making them as minute as possible, and limiting the executive to a certain extent, there would be always some distinction left him. It was proper, also, he admitted, where it could be done, to designate and fix the place where the public mony is to be applied; but this could not in all cases be done, and he mentioned instances in which this was left by law to the discretion of the executive; and the present was one of those cases in which this must necessarily be done.

SEMINOLE WAR. *H. R., January* 21, 1819.

Mr. R. M. JOHNSON, (Ky.) As early as 1787, and farther back, if it were necessary to trace, provisions of the same nature as those now existing, were enacted by the venerable congress of the confederation. By various statutes the same provisions had been continued to the present day The statute gave to the president a discretionary power to employ the forces of the United States, and to call forth the militia to repress Indian hostility; and gave it to him properly on the principles of the constitution. By the constitution, the president is made commander-in-chief of the army; and it is made his duty to take care that the laws are executed, to suppress insurrections, and repel invasions: and by the same instrument it is made our duty to provide for calling forth the militia to be employed in these objects. That power has been exercised in the manner which will be shewn by the law of the United States. [Mr. J. here requested the clerk to read the statute to which he alluded; and it was read accordingly.] Now, Mr. J. said, he thought this was a declaration of war of at least equal dignity to the manner in which the savages make war against us, and to the light in which we view them. We treat them, it is true, and we ought to treat them, with humanity; we have given them privileges beyond all other nations—but we reserve the right to repel their invasions, and to put to death murderers and violators of our peace, whether Indians or white men.

TARIFF. *H. R., April* 26, 1820.

Mr. CLAY. Sir, friendly as I am to the existence of domestic manufactures, I would not give to them unreasonable encouragement by protecting duties. Their growth ought to be gradual, but sure. I believe all the circumstances of the present period highly favorable to their success. But they are the youngest and the weakest interest of the state. Agriculture wants but little or no protection against the regulations of foreign powers. The advantages of our position, and the cheapness, and abundance, and fertility of our land, afford to that greatest interest of the state almost all the protection it wants. As it should be, it is strong and flourishing; or, if it be not, at this moment, prosperous, it is not because its produce is not ample, but because, depending as we do altogether upon a foreign market, for the sale of the surplus of that produce, the foreign market is glutted. Our foreign trade, having almost exclusively engrossed the protecting care of government, wants no further legislative aid. And whatever depression it may now experience, it is attributable to causes beyond the control of this government. The abundance of capital, indicated by the avidity with which loans are sought, at the reduced rate of five per centum; the reduction in the wages of labor; and the decline in the price of property of every kind, as well as that of agricultural produce, all concur favorably for domestic manufactures. Now,

as when we arranged the existing tariff, is the auspicious moment for government to step in and cheer and countenance them. We did too little then, and I endeavored to warn this house of the effects of inadequate protection. We were called upon, at that time, by the previous pledges we had given, by the inundation of foreign fabrics which was to be anticipated from their free admission after the termination of the war, and by the lasting interests of this county, to give them efficient support. We did not do it; but let us not now repeat the error. Our great mistake has been in the irregularity of the action of the measures of this government upon manufacturing industry. At one period it is stimulated too high, and then, by an opposite course of policy, it is precipitated into a condition of depression too low. First, there came the embargo; then non-intercourse, and other restrictive measures followed; and finally, that greatest of all stimuli to domestic fabrication, war. During all that long period we were adding, to the positive effect of the measures of government, all the moral encouragement which results from popular resolves, legislative resolves, and other manifestations of the public will and the public wish to foster our home manufactures, and to render our confederacy independent of foreign powers. The peace ensued, and the country was flooded with the fabrics of other countries; and we, forgetting all our promises, coolly and philosophically talk of leaving things to themselves; making up our deficiency of practical good sense, by the stores of learning which we collect from theoretical writers. I, too, sometimes amuse myself with the visions of these writers, and, if I do not forget, one of the best among them enjoins it upon a country to protect its industry against the influence of the prohibitions and restrictions of foreign countries, which operate upon it.

Let us manifest, by the passage of this bill, that congress does not deserve the reproaches which have been cast on it, of insensibility to the wants and the sufferings of the people.

The Petition of Matthew Lyon. Senate, March, 1821.

Mr. SMITH, (S. C.) The constitution of the United States is not the production of congress; it is not the property of congress. It is the production of the people, and the property of the people. It is their shield against the abuse of powers, as well as against the usurpation of powers, both by congress and the judges. Your powers are limited. All legislative powers are granted to congress, and all judicial powers are granted to the judges. You have therefore the power to enact laws, but no power to set in judgment upon those laws. It is expressly and exclusively given to the judges to construe the laws, and to decide upon their constitutionality. The judges are an independent and co-ordinate branch of the government, deriving their authority from the constitution, and not from congress. They are accountable to the sovereign people; and if

guilty of mal-practice in administering the laws, they can, and ought to be impeached; and you are the tribunal before which they are to answer; but there your powers cease. You have powers to punish judges for corruption, but none to revise or correct their decisions.

Mr. S. added, within three years after the adoption of the federal constitution, Mr. President Madison, in debate upon a proposition to incorporate the former bank of the United States, opposed it on the ground of its being unconstitutional. He said—

"In making these remarks on the merits of the bill, he had reserved to himself the right to deny the authority of congress to pass it. He had entertained this opinion from the date of the constitution. His impression might perhaps be the stronger, because he well recollected that a power to grant charters to incorporations had been proposed in the general convention and rejected."

But, when a bill to incorporate the present United States' Bank was submitted for his approval, and when he could have put it down forever, he found means to get over all his constitutional scruples, and approved the act.

MISSOURI QUESTION. *H. R., December* 13, 1821.

Mr. LOWNDES. The constitution gives to congress the power to admit states in the *broadest* terms. The high privileges which it is authorised to impart may commence instantly, and extend through all future time. When the convenience of a territory required that it should become a member of the union at a future day, what principle of the constitution was opposed to this prospective admission? Congress may raise armies. Has any man ever suspected that this power could not be executed by giving a prospective, and even a contingent authority? Congress may lay taxes: may they not be limited to take effect some time after the passage of the law? Congress may institute inferior courts: would such an act be void, because its operation was to commence from a future day; void, because it was not inconvenient and absurd? Run your eye along the whole list of powers which are given to the federal legislature, and you will find no countenance for the doctrine which would require that at the very moment when their will is pronounced, the object which they are empowered to effect should be instantly executed. The power of making treaties, too, although given to another depository, is supposed to be pursued, although the convention with a foreign state, may take effect from a future day. There is nothing plausible in the assertion which denies to congress the power of admitting states, by an act which shall not go into operation for some time after its passage. The house would see, in his subsequent observations, the importance of determining whether congress had the constitutional right of admitting states by a prospective law. He need not say that this question of right, was distinct from that of expediency.

BANKRUPT BILL.—*H. R.*—*March* 12, 1822.

Mr. BUCHANAN, (Pa.) It has been urged, that, as the powers of the constitution gave to congress the power of passing a bankrupt law, we are bound to put that power into practical operation, and to suffer it to remain dormant.

In answer to this argument I would reply, that power and duty are very different in their nature. Power is optional, duty is imperative. The language of power is that you may, that of duty you must. The constitution has, in the same section and in the same terms, given to congress the power to declare war, to borrow money, to raise and support armies, &c. Will any gentleman, however, undertake to say, we are under an obligation to give life and energy to these powers, by bringing them into action? Will it be contended, that, because we possess the power of declaring war and of borrowing money, that we are under a moral obligation to embroil ourselves with foreign powers, or load the country with a national debt? Should any individual act upon the principle, that it is his duty to do every thing, which he has the legal power of doing, he would soon make himself a fit citizen for a mad house.

Power, whether vested in congress or in an individual, necessarily implies the right of exercising the right of a sound discretion. The constitution was intended not only for us, and for those who have gone before us, but for generations yet to come. It has vested in congress ample powers, to be called into action whenever, in their sound discretion, they believe the interest or the happiness of the people require their exertion. We are, therefore, left to exercise our judgment on this subject, entirely untrammelled by any constitutional injunction.

On the CONSTITUTIONALITY of the TARIFF. *Senate, April* 1824.

Mr. HAYNE. Will gentlemen suffer me to ask them to point out to me, if they can THE POWER which this government possesses to adopt a system for the *avowed purpose of encouraging particular branches of industry?* The power to declare war may involve the right of bringing into existence the means of national defence. But, to tell us we have a right to resort to theoretical speculations, as to the most convenient or profitable employments of industry, and that you can, by law, encourage certain pursuits, and prohibit others, is to make this not merely a consolidated, but an unlimited government. If you can control and direct any, why not all the pursuits of your citizens? And if all, where is the limitation to your authority? Gentlemen surely forget, that the supreme power, is not in the governments of the United States. They do not remember that the several States are free and independent SOVEREIGNTIES, and that all power, not expressly granted to the Federal Government, is reserved to the people of those sovereignties.

When I say, expressly delegated, I wish to be understood, that no power can be exercised by congress, which is not expressly granted, or which is not clearly incident to such a grant. Now, when we call upon gentlemen, to show their authority, they tell us it is derived from the authority to "regulate commerce." But are *regulation*, and *annihilation*, synonimous terms? Does one include the other? Or are they not rather opposites, and does not the very idea of regulation, exclude that of destruction? I rejoice, sir, to find that gentlemen refer us to COMMERCE; for the very clause which expressly confers the right to regulate commerce, by saying nothing of the regulation of manufactures or of agriculture, or home industry, seems to demonstrate, that they were intended to be put beyond our control; and to be reserved to the people of the States respectively. But our opponents gravely inform us, that this is a bill to levy imposts, and that it is, therefore, within the *very letter* of the constitution. True, sir, if *imposts* were the end and aim of the bill. But, surely, gentlemen will not attempt to justify a departure from the *spirit*, by an adherence to the *letter* of the constitution? Will they contend, that we could, by law, adopt and enforce the *Chinese policy*, and by virtue of our authority to regulate commerce, interdict all intercourse with foreign nations? And if you could not do that directly, can you accomplish the same thing indirectly, by levying such imposts as will produce the same result? It may be difficult to draw the exact line which divides the lawful exercise from the abuse of authority—where regulation ceases, and unconstitutional prohibition begins. But it is certain, if you have a right to prohibit the importation of cottons and woollens, and cotton bagging, for the encouragement of domestic manufactures you may, whenever you please, prohibit importations and shut up your ports entirely. An embargo can only be justified as a branch of the war power, and I think no one will contend at this day, that a *general and perpetual embargo* could be lawfully laid. If it be sufficient to adhere to the letter without regard to the spirit and intent of the constitution, if we may use a power granted for one purpose, for the accomplishment of another and very different purpose, it is easy to show that a constitution on parchment is worth nothing. Orders of nobility, and a church establishment, might be created even under the power to raise armies. We are informed, that in Russia, military titles alone confer civil rank—and all the departments of the government are filled with generals and colonels, entitled to rank, and to pay, without actual command or liability to service. Now, suppose, we were to follow the example of Russia, and should give rank and pay to a certain number of *generals* and CHAPLAINS, with a total, or qualified exemption from service; might we not easily build up orders of nobility, and a church establishment? Sir, this government was never established for the purpose of divesting the States of their sovereignty, and, I fear, it cannot long exist, if the system, of which this bill is the

foundation, shall be steadily pursued to the total destruction of foreign commerce, and the ruin of all who are connected with it.—Sir, it is my most sober and deliberate opinion, that the congress of the United States, have no more power, to pass laws for the purpose of directly or indirectly compelling any portion of the people to engage in manufactures, than they have to abolish trial by jury, or to establish the inquisition. I will invoke gentlemen on the other side, while we yet pause on the brink of this mighty danger, in the name of Liberty and the Constitution, to examine this question, carefully and candidly; and if they shall search in vain, in our great charter, for power to pass this bill—they must surely suffer it to perish. I must be permitted, while on this topic, to declare, that, however this bill may be modified, still the system is one, against which, we feel ourselves constrained, in behalf of those we represent, to enter our most solemn protest. Considering this scheme of promoting certain employments, at the expense of others, as unequal, oppressive, and unjust—viewing prohibition as the *means*, and the destruction of all foreign commerce, the *end* of this policy,—I take this occasion to declare, that we shall feel ourselves fully justified, in embracing the very first opportunity of repealing all such laws, as may be passed for the promotion of these objects. Whatever interests may grow up under this bill, and whatever capital may be invested, I wish it to be distinctly understood, that we will not hold ourselves bound to maintain the system; and if capitalists, will, in the face of our protests, and in defiance of our solemn warnings, invest their fortunes in pursuits, made profitable at our expense, on their own heads be the consequences of their folly. This system is in its very nature PROGRESSIVE. Grant what you may now, the manufacturers will never be satisfied—do what you may for them, the advocates of home industry, will never be content, until every article imported from abroad, which comes into competition with any thing made at home, shall be prohibited—until, in short, foreign commerce shall be entirely cut off.

JUDICIARY—*H. R. Jan.* 10, 1825.

Mr. WEBSTER. In defining the power of congress, the constitution says, it shall extend to the defining and punishing of piracies and felonies upon the high seas and offences against the law of nations. Whether the constitution uses the term "high seas," in its strictly technical sense, or in a sense more enlarged, is not material. The constitution throughout, in distributing legislative power, has reference to its judicial exercise, and so, in distributing judicial power, has respect to the legislative. Congress may provide by law, for the punishment; but it cannot punish. Now it says that the judicial power shall extend to all cases of maritime jurisdiction; and it has lately been argued that, as soon as a judicial

system is organized, it had maritime jurisdiction at once, by the constitution, without any law to that effect—but I do not agree to this doctrine—and I am very sure that such has not been the practice of our government from its origin in 1789 till now. The constitution defines what shall be the objects of judicial power, and it establishes only a supreme court—but in the subordinate courts the jurisdiction they shall exercise must be defined by congress; the defining of it is essential to the creation of those courts. The judicial power is indeed *granted* by the constitution, but it is not, and cannot be *exercised* till congress establishes the courts by which it is to be so exercised. And I hold there is still a residuum of judicial power, which has been granted by the constitution, and is not yet exercised, viz: for the punishment of crimes committed within the admiralty jurisdiction of the United States' courts, and yet not without the jurisdiction of the particular states So the constitution says that the federal courts shall have jurisdiction of all civil cases between citizens of different states, and yet the law restricts this jurisdiction in many respects—as to the amount sued for, &c. There is a mass of power entrusted to congress; but congress has not granted it all to specific courts, and therefore the courts do not exercise it. The constitution gives to congress legislative power in all cases of admiralty jurisdiction, from whence has occurred one of the most extraordinary of all circumstances that causes of revenue have become cases of admiralty jurisdiction.****

Many things are directed to be punished in the act of 1790, on the high seas, which are neither piracies nor felonies, although the constitution, speaking of the judicial power, restricts it to piracies and felonies which would infer that the Constitution was then held to grant larger power by the other clause.

INTERNAL IMPROVEMENT.—*Jan.* 18, 1825.

Mr. CAMBRELENG said he had hitherto uniformly, but silently, opposed measures of this character, only from a doubt of the constitutional power of the federal government. He had, however, devoted much attention to the question, and, after mature deliberation, he had been led to the conclusion, that, if a government, enjoying the entire post-road and military powers of this union, could not constitutionally construct a road or a canal, then it had no incidental power whatever. He had, accordingly, for the first time, given his vote in favour of a subscription to the Chesapeake and Delaware canal.

February 13, 1826.

Mr. BERRIEN said, as to the general right asserted for the union, to make roads through all the indian countries, against such a doctrine he should desire to protest. He would draw a distinction between those lands of indians, living within limits of the states which came into the confederation, with certain chartered limits, and those living within states, who, at the time of the for-

mation of the constitution, had no limits, and whose limits were only defined by the laws regulating their admission into the union.

FLORIDA CANAL.—*Feb.* 14, 1826.

Mr. BRANCH perfectly coincided with the gentleman from Tennessee, (Mr. White)—doubting of the constitutional right of the United States to cut roads and canals through the States, he had hitherto abstained from exercising it; but as regarded the territory, the objection did not seem to exist; for, not only had congress the right to make this appropriation for a road through the indian country, acquired by treaty, before it came into the union, but it was an obligation on the general government to complete the work it had commenced, and he had therefore voted for it.

Mr. ROWAN. In the general government, they were, Mr. R. said, to look into the constitution for all the power they possessed—there was no such power given in the constitution; and he believed, with deference to the opinion entertained, that, to convey the exercise of such a power, was incompatible with what was the acknowledged power of the States. There was no power given to expend money in roads and canals in the States; there was no such power specifically given to the United States; and when once it was settled in this house that power could be derived to this government by construction, you have discovered the means by which the whole power of a State might be frittered down and annihilated.

On the Constitutional Power of the President to originate the appointment of a FOREIGN MINISTER, *Senate, March,* 1826.

Mr. BERRIEN.—By the constitution, the president is authorised to nominate, and, by and with the advice and consent of the senate, to appoint ambassadors, and other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not therein otherwise provided for, and which shall be established by law.—Now, it is plain that the appointing power does not include the power to create the office; in other words, that the office, to which the appointee is nominated, must be previously created by law. If an appointment be to an office, to be exercised within the limits of the United States or its territories, it must be to one which exists, and has been created, by the municipal laws of the United States. If to an office which is to be exercised without the limits of the United States, within the dominions of a foreign sovereign, it must be to one which exists, and is recognized, by the general principles of international law, or which is specially created by positive and particular pacts and conventions. The limitation in the latter case results not only from the fundamental law of this government, but from the exclusive dominion, within his own territories, of the sovereign within whose territories this minister is to exercise his functions. That sovereign is bound, as a member

of the great family of nations, to recognize as legitimate, an appointment which is consonant to the code of international law; and of course, to acknowledge one which, by express convention, he has stipulated: but this is the extent of his obligation, and consequently the limit of the appointing power under our constitution.

Let us look to the first of these propositions. Is it within the "constitutional competency" of the president to appoint to an office, the functions of which are to be exercised within the limits of the United States, which office has not been created by the laws of the United States? Take an example. The president deems it expedient to establish a home department. Is there any one sufficiently absurd to assert, that he has a right *ex mero motu*, or even with the assent of a majority of the senate, to appoint a secretary for that department—to assign to him certain specific duties, and then to call on congress for the requisite appropriation, to compensate his services?—to imagine that the acts of such an officer would be valid, or that his attestations would be respected by our judicial tribunals?

Before the passing of an act of congress for the organization of a newly acquired territory, and the creation by that act of the legislative, executive, and judicial officers deemed necessary for its government, is it within the "constitutional competency" of the president, aided even as before, by a majority of the senate, to appoint an officer or officers to exercise all or either of these functions? The proposition is believed to be too clear for argument.

Within the United States the office *must be created by law*, before the appointing power can be called into action. Why should a different rule prevail *without?* The law of nations operates on this government in its intercourse with other sovereignties, as the municipal law does, in its action on its own citizens. In this case, then, the law of nations, as in the other, the municipal law, must have created the office, before the power of appointment can exist. Now, the law of nations does recognize ambassadors and other ministers, in the intercourse between sovereigns. But this law does no where recognize the right of a congress of ministers to receive an embassy. The right to receive, and the right to send, a minister, are co-relative. The one does not exist without the other. A congress of ministers is not authorized to receive an ambassador, unless it is authorized to send one. Who will assert for the congress of Panama, the right to exercise the latter power?

A sovereign cannot, then, be represented in a congress of ministers, otherwise than by a deputy, who becomes a member of that congress. He is not an ambassador to that congress, but is himself a *constituent part of it.* He is not accredited to any particular power, but is commissioned as one of a number of deputies who are collectively to compose the congress. How are these deputies created? The answer is obvious. From *the necessity of the thing*, it must be, by conventions or treaties between the respective pow-

ers who are to be represented by those deputies. In this manner, the congress at Verona was created by the treaty of Paris. The deputies who appeared there were called into existence by the express stipulations of that treaty. So, too, in the congress of Panama, the office of deputy to that congress is created by the special provisions of the treaties between the several powers who are to be represented there.

The result of what has been said is this: the office of a deputy to an international congress, does not exist permanently under the law of nations, but is the offspring of particular convention; and this, of necessity, because the congress itself is not pre-existing, but is the creature of treaty—and the treaty which creates the congress, stipulates also for the appointment of the deputies, of whom it is to be composed. Then the clause of the constitution which authorizes the appointment of Ambassadors, or other ministers, cannot be invoked to sustain this nomination, because a deputy to a congress is not a minister existing by force of the law of nations, but created by particular conventions between the powers represented in that congress; and we have no such conventions with the powers represented in the congress of Panama. Consequently, as to us, the office of minister or deputy to that congress, does not exist, not being derived from the law of nations, nor provided for by any convention. A very simple view of the subject seems to be decisive. Could the president have sent ministers to the congress of Panama, *uninvited* by the powers represented there? Could he, without such invitation, have required such ministers to be accredited by that congress? Would a refusal to receive them have furnished just ground of complaint? If these questions are answered in the negative, as I presume they must be, the conclusion is obvious, the office *exists only by force of the invitation.*

Unless, then, the *mere invitation of a foreign nation* is competent to *create an office*, and thus to call into action the appointing power of the president, or unless this appointing power includes the power to create the office, which we have seen that it does not, the appointment by the president of ministers to the congress of Panama cannot be valid, nor can it be rendered so by the advice and consent of a majority of the senate. nor by any power short of that which is competent to create the office, and that we have seen is the treaty-making power. The president can appoint a minister to the Republic of Colombia, because such an office exists under the law of nations, and is, therefore, a legitimate object of the appointing power; and he may instruct such minister to communicate with the congress of Panama—but he cannot appoint a minister to take a seat *in* that congress, because we have no conventions with the powers represented there, by which, as to us, the office is created; nor can he send a minister, as an ambassador or legate, to that congress, because the congress, as such, has not the rights of embassy. If it be said that this is mere form, the anwer is ob-

vious—form becomes substance in this case, by force of the constitutional provision, which requires the assent *of two-thirds of the* senate to the ratification of a treaty, while *a bare majority* is sufficient to give effect to an exercise of the appointing power.

Let us consider this question for a moment, freed from the prejudices which operate in favor of the Spanish American Republics. If the states represented in the congress of Vienna or Verona, or the Holy Alliance, had given us an invitation to be represented there, apart from the expediency of the measure, could it have been within the "constitutional competency" of the president to have sent ministers to take their seats in either of those assemblies? If the nations of Europe should, by treaties, provide for a congress to devise the means of abolishing the slave trade, of resisting the extortions of the Barbary Powers, or of suppressing the piracies of the West Indian seas, could the president, the United States not being parties to those treaties, of his own mere will, make us members of that congress, by sending deputies to represent us there? The question is proposed in this form, because our ministers would, of necessity, if received at all, be members, and not ambassadors, since such a congress is neither competent to send or to receive an embassy.

Why, then, in the creation of this office of deputy or minister to the congress of Panama, was not the constitutional organ, the treaty-making power, resorted to? What would have been the result of such a course is obvious, I think, in the recorded votes of the senate, on the preliminary questions which have arisen. *The object could not have been effected. Two-thirds of the senate could not have been obtained.* The office would not have had existence, or the senate, in the exercise of their legitimate powers, would have so modified the treaty, as to have limited the functions of the ministers to those objects of which they would have approved.***

Mr. ROBBINS.—The theory of our constitution charges the executive with the care of our foreign relations, and of the public interest connected therewith: it supposes him intimately acquainted with all those interests, and therefore possessed of the means of forming a correct opinion of the measures conducive to their advancement. This opinion, though *not* binding as authority, is yet, I think, entitled to much weight, as well as to much respect, in our deliberations. We have the executive opinion in this case, under circumstances that entitle it to peculiar consideration. The credit of the government, in the estimation of all those nations, is in a degree connected with the adoption of this measure; and that estimation ought not, in my opinion, lightly to be forfeited, nor unneccessarily impaired.

On SLAVERY [*Panama Mission.*] *Senate, March* 1826.

Mr. HAYNE. The question of slavery is one, in all its bearings, of extreme delicacy; and concerning which, I know of but

a single wise and safe rule, either for the states in which it exists, or for the union. It must be considered and treated entirely as a DOMESTIC QUESTION. With respect to foreign nations, the language of the United States ought to be, that it concerns the peace of our own political family, and therefore we cannot permit it to be touched; and in respect to the slave-holding states, the only safe and constitutional ground on which they can stand, is, that they will not permit it to be brought into question, either by their sister states, or by the federal government. It is a matter for ourselves. To touch it at all, is to violate our most sacred rights—to put in jeopardy our dearest interests—the peace of our country—the safety of our families, our altars, and our firesides. Sir! on the question of our slave institutions, so often incidentally mentioned, I will take *this opportunity*, once for all, to declare, in a few words, my own feelings and opinions. It is a subject to which I always advert with extreme reluctance, and never, except when it is forced upon me. On the present occasion, the subject has been forced upon our consideration, and when called upon to give my sanction to the discussion by our ministers, (in connection with a foreign congress,) of questions so intimately connected with the welfare of those whom I represent, I cannot consent to be silent. On the slave question, my opinion is this: I consider our rights in that species of property as not even open to discussion, either here or elsewhere; and in respect to our duties, (imposed by our situation,) we are not to be taught them by fanatics, religious or political. To call into question our rights, is grossly to violate them—to attempt to instruct us on this subject, is to insult us—to dare to assail our institutions, is wantonly to invade our peace. Let me solemnly declare, once for all, that the southern states never will permit, and never can permit, any interference whatever in their domestic concerns; and that the very day on which the unhallowed attempt shall be made by the authorities of the federal government, we will consider ourselves as driven from the union. Let the consequences be what they may, they never can be worse than such as must inevitably result, from suffering a rash and ignorant interference with our domestic peace and tranquillity. But while I make these declarations, I must be permitted to add, that I apprehend no such violation of our constitutional rights. I believe that this house is not disposed, and that the great body of our intelligent and patriotic fellow-citizens in the other states, have no inclination whatever to interfere with us. There are *parties* indeed, composed, some of them of fanatics, and others of political aspirants, who are attempting, vainly I hope, to turn the current of popular opinion against us. These men have done us much harm already, and seem still fatally bent upon mischief. But if we are true to ourselves, we will have nothing to fear. Now, sir, if it is the policy of the states not to suffer this great question to be touched by the federal government, surely it must

be the policy of this government, exercising a paternal care over every member of the political family, not to suffer foreign nations to interfere with it. It is their imperative duty to shun discussion with them—and to avoid all treaty stipulations whatever, on any point connected directly, or remotely, with this great question. It is a subject of too delicate a nature—too vitally interesting to us—to be discussed abroad. On this subject, we committed an error when we entered into treaties with Great Britain and Colombia, for the suppression of the *slave trade.* That error has been happily corrected. The first treaty has failed, and the second was nearly unanimously rejected by this body. Our policy then is now firmly fixed—our course is marked out. With nothing connected with slavery, can we consent to treat with other nations—and, least of all, ought we to touch the question of the independence of Hayti, in conjunction with revolutionary governments, whose own history affords an example scarcely less fatal to our repose. Those governments have proclaimed the principles of "liberty and equality," and have marched to victory under the banner of "universal emancipation." You find men of color at the head of their armies, in their legislative halls, and in their executive departments. They are looking to Hayti, even now, with feelings of the strongest confraternity; and show, by the very documents before us, that they acknowledge her to be independent, at the very moment when it is manifest to all the world beside, that she has resumed her colonial subjection to France. Sir, it is altogether hopeless that we could, if we would, prevent the acknowledgment of Haytien independence by the Spanish American states; and I am constrained to add, that I must doubt, from the instruments to be employed by our government, whether they mean to attempt to do so. We are to send, it seems, an honest and respectable man, but a distinguished advocate of the *Missouri restriction*—an acknowledged abolitionist—to plead the cause of the south, at the congress of Panama. Our policy, with regard to Hayti, is plain. We never can acknowledge her independence. Other states will do as they please—but let us take the high ground, that these questions belong to a class, which the peace and safety of a large portion of our union forbids us even to discuss. Let our government direct all our ministers in South America and Mexico, to *protest* against the independence of Hayti. But let us not go into council on the slave trade and Hayti. These are subjects not to be discussed any where. There is not a nation on the globe with whom I would consult on that subject—and, least of all, the new republics.

JUDICIAL SYSTEM.—*Senate—April* 7, 1826.

Mr. VAN BUREN. It has been justly observed that "there exists not upon this earth, and there never did exist, a judicial tribunal clothed with powers so various and so important" as the supreme court.

By it, treaties and laws, made *pursuant* to the constitution are declared to be the supreme law of the land. So far, at least, as the acts of congress depend upon the courts for their execution, the supreme court is the judge, whether, or no, such acts are *pursuant to the constitution*, and from its judgment there is no appeal. Its veto, therefore, may absolutely suspend nine-tenths of the acts of the national legislature. Although this branch of its jurisdiction is not that which has been most exercised, still instances are not wanting in which it has disregarded acts of congress, in passing upon the rights of others, and in refusing to perform duties required of it by the legislature, on the ground that the legislature had no right to impose them.

Not only are the acts of the national legislature subject to its review, but it stands as the umpire between the conflicting powers of the general and state governments. That wide field of debatable ground between those rival powers is claimed to be subject to the exclusive and absolute dominion of the supreme court. The discharge of this solemn duty has not been unfrequent, and, certainly, not uninteresting. In virtue of this power, we have seen it holding for naught the statutes of powerful states, which had received the deliberate sanction, not only of their legislatures, but of their highest judicatories, composed of men venerable in years, of unsullied purity, and unrivalled talents—statutes, on the faith of which immense estates had been invested, and the inheritance of the widow and the orphan were suspended. You have seen such statutes abrogated by the decision of this court, and those who had confided in the wisdom and power of the state authorities, plunged in irremediable ruin. Decisions—final in their effect, and ruinous in their consequences. I speak of the power of the court, not of the correctness or incorrectness of its decisions. With that we have here nothing to do.

But this is not all. It not only sits in final judgment upon our acts, as the highest legislative body known to the country—it not only claims to be the absolute arbiter between the federal and state governments—but it exercises the same great power between the respective *states* forming this great confederacy, and *their own citizens*. By the constitution of the United States, the states are prohibited from passing "any law *impairing the obligation of contract*." This brief provision has given to the jurisdiction of the supreme court a tremendous sweep. Before I proceed to delineate its tendency and character, I will take leave to remark upon some extraordinary circumstances in relation to it. We all know the severe scrutiny to which the constitution was exposed. Some from their own knowledge—others from different sources. We know with what jealousy—with what watchfulness—with what scrupulous care its minutest provisions were examined, discussed, resisted, and supported, by those who opposed, and those who advocated its ratification. But, of this highly consequential provision—this

provision which carries so great a portion of all that is valuable in state legislation, to the feet of the federal judiciary, no complaints were heard—no explanation asked—no remonstrances made. If, they were, they have escaped my researches. It is most mysterious, if the constitution was then understood, as it now is, that this was so. An explanation of it has been given—how correct I know not.

The difficulties which existed between us and Great Britain relative to the execution of the treaty of peace, are known to all.—Upon the avowed ground of retaliation for the refusal of England to comply with the stipulation on her part, laws were passed, between the years 1783 and 1788, by the states of Virginia, South Carolina, Rhode Island, New-Jersey, and Georgia, delaying execution, liberating the body from imprisonment on the delivery of property, and admitting executions to be discharged in paper money. Although those laws were general in their terms, applicable as well to natives as to foreigners, their chief operation was upon the British creditors, and such was the leading design of their enactment. England remonstrated against them as infractions of the stipulations in the treaty, that creditors, on either side, should meet with no impediments to the recovery of the full value, in sterling money, of all debts previously contracted, and attempted to justify the glaring violations of the treaty, on her part, on that ground. An animated discussion took place between the federal government and Great Britain, and between the former and the states in question, upon the subject of the laws referred to, their character and effect. It was during this time that the constitution was formed and ratified. It is supposed that the difficulties, thus thrown in the way of adjustment with England, through the acts of the state governments, suggested the insertion in the constitution of *the provision in question,* and that it was under a belief that its chief application would be to the evil then felt, that so little notice was taken of the subject.

If it be true, that such was its object, and such its supposed effect, it adds another and a solemn proof to that which all experience has testified, of the danger of adopting general provisions for the redress of particular and partial evils. But, whatever the motive that led to its insertion, or the cause that induced so little observation on its tendency, the fact of its extensive operation is known and acknowledged. The prohibition is not confined to express contracts, but includes such as are implied by law, from the nature of the transaction. Any one conversant with the usual range of state legislation, will at once see how small a portion of it is exempt, under this provision, from the supervision of the seven judges of the supreme court. The practice under it has been in accordance with what should have been anticipated.

There are few states in the union, upon whose acts the seal of condemnation has not, from time to time, been placed by the su-

preme court. The sovereign authorities of Vermont, New-Hampshire, New-York, New-Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Missouri, Kentucky, and Ohio, have, in turn, been rebuked and silenced, by the over ruling authority of this court. I must not be understood, sir, as complaining of the exercise of this jurisdiction by the supreme court, or to pass upon the correctness of their decisions. The authority has been given to them, and this is not the place to question its exercise. But this I will say, that, if the question of conferring it was now presented for the first time, I should unhesitatingly say, that the people of the states might, with safety, be left to their own legislatures, and the protection of their own courts.

Add to the immense powers of which I have spoken, those of expounding treaties, so far, at least, as they bear upon individuals, citizens, or aliens, of deciding controversies between the states of the confederacy themselves, and between the citizens of the different states ; and the justice of the remark will not be questioned, that there is no known judicial power so transcendently omnipotent as that of the supreme court of the United States!

Let us now consider the influence which this ought to have upon our legislation. It would not be in accordance with the common course of nature, to expect that such mighty powers can long continue to be exercised, without accumulating a weight of prejudice that may, one day, become dangerous to an institution, which all admit to be of inestimable value. It is true, as has elsewhere been said, with apparent triumph, that the states, whose legislative acts have successively fallen under the interdiction of the court, have excited little or no sympathy on the part of their sister states ; and, after struggling with the giant strength of the court, have submitted to their fate. But, sir, it is feared that this will not always be the case. Those who are most ardent in their devotion to this branch of the government, knowing the feelings produced by these decisions in the states affected by them—sensible that those feelings are rather smothered than abandoned, upon conviction of their injustice, fear that, by adding another and another state to the ranks of those who think they have reason to complain, an accumulation of prejudice may be produced, that will threaten, if not endanger, the safety of the institution.

April 11, 1826.

Mr. WOODBURY.—The proposed bill not only alters the system for local purposes, by requiring the attendance of an additional judge at the circuit court in regions of country not so populous as those where the judges of the supreme court now attend; but it alters the system for general purposes, by enlarging the supreme court itself one half its whole original number, by leaving its quorum so that contradictory decisions may constantly be made without any change in the court itself, and by increasing it to as

great an extent as a majority of its present quorum, so that new results may possibly be produced in all its grand supervising powers over each state, and over the whole confederation.

It is thus that a principle lurks in the last effect of this great alteration, which, in the opinion of many, should carry anxiety and dismay into every heart; because, among other objections, it places at the mercy of legislative breath, in any moment of overheated excitement, all that is valuable in any constitutional judgment on its records. We have only, as in this case, to add a number to any court sufficient to balance a majority of its quorum, and, by an union of feeling with the appointing power, secure judges of certain desirable opinions: and any political or constitutional decision can, in the next case which arises, be overturned. Every security is thus prostrated. The system is not extended, but is, in principle, destroyed. For thus does this increase open an avenue to a radical change in the highest functions of one great department of our government, and a department, too, of all others, the most endangered by any change, because, in its very nature, designed for permanency, independence, and firmness, amidst those tempests, which, at times, convulse most of the elements of society.

Gentlemen must perceive that I speak only of the general tendency and alarming character of such an increase, without reference to the motives which have now recommended it. They are doubtless pure. But its propriety is to be tried by the reasons for it, and not by motives. * * *

If this system is to be extended to the six new states, because most excellent, without regard to the effect of such an extension, on the supreme court itself, and without regard to population or expense: then why not extend it to every part of the union now destitute of it? When gentlemen talk of equality and broad American grounds—when they, with indignation and justice, disdain sectional views and favoritism, why create new circuits for the people in these new states, and not, at the same time, create them for more than three times as many people, now destitute of such circuits, in Western New York, Pennsylvania, and Virginia? For, if the circuit system of itself be superior, and therefore, without regard to other circumstances, is to be extended to the west and southwest, for the safety and advantage of about half a million of people now destitude; then, surely, a million and a half of people in the three great Atlantic states are equally entitled to its securities and blessings.

April 13, 1826.

Mr. BERRIEN. Let the United States be divided into seven circuits, to each of which shall be assigned a judge of the supreme court, who shall be required to reside therein: this requisition of residence to be prospective, and not to operate as to the present incumbents, who should be left to the provisions of existing laws. Give to the district judges associated in the manner hereafter men-

tioned, the original jurisdiction now exercised by the circuit courts; let the district judges of three or more contiguous states hold two terms of this court in each state in every year; let them separately exercise their present powers as district judges; compensate them liberally; but provide, if you please, that the increased compensation shall not take effect until after a vacancy; let a judge of the supreme court hold one term in every year, in each state, in his circuit, exercising the same original jurisdiction as the circuit court does at present, and, under certain restrictions, jurisdiction in error and appeals. In all cases beyond a specified amount, let the appeal or writ of error from the courts held by the district judges, whether separately or associated, be direct to the supreme court: in cases below that amount, to the court held in the circuit by the judge of the supreme court, whose decision, if concurrent with that of the court of original jurisdiction, shall be final; inhibit each judge of the supreme court from sitting in appeals or writs of error brought up to that court, from the circuit in which he presides.

In the operation of such a system, the great desiderata of the advocates of this bill will be attained; the judges of the supreme court will be kept in constant employment; they will reside in their circuits, will mingle with the people; and, by presiding in courts held in those circuits, will have all the facilities for acquiring a knowledge of the local laws of the different states, the value of which has been so highly estimated in the course of this discussion; they will, moreover, not be inconvenient in number; the exclusion of the judge presiding in the circuit, from sitting on the appeal, besides, that it is proper in itself, and is recommended by the practice of other nations, will also be productive of this further benefit. By such an arrangement, a full bench will consist of six; a number more appropriate than any other for an appellate tribunal, as probably combining the requisite legal intelligence, without being too numerous for the dispatch of business, and what is particularly important in such a tribunal, especially when called to the decisions of great questions of constitutional law, requiring a majority of two to one, for the reversal of the judgments of the courts below: such an arrangement will also allow ample time to the judges of the supreme court for their appellate duties. Those which they are required to discharge in their respective circuits, will be performed consecutively at one season of the year, and will not interfere with the sitting of the supreme court. It will take much less time for a judge of that court, to hold a term once a year in three, four, or even five states, in immediate succession, than to perform the circuit duties required from him under the present system.

In the operation of the proposed plan, justice will be administered in the courts of original jurisdiction, by judges familiar with the state laws, known to the people of the states in which they preside, and enjoying their confidence. If it be objected that the present district judges are not adequate to the discharge of those du-

ties, my first answer is, that such a suggestion comes with an ill grace from the advocates of this bill, who require from these judges the performance of the same duties. But another and more decisive answer presents itself: The objection, admitting it to be well founded, can only be temporary. When the office of the district judge shall have acquired the importance which will be given to it in the plan which I have proposed, and an adequate salary shall have been annexed to it, it will become an object of desire to professional men qualified for the discharge of its various and important duties. From among the persons trained on a bench thus constituted, most of those who would hereafter be called to preside in the appellate tribunal, would, I have no doubt, be selected. * * *

The proposed plan presents also this further advantage. The appellate jurisdiction, in minor cases, will be brought home to the domicil of the suitor. In many instances, in which appeals and writs of error are allowed under the present system, the expense which is incident to them forbids their prosecution. A judge of the supreme court, familiar with the doctrines and opinions of his associates, will go down to the circuits, there to exercise appellate jurisdiction in such cases, and when, in process of time, the system proposed shall have had its operation in the selection of the district judges, this will be the chief duty which he shall have to perform—perhaps the only one which ought then to be required from him in the circuits. The confidence inspired by the local courts of original jurisdiction constituted in the mode proposed, would render it unnecessary to provide any other tribunal for objects within the scope of their powers.

On the BANKRUPT LAW. *Senate, May* 1, 1826.

Mr. HAYNE. The first question which presents itself for consideration, is, *the necessity of a bankrupt law.* It is asked, "whether the laws of the states, on this subject, are not adequate to the object?" I answer decidedly and unequivocally, that there exists the most pressing necessity for now establishing "uniform laws on the subject of bankruptcy throughout the United States;" and that the laws of the states, on this subject, are inefficient, unjust, and ruinous, in their operation. In the remarks I am about to make on this branch of the subject, I wish to be distinctly understood as confining my observations to the effect of the state insolvent laws, *on persons concerned in trade.* It is from the operation of these laws, on the commerce of the country, that those evils flow, which demand a speedy and effectual remedy.

There now exists, in the several states of this union, upwards of *twenty distinct systems of bankruptcy,* or insolvency, each differing from all the rest in almost every provision intended to give security to the creditor, or relief to the debtor—differing in every thing which touches the rights and remedies of the one, or the duties and liabilities of the other.

By the laws of some of the states, debtors cannot be arrested, either on *mesne or final process* ; by others, personal property may be held in defiance of creditors ; while, by others, real estate cannot be touched. In some instances, executions are suspended ; in others, the courts of justice are closed, or, which is the same thing, delays are sanctioned, which amount to a denial of justice. In some states, a few creditors in the immediate neighborhood are suffered, by attachment, or other legal proceedings, (often the result of collusion with the debtor,) to secure to themselves the whole estate of an insolvent. In several states, persons arrested for debt are permitted "to swear out," (as it is called) after a notice of a few days—while, in other states, they are required to lie in jail for three or four months. In some instances, the relief extended, is confined to the discharge of the debtor from arrest, in the particular suit ; in others, from arrest in all suits ; and, in some few cases, the attempt has been made to release him from all future liability on existing *contracts*. These various systems, unequal and inconsistent as they must be admitted to be, are rendered still more objectionable by being perpetually *fluctuating*. It was the opinion of one of the ablest judges that ever sat on the English bench, or any other bench, that it was better for the community "that a rule should be certain than that it should be just ;" for the obvious reason, that we can shape our conduct or our contracts in reference to any known and settled rule, so as to avoid its injurious effects ; but when the rule is uncertain, we cannot avoid falling under its operation.

We are told that it was felt as a grievance by the Roman people, that the tyrant should write his laws "in a small character, and hang them up on high pillars," so that it was difficult to read them ; but that grievance would have been rendered still more intolerable, if the inscriptions had been varied with the rising and setting of the sun.

Not a year, hardly a month, passes by, which does not witness numerous, and, in many instances, radical changes, in the insolvent systems of the several states. It is found utterly impracticable to conform to them, or to guard against them. It defies the wisdom of the bench, or the learning of the bar, to give certainty or consistency to a system of laws, upon which twenty-four different legislatures are constantly acting, and almost daily innovating—a system which changes with a rapidity that deceives the mental vision, and leaves us in the grossest ignorance. * * *

It is manifest, Mr. President, that the states are now reduced to the necessity of entering into a competition with each other, in restricting the rights of creditors, and impairing the liabilities of debtors : and this, too, in a matter in which, as it is impossible to mark the exact line of equality, there must be great danger of their advancing, step by step, until every thing is unsettled. I am persuaded, that nothing but the constitutional prohibition on

the states, against "impairing the obligation of contracts," and the general, I might almost say the universal, belief, that they have no right to pass an efficient bankrupt law, have hitherto prevented such an interference between debtor and creditor, as would have given a fatal blow to commercial credit and enterprise. * * *

Sir, this whole country is filled with unfortunate debtors, who owe their failure to such causes. I have no hesitation in declaring it to be my firm belief and settled conviction, founded on some personal knowledge, and information derived from those well acquainted with the subject, and worthy of entire confidence, that, from these causes, there is a mass of talent, industry—ay, sir, and virtue too—in our country, idle and useless; and that their number is daily and rapidly increasing. Thousands of individuals, who, in the commercial vicissitudes of the last twenty years, have become bankrupt—sometimes from fraud, oftener from imprudence, but most frequently from misfortune—are now struggling out a miserable existence, a burthen to their friends, and to their country. They live without hope, and will die without regret.

If we look into the proceedings of the convention, or examine the commentaries on the constitution by the great men who framed it, we will find abundant reason to believe, that the article which gives to congress power over this subject, was designed *to prevent frauds.* The journals of the convention show, that, on the 29th August, 1787, it was moved to commit the following proposition, to wit: "To establish uniform laws on the subject of bankruptcy, and respecting the damages arising from the protest of foreign bills of exchange," which passed in the affirmative, by a vote of eight states against two: Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, voting in the affirmative; and New Hampshire and Massachusetts in the negative. On the 1st of September following, Mr. Rutledge, of South Carolina, (from the committee,) reported and recommended the insertion of the following words, viz: "To establish uniform laws on the subject of bankruptcies;" which, on the 3d of September, was agreed to by yeas and nays, every state voting in the affirmative, except Connecticut.

I confess I felt my confidence in the wisdom of this provision of the constitution strengthened and confirmed, when I discovered that it had been introduced by John Rutledge, and had received the *unequivocal sanction* of James Madison. In a number of the Federalist, written by that distinguished statesman, speaking of this particular provision of the constitution, he says, "Uniform laws on the subject of Bankruptcy, *will prevent so many frauds,* that the expediency of it seems not likely to be called in question." Sir, we are wiser than our ancestors; that which they designed to "prevent frauds," we pronounce to be the most fruitful source of frauds. A proposition which seemed to them so clear, that it was "not likely to be called in question," we have for twenty years

rejected as unworthy even of a trial. It may be, Mr. President, that I am bigotted in my reverence for the authors of this constitution, but I am free to confess that I distrust my own judgment when I find it leading me to discard their precepts, or to reject their injunctions.

In relation to Bankruptcy, it is the federal government only that ever *will* enact a wise and judicious system, and no power but congress *can* establish UNIFORMITY. This is the great desideratum. This is the true, the only remedy for the evils I have pointed out. The wise man now at the head of the supreme court of the United States, (whose character has been drawn with a master's hand, by the gentleman from Virginia, in a finished picture that I cannot venture to touch, lest I should impair its beauty,) has given us his opinion on this clause of the constitution, in terms worthy of consideration. "The peculiar terms of the grant, (says Chief Justice Marshall,) certainly deserve notice. Congress is not authorised merely to pass laws, the operation of which shall be uniform, but to establish uniform laws on the subject throughout the United States. This *establishment of uniformity* is, perhaps, incompatible with state legislation on that part of the subject to which the acts of congress may extend." Now, let it be remembered that, while on the one hand the power is expressly conferred on the federal government of acting efficiently on this subject, the right has been taken away from the States. This the Supreme Court of the United States have decided in the cases of Sturges and Crowninshield, and McMillan and McNeill, (4 Wheat. 122, 209.) A discharge under the bankrupt or insolvent law of a state, is, in these cases, declared to be invalid, in consequence of the constitutional prohibition on the states of passing any law "impairing the obligation of contracts." Now, prior to the adoption of the constitution, the states possessed this right, and, in some instances, exercised it to the most unlimited extent. It is a right essential to commercial credit and prosperity. It has been taken from the states and vested in us; and if proper to be exercised at all, can only be exerted by us. I am aware, sir, that there are cases still pending before the Supreme Court, in which the question is involved, whether a State Bankrupt Law may not be enforced in such State, on parties residing there, and contracting in reference to that law. This question has remained for several years undecided; but, whatever may be the final decision, it is obvious that it will not restore to the States the power of acting on the subject matter in the only way at all adequate to the exigencies of the country. The application of the *lex loci contractus*, would be but a miserable substitute for a general bankrupt law. And even if it were possible that the case of Sturges and Crowninshield could be reversed, and the power be restored to the States of passing bankrupt laws, without restriction or limitation, I should consider twenty-four different bankrupt laws as infinitely worse than none.

In this bill, the committee have framed a system of bankruptcy, which will, in their opinion, greatly contribute to give security to creditors, and relief to debtors, within the sphere of its operation. It is believed, that it offers the strongest inducements to debtors for honest dealing; that it holds out a temptation to insolvent traders to make a timely surrender of their effects to their creditors, and that, thus, it will have a powerful tendency to prevent over trading, and desperate adventures. This bill gives power to creditors to arrest the fraudulent career of their debtors—furnishes a prompt remedy for the recovery of debts, and time and means for thorough investigations; it prevents all unjust preferences and secures an impartial distribution of insolvent estates; it puts citizens of different states on an equal footing, and gives a certain, a just rule, for commercial contracts; it puts our own citizens on a footing with foreigners; and, *lastly*, it will restore to society, to honor, and usefulness, a mass of industry and talent, which, under the present system, is irretrievably lost—thus "paying a just tribute to the rights of humanity, by depriving the creditor of the power he now has now over the whole life of his debtor."

January 24, 1827.

Mr. WOODBURY. The gentleman on his right (Mr. Berrien,) had said, that congress might legislate without limitation, as to the objects or manner of a bankrupt system, because no limitation as to them had been expressed in the constitution. But the limitation existed in the subject matter of the grant. The grant was not to legislate on the subject of contracts generally—of descents—of suits at law—but on the subject of bankruptcy. To bankruptcies, and to bankruptcies alone, then, was the power confined. And the word bankruptcies, as used in the constitution, was never, in his apprehension, intended to extend beyond embarrassments and failures among mercantile men.

The bankrupt system had been limited essentially to persons more or less engaged in trade. The word itself, as remarked last year by the gentleman from South Carolina, had been derived from the circumstance, that the person coming within its operation, had his bench ruptured or broken up. The bench of whom? Not of the farmer—not of the mechanic—but the bench of the money dealer, and the bench or counter of the merchant. Grant that some persons, not strictly traders, may, at times, have been included in the provisions of some laws on the subject of bankruptcies; yet this was where the power of legislation was unlimited—where all legislation, as to all creditors and debtors, was invested in one body. It has but seldom occurred any where, and existed no where at the time of this grant of power to congress.

That laws on the subject of bankruptcies were then deemed commercial only, is further manifest from the fact, that when, late in the session of the convention which framed the constitution, this

clause was introduced, it was coupled with a clause regulating the rate of damages, &c. on bills of exchange. It was well known to our fathers, that, in thirteen distinct sovereignties, the laws, as to debtors and creditors, were, and must always be, in many respects, very various, to meet their different usages, pursuits, prejudices, and educations; but that the merchants, throughout the confederacy, must carry on their business in other and remote states from those where they resided; and hence, as to their debts, their failures, and their adjustment of their affairs, it might be highly convenient and salutary to have similar rules and laws. In a constitution, therefore, created in a great degree throughout, to benefit commerce, it was natural to confer power to make uniformity, or uniform laws, on a commercial subject. * * *

It was impossible that congress could, constitutionally, bring farmers and mechanics, by their individual consent, within the provisions of this act, where they would not be compelled to come without consent. It was no question between congress and those individuals; it was solely a question between the general government and the individual states. He was opposed to this feature of the act; because, to pass it, would be to bring subjects and citizens within the scope of the general goverment, never contemplated by our fathers. * * *

The question lay in a very narrow compass. It was, whether congress had been clothed with power to pass laws regulating the insolvencies of persons not traders, and making their operation upon such persons dependent on their consent? The solution of this question rested mainly on the meaning of the word bankruptcies, as used in the grant of power on this subject, by the states, to the general government, in the eighth section of the first article of the constitution. It thus became a momentous question of state rights; and hence deserved most deliberate consideration.

AMENDMENT to the CONSTITUTION.—*S. March,* 1826.

Mr. DICKERSON. If, by our constitution, the president of the United States was elected to hold his office during good behavior, our government would be, by whatever name it might be called, an elective monarchy; limited in its powers, but with sufficient inherent energy to break down, in time, any barriers that a written constitution could present against the encroachment of arbitrary power. If, under our constitution, we adopt the practice of electing our presidents from period to period, until the infirmities of age admonish them to retire, our system will soon become that of elective monarchy. That the want of the limitation now proposed has not been practically felt, must be attributed, not to any corrective principle in our constitution, nor to any rigid adherence to the jealous maxims of democracy on the part of the people, but to the motives of action, which have governed our chief magistrates. As yet, there has been nothing to excite alarm upon this subject.

The limitation proposed has not yet been wanted, and, probably, will not be for many years to come; but it is the dictate of prudence to provide for the danger while it is yet remote. * * *

Although this question excites but little feeling at present, it once created more agitation in the federal convention than any other subject that came before them, as will appoar by a few extracts from the journal of that convention.

On the 1st of June, 1787, in the Federal Convention, Mr. Randolph introduced a resolution, that the National Executive should not be eligible a second time, (page 52) and, the next day it was agreed to, eight states being for the resolution, one against it, and one divided. (page 52.) 7 years was the term then in contemplation.

On the 15th of June, Mr. Patterson submitted a proposition, that United States in Congress be authorized to elect a Federal Executive for——years, to be ineligible a second time, [p. 71.] The term in contemplation then was also 7 years.

On the 18th of June, Col. Hamilton submitted resolutions, that the President and Senate should be elected to serve during good behaviour; that is, for life, with powers nearly as extensive as those of the King and House of Lords of Great Britain, [page 73.]

Col. Hamilton was one of the greatest men in this country, and, without doubt, believed that his plan was well calculated to promote the happiness and prosperity of the Union. Many of our distinguished citizens thought with him then, who afterwards changed their opinions, on witnessing the success of our present system.

On the 19th of June, the resolutions of Mr. Randolph, as altered and agreed to in the committee of the whole, were submitted, of which the ninth resolution was, "that a National Executive be instituted, to consist of a single person, to be chosen "by the national Legislature, for the term of seven years, to be ineligible a second time," [pp. 74, 100.] July 17th, it was moved to strike out the words "to be ineligible a second time,,' which passed in the affirmative—Yeas, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, and Georgia—Nays, Delaware, Virginia, North Carolina, and South Carolina, [p. 101.] On this occasion, Massachusetts, Maryland, and Georgia, changed their votes, which were first in favor of the limitation. Pennsylvania, which was divided before, now voted against the limitation. Delaware, Virginia, North Carolina, and South Carolina, maintained their ground. New Jersey did not vote on the first question.

It was moved to strike out "seven years," and insert "good behaviour;" which passed in the negative—years 4, nays 6. It would seem that four States, at this time, preferred an Executive for life.

A motion was made to re-consider, and passed in the affirmative.

On the 19th July, a motion was made to restore the words "to be ineligible a second time." It passed in the negative, [p. 104.]

July 25th, it was moved that no person should be capable of holding the office of President more than six years, in any twelve; which passed in the negative—yeas, 5, nays, 6.

The next day it was moved to amend the resolution, so as to read, for the term of seven years, to be ineligible a second time. It passed in the affirmative.—Yeas, New Hampshire, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Nays, Connecticut and Delaware. [p. 110.]

The same day it was reported to the convention as one of the resolutions agreedto

This resolution, together with those offered by Mr. Pinckney, and those offered by Mr. Patterson, were referred to a committee, who, on the 6th of August, reported a draft of a Constitution, the first section of the 10th article of which was "The "President shall be elected by the Legislature. He shall hold his office during sev-"en years; but shall not be elected a second time." [p. 116.]

The friends of this limitation now considered the question at rest, but they were deceived; it was too important in the eyes of the friends to an Executive for life, to be given up yet.

On the 24th August, a motion was made to postpone the consideration of the two last clauses of the first section of article ten, to wit, the term of years and the limitation. It passed in the negative. It was moved to refer them to a Committee of a Member from each State. It passed in the negative. [153.]

August 31, it was agreed to refer such parts of the plan of a Constitution as had

been postponed, and such reports as had been acted on, to a Committee of one Member from each State. [p. 318.]

On the 4th of September, Mr. Brearly reported certain alterations, &c. the fourth of which was, "The President shall hold his office for four years." In this the limitation was omitted. [p. 314.]

On the 5th of September, it was moved to postpone the report, and take up the following: "The President shall be elected by joint ballot of the Legislature. He "shall hold his office during seven years, but shall not be elected a second time." This was decided in the negative, and seems to have been the last effort in the Convention, in favor of limitation.

On the ratification of the constitution, several of the States proposed amendments: Virginia proposed, that no person should be capable of being President more than eight years in sixteen.

North Carolina the same.

New York proposed, that no person should be elected President a third time. Exactly What is now proposed.

It is not possible to understand precisely the motives which governed the members of the convention, in the votes which they gave on this question, from a bare perusal of their journal. It is evident, however, that the struggle was arduous. The limitation was twice adopted and finally abandoned. The plan agreed upon was not in accordance with the views of either party. It was an intermediate step; considered by both parties as an expedient. Those in favor of the limitation, believed they would soon attain their object by an amendment to the constitution. Those opposed to it, flattered themselves that the president would be elected from period to period, without interruption, until, by usage, our executive would be considered, when once elected, as elected during good behaviour. That the elections, after the first, would become mere matters of form.

The debates upon this subject, in the convention, must have been very animated. Of this, we may form some opinion, from the report of Mr. Martin, one of the convention, to the legislature of Maryland.

In thirteen of the states, the periods which the executive can serve are limited, although their powers bear no comparison with those of the president of the United States These limitations have been found salutary and safe in principle and in practice. * * * although the principle of hereditary succession has gained no force in our presidential elections, the principle of a different succession has already become almost irresistible. It is that the president shall designate his successor, by placing him in the most important office in his gift, and clothing him with such a degree of patronage and power, as to make him an overmatch for any competitor in the walks of private life, whatever may be his merits or his services: the federal convention could not have foreseen the operation of this principle as we now see it, or they would have adopted some rule analogous to that most important provision of the Roman law, that no one conld be a candidate for the consulship, unless he presented himself in a private station.

As no president has yet discovered a disposition to hold his office more than eight years, it may be considered by some as having grown into a law, that no one shall hold the office for a longer period.

On the RIGHT TO CALL TO ORDER, *by the Vice President.*
Senate —April 1828.

Mr. VAN BUREN—What are the provisions of the constitution that bear upon the question? By the third section of the first article, it is declared, "that the Vice President of the "United States shall be President of the Senate; but SHALL HAVE "NO VOTE, UNLESS THEY BE EQUALLY DIVIDED." In the teeth of this express provision, it is gravely contended, not only that he *shall have a vote* where the senate is *not* equally divided—but that he shall have the *whole vote;* and that, upon a question involving the freedom of debate, and by consequence the interests of our constituents. Again: By the fifth section of the same article, the *rules of order,* and the means of their enforcement, are, in terms, subjected to the *legislation of the senate:* but it is now as gravely contended that, this provision to the contrary notwithstanding, the subject (and, as he would hereafter show, the whole subject,) rests, by the true construction of the constitution, in the discretion of the vice president. And what sir, said he, is the foundation upon which this high reaching pretension is founded? It is no other than the doctrine of *implied powers.* It is to register this, also, among the constructive powers of the government and its functionaries, that the gentlemen on the other side invoke to their aid a principle, which has already done such extensive violence to the constitution—a principle which, as defined and practised upon by many of the public men of the day, leaves no other restriction upon power, than the discretion or caprice of its possessor—a principle which, in the sense in which it is understood by many, is never so true to itself as when it is false to the constitution. Relaxed as the sentiments of public men had become in regard to coustitutional construction, still he could not have anticipated what appeared to him to be so flagrant a perversion of the doctrine of *implied powers.* What more should he say in reply? The implied power claimed for the vice president, is not only inconsistent with one provision of the constitution, but is expressly inhibited by another. The constitution not only denies to the vice president this right, by one provision Mr. V. B. had read, but expressly places it elsewhere by another which he had also read. * * *

If the power in dispute belongs to the office—if, as gentlemen say, it be inherent in the office, and be made so by the constitution, it is wholly *beyond our legislation.* We have no right to touch it: to do so would be a high-handed encroachment upon the constitutional rights of the second officer of the government. The power conferred upon him by our rules, upon the subject of order, is under our control. In these, *his ministerial* duties, he is our servant, and subject to our law. But you now propose to concede to him a high *judicial power,* and you trace his title to it to an authority higher than your own; an authority paramount to all—the constitution.

You might, said Mr. V. B., with as much propriety undertake to explain, modify, or control the executive power of the President of the United States by your rules, as to control this power, if it springs directly from the constitution. Gentlemen must excuse him, if laying out of view the words in which they see fit to clothe their propositions, he held them responsible in argument for their legitimate results. A course different from this, would neither comport with the dignity of the occasion, nor the interest awakened by the subject Among those results were the following: If the vice-president be made, by the constitution, the judge of the propriety of our debate, and has the right to call us to order when, in his discretion, he may think we violate that propriety, then are his rights and duties, in that respect, not only not subject to our legislation, but he would become the *sole judge* of the extent of this power, and the means of enforcing it, without any other direct responsibility than that secured by the right of impeachment. Then, too, has he the right to enforce his decision, by punishing disobedience; and all the power of the Senate upon the subject, must be subordinate to his. It was, in his judgment, idle to talk about the power to keep order, without the means of enforcing decisions by punishment for disorder. The framers of the constitution had taken a better view of the matter, by giving to the senate the right to punish for disorder—even to expulsion, as a necessary part of its control over the subject. If a similar power in the vice-president be implied by the constitution, the means to enforce it are also implied. If a power in the vice-president to call to order for words spoken in debate be implied, he must decide upon all questions growing out of its exercise, without being subjected to the control of the senate. For, unless the positive provision of the constitution is to be disregarded, he cannot vote with us unless the senate be equally divided. These are, then, separate and distinct powers, traced to the same source, and acting upon the same subject matter; and one or the other must be supreme, or the whole will be vain and inoperative. Suppose the senate, by its rules, allow to be in order what the vice-president, in virtue of his inherent right, holds to be out of order—which is to prevail?

The result then, said Mr. V. B., of the doctrine contended for, when stripped of all unnecessary verbiage and extraneous considerations, is no more nor less than this: that it is within the constitutional competency of the vice-president, if, in the exercise of his best discretion, he thinks a senator urges exceptionable matter in debate, or insist on matter that is irrelevant, to prohibit the prosecution of the debate, except upon such terms, and in such form, as the vice-president shall prescribe; and to exercise the means necessary to carry that power into effect, without authority or responsibility to this body, or to the individual senators, save through impeachment. * * *

The constitution, and the rules of the senate made under it, afford of themselves an ample shield for individual protection, if any shield be necessary; and he hoped no one would suppose that so craven a spirit existed within these walls, as to make it necessary or even desirable to place this power in the hands of the vice-president, because we might be unwilling to protect ourselves. He was quite confident, that no danger was to be apprehended from that quarter. *If strong ground is ever taken upon this subject, said he, it will arise out of the intercourse of this body with the co-ordinate, and in some sense, rival, departments of this government.* It is from our acts as they bear upon the executive and its inferior functionaries, and upon the judiciary and its subordinates, that such a proceeding can alone be expected. From the present condition of things, abuse in that respect might not be likely to take place. But the present is not the natural state of things. In general, the president and vice-president will belong to the same political party. It is only when "times are out of joint," that they will be taken from different sides. The present case is an exception growing out of that cause. * * *

The connexion of the executive with the senate, is much closer than with the house of representatives. Upon the subject of treaties, appointments, and the whole range of executive business, the senate is almost the only check. It is, therefore, of vital importance, that it should be wholly exempt from executive control. This body was looked to by the framers of the constitution, as a sanctuary for the federal and equal rights of the states, and so framed as to cherish that sentiment on the part of its members. It is here alone that the federal principle had been preserved: a principle valuable to all, but particularly to the small states; for it is in this department alone that their perfect equality is recognised. * * *

If, said he, it should hereafter become manifest to a portion, or even a majority of this house, that the third power of the federal government, created and supported by the other two, is gradually, though to the great mass of the people imperceptibly, subverting the reserved rights of the states, and undermining the constitution of the United States, in some of its most essential points; and if, on a subject of such vital importance, the representative of a sovereign state should express himself on this floor in a manner calculated to suppress the mischief, but yet without just offence to propriety, he may expect to be told from that chair, that although the acts of a co-ordinate branch of the government, when coming properly before the senate, are liable to free examination, yet the ermine of justice is not to be thus rudely assailed within these walls. Could there, he asked, be any principle which would more effectually prostrate the independence of this body? * * *

In every point of view, said Mr. V. B., in which this subject had presented itself to his mind, it had produced but one senti-

ment, and that was unqualified opposition to the *prerogative* claimed for the chair. Although this claim of power is now for the first time made, the *principle* in which it originates is as old as the government itself. I look upon it, sir, as the legitimate offspring of a school of politics, which has, in times past, agitated and greatly disturbed this country: of a school, the leading principle of which may be traced to that great source of the political contentions which have pervaded every country where the rights of man were in any degree respected. I allude sir, to that colision which seems to be inseparable from the nature of man, between the rights of the *few* and the *many*---to those never-ceasing conflicts between the advocates of the *enlargement* and *concentration* of power on the one hand, and its *limitation* and *distribution* on the other. * * *

The earlier battles upon this cardinal point, [monarchical and democratical principles,] were fought upon the question of the degree of *energy*; or, in other words, *power*, that ought to be given to the federal government, at the expense of the states and the people. They commenced in the convention of 1787, and soon spread through the great body of the people upon the question of ratification. The proceedings of that convention were for a long time secret, but are now before the public. In them, when taken in connexion with later events, we read the grounds of our subsequent political dissensions in language so plain, that none but those who are wilfully blind can be deceived. There were, of course, different degrees, as to individuals; but the leading division in the convention was between those who, distrustful of the states, sought to abridge their powers, that those of the new government might thereby be enlarged; and those who, on their part, distrustful, perhaps jealous of the government about to be created, and possessing full confidence in those of the states, were as strenuous to retain all powers not indispensibly necessary to enable the federal government to discharge the specified and limited duties to be imposed upon it. The contest was animated, and, as is well known, more than once threatened a dissolution of the convention, without agreeing upon any thing.

Necessity, however, ultimately compelled a compromise. The terms were arranged as well as practicable. The then friends of State rights, (the true *federalists*, but who, by a singular misnomer, were immediately after called *anti-federalists*, whilst those who had throughout opposed the federal principle, assumed the then more popular name of federalists,) succeeded, or thought they succeeded, in saving much of what they had so earnestly contended for. The advocates of what was in the language of the day called a *strong General Government*, certainly failed in obtaining by express grant, or necessary implication, much of what they had so long and so ably struggled to acquire for the new Government. The question of ratification came on, and was full of difficulty. The abuses to which some of the more general provisions of the constitution might be exposed, were pointed out by its opponents. The concealed powers of the constitution, which are at this day put forth with so much confidence, were disclaimed and condemned by those who advocated the ratification. No candid and well-informed man, will for a moment, pretend that, if the powers now claimed for this Government had been avowed at the time, or even had not been expressly disclaimed, there would have been the slightest chance for the adoption of the constitution, by the requisite number of the old thirteen States. * * *

But it was ratified, said Mr. V. B. *and from the moment of its adoption to the present day, the spirit he had described, had been at work to obtain by construction what was not included or intended to be included in the grant.* * * *

A general surrender of such opinions, is, therefore, at this time, a tribute justly due to the redeemed and established character of the State Governments.

Mr. JOHNSTON. I believe the right of calling to order, preserving order, and deciding on all questions of order, belongs to the presiding officer. The chair declines to exercise the power. [The Vice President rose and explained, that he stated specifically that he did call to order in all cases, except for words spoken.] I take the distinction of the chair. As far as the decision goes it is correct. But it supports the very argument I have endeavored to maintain. That power by which you call to order in any case, which you distinguish as ministerial is, by virtue of a right inherent

in the office. There is no rule that vests that power, in any case, in the chair. But assuming that power, how is the distinction taken between those cases, where you can act from cases of disorder arising from *words spoken?* There is none in the rules. The distinction seems to be artificial. My mind cannot perceive the criterion on which the discrimination is made. The delicacy which declines the exercise of power, because it is doubtful, is meritorious. But I am sure the chair will never avail itself of the pretence which has been urged in this debate, that the surrender of power is favorable to liberty. Power is delegated to be exercised for the security of liberty. Liberty depends not on its being without limits and without control, but on its being regulated. The power of the presiding officer is necessary to the despatch of business, and the order and dignity of the body. To release every member from the restraints of the rules, and restore him his liberty to say and do what he pleases, instead of being favorable, will be fatal to liberty. It is not liberty in that sense for which government was instituted: it was regulated liberty secured by law.

STATE RIGHTS, [*in reply to Mr. Webster's Remarks of the 27th Jan.*]—*Senate, January 27*, 1830.

Mr. HAYNE. The proposition which I laid down, and from which the gentleman dissents, is taken from the Virginia resolutions of '98, and is in these words, "that in case of a deliberate, palpable, and dangerous exercise by the federal government *of powers not granted* by the compact [the constitution,] the states who are parties thereto, *have a right to interpose*, for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties, appertaining to them." The gentleman insists that the states have no right to decide whether the constitution has been violated by acts of congress or not—but, *that the federal government is the exclusive judge of the extent* of *its own powers*; and that in case of a violation of the constitution, however "deliberate, palpable, and dangerous," a state has no constitutional redress, except where the matter can be brought before the supreme court, whose decision must be final and conclusive on the subject. Having thus distinctly stated the points in dispute between the gentleman and myself, I proceed to examine them. And here it will be necessary to go back to the origin of the federal government. It cannot be doubted, and is not denied, that before the constitution, each state was an independent sovereignty, possessing all the rights and powers appertaining to independent nations; nor can it be denied, that, after the constitution was formed, they remained equally sovereign and independent, as to all powers not expressly delegated to the federal government. This would have been the case even if no positive provision to that effect had been inserted in that instrument. But to remove all doubt it is expressly declared, by the

the 10th article of the amendment of the constitution, "that the powers not delegated to the states, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The true nature of the federal constitution, therefore, is, (in the language of Mr. Madison,) "a compact to which the states are parties," a compact by which each state, acting in its sovereign capacity, has entered into an agreement with the other states, by which they have consented that certain designated powers shall be exercised by the United States, in the manner prescribed in the instrument. Nothing can be clearer than that, under such a system, the federal government, exercising strictly delegated powers, can have no right to act beyond the pale of its authority, and that all such acts are void. A state, on the contrary, retaining all powers not expressly given away, may lawfully act in all cases where she has not voluntarily imposed restrictions on herself. Here then is a case of a compact between sovereigns, and the question arises, what is the remedy for a clear violation of its express terms by one of the parties? And here the plain obvious dictate of common sense, is in strict conformity with the understanding of mankind, and the practice of nations in all analogous cases—"that where resort can be had to no common superior, the parties to the compact must, themselves, be the rightful judges whether the bargain has been pursued or violated." (Madison's Report, p. 20.) When it is insisted by the gentleman that one of the parties "has the power of deciding ultimately and conclusively upon the extent of its own authority," I ask for the grant of such a power. I call upon the gentleman to show it to me in the constitution. It is not to be found there.

But if there be no common superior, it results, from the very nature of things, that the parties *must be their own judges.* This is admitted to be the case where treaties are formed between independent nations, and if the same rule does not apply to the federal compact, it must be because the federal is superior to the state government, or because the states have surrendered their sovereignty. Neither branch of this proposition can be maintained for a moment.

Here, however, we are met by the argument that the constitution was not formed by *the states*, in their sovereign capacity, but by *the people*, and it is therefore inferred that the federal government, being created by all the people, must be supreme; and though it is not contended that the constitution may be rightfully violated, yet it is insisted that from the decisions of the federal government there can be no appeal.

I deny that the constitution was framed by the people in the sense in which that word is used on the other side, and insist that it was framed by the states acting in their sovereign capacity. When, in the preamble of the constitution, we find the words, "we, the people of the United States," it is clear, they can only

relate to the people as citizens of the several states, because the federal government was not then in existence.

We accordingly find, in every part of that instrument, that the people are always spoken of in that sense. Thus, in the second section of the first article, it is declared, "That the house of representatives shall be composed of members chosen every second year, by the peoplee of the several states." To show that, in entering into this compact, the states acted in their sovereign capacity, and not merely as parts of one great community, what can be more conclusive than the historical fact, that, when every stae had consented to it except one, she was not held to be bound. A majority of the people in any state bound that state, but nine-tenths of all the people of the United States could not bind the people of Rhode-Island, until Rhode-Island, as a state, had consented to the compact.

I am not disposed to dwell longer on this point, which does appear to my mind to be too clear to admit of controversy. But I will quote from Mr. Madison's report, which goes the whole length in support of the doctrines for which I have contended:

Having now established the position that the constitution was a compact between sovereign and independent states, having no common superior, "it follows of necessity," (to borrow the language of Mr. Madison,) "that there can be no tribunal above their authority to decide in the last resort, whether the compact made by them be violated; and consequently, that, as the parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition."

But the gentleman insists that the tribunal provided by the constitution, for the decision of controversies between the states and the federal government, is the supreme court.

It is clear that questions of sovereignty are not the proper subjects of *judicial investigation*. They are much too large, and of too delicate a nature, to be brought within the jurisdiction of a court of justice. Courts, whether supreme or subordinae, are the mere creatures of the sovereign power, designed to expound and carry into effect its sovereign will. No independent state ever yet submitted to a judge on the bench the true construction of a compact between itself and another sovereign. All courts may incidentally take cognizance of treaties, where rights are claimed under them, but who ever heard of a court making an enquiry into the authority of the agents of the high contracting parties to make the treaty—whether its terms had been fulfilled, or whether it had become void, on account of a breach of its conditions on either side? All these are political, and not judicial questions. Some reliance has been placed on those provisions of the constitution which constitute "one supreme court," which provide, "that the judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States and treaties,"

and which declare "that the constitution, and the laws of the United States, *which shall be made in pursuance thereof*, and all treaties, &c. shall be the supreme law of the land," &c. Now, as to the name of the *supreme court*, it is clear that the term has relation only to its supremacy over the inferior courts provided for by the constitution, and has no reference whatever to any supremacy over the sovereign states. The words are, "the judicial power of the United States shall be vested in one supreme court, and such inferior courts as congress may, from time to time, establish," &c. Though jurisdiction is given "in cases arising under the constitution," yet it is expressly limited to "cases in law and equity," showing conclusively that this jurisdiction was incidental merely to the ordinary adminstration of justice, and not intended to touch high questions of conflicting sovereignty. When it is declared that the constituion and the laws of the United States, "made in pursuance thereof, shall be the supreme law of the land," it is manifest that no indication is given either as to the power of the supreme court, to bind the states by its decisions, nor as to the *course to be pursued in the event of laws being passed not in pursuance of the constitution.* And I beg leave to call gentlemen's attention to the striking fact, that the powers of the supreme court in relation to questions arising under "the laws and the constitution," are co-extensive with those arising under treaties. In all of these cases the power is limited to questions arising in law and equity," that is to say, to cases where jurisdiction is incidentally acquired in the ordinary administration of justice. But as, with regard to treaties, the supreme court has never assumed jurisdiction over questions arising between the sovereigns who are parties to it; so under the constitution, they cannot assume jurisdiction over questions arising between the individual states and the United States.

But to prove, as I think conclusively, that the judiciary were not designed to act as umpires, it is only necessary to observe, that, in a great majority of cases, that court could manifestly not take jurisdiction of the matters in dispute. Whenever it may be designed by the federal government to commit a violation of the coustitution, it can be done, and always will be done in such a manner as to deprive the court of all jurisdiction over the subject. Take the case of the tariff and internal improvements, whether constitutional or unconstitutional, it is admitted that the supreme court have no jurisdiction. Suppose congress should, for the acknowledged purpose of making an equal distribution of the property of the country, among states or individuals, proceed to lay taxes to the amount of $50,000,000 a year. Could the supreme court take cognizance of the act laying the tax, or making the distribution? Certainly not.

Take another case which is very likely to occur. Congress have the *unlimited power of taxation.* Suppose them also to assume an *unlimited power of appropriation.* Appropriations of money are

made to establish presses, promote education, build and support churches, create an order of nobility, or for any other unconstitutional object; it is manifest that, in none of these cases, could the constitutionality of the laws making those grants be tested before the supreme court. It would be in vain, that a state should come before the judges with an act appropriating money to any of these objects, and ask of the court to decide whether these grants were constitutional. They could not even be heard; the court would say they had nothing to do with it; and they would say rightly. It is idle, therefore, to talk of the supreme court affording any security to the states, in cases where their rights may be violated by the exercise of unconstitutional powers on the part of the federal government. On this subject Mr. Madison, in his report, says: "But it is objected, that the judicial authority is to be regarded as the sole expositor of the constitution in the last resort; and it may be asked, for what reason the declaration by the General Assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner.

"On this objection it might be observed, first, that there may be instances of usurped power, which the forms of the constitution would never draw within the control of the judicial department."

But the proper answer to the objection is, that the resolution of the General Assembly relates to those great and extraordinary cases in which all the forms of the constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it.

"However true, therefore, it may be, that the judicial department is, in all questions submitted to it by the forms of the constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the government; not in relation *to the rights of the parties to the constitutional compact*, from which the judicial as well as the other departments, hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others in usurped powers, might subvert forever, and beyond the possible reach *of any rightful remedy*, the very constitution which all were instituted to preserve."

If, then, the supreme court are not, and, from their organization, cannot, be the umpires in questions of conflicting sovereignty, the next point to be considered is, whether congress themselves possess the right of deciding conclusively on the extent of their own powers. This, I know, is a popular notion, and it is founded on the idea, that as all the states are represented here, nothing can prevail which is not in conformity with the will of the majority—and it is supposed to be a republican maxim, "that the majority must govern."

Now will any one contend that it is the true spirit of this gov-

ernment, that the *will of a majority of congress* should, in all cases, be *the supreme law?* If no security was intended to be provided for the rights of the states, and the liberty of the citizens, beyond the mere organization of the federal government, we should have had no written constitution, but congress would have been authorized to legislate for us, in all cases whatsoever; and the acts of our state legislatures, like those of the present legislative councils in the territories, would have been subjected to the revision and control of congress. If the will of a majority of congress is to be the supreme law of the land, it is clear the constitution is a dead letter, and has utterly failed of the very object for which it was designed—the protection of the rights of the minority. But when, by the very terms of the compact, strict limitations are imposed on every branch of the federal government, and it is, moreover, expressly declared, that all powers, not granted to them, "are reserved to the states or the people," with what show of reason can it be contended, that the federal government is to be the exclusive judge of the extent of its own powers? A *written constitution* was resorted to in this country, as a great experiment, for the purpose of ascertaining how far the rights of a minority could be secured against the encroachments of majorities—often acting under party excitement, and not unfrequently under the influence of strong interests. The moment that constitution was formed, the will of the majority ceased to be the law, except in cases that should be acknowledged by the parties to it to be *within the constitution*, and to have been thereby submitted to their will. But when congress, (exercising a delegated and strictly limited authority) pass beyond these limits, their acts become null and void; and must be declared to be so by the courts, in cases within their jurisdiction; and may be pronounced to be so, by the states themselves, in cases not within the jurisdiction of the courts, of *sufficient importance to justify such an inference.*

But what then? asks the gentleman. A state is brought into collision with the United States, in relation to the exercise of unconstitutional powers: who is to decide between them? Sir, it is the common case of difference of opinion between sovereigns, as to the true construction of a compact. Does such a difference of opinion necessarily produce war? No. And if not, among rival nations, why should it do so among friendly states? In all such cases, some mode must be devised by mutual agreement, for settling the difficulty: and most happily for us, that mode is clearly indicated in the constitution itself, and results indeed from the very form and structure of the government. The creating power is three fourths of the states. By their decision, the parties to the compact have agreed to be bound, even to the extent of changing the entire form of the government itself; and it follows of necessity, that in case of a deliberate and settled difference of opinion between the parties to the compact, as to the extent of the powers of either, resort must be had to their common superior—(that pow-

er which may give any character to the constitution they may think proper,) viz: three fourths of the states.

But it has been asked, why not compel a state, objecting to the constitutionality of a law, to appeal to her sister states, by a proposition to amend the constitution? I answer, because, such a course would, in the first instance, admit the exercise of an unconstitutional authority, which the states are not bound to submit to, even for a day, and because it would be absurd to suppose that any redress would ever be obtained by such an appeal, even if a state were at liberty to make it. If a majority of both houses of congress should, from any motive, be induced deliberately, to exercise "powers not granted," what prospect would there be of "arresting the progress of the evil," by a vote of three-fourths? But the constitution does not permit a minority to submit to the people a proposition for an amendment of the constitution. Such a proposition can only come from "two-thirds of the two houses of congress, or the legislatures of two-thirds of the states." It will be seen therefore, at once, that a minority, whose constitutional rights are violated, can have no redress by an amendment of the constitution. When any state is brought into direct collision with the federal government, in the case of an attempt, by the latter, to exercise unconstitutional powers, the appeal must be made by congress, (the party proposing to exert the disputed power,) in order to have it expressly conferred, and, until so conferred, the exercise of such authority must be suspended. Even in cases of doubt, such an appeal is due to the peace and harmony of the government. On this subject our present chief magistrate, in his opening message to congress, says: "I regard *an appeal to the source of power*, in cases of real doubt, and where its exercise is deemed indispensable to the general welfare, as among *the most sacred of all our obligations.* Upon this country, more than any other, has, in the providence of God, been cast the special guardianship of the great principle of adherence to *written constitutions.* If it fail here all hope in regard to it will be extinguished. That this was intended to be a government of limited and specific, and not general powers, must be admitted by all; and it is our duty to preserve for it the character intended by its framers. The scheme has worked well. It has exceeded the hopes of those who devised it, and become an object of admiration to the world. Nothing is clearer, in my view, than that we are chiefly indebted for the success of the constitution under which we are now acting, to the watchful and auxiliary operation of the state authorities. This is not the reflection of a day, but belongs to the most deeply rooted convictions of my mind, I cannot, therefore, too strongly or too earnestly, for my own sense of its importance, warn you against all encroachments upon the legitimate sphere of state sovereignty. Sustained by its healthful and invigorating influence, the federal system can never fail."

I have already shown, that it has been fully recognized by the Virginia resolutions of '98, and by Mr. Madison's report on these resolutions, that it is not only "the right, but the duty of the states," to "judge of infractions of the constitution," and "to interpose for *maintaining within their limits the authorities, rights, and liberties, appertaining to them.*

Mr. Jefferson, on various occasions, expressed himself in language equally strong. In the Kentucky resolutions of '98, prepared by him, it is declared that the federal government "was not made the exclusive and final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the constitution the measure of its powers, but that, as in all other cases of compact among parties having no common judge, each party has an equal right *to judge for itself, as well of infractions as the mode and measure of redress.*"

In the Kentucky resolutions of '99, it is even more explicitly declared, "that the several states which formed the constitution, being sovereign and independent, have the unquestionable right *to judge of its infraction*, and that *a nullification* by those sovereignties of all unauthorized acts done under color of that instrument is *the rightful remedy.*"

But the gentleman says, this right will be dangerous. Sir, I insist, that of all the checks that have been provided by the constitution, this is by far the safest, and the least liable to abuse.

But there is one point of view, in which this matter presents itself to my mind with irresistible force. The supreme court, it is admitted, may nullify an act of congress, by declaring it to be unconstitutional. Can congress, after such a nullification, proceed to enforce the law, even if they should differ in opinion from the court? What then would be the effect of such a decision? And what would be the remedy in such a case? Congress would be *arrested in the exercise of the disputed power*, and the only remedy would be, *an appeal to the creating power*, three-fourths of the states, for an amendment to the constitution. And by whom must such an appeal be made? It must be made by the party proposing to exercise the disputed power. Now I will ask, whether a sovereign state may not be safely entrusted with the exercise of a power, operating merely as a check, which is admitted to belong to the supreme court, and which may be exercised every day, by any three of its members. Sir, no ideas that can be formed of arbitrary power on the one hand, and abject dependence on the other, can be carried further, than to suppose, that three individuals, mere men, "subject to like passions with ourselves," may be safely entrusted with the power to nullify an act of congress, because they conceive it to be unconstitutional; but that a sovereign and independent state, even the great state of New York, is bound, implicitly, to submit to its operation, even where it violates, in the grossest manner, her own rights, or the liberties of her citizens.

But we do not contend that a common case would justify the interposition.

This is "the extreme medicine of the state," and cannot become our daily bread.

Mr. Madison, in his report, says, "it does not follow, however, that because the states, as sovereign parties to their constitutional compact, must ultimately decide whether it has been violated, that such a decision ought to be interposed, either in a hasty manner, or on doubtful and inferior occasions.

"The resolution has, accordingly, guarded against any misapprehension of its object, by expressly requiring, for such an interposition, "the case of a deliberate, palpable, and dangerous breach of the constitution, by the exercise of powers not granted by it."

"But the resolution has done more than guard against misconstruction, by expressly referring to cases of a deliberate, palpable, and dangerous nature. It specifies *the object of the interposition* which it contemplates to be solely that of *arresting the progress of the evil of usurpation*, and of maintaining the authorities, rights, and liberties appertaining to the states, as parties to the constitution."

No one can read this, without perceiving that Mr. Madison goes the whole length, in support of the principles for which I have been contending.

The gentleman has called upon us to carry out our scheme *practically.* Now, sir, if I am correct in my view of this matter, then it follows, of course, that the right of a state being established, the federal government is *bound to acquiesce* in a solemn decision of a state, acting in its sovereign capacity, at least so far as to make an appeal to the people for an amendment of the constitution.—This solemn decision of a state, (made either through its legislature or a convention, as may be supposed to be the proper organ of its sovereign will—a point I do not propose now to discuss) binds the federal government under the highest constitutional obligation, not to resort to any means of coercion against the citizens of the dissenting state. How then can any collision ensue between the federal and state governments, unless indeed, the former should determine to enforce the law by unconstitutional means?

Sir, I will put the case home to the gentleman. Is there any violation of the constitutional rights of the states, and the liberties of the citizen, (sanctioned by congress and the supreme court,) which he would believe it to be the right and duty of a state to resist? Does he contend for the doctrine "of passive obedience and non-residence? Would he justify an open resistance to an act of congress sanctioned by the courts, which should abolish the trial by jury, or destroy the freedom of religion, or the freedom of the press? Yes, sir, he would advocate resistance in such cases; and so would I, and so would all of us. But such resistance would,

according to his doctrine, be *revolution:* it would be *rebellion.*—According to my opinion it would be just, legal, and *constitutional resistance.* The whole difference between us, then, consists in this: the gentleman would make force the only arbiter in all cases of collision between the states and the federal government. I would resort to a peaceful remedy—the interposition of the state to "arrest the progress of the evil," until such times as "a convention, (assembled at the call of congress or two-thirds of the sestates) shall decide to which they mean to give an authority claimed by two of their organs." Sir, I say with Mr. Jefferson, (whose words I have here borrowed) that "it is the peculiar wisdom and felicity of our constitution, to have provided this *peaceable appeal,* where that of other nations," (and I may add that of the gentleman) "is at once *to force.*"

* * *

Mr. WEBSTER (in some closing remarks said): A few words on the constitutional argument, which the honorable gentleman [Mr. Hayne] labored to reconstruct.

His argument consists of two propositions, and an inference.—His propositions are—

1. That the Constitution is a compact between the States.

2. That a compact between two, with authority reserved to *one* to interpret its terms, would be a surrender to that one, of all power whatever.

3. Therefore, (such is his inference) the General Government does not possess the authority to construe its own powers.

Now, sir, who does not see, without the aid of exposition or detection, the utter confusion of ideas, involved in this, so elaborate and systematic argument?

The constitution, it is said, is a compact *between States:* the States, then, and the States only, *are parties to the compact.* How comes the general government itself *a party?* Upon the honorable gentleman's hypothesis, the general government is the result of the compact, the creature of the compact, not one of the parties to it. Yet the argument, as the gentleman has now stated it, makes the government itself one of its own creators. It makes it a party to that compact to which it owes its own existence.

For the purpose of erecting the constitution on the basis of a compact, the gentleman considers the States as parties to that compact; but as soon as his compact is made, then he chooses to consider the general government, which is the offspring of that compact, not its offspring, but one of its parties; and so, being a party, has not the power of judging on the terms of compact.

If the whole of the gentleman's main proposition were conceded to him, that is to say—if I admit for the sake of the argument, that the constitution is a compact between States, the inferences, which he draws from that proposition, are warranted by no just reason. Because, if the constitution be a compact between States, still, that constitution, or that compact, has established a government, with

certain powers; and whether it be one of those powers, that it shall construe and interpret for itself, the terms of the compact, in doubtful cases, can only be decided by looking to the compact, and inquiring what provisions it contains on this point. Without any inconsistency with natural reason, the government, even thus created, might be trusted with this power of construction. The extent of its powers, therefore, must still be sought for in the instrument itself.

If the old confederation had contained a clause, declaring that resolutions of the congress should be the supreme law of the land, any state law or constitution to the contrary notwithstanding, and that a committee of congress, or any other body created by it, should possess judicial powers, extending to all cases arising under resolutions of congress, then the power of ultimate decision would have been vested in congress, under the confederation, although that confederation was a compact between States; and, for this plain reason: that it would have been competent to the States. who alone were parties to the compact, to agree, who should decide, in cases of dispute arising on the construction of the compact.

For the same reason, sir, if I were now to concede to the gentleman his principal propositions, viz. that the constitution is a compact between States, the question would still be, what provision is made, in this compact, to settle points of disputed construction, or contested power, that shall come into controversy? and this question would still be answered, and conclusively answered, by the constitution itself. While the gentleman is contending against construction, he himself is setting up the most loose and dangerous construction. The constitution declares, that *the laws of congress shall be the supreme law of the land.* No construction is necessary here. It declares, also, with equal plainness and precision, *that the judicial power of the United States shall extend to every case arising under the laws of Congress.* This needs no construction. Here is a law, then, which is declared to be supreme; and here is a power established, which is to interpret that law.—Now, sir, how has the gentlemen met this? Suppose the constitution to be a compact, yet here are its terms and how does the gentleman get rid of them? He cannot argue the *seal off the bond*, nor the words out of the instrument. Here they are—what answer does he give to them? None in the world, sir, except, that the effect of this would be to place the States in a condition of inferiority; and because it results, from the very nature of things, there being no superior, that the parties must be their own judges! Thus closely and cogently does the honorable gentleman reason on the words of the constitution. The gentleman says, if there be such a power of final decision in the general government, he asks for the grant of that power. Well, sir, I show him the grant—I turn him to the very words—I show him that the laws of congress are made supreme; and that the judicial power extends, by ex-

press words, to the interpretation of these laws. Instead of answering this, he retreats into the general reflection, that it must result *from the nature of things*, that the States, being the parties, must judge for themselves.

I have admitted, that, if the constitution were to be considered as the creature of the State Governments, it might be modified, interpreted, or construed, according to their pleasure. But, even in that case, it would be necessary that they should *agree*. One, alone, could not interpret it conclusively; one, alone, could not construe it; one alone, could not modify it. Yet the gentleman's doctrine is, that Carolina, alone, may construe and interpret that compact which equally binds all, and gives equal rights to all.

So then, sir, even supposing the constitution to be a compact between the States, the gentleman's doctrine, nevertheless, is not maintainable; because, first, the general government is not a party to that compact, but a *Government* established by it, and vested by it with the powers of trying and deciding doubtful questions; and, secondly, because, if the constitution be regarded as a compact, not one State only, but all the States, are parties to that compact, and one can have no right to fix upon it her own peculiar construction.

So much, sir, for the argument, even if the premises of the gentleman were granted, or could be proved. But, sir, the gentleman has failed to maintain his leading proposition. He has not shown, it cannot be shown, that the constitution is a compact between state governments. The constitution itself, in its very front, refutes that proposition: it declares that it is ordained and established *by the People of the United States.* So far from saying that it is established by the governments of the several States, it does not even say that it is established by the People *of the several States:* but it pronounces that it is established by the People of the United States, in the aggregate. The gentleman says, it must mean no more than that the People of the several States, taken collectively, constitute the People of the United States; be it so, but it is in this, their collective capacity, it is as all the People of the United States, that they establish the constitution. So they declare; and words cannot be plainer than the words used

When the gentleman says, the constitution is a compact between the States, he uses language exactly applicable to the old confederation. He speaks as if he were in Congress before 1789. He describes fully that old state of things then existing. The confederation was, in strictness, a compact; the States, as States, were parties to it. We had no other general government. But that was found insufficient, and inadequate to the public exigencies.—The People were not satisfied with it, and undertook to establish a better. They undertook to form a general government, which should stand on a new basis—not a confederacy, not a league, not a compact between States, but a *Constitution:* a popular govern-

ment, founded in popular election, directly responsible to the people themselves, and divided into branches, with prescribed limits of power, and prescribed duties. They ordained such a government: they gave it the name of a *Constitution*, and therein they established a distribution of powers between this, their general government, and their several state governments. When they shall become dissatisfied with this distribution, they can alter it. Their own power over their own instrument remains. But until they shall alter it, it must stand as their will, and is equally binding on the general government and on the States.

The gentleman, sir, finds analogy, where I see none. He likens it to the case of a treaty, in which, there being no common superior, each party must interpret for himself, under its own obligation of good faith. But this is not a treaty, but a Constitution of Government, with powers to execute itself, and fulfil its duties.

I admit, sir, that this government is a government of checks and balances; that is, the House of Representives is a check on the Senate, and the Senate is a check on the House, and the President is a check on both. But I cannot comprehend him, or, if I do, I totally differ from him, when he applies the notion of checks and and balances to the interference of different governments. He argues, that if we transgress, each State, as a State, has a right to check us. Does he admit the converse of the proposition, that we have a right to check the States? The gentleman's doctrines would give us a strange jumble of authorities and powers, instead of governments of separate and defined powers. It is the part of wisdom, I think, to avoid this; and to keep the general government and the state governments, each in its proper sphere, avoiding, as carefully as possible, every kind of interference.

Finally, sir, the honorable gentleman says, that the States will only interfere, by their power, to preserve the constitution. They will not destroy it, they will not impair it—they will only save, they will only preserve, they will only strengthen it! All regulated governments, all free governments, have been broken up by similar disinterested and well disposed interference!

Mr LIVINGSTON. I think that the Constitution is the result of a compact entered into by the several states, by which they surrendered a part of their sovereignty to the Union, and vested the part so surrendered in a general government.

That this Government is partly popular, acting directly on the citizens of the several states; party federative, depending for its existence and action on the existence and action of the several states.

That, by the institution of this government, the states have unequivocally surrendered every constitutional right of impeding or resisting the execution of any decree or judgment of the Supreme Court in any case of law or equity between persons or on matters of whom or on which, that court has jurisdiction, even if such decree or judgment should, in the opinion of the states, be unconstitutional.

That, in cases in which a law of the United States may infringe the constitutional right of a state, but which, in its operation, cannot be brought before the Supreme Court, under the terms of the jurisdiction expressly given to it over particular persons or matters, that court is not created the umpire between a state that may deem itself aggrieved and the general government.

That, among the attributes of sovereignty retained by the states, is that of watch-

ing over the operations of the general government, and protecting its citizens against their unconstitutional abuse; and that this can be legally done—

First, in the case of an act in the opinion of the state palpably unconstitutional, but affirmed in the Supreme Court in the legal exercise of its functions;

By remonstrating against it to Congress;

By an address to the people in their elective functions to change or instruct their Representatives;

By a similar address to the other states, in which they will have a right to declare that they consider the act as unconstitutional and therefore void;

By proposing amendments to the Constitution in the manner pointed out by that instrument;

And, finally, if the act be intolerably oppressive, and they find the general government persevere in enforcing it, by a resort to the natural right which every people have to resist extreme oppression.

Secondly, if the act be one of those few which, in its operation, cannot be submitted to the Supreme Court, and be one that will, in the opinion of the state, justify the risque of a withdrawal from the Union, that this last extreme remedy may at once be resorted to.

That the right of resistance to the operation of an act of Congress, in the extreme cases above alluded to, is not a right derived from the Constitution, but can be justified only on the supposition that the Constitution has been broken, and the state absolved from its obligation; and that, whenever resorted to, it must be at the risk of all the penalties attached to an unsuccessful resistance to established authority.

That the alledged right of a state to put a *veto* on the execution of a law of the United States, which such state may declare to be unconstitutional, attended (as, if it exist, it must be) with a correlative obligation on the part of the general government, to refrain from executing it; and the further alledged obligation on the part of that government to submit the question to the states, by proposing amendments, are not given by the constitution, nor do they grow out of any of the reserved powers.

That the exercise of the powers last mentioned, would introduce a feature in our Government, not expressed in the Constitution, not implied from any right of sovereignty reserved to the states, not suspected to exist by the friends or enemies of the Constitution when it was framed or adopted, not warranted by practice or cotemporaneous exposition, nor implied by the true construction of the Virginia resolutions in '98.

That the introduction of this feature in our government would totally change its nature, make it inefficient, insite to dissension, and end, at no distant period, in seperation; and that, if it had been proposed in the form of an explicit provision in the Constitution, it would have been unanimously rejected, both in the Convention which framed that instrument, and in those which adopted it.

That the theory of the Federal Government, being the result of the general will of the people of the United States in their aggregate capacity, and founded, in no degree, on compact between the states, would tend to the most disastrous practical results; that it would place three-fourths of the states at the mercy of one-fourth, and lead inevitably to a consolidated government, and finally to monarchy if the doctrine were generally admitted; and if partially so, and opposed, to civil dissentions.

Mr. WOODBURY—

From the very fact of there being two parties in the Federal Government, it would seem a necessary inference that the agents of each party, on proper occasions, must be allowed, and are required, by an official oath, to conform to the Constitution, and to decide on the extent of its provisions, so far as is necessary for the expression of their own views, and for the performance of their own duties. This being, to my mind, the rationale of the case, I look on the express words of the Constitution as conforming to it, by limiting the grant of judicial jurisdiction to the Supreme Court, both by the Constitution, and by the acts of Congress, to specific enumerated objects. In the same way, there are limited grants of judicial jurisdiction to State Courts, under most of the State Constitutions. When cases present themselves within these grants, the Judges, whether of the State or United States, must decide, and enforce their decision with such means as are confided to them by the laws and the Coostitutions. But, when questions arise, not confided to the judiciary of the States, or United States, the officers concerned in those questons must themselves decide them; and, in the end, must pursue such course as their views of the Constitution dictate. In such instances, they have the same authority to make this decision, as the Supreme Court itself has in other instances.

On the Powers of the State and Federal Governments, Feb. 29, 1830.

Mr. GRUNDY. I will proceed to an examination of a subject, upon which a great diversity of opinion seems to prevail. I mean the powers of the State and Federal Governments. As to the true division or distribution of their powers, no difficulty exists so long as we speak in general terms; differences of opinion arise when we come to act on particular cases—at present, we have no case before the Senate, and are only discussing the subject for the purpose of ascertaining the true rule by which to test cases as they arise; and in the event Congress should transcend the limits or boundaries of its Constitutional powers, to ascertain where we are to look for the ultimate corrective tribunal.

The States existed prior to this Government. Each of them possessed all the rights and powers which appertain to sovereign and independent nations. For all the purposes of self government, no want of power, or the means of using it, was felt by any of these communities. Life, liberty, reputation, and property, all found an ample protection in the State Governments. If any internal improvement were necessary, within its limits, the sovereign power of the State, having entire and uncontrolled jurisdiction, could cause it to be undertaken and effected. For none of these purposes or objects was there a defect of competency in the State Governments. There were objects, however, of high importance, to which the States separately, were not equal or adequate to provide. These are specified in the recommendatory letter issued by the Convention, and signed by General Washington, which accompanied the Constitution, when presented to the old Congress for its consideration; the language is, "The friends of our country have long seen and desired, that the power of making war, peace, and treaties; that of levying money and regulating commerce, and the correspondent, executive, and judicial authorities, should be fully and effectually vested in the General Government of the Union." Here is an enumeration of the objects which made it necessary to establish this Government; and when we are called on to decide whether a subject be within our powers, we ought not to lose sight of the purposes for which the Government was created. When it is recollected that all the powers now possessed by the General and State Governments belonged originally to the latter, and that the former is constructed from grants of power yielded up by the State Governments, the fair and just conclusion would be, that no other power was conferred, except what was plainly and expressly given. But if doubt could exist, the 10th Article in the Amendments to the Constitution settles this question. It declares, that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states, respectively, or to the people." The conclusion hence arises, that this Government is one of limited, delegated powers, and can only act on subjects expressly placed under its control by the Constitution, and upon such other matters as may be necessarlly and properly within the sphere of its action, to enable it to carry the enumerated and specified powers into execution, and without which, the powers granted, would be inoperative.

Mr. ROWAN. The states remained in full vigor, while the Constitution of the United States was forming. They were not even shorn of any of their sovereign power by that process, for the gentleman says, that that instrument was brought into existence, among other reasons, for the purpose of imposing certain salutary restraints upon state sovereignties.

Now that which does not exist, cannot be restrained. He, therefore, admits the existence of the sovereignties of the states, not only at the time, but ever since the formation of the Constitution If the sovereignty of each state was separate and distinct, and consisted in the concentrated will of the people of each, by what authority could the people of the state of Georgia interfere in the reduction or modification of the sovereign power of the state of Virginia, and if they could not interfere in the regulation of the power of the state of Virginia, by what mode conld the people of Virginia itself, other than their collective, their state capacity, diminish or modify the sovereign power of that state! The people of no one state could interfere with the rights of another, nor with its own, in any other capacity, than as the collective body which composed the state. But, upon the supposition, that the people of all the states, not in their state capacities, but at large, and by their confluent voice or agency, formed the constitution. The difficulty still presents itself. By what authority did all unite in modifying the constitution of each. They had not entered all into one general compact, and thereby conferred power upon the majority, to form the constitution, by the adoption of the state machinery, which they had thrown off. This government is not formed by the people at large, out of the *exuviæ* of the states. But will the gentleman (Mr. Sprague) have the goodness to tell us, what is the power, and where does it reside, which is employed in altering the constitution of a state? Does it not reside *exclusively* in the people of the state, and in their col-

lective capacity, and must it not be exerted in that capacity, to produce any alteration in their constitution? And must it not be exerted according to the mode prescribed in the constitution? Can the people, pursuing that mode, be viewed in any other than their state capacities? The gentleman, I am sure, will answer these questions in the affirmative. Well, the state constitutions were all affected, and seriously too, by the constitution of the United States.

Now, if none but the people of a state, in their distinct state capacity, could affect its constitution, then their action in forming the constitution of the United States, must have been exerted in their state capacity. The states, whereby I mean the people of each, has a distinct political body, then must have formed the constitution, and not the people at large. If these views are correct, how can the gentleman reconcile his idea, that the constitution was formed by the people, and not by the states, with his other idea, that it was formed by the *people* to impose certain *restraints* upon state sovereignty. If the people acted in their distinct state capacities, then they could consistently impose restraints upon the exercise by the states of their sovereign power—but that they acted as states—and imposed the restraints by *compact*; and in no other capacity could they act, nor by any other mode than by compact, could they achieve that object. The social compact gives, as I have urged, unity and compaction to the people. It gives the power to the state, which it forms, of expressing its will by a majority. And thus it acts in forming its constitutional compact, and in the exercise of its legislative power. This power of acting by majority, would be tyranny over the minority, if it had not been conceded by the social compact. Upon this ground it must be obvious, that the social, must precede the constitutional compact, and that the power to form the latter must be derived from the former. But until there be a state, there can be neither need for a government, or the power to form it. So that, if the people had not, at the time the constitution was formed, existed in distinct political bodies, they must all have existed in one political body, before they could either need a government, or possess the power to form one.

Public Lands. Senate, February 23, 1830.

MR. WOODBURY. Not examining the particular kind of sales the government can make for the common benefit, such as grants to the new States for schools, receiving virtual compensation therefor, by having the rest of the land freed from taxation, I merely lay down what I suppose to be the general principle.

On that principle, no reasoning has been offered which convinces me that lands can be legally appropriated to any object for which we might not legally appropriate money. The lands are as much the property of the Union as its money in the Treasury. The cessions and purchases of them were as much for the benefit of all, as the collection of the money. The Constitution, as well as common sense, seems to me to recognise no difference; and if the money can only be appropriated to specified objects, it follows that the land can only be so appropriated. Within those specified objects I have ever been, and ever shall be as ready to give lands or money to the West, as the East, but beyond them, I never have been ready to give either to either. Towards certain enumerated objects, Congress have authority to devote the common funds—the land or the money; because those objects were supposed to be better managed under their control than under that of the States; but the care of the other objects is reserved to the States themselves, and can only be promoted by the common funds, in a return or division of those funds to proprietors, to be expended as they may deem judicious.

The whole debate on these points goes to satisfy my mind of the correctness of that construction of the Constitution, which holds no grants of money or lands valid, unless to advance some of the enumerated objects entrusted to Congress. When we once depart from that great land mark on the appropriation of lands or money, and wander into indefinite notions of "common good" or of the "general welfare," we are, in my opinion, at sea without compass or rudder: and in a Government of acknowledged limitations, we put every thing at the caprice of a fluctuating majority here; pronouncing that to be for the general welfare to-day, which to-morrow may be denounced as a general curse. Were the Government not limited, this broad discretion would, of course, be necessary and right. But here every grant of power is defined. Many powers are not ceded to the General Government, but are expressly withheld to the States and people; and right is, in my opinion, given to promote the "general welfare" by granting money or lands, but in the exercise of the specific powers granted, and in the modes prescribed by the Constitution. ***

In fine, if the Government, on the principles of strict construction of the Constitution, cannot be prosperously administered, it requires no spirit of porphecy to foresee, that, in a few brief years, in a new crisis approaching, and before indicated, it must, as a Confederation, probably cease to be administered at all. It will, in my

judgment, become a government of usurped, alarming, undefined powers; and the sacred rights of the States will become overshadowed in *total eclipse*. When that catastrophe more nearly approaches, unless the great parties to the Government shall arouse and in some way interfere and rescue it from consolidation, it will follow, as *darkness does the day*, that the government ends like all republics of olden times, either in anarchy or despotism.

Nullification. Senate, April 2, 1830.

Mr. JOHNSTON.—The right of a state to annul a law of congress must depend on their shewing that this is a mere confederation of states, which has not been done, and cannot be said to be true, although it should not appear to be absolutely a government of the people. It is by no means necessary to push the argument, as to the character of the government, to its utmost limit; the ground has been taken and maintained with great force of reasoning, that this government is the agent of the supreme power, the people. It is sufficient for the argument that this is not a compact of states; it may be assumed that it is neither strictly a confederation nor a national government; it is compounded of both; it is an anomaly in the political world; an experiment growing out of our peculiar circumstances; a compromise of principles and opinions; it is partly federal, partly national.

"The proposed constitution is, in strictness, neither national or federal; it is a composition of both; in its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal, partly national; in the operation of these powers it is national, not federal; in the mode for amendment, it is neither wholly federal nor wholly national."—*Federalist*

The following list will exhibit the nature and number of the causes decided [in the Supreme Court.] The same case is sometimes counted under different heads:

1.	Declaring acts of Congress unconstitutional	2	7.	Assenting to appeal jurisdiction	7
2.	Constitutional		8.	Acquiescing in appeal jurisdiction	21
3.	Declaring state laws constitutional	9	9.	States parties really & nominally	6
4.	do unconstitutional	26	10.	do incidentally	4
5.	Affirming judgt's. of state courts	14	11.	Opinions against the President	2
6.	Annulling do do	14	12.	in favor of do	2
			13.	do against Secretary of State	2

They have decided twenty-six state laws to be unconstitutional; that is interfering with the rights of the general government; which, considering these as twenty-four states, are not equal to the number of decisions against the acts of congress. * *

The [supreme] court has annulled the judgments of state courts in 14 cases, which drew in question the constitution, laws, or treaties of the United States, but has affirmed as many, which shows they have no bearing against the rights of states; and which, if it has had no other effect, has preserved the uniformity so essential to the administration of justice under them. * * *

Indian "Treaties." Senate, May, 1830.

Mr. SPRAGUE. These contracts with aboriginal communities have been denominated *treaties* from the first settlement of this country. It has been their peculiar and appropriate name without even an *alias dictus*. Great Britain made *treaties* with the Indians; the several colonies formed many, and gave them the same appellation. The continental congress from the time it first assembled, until it was merged in the present national government, uniformly called them treaties. They did so in 1775, 1776, 1778, 1783, 1784, 1785, 1786, 1787, 1788, and even to the day of the formation and adoption of the constitution. We find them repeatedly and particularly mentioned in July, August and October, 1787; the constitution being formed in September of the same year.

United States Bank. H. R.—April 13, 1830.

Mr. McDUFFIE. It remains for the committee to show that the Bank of the United States is a "necessary and proper," or, in other words, a natural and appropriate means, of executing the powers vested in the Federal Government. In the discussion of 179[illegible] and also in that before the supreme court, the powers of raising, collecting, and disbursing the public revenue, of borrowing money on the credit of the United States, and paying the public debt, were those which were supposed most clearly to carry with them the incidental right of incorporating a bank, to facilitate these operations. There can be no doubt that these fiscal operations are greatly facilitated by a bank, and it is confidently believed, that no person has presided twelve months over the Treasury, from its first organization to the present time, without coming to the conclusion, that such an institution is exceedingly useful to the public finances in time of peace, but indispensible in time of war. But as this view of the question has been fully unfolded in former discussions, familiar to the house, the committee will proceed to examine the relation which the Bank of the United States bears to another of the powers of the Federal Government, but slightly adverted to in former discussions of the subject.

The power to "coin money and fix the value thereof," is expressly and exclusively vested in Congress. This grant was evidently intended to invest Congress with the power of regulating the circulating medium. "Coin" was regarded, at the period of framing the Constitution, as synonimous with "currency," as it was then generally believed that bank notes could only be maintained in circulation by being the true representative of the precious metals. The word "coin," therefore, must be regarded as a particular term, standing as the representative of a general idea. No principle of sound construction will justify a rigid adherence to the letter, in opposition to the plain intention of the clause. If, for example, the gold bars of Ricardo should be substituted for our present coins, by the general consent of the commercial world, could it be maintained that Congress would not have the power to *make* such money, and fix its value, because it is not "coined?" This would be sacrificing sense to sound, and substance to mere form. This clause of the Constitution is analogous to that which gives Congress the power "to establish post roads." Giving to the word "establish" its restricted interpretation, as being equivalent to "fix" or "prescribe," can it be doubted that Congress has the power to establish a canal, or a river, as a post route, as well as a road? Roads were the ordinary channels of conveyance, and the term was, therefore, used as synonimous with "routes," whatever might be the channel of transportation, and, in like manner, "coin," being the ordinary and most known form of a circulating medium, that term was used as synonimous with currency.

An argument in favor of the view just taken, may be fairly deduced from the fact, that the states are expressly prohibited from "coining money, or emitting bills of credit," and from "making any thing but gold and silver a lawful tender in payment of debts." This strongly confirms the idea, that the subject of regulating the circulating medium, whether consisting of coin or paper, was, at the same time that it was taken from the control of the states, vested in the only depository in which it could be placed, consistently with the obvious design of having a common measure of value throughout the Union.

[*Note.*—The President's *Veto*. Mr. Madison's, on the *Bonus* Bill, in 1817, is inserted at page 281 of the "Opinions;" and Mr. Monroe's on the Cumberland Road Bill, in 1822, is as follows:]

Mr. Monroe's *Objections to "An act for the Preservation and Repair of the Cumberland Road."*

Having duly considered the bill, entitled "an Act for the Preservation and Repair of the Cumberland Road," it is with deep regret, approving as I do the policy, that I am compelled to object to its passage, and to return it to the House of Representatives in which it originated, under a conviction that congress do not possess the power, under the constitution, to pass such a law.

A power to establish turnpikes with gates and tolls, and to enforce the collection of tolls, by penalties, implies a power to adopt and execute a system of Internal Improvement. A right to impose duties, to be paid by all persons, passing a certain road, and on horses and carriages, as is done by this bill, involves the right to take land from the proprietor, on a valuation, and to pass laws for the protection of the road from injuries; and if it exist as to one road, it exists as to any other, and to as many roads as congress may think proper to establish. A right to legislate for one of these purposes, is a right to legislate for the others. It is a complete right of jurisdiction and sovereignty, for all the purposes of Internal Improvement, and not merely the right of appropriating money, under the power vested in congress to make appropriations, under which power, with the consent of the states through which the road passes, the work was originally commenced, and has been so far executed. I am of opinion that congress do not possess this power; that the states individually, cannot grant it; for, although they may assent to the appropriation of money within their limits for such purposes, they can grant no power of jurisdiction or sovereignty by special compacts with the United States. This power can be granted only by an amendment to the constitution, and in the mode prescribed by it.

If the power exist, it must, either because it has been specifically granted to the United States, or that which is incidental to some power which has been specifically granted. If we examine the specific grants of power, we do not find it among them; nor is it incidental to any power which has been specifically granted.

It never has been contended, that the power was specifically granted. It is claimed only as being incidental to some one or more of the powers which are specifically granted. The following are the powers from which it is said to be derived:

1st. From the right to establish post offices and post roads. 2d. From the right to declare war. 3d. To regulate commerce. 4th. To pay the debts and provide for the common defence and general welfare. 5th. From the power to make all laws necessary and proper for carrying into execution all the powers vested by the constitution in the government of the United States, or in any department or officer

thereof. 6th, and lastly. From the power to dispose of, and make all needful rules and regulations respecting the territory and other property of the United States.

According to my judgment it cannot be derived from either of those powers, nor from all of them united; and, in consequence, does not exist. * * *.

Washington, May 4, 1822. JAMES MONROE.

[On the evening of the 24th, President MONROE also transmitted his "*views*," in support of his *veto*, in an elaborate argument: this is the exposition quoted in the text of the following objections—]

GEN. JACKSON'S VETO ON THE MAYSVILLE ROAD BILL.

OBJECTIONS of the President of the United States on returning to the House of Representatives the enrolled bill entitled "An act authorizing a subscription of stock in the Maysville, Washington, Paris, and Lexington Turnpike Road Company.

The act which I am called upon to consider, has been passed with a knowledge of my views on this question, and these are expressed in the message referred to. In that document the following suggestion will be found:

"After the extinction of the public debt, it is not probable that any adjustment of the tariff, upon principles satisfactory to the people of the union, will, until a remote period, if ever, leave the government without a considerable surplus in the treasury, beyond what may be required for its current service. As then the period approaches when the application of the revenue to the payment of debt will cease, the disposition of the surplus will present a subject for the serious deliberation of congress; and it may be fortunate for the country that it is yet to be decided. Considered in connexion with the difficulties which have heretofore attended appropriations for purposes of internal improvement, and with those which this experience tells us will certainly arise, whenever power over such subjects may be exercised by the general government; it is hoped that it may lead to the adoption of some plan which will reconcile the diversified interests of the states, and strengthen the bonds which unite them. Every member of the union, in peace and in war, will be benefitted by the improvement of inland navigation and the construction of highways in the several states. Let us then endeavor to attain this benefit in a mode which will be satisfactory to all. That hitherto "adopted has been deprecated as an infraction of the constitution by many of our fellow citizens; while by others it has been viewed as inexpedient. All feel that it has been employed at the expense of harmony in the legislative councils;" and adverting to the constitutional power of congress to make what I consider a proper disposition of the surplus revenue, I subjoin the following remarks: "To avoid these evils, it appears to me that the most safe, just and federal disposition which could be made of the surplus revenue, would be its apportionment among the several states according to their ratio of representation; and should this measure not be found warranted by the constitution, that it would be expedient to propose to the states an amendment authorizing it."

The constitutional power of the Federal Government to construct or promote works of internal improvement, presents itself in two points of view: the first, as bearing upon the sovereignty of the states within whose limits their execution is contemplated, if jurisdiction of the territory which they may occupy, be claimed as necessary to their preservation and use: the second, as asserting the simple right to appropriate money from the national treasury in aid of such works when undertaken by state authority, surrendering the claim of jurisdiction. In the first view, the question of power is an open one, and can be decided without the embarrassment attending the other, arising from the practice of the government.

Although frequently and strenuously attempted, the power, to this extent, has never been exercised by the government in a single instance. It does not, in my opinion, possess it, and no bill, therefore, which admits it, can receive my official sanction.

But, in the other view of the power, the question is differently situated. The ground taken at an early period of the government, was, "that whenever money has been raised by the general authority, and is to be applied to a particular measure, a question arises, whether the particular measure be within the enumerated authorities vested in congress. If it be, the money requisite for it may be applied to it; if not, no such application can me made." The document in which this principle was first advanced is of deservedly high authority, and should be held in grateful remembrance for its immediate agency in rescuing the country from much existing abuse, and for its conservative effect upon some of the most valuable principles of the constitution. The symmetry and purity of the government would, doubtless, have been better preserved, if this restriction of the power of appropriation could have been maintained without weakening its ability to fulfil the general objects of its institution: an effect so likely to attend its admission, notwithstanding its apparent fitness, that every subsequent administration of the government, embracing a period

of thirty out of the forty-two years of its existence, has adopted a more enlarged construction of the power. * * *

In the administration of Mr. *Jefferson* we have two examples of the exercise of the right of appropriation, which, in the consideration that led to their adoption and in their effects upon the public mind, have had a greater agency in marking the character of the power, than any subsequent events. I allude to the payment of fifteen millions of dollars for the purchase of Louisiana, and to the original appropriation for the construction of the Cumberland Road; the latter act deriving much weight from the acquiescence and approbation of three of the most powerful of the original members of the confederacy, expressed through their respective legislatures. Although the circumstances of the latter case may be such as to deprive so much of it as relates to the actual construction of the road, of the force of an obligatory exposition of the constitution, it must, nevertheless, be admitted that, so far as the mere appropriation of money is concerned, they present the principle in its most imposing aspect. No less than twenty-three different laws have been passed through all the forms of the constitution, appropriating upwards of two millions of dollars out of the national treasury in support of that improvement, with the approbation of every president of the United States, including my predecessor, since its commencement. * * *

Independently of the sanction given to appropriations for the Cumberland and other roads and objects, under this power, the administration of Mr. *Madison* was characterised by an act which furnishes the strongest evidence of his opinion of its extent. A bill was passed through both houses of Congress, and presented for his approval, "setting apart and pledging certain funds for constructing roads and canals, and improving the navigation of water courses, in order to facilitate, promote, and give security to internal commerce among the several States; and to render more easy, and less expensive, the means and provisions for the common defence." Regarding the bill as asserting a power in the federal Government to construct roads and canals within the limits of the States in which they were made, he objected to its passage, on the ground of its unconstitutionality, declaring that the assent of the respective States, in the mode provided by the bill, could not confer the power in question; that the only cases in which the consent and cession of particular States can extend the power of Congress, are those specified and provided for in the Constitution; and superadding to these avowals, his opinion, that "a restriction of the power 'to provide for the common defence and general welfare,' to cases which are to be provided for by the expenditure of money, would still leave within the legislative power of Congress, all the great and most important measures of Government, money being the ordinary and necessary means of carrying them into execution." I have not been able to consider these declarations in any other point of view, than as a concession that the right of appropriation is not limited by the power to carry into effect the measure for which the money is asked, as was formerly contended.

The views of Mr. *Monroe* upon this subject, were not left to interference.—During his administration a bill was passed through both Houses of Congress, conferring the jurisdiction and prescribing the mode by which the Federal Government should exercise it in the case of the Cumberland Roard. He returned it with objections to its passage, and in assigning them, took occasion to say, that in the early stages of the Government, he had inclined to the construction that it had no right to expend money, except in the performance of acts authorized by the other specific grants of power, according to a strict construction of them; but that, on further reflection and observation, his mind had undergone a change; that his opinion then was, "that Congress have unlimited power to raise money, and that, in its appropriation, they have a discretionary power, restricted only by the duty to appropriate it to purposes of common defence, and of general, not local, national, not State benefit;" and this was avowed to be the governing principle through the residue of his administration. The views of the last administration are of such recent date as to render a particular reference to them unnecessary. It is well known that the appropriating power, to the utmost extent which had been claimed for it, in relation to internal improvements, was fully recognized and exercised by it.

This brief reference to known facts, will be sufficient to show the difficulty, if not impracticability, of bringing back the operations of the Government to the construction of the Constitution set up in 1798, assuming that to be its true reading, in relation to the power under consideration: thus giving an admonitory proof of the force of *implication*, and the necessity of guarding the Constitution with sleepless vigilance, against the authority of precedents which have not the sanction of its most plainly defined powers. For, although it it is the duty of all to look to that sacred instrument, instead of the statute book, to repudiate at all times, encroachments upon its spirit, which are too apt to be effected by the conjecture of peculiar and facilitating circumstances; it is not less true, that the public good and the nature of our political

institutions require, that individual differences should yeild to a well settled acquiescence of the people and confederated authorities, in particular constructions of the Constitution, on doubtful points. Not to concede this much to the spirit of our institutions, would impair their stability, and defeat the objects of the Constitution itself.

The bill before me does not call for a more definite opinion upon the particular circumstances which will warrant appropriations of money by Congress, to aid works of internal improvement, for although the extension of the power to apply money beyond that of carrying into effect the object for which it is appropriated, has, as we have seen, been long claimed and exercised by the Federal Government, yet such grants have always been professedly under the control of the general principle, that the works which might be thus aided, should be "of a general, not local--national, not State" character. A disregard of this distinction would of necessity lead to the subversion of the federal system That even this is an unsafe one, arbitrary in its nature, and liable, consequently, to great abuses is too obvious to require the confirmation of experience. It is, however, sufficiently definite and and imperative to my mind, to forbid my approbation of any bill having the character of the one under consideration. I have given its provisions all the reflection demanded by a just regard for the interests of those of our fellow citizens who have desired its passage, and by the respect which is due to a co-bordinate branch of the Government, but I am not able to view it in any other light than as a measure of purely local character; or if it can be considered national, that no further distinction between the appropriate duties of the General and State Government, need be attempted; for there can be no local interest that may not with equal propriety be denominated national. It has no connection with any established system of improvements; is exclusively within the limits of a State, starting at a point on the Ohio river, and running out sixty miles to an interior town; and even as far as the state is interested, conferring partial instead of general advantages. * * *

In the other view of the subject, and the only remaining one, which it is my intention to present at this time, is involved the expediency of embarking in a system of internal improvement, without a previous amendment of the constitution, explaining and defining the precise powers of the federal government over it: assuming the right to appropriate money, to aid in the construction of national works, to be warranted by the cotemporaneous and continued exposition of the constitution, its insufficiency for the successful prosecution of them, must be admitted by all candid minds. If we look to usage to define the extent of the right, that will be found so variant, and embracing so much that has been overruled, as to involve the whole subject in great uncertainty, and to render the execution of our respective duties in relation to it, replete with difficulty and embarrassment. It is in regard to such works, and the acquisition of additional territory, that the practice obtained its first footing. In most, if not all other disputed questions of appropriation, the construction of the constitution may be regarded as unsettled, if the right to apply money, in the enumerated cases, is placed on the ground of usage. * * *

If it be the desire of the people that the agency of the federal government should be confined to the appropriation of money, in aid of such undertakings, in virtue of the state authorities, then the occasion, the manner, and the extent of the appropriations, should be made the subject of constitutional regulation. This is the more necessary, in order that they may be equitable among the several states; promote harmony between different sections of the union and their representatives; preserve other parts of the constitution from being undermined by the exercise of doubtful powers, or the two great extension of those which are not so, and protect the whole subject against the deleterious influence of combinations to carry, by concert, measures which, considered by themselves, might meet but little countenance.

That a constitutional adjustment of this power, upon equitable principles, is, in the highest degree, desirable, can scarcely be doubted; nor can it fail to be promoted by every sincere friend to the success of our political institutions. In no government are appeals to the source of power, in cases of real doubt, more suitable than in ours. No good motive can be assigned for the exercise of power by the constituted authorities, while those, for whose benefit it is to be exercised, have not conferred it, and may not be willing to confer it. It would seem to me that an honest application of the conceded powers of the general government to the advancement of the common weal, present a sufficient scope to satisfy a reasonable ambition. The difficulty and supposed impracticability of obtaining an amendment of the constitution in this respect, is, I firmly believe, in a great degree, unfounded. * * *

In presenting these opinions I have spoken with the freedom and candor which I thought the occasion for their expression called for, and now respectfully return the bill which has been under consideration for your further deliberation and judgment.

ANDREW JACKSON.

May 27, 1830

THE MAYSVILLE ROAD BILL.

Having originated in the House of Representatives, the question being ordered and put, viz: "will the House pass the bill, the President's objections notwithstanding" was decided as follows:

YEAS.

Armstrong,	Crockett,	Hodges,	Mercer,	Stanberry,
Noyes Barber,	Creighton,	Howard,	Miller,	Standefer,
Bartley,	Crowninshield,	Hughes,	Mitchell,	Stephens,
Bates,	John Davis,	Hunt,	Norton,	H. R. Storrs,
Baylor,	Denny,	Huntington,	Pearce,	W. L. Storrs,
Beekman,	Doddridge,	Ingersoll,	Pettis,	Strong,
John Blair,	Dorsey,	Irvin,	Pierson,	Sutherland,
Boon,	Duncan,	Isaacks,	Ramsey,	Swann,
Brown,	Dwight,	Johns,	Randolph,	Swift,
Burges,	Ellsworth,	Kendall,	Reed,	Test,
Cahoon,	George Evans,	Kennon,	Richardson,	John Thomson,
Childs,	Ed. Everett,	Kincaid,	Rose,	Vance,
Chilton,	HoraceEverett,	Lecompte,	Russel,	Vinton,
Clay,	Findlay,	Letcher,	Scott,	Washington,
Clark,	Finch,	Lyon,	W. B. Shepard,	Whittlesey,
Coleman,	Ford,	Mallary,	Semmes,	Ed. D. White,
Condict,	Forward,	Martindale,	Sill,	Wickliffe,
Cooper,	Grennell,	L. Maxwell,	A. Spencer,	Yancey,
Crane,	Hawkins,	McCreery,	Sprigg,	Young. **97.**
Crawford,	Hemphill,			

NAYS.

Alexander,	Campbell,	Foster,	Leiper,	A.H.Shepperd,
Allen,	Carson,	Fry,	Loyall,	Shields,
Alston,	Chandler,	Gaither,	Lewis,	Smith,
Anderson,.	Claiborne,	Gordon,	Lumpkin,	Speight,
Angell,	Coke,	Gorham,	Magee,	R. Spencer,
Archer,	Conner,	Hall,	T. Maxwell,	Sterigere,
Arnold,	Cowles,	Hammons,	McCoy,	Taliaferro,
Bailey,	Hector Craig,	Harvey,	McDuffie,	Taylor,
J. S. Barbour,	Robert Craig,	Haynes,	McIntire,	W. Thompson,
P. P. Barbour,	Crocheron,	Hinds,	Monell,	Trezvant,
Barnwell,	Daniel,	Hoffman,	Muhlenberg,	Tucker,
Barringer,	Davenport,	Hubbard,	Nuckolls,	Varnum,
Bell,	W. R. Davis,	Jennings,	Overton,	Verplanck,
James Blair,	Deberry,	C. Johnson,	Polk,	Wayne,
Bockee,-Borst,	Desha,	Perkins King,	Potter,	Weeks,
Bouldin,	De Witt,	Adam King,	Powers,	C. P. White,
Brodhead,	Drayton,	Lamar,	Rencher,	Wilde,
Cambreleng.	Dudley,-Earll,	Lea,	Roane,	Williams. **92.**

WASHINGTON TURNPIKE ROAD.

To the Senate of the United States: WASHINGTON, 31*st*, *May*, 1830.

Gentlemen: I have considered the bill proposing "to authorize a subscription of stock in the Washington Turnpike Road Company," and now return the same to the Senate, in which it originated.

I am unable to approve this bill, and would respectfully refer the Senate to my message to the House of Representatives, on returning to that House the bill to authorize "a subscription of stock in the Maysville, Washington, Paris, and Lexington Turnpike Road Company," for a statement of my objections to the bill herewith returned. The message referred to, bears date on the 27th inst., and a printed copy of the same is herewith transmitted. ANDREW JACKSON.

The bill referred to in the foregoing message, having originated in the Senate, the Senate proceeded to re-consider said bill in the manner prescribed in the 7th section of the 1st article of the constitution; and two-thirds of the senators present not voting for its passage; it was rejected by the following vote:

YEAS			NAYS.		
Barnard,	Hendricks,	Robbins,	Adams,	Grundy,	Sprague,
Barton,	Johnston,	Ruggles,	Bibb,	Iredell,	Tyler,
Benton,	King,	Seymour,	Brown,	Kane,	White,
Burnet,	Livingston,	Silsbee,	Dickerson,	Rowan,	Woodbury.
Chambers,	McKinley,	Smith, Md.	Dudley,	Sanford,	**17**
Chase,	Naudain,	Webster,	Ellis,	Smith, S. C.	
Clayton,	Noble,	Willey. **21.**	Foot,		

[On the 31st the President *withheld* his signature to two other bills, to wit—a bill to authorize a subscription of stock in the Louisville and Portland Canal, and a bill "making appropriations for building light-houses, light-boats, beacons and monuments, placing buoys, and for improving harbors, and directing surveys."

[At page 315, under the head of "State Rights," the following remarks should *precede* those of Mr. Hayne, "*in reply* to Mr. Webster."]

Mr. WEBSTER. There remains to be performed, by far the most grave and important duty, which I feel to be devolved on me, by this occasion. It is to state, and to defend, what I conceive to be the true principles of the constitution under which we are here assembled. * * *

I understand the hon. gentleman from S Carolina [Mr Hayne] to maintain that it is a right of the state legislatures to interfere, whenever, in their judgment, this government transcends its constitutional limits, and to arrest the operation of its laws.

I understand him to maintain this right, as a right existing *under* the constitution; not as a right to overthrow it, on the ground of extreme necessity, such as would justify violent revolution.

I understand him to maintain an authority, on the part of the states, thus to interfere, for the purpose of correcting the exercise of power by the general government, of checking it, and of compelling it to conform to their opinion of the extent of its powers.

I understand him to maintain that the ultimate power of judging of the constitutional extent of its own authority, is not lodged exclusively in the general government, or any branch of it; but, that, on the contrary, the states may lawfully decide for themselves, and each state for itself, whether, in a given case, the act of the general government transcends its power.

I understand him to insist, that if the exigency of the case, in the opinion of any state government, require it, such state government may, by its own sovereign authority, annul an act of the general government, which it deems plainly and palpably unconstitutional.

This is the sum of what I understand from him to be the South Carolina doctrine; and the doctrine which he maintains. I propose to consider it, and to compare it with the constitution. Allow me to say, as a preliminary remark, that I call this the South Carolina doctrine, only because the gentleman himself has so denominated it. I do not feel at liberty to say that South Carolina, as a state, has ever advanced these sentiments. I hope she has not, and never may. That a great majority of her people are opposed to the Tariff laws, is doubtless true. That a majority, somewhat less than that just mentioned, conscientiously believe those laws unconstitutional, may probably also be true. But that any majority holds to the right of direct state interference, at state discretion, the right of nullifying acts of congress, by acts of state legislation, is more than I know, and what I shall be slow to believe.

That there are individuals, besides the honorable gentleman, who do maintain these opinions, is quite certain. I recollect the recent expression of a sentiment, which circumstances attending its utterance and publication, justify us in supposing was not unpremeditated. "The sovereignty of the state—never to be controlled, construed, or decided on, but by her own feelings of honorable justice."

[Mr. HAYNE here rose, and said, that for the purpose of being clearly understood, he would state, that his proposition was in the words of the Virginia resolution, as follows:

"That this assembly doth explicitly and peremptorily declare, that it views the powers "of the federal government, as resulting from the compact, to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no farther valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, "not granted by the said compact, the states who are parties thereto have the right, and "are in duty bound to interpose, for arresting the progress of the evil and for maintaining, "within their respective limits, the authorities, rights and liberties appertaining to them."]

Mr. WEBSTER resumed—I am quite aware of the existence of the resolution which the gentleman read, and has now repeated, and that he relies on it as his authority. I know the source, too, from which it is understood to have proceeded. I need not say that I have much respect for the constitutional opinions of Mr. Madison; they would weigh greatly with me, always. But, before the authority of his opinion be vouched for the gentleman's proposition, it will be proper to consider what is the fair interpretation of that resolution, to which Mr. Madison is understood to have given his sanction. As the gentleman construes it, it is an authority for him. Possibly, he may not have adopted the right construction. That resolution declares, that, *in the case of the dangerous exercise of powers not granted, by the general government, the states may interpose to arrest the progress of the evil.* But *how* interpose, and what does this declaration purport?—Does it mean no more, than that there may be extreme cases, in which the People, in any mode of assembling, may resist usurpation, and relieve themselves from a tyrannical government? No one will deny this. Such resistance is not only acknowledged to be just in America, but in England, also: Blackstone admits as much, in the theory, and practice, too, of the English constitution. We, sir, who oppose the Carolina doctrine, do not deny that the people may, it they choose, throw off any government, when it become oppressive and intolerable, and erect a better in its stead. We all know that civil institutions are established for the public benefit, and that when they cease to answer the ends of their existence, they may be changed. But I do not understand the

doctrine now contended for to be that which, for the sake of distinctness, we may call the right of revolution. I understand the gentleman to maintain, that, without revolution, without civil commotion, without rebellion, a remedy for supposed abuse and transgression of the powers of the general government lies in a direct appeal to the interference of the state governments. [Mr. HAYNE here rose: He did not contend, he said, for the mere right of revolution, but for the right of constitutional resistance. What he maintained, was, that, in case of plain, palpable violation of the constitution, by the general government, a state may interpose; and that this interposition is constitutional.] Mr. WEBSTER resumed: So, sir, I understood the gentleman, and am happy to find that I did not misunderstand him. What he contends for, is, that it is constitutional to interrupt the administration of the constitution itself, in the hands of those whose are chosen and sworn to administer it, by the direct interference, in form of law, of the states, in virtue of their sovereign capacity. The inherent right in the people to reform their government, I do not deny; and they have another right, and that is, to resist unconstitutional laws, without overturning the government. It is no doctrine of mine, that unconstitutional laws bind the people. The great question is, *whose prerogative is it to decide on the constitutionality or unconstitutionality of the laws?* On that, the main debate hinges. The proposition, that, in case of a supposed violation of the constitution by congress, the states have a constitutional right to interfere, and annul the law of congress, is the proposition of the gentlemen; I do not admit it. If the gentleman had intended no more than to assert the right of revolution, for justifiable cause, he would have said only what all agree to. But I cannot conceive that there can be a middle course between submission to the laws, when regularly pronounced constitutional, on the one hand, and open resistance, which is revolution, or rebellion, on the other. I say, the right of a state to annul a law of congress, cannot be maintained, but on the ground of the unalienable right of man to resist oppression; that is to say, upon the ground of revolution. I admit that there is an ultimate violent remedy, above the constitution, and in defiance of the constitution, which may be resorted to, when a revolution is to be justified. But I do not admit that, under the constitution, and in conformity with it, there is any mode, in which a state government, as a member of the union, can interfere and stop the progress of the general government, by force of her own laws, under any circumstances whatever.

This leads us to inquire into the origin of this government, and the source of its power. Whose agent is it? Is it the creature of the state legislatures, or the creature of the people? If the government of the United States be the agent of the state governments, then they may control it, provided they can agree in the manner of controlling it; if it be the agent of the people, then the people alone can control it, restrain it, modify, or reform it. It is observable enough, that the doctrine for which the honorable gentleman contends, leads him to the necessity of maintaining, not only that this general government is the creature of the states, but that it is the creature of each of the states severally; so that each may assert the power, for itself, of determining whether it acts within the limits of its authority. It is the servant of four and twenty masters, of different wills and different purposes, and yet bound to obey all. This absurdity (for it seems no less) arises from a misconception as to the origin of this government and its true character. It is, sir, the people's constitution, the people's government; made for the people; made by the people: and answerable to the people. The people of the United States have declared that this constitution shall be the supreme law. We must either admit the proposition, or dispute their authority. The states are, unquestionably, sovereign, so far as their sovereignty is not affected by this supreme law. But the state legislatures, as political bodies, however sovereign, are yet not sovereign over the people. So far as the people have given power to the general government, so far the grant is unquestionably good, and the government holds of the people, and not of the state governments. We are all agents of the same supreme power, the people. The general government and the state governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted, and the other general and residuary. The national government possesses those powers which it can be shown the people have conferred on it, and no more. All the rest belongs to the state governments or to the people themselves. So far as the people have restrained state sovereignty, by the expression of their will, in the constitution of the United States, so far, it must be admitted, state sovereignty is effectually controlled. I do not contend that it is, or ought to be, controlled farther. The sentiment to which I have referred, propounds that state sovereignty is only to be controlled by its own "feeling of justice;" that is to say, it is not to be controlled at all: for one who is to follow his own feelings is under no legal control. Now, however men may think this ought to be, the fact is, that the people of the United States have chosen to impose control on state sovereignties. There are those, doubtless, who wish they had been left without restraint; but the constitution has ordered the matter differently. To make war, for instance, is an exercise of sovereignty; but the constitution declares that no state shall make war. To coin money is another exercise of sovereign power; but no state is at liberty to coin money. Again, the constitution says that no sovereign state shall be so sovereign as to make a

treaty. These prohibitions, it must be confessed, are a control on the state sovereignty of South Carolina, as well as of the other states, which does not arise "from her own feelings of honorable justice." Such an opinion, therefore, is in defiance of the plainest provisions of the constitution.

There are other proceedings of public bodies which have already been alluded to, and to which I refer again, for the purpose of ascertaining more fully, what is the length and breadth of that doctrine, denominated the Carolina doctrine, which the honorable member has now stood up on this floor to maintain. In one of them I find it resolved, that "the tariff of 1828, and every other tariff designed to promote one branch of industry at "the expense of others, is contrary to the meaning and intention of the federal compact; "and, as such, a dangerous, palpable, and deliberate usurpation of power, by a deter-"mined majority, wielding the general government beyond the limits of its delegated "powers, as calls upon the states which compose the suffering minority, in their sove-"reign capacity, to exercise the powers which, as sovereigns, necessarily devolve upon "them, when their compact is violated."

Observe, sir, that this resolution holds the tariff of 1828, and every other tariff, designed to promote one branch of industry at the expense of another, to be such a dangerous, palpable and deliberate usurpation of power, as calls upon the states, in their sovereign capacity, to interfere by their own authority. This denunciation, Mr. President, you will please to observe, includes our old tariff, of 1816, as well as all others; because that was established to promote the interest of the manufactures of cotton, to the manifest and admitted injury of the Calcutta cotton trade. Observe, again, that all the qualifications are here rehearsed and charged upon the tariff, which are necessary to bring the case within the gentleman's proposition. The tariff is a usurpation; it is a dangerous usurpation; it is a palpable usurpation; it is a deliberate usurpation. It is such a usurpation, therefore, as calls upon the states to exercise their right of interference. Here is a case, then, within the gentleman's principles, and all his qualifications of his principles. It is a case for action. The constitution is plainly, dangerously, palpably, and deliberately violated; and the states must interpose their own authority to arrest the law. Let us suppose the state of South Carolina to express this same opinion, by the voice of her Legislature. That would be very imposing; but what then? Is the voice of one state conclusive? It so happens that at the very moment when South Carolina resolves that the Tariff laws are unconstitutional, Pennsylvania and Kentucky resolve exactly the reverse. *They* held those laws to be both highly proper and strictly constitutional.—And now, sir, how does the honorable member propose to deal with this case? How does he relieve us from this difficulty, upon any principle of his? His construction gets us into it; how does he propose to get us out?

In Carolina, the Tariff is a palpable, deliberate usurpation; Carolina therefore, may *nullify* it, and refuse to pay the duties. In Pennsylvania, it is both clearly constitutional, and highly expedient; and there the duties are to be paid. And yet, we live under a government of uniform laws, and under a constitution, too, which contains an express provision, as it happens, that all duties shall be equal in all the states! Does not this approach absurdity?

If there be no power to settle such questions, independent of either of the states, is not the whole union a rope of sand? Are we not thrown back again, precisely, upon the old confederation?

It is too plain to be argued. Four and twenty interpreters of constitutional law, each with a power to decide for itself, and none with authority to bind any body else, and this constitutional law the only bond of their union! What is such a state of things, but a mere connexion during pleasure, or, to use the phraseology of the times, *during feeling?* And that feeling, too, not the feeling of the people, who established the constitution, but the feeling of the state governments.

In another of the South Carolina addresses, having premised that the crisis requires "all the concentrated energy of passion," an attitude of open resistance to the laws of the union is advised. Open resistance to the laws, then, is the constitutional remedy, the conservative power of the state, which the South Carolina doctrines teach for the redress of political evils, real or imaginary. And its authors further say, that appealing with confidence to the constitution itself, to justify their opinions, they cannot consent to try their accuracy by the courts of justice. In one sense, indeed, sir, this is assuming an attitude of open resistance in favor of liberty. But what sort of liberty? The liberty of establishing their own opinions, in defiance of the opinions of all others; the liberty of judging and of deciding exclusively themselves, in a matter in which others have as much right to judge and decide as they; the liberty of placing their own opinions above the judgment of all others, above the laws, and above the constitution. This is their liberty, and this is the fair result of the proposition contended for by the honorable gentleman. Or it may be more properly said, it is identical with it, rather than a result from it.

In the same publication, we find the following: "Previously to our revolution, when the arm of oppression was stretched over New England, where did our northern brethern meet with a braver sympathy than that which sprung from the bosoms of Carolinians? *We had no extortion, no oppression, no collision with the king's ministers, no navigation interests springing up in envious rivalry of England.*"

This seems extraordinary language. South Carolina no collision with the king's ministers, in 1775! No extortion! No oppression! But, sir, it is, also, most significant language. Does any man doubt the purpose for which it was penned? Can any one fail to see that it was designed to raise in the reader's mind the question, whether, at this time—that is to say, in 1828, South Carolina has any collision with the king's ministers, any oppression, or extortion to fear from England? Whether, in short, England is not as naturally the friend of South Carolina, as New England, with her navigation interests springing up in envious rivalry of England?

Is it not strange, sir, that an intelligent man in South Carolina, in 1828, should thus labor to prove, that, in 1775, there was no hostility, no cause of war between South Carolina and England? That she had no occasion, in reference to her own interest, or from a regard to her own welfare, to take up arms in the revolutionary contest? Can any one account for the expression of such strange sentiments, and their circulation through the state, otherwise than by supposing the object to be, what I have already intimated, to raise the question, if they had no "*collision*" (mark the expression) with the ministers of King George the Third, in 1775, what *collision* have they, in 1828, with the ministers of King George the Fourth? What is there now, in the existing state of things, to separate Carolina from *Old*, more, or rather, than from *New* England?

Resolutions, sir, have been recently passed by the Legislature of S. Carolina. I need not refer to them: they go no farther than the honorable gentleman himself has gone—and, I hope, not so far. I content myself, therefore, with debating the matter with him.

And now, sir, what I have first to say on this subject is, that at no time, and under no circumstances, has New England, or any state in New England, or any respectable body of persons in New England, or any public man of standing in New England, put forth such a doctrine as this Carolina doctrine.

The gentleman has found no case, he can find none, to support his own opinions by New England authority. New England has studied the constitution in other schools, and under other teachers. She looks upon it with other regards, and deems more highly and reverently, both of its just authority, and its utility and excellence. The history of her legislative proceedings may be traced—the ephemeral effusions of temporary bodies, called together by the excitement of the occasion, may be hunted up—they have been hunted up. The opinions and votes of her public men, in and out of congress, may be explored—it will all be in vain. The Carolina doctrine can derive from her neither countenance nor support. She rejects it now: she always did reject it; and till she loses her senses, she always will reject it. The honorable member has referred to expressions on the subject of the embargo law, made in this place by an honorable and venerable gentleman [Mr. Hillhouse] now favoring us with his presence. He quotes that distinguished senator as saying, that, in his judgment, the embargo law was unconstitutional, and that, therefore, in his opinion, the people were not bound to obey it. That, sir, is perfectly constitutional language. An unconstitutional law is not binding; *but then it does not rest with a resolution, or a law of a state legislature, to decide whether an act of congress be, or be not, constitutional.* An unconstitutional act of congress would not bind the people of this district, although they have no legislature to interfere in their behalf; and, on the other hand, a constitutional law of congress does bind the citizens of every state, although all their legislatures should undertake to annul it, by act or resolution. The venerable Connecticut senator is a constitutional lawyer, of sound principles, and enlarged knowledge; a statesman, practised and experienced, bred in the company of Washington, and holding just views upon the nature of our governments. He believed the embargo unconstitutional, and so did others; but what then? Who, did he suppose, was to decide that question? The state legislatures? Certainly not. No such sentiment ever escaped his lips. Let us follow up, sir, this New England opposition to the Embargo laws; let us trace it till we discern the principle which controlled and governed New England, throughout the whole course of that opposition. We shall then see what similarity there is between the New England school of constitutional opinions, and this modern Carolina school. The gentleman, I think, read a petition from some single individual, addressed to the legislature of Massachusetts, asserting the Carolina doctrine—that is, the right of state interference to arrest the laws of the union. The fate of that petition shows the sentiment of the legislature. It met no favor. The opinions of Massachusetts were otherwise. They had been expressed in 1798, in answer to the resolutions of Virginia, and she did not depart from them, nor bend them to the times. Mis-governed, wronged, oppressed, as she felt herself to be, she still held fast her integrity to the union. The gentleman may find in her proceedings much evidence of dissatisfaction with the measures of the government, and great and deep dislike to the embargo; all this makes the case so much the stronger for her: for, notwithstanding all this dissatisfaction and dislike, she claimed no right, still, to sever asunder the bonds of union. There was heat, and there was anger, in her political feeling—be it so—her heat or her anger did not nevertheless, betray her into infidelity to the government. The gentleman labors to prove that she disliked the embargo, as much as South Carolina dislikes the tariff, and expressed her dislike as strongly. Be it so; *but did she propose the Carolina remedy?—did she threaten to interfere, by state authority, to annul the laws of the union?* That is the question for the gentleman's consideration.

No doubt, sir, a great majority of the people of New England conscientiously believed the embargo law of 1807 unconstitutional; as conscientiously, certainly, as the people of South Carolina hold that opinion of the tariff. They reasoned thus: congress has power to regulate commerce; but here is a law, they said, stopping all commerce, and stopping it indefinitely. The law is perpetual; that is, it is not limited in point of time, and must, of course, continue until it shall be repealed by some other law. It is as perpetual, therefore, as the law against treason or murder. Now, is this regulating commerce, or destroying it? Is it guiding, controlling, giving the rule to commerce, as a subsisting thing; or is it putting an end to it altogether? Nothing is more certain, than that a majority in New England deemed this law a violation of the constitution. The very case required by the gentleman, to justify state interference, had then arisen. Massachusetts believed this law to be "*a deliberate, palpable, and dangerous exercise of a power, not granted by the constitution.*" Deliberate it was, for it was long continued; palpable she thought it, as no words in the constitution gave the power, and only a construction, in her opinion most violent, raised it; dangerous it was, since it threatened utter ruin to her most important interests. Here, then, was a Carolina case. How did Massachusetts deal with it? It was, as she thought, a plain, manifest, palpable violation of the constitution; and it brought ruin to her doors. Thousands of families, and hundreds of thousands of individuals, were beggared by it. While she saw and felt all this, she saw and felt also, that as a measure of national policy, it was perfectly futile; that the country was no way benefitted by that which caused so much individual distress; that it was efficient only for the production of evil, and all that evil inflicted on ourselves. In such a case, under such circumstances, how did Massachusetts demean herself? Sir, she remonstrated, she memorialized, she addressed herself to the general government, not exactly "with the concentrated energy of passion," but with her own strong sense, and the energy of sober conviction. But she did not interpose the arm of her own power to arrest the law, and break the embargo. Far from it. Her principles bound her to two things; and she followed her principles, lead where they might. First, to submit to every constitutional law of congress, and, secondly, if the constitutional validity of the law be doubted, to refer that question to the decision of the proper tribunals. The first principle is vain and ineffectual without the second. A majority of us in New England believed the embargo law unconstitutional; but the great question was, and always will be, in such cases, who is to decide this? Who is to judge between the people and the government? And, sir, it is quite plain, that the constitution of the United States confers on the government itself, to be exercised by its appropriate department, and under its own responsibility to the people, this power of deciding ultimately and conclusively, upon the just extent of its own authority. If this had not been done, we should not have advanced a single step beyond the Old Confederation.

Being fully of opinion that the embargo law was unconstitutional, the people of New England were yet equally clear in the opinion—it was a matter they did doubt upon—that the question, after all, must be decided by the judicial tribunals of the United States.—Before those tribunals, therefore, they brought the question. Under the provisions of the law, they had given bonds, to millions in amount, and which were alleged to be forfeited. They suffered the bonds to be sued, and thus raised the question. In the old-fashioned way of settling disputes, they went to law. The case came to hearing, and solemn argument; and he who espoused their cause, and stood up for them against the validity of the embargo act, was none other than that great man of whom the gentleman has made honorable mention, SAMUEL DEXTER. He was then, sir, in the fullness of his knowledge, and the maturity of his strength. He had retired from long and distinguished public service here, to the renewed pursuit of professional duties; carrying with him all that enlargement and expansion, all the new strength and force, which an acquaintance with the more general subjects discussed in the national councils, is capable of adding to professional attainment, in a mind of true greatness and comprehension. He was a lawyer, and he was also a statesman. He had studied the constitution, when he filled public station, that he might defend it; he had examined its principles, that he might maintain them. More than all men, or at least as much as any man, he was attached to the general government and to the union of the states. His feelings and opinions all ran in that direction. A question of constitutional law, too, was, of all subjects, that one which was best suited to his talents and learning. Aloof from technicality, and unfettered by artificial rules, such a question gave opportunity for that deep and clear analysis, that mighty grasp of principle, which so much distinguished his higher efforts. His very statement was argument; his inference seemed demonstration. The earnestness of his own conviction, wrought conviction in others. One was convinced, and believed, and assented, because it was gratifying, delightful to think, and feel, and believe, in unison with an intellect of such evident superiority.

Mr. Dexter, sir, such as I have described him, argued the New England cause. He put into his effort his whole heart, as well as all the powers of his understanding: for he had avowed, in the most public manner, his entire concurrence with his neighbors, on the point in dispute. He argued the cause; it was lost, and New England submitted. The established tribunals pronounced the law constitutional, and New England acquiesced. Now, sir, is not this the exact opposite of the doctrine of the gentleman from South Ca-

rolina? According to him, instead of referring to the Judicial tribunals, we should have broken up the embargo, by laws of our own: we should have repealed it, *quoad* New England; for we had a strong, palpable, and oppressive case. Sir, we believed the embargo unconstitutional; but still, that was matter of opinion, and who was to decide it? We thought it a clear case; but, nevertheless, we did not take the law into our own hands, *because we did not wish to bring about a revolution, nor to break up the union.* for I maintain, that, between submission to the decision of the constituted tribunals, and revolution, or disunion, there is no middle ground—there is no ambiguous condition, half allegiance, and half rebellion. And, sir, how futile, how very futile, it is, to admit the right of state interference, and then attempt to save it from the character of unlawful resistance, by adding terms of qualification to the causes and occasions, leaving all these qualifications, like the case itself, in the discretion of the state governments. It must be a clear case, it is said; a deliberate case; a palpable case; a dangerous case. But then the state is still left at liberty to decide for herself, what is clear, what is deliberate, what is palpable, what is dangerous. Do adjectives and epithets avail any thing? Sir, the human mind is so constituted, that the merits of both sides of a controversy appear very clear and very palpable, to those who respectively espouse them; and both sides usually grow clearer, as the controversy advances. South Carolina sees unconstitutionality in the tariff; she sees oppression there, also; and she sees danger. Pennsylvania, with a vision not less sharp, looks at the same tariff, and sees no such thing in it—she sees it all constitutional, all useful, all safe. The faith of South Carolina is strengthened by opposition, and she now not only sees, but *Resolves*, that the tariff is palpably unconstitutional, oppressive, and dangerous: but Pennsylvania, not to be behind her neighbors, and equally willing to strengthen her own faith by a confident asseveration, *Resolves*, also, and gives to every warm affirmative of South Carolina, a plain downright, Pennsylvania negative. South Carolina, to show the strength and unity of her opinion, brings her assembly to an unanimity, within seven voices; Pennsylvania, not to be outdone in this respect more than others, reduces her dissentient fraction to a single vote. Now, sir, again I ask the gentleman, what is to be done? Are these states both right? Is he bound to consider them both right? If not, which is in the wrong? or rather, which has the best right to decide? And if he, and if I, are not to know what the constitution means, and what it is, till those two state legislatures, and the twenty-two others, shall agree in its construction, what have we sworn to, when we have sworn to maintain it? I was forcibly struck with one reflection, as the gentleman [MR. HAYNE] went on in his speech. He quoted Mr. Madison's resolutions to prove that a state may interfere, in a case of deliberate, palpable, and dangerous exercise of a power not granted. The honorable member supposes the tariff law to be such an exercise of power; and that, consequently, a case has arisen in which the state may, if it see fit, interfere by its own law. Now it so happens, nevertheless, that Mr. Madison himself deems this same tariff law quite constitutional. Instead of a clear and palpable violation, it is, in his judgment, no violation at all. So that, while they use his authority for a hypothetical case, they reject it in the very case before them. All this, sir, shows the inherent—futility—I had almost used a stronger word—of conceding this power of interference to the states, and then attempting to secure it from abuse by imposing qualifications, of which the states themselves are to judge. One of two things is true; either the laws of the union are beyond the discretion, and beyond the control of the states; or else we have no constitution of general government, and thrust back again to the days of the confederacy.

Let me here say, sir, that if the gentleman's doctrine had been received and acted upon in New England, in the times of the embargo and non-intercourse, we should probably not now have been here. The government would, very likely, have gone to pieces, and crumbled into dust. No stronger case can ever arise than existed under those laws; no states can ever entertain a clearer conviction than the New England states then entertained; and if they had been under the influence of that heresy of opinion, as I must call it, which the honorable member espouses, this union would, in all probability, have been scattered to the four winds. I ask the gentleman, therefore, to apply his principles to that case; I ask him to come forth and declare, whether, in his opinion, the New England states would have been justified in interfering to break up the embargo system, under the conscientious opinions which they held upon it? Had they a right to annul that law? Does he admit or deny? If that which is thought palpably unconstitutional in South Carolina, justifies that state in arresting the progress of the law, tell me, whether that which was thought palpably unconstitutional also in Massachusetts, would have justified her in doing the same thing? Sir, I deny the whole doctrine. It has not a foot of ground in the constitution to stand on. No public man of reputation ever advanced it in Massachusetts, in the warmest times, or could maintain himself upon it there at any time.

I wish now, sir, to make a remark upon the Virginia resolutions of 1798. I cannot undertake to say how these resolutions were understood by those who passed them. Their language is not a little indefinite. In the case of the exercise, by congress, of a dangerous power, not granted to them, the resolutions assert the right, on the part of the state, to interfere, and arrest the progress of the evil. This is susceptible of more than one interpretation. It may mean no more than that the states may interfere by complaint and remonstrance; or by proposing to the people an alteration of the federal constitution.

This would be all quite unobjectionable: or, it may be, that no more is meant than to assert the general right of revolution, as against all governments, in cases of intolerable oppression. This no one doubts; and this, in my opinion, is all that he who framed the resolutions could have meant by it: for I shall not readily believe, that he was ever of opinion that a state, under the constitution, and in conformity with it, could, upon the ground of her own opinion of its unconstitutionality, however clear and palpable she might think the case, annul a law of congress, so far as it should operate on herself, by her own legislative power.

I must now beg to ask, sir, whence is this supposed right of the states derived?—where do they find the power to interfere with the laws of the Union? Sir, the opinion which the honorable gentleman maintains, is a notion, founded in a total misapprehension, in my judgment, of the origin of this government, and of the foundation on which it stands. I hold it to be a popular government, erected by the people; those who administer it responsible to the people; and itself capable of being amended and modified, just as the people may choose it should be. It is as popular, just as truly emanating from the people, as the state governments. It is created for one purpose; the state governments for another. It has its own powers; they have theirs. There is no more authority with them to arrest the operation of a law of congress, than with congress to arrest the operation of their laws. We are here to administer a constitution emanating immediately from the people, and trusted, by them, to our administration. It is not the creature of the state governments. It is of no moment to the argument, that certain acts of the state legislatures are necessary to fill our seats in this body. That is not one of their original state powers, a part of the sovereignty of the state. It is a duty which the people, by the constitution itself, have imposed on the state legislatures; and which they might have left to be performed elsewhere, if they had seen fit. So they have left the choice of president with electors; but all this does not affect the proposition, that this whole government, president, senate, and house of representatives, is a popular government. It leaves it still all its popular character. The governor of a state, (in some of the states) is chosen, not directly by the people, but by those who are chosen by the people, for the purpose of performing, among other duties, that of electing a governor. Is the government of a state, on that account, not a popular government? This government, sir, is the independent offspring of the popular will. It is not the creature of state legislatures, nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on state sovereignties. The states cannot now make war; they cannot contract alliances; they cannot make each for itself, separate regulations of commerce; they cannot lay imposts; they cannot coin money. If this constitution, sir, be the creature of state legislatures, it must be admitted that it has obtained a strange control over the volitions of its creators.

The people, then, sir, erected this government. They gave it a constitution, and in that constitution they have enumerated the powers which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others, they declare, are reserved to the states or the people. But, sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear, as to avoid possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who, then, shall construe this grant of the people? Who shall interpret their will, where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the government? Sir, they have settled all this in the fullest manner. They have left it, with the government itself, in its appropriate branches. Sir, the very chief end, the main design, for which the whole constitution was framed and adopted, was to establish a government that should not be obliged to act through state agency, depend on state opinion and state discretion. * * *

But who shall decide on the question of interference? To whom lies the last appeal? This, sir, the constitution itself decides, also, by declaring, "*that the judicial power shall extend to all cases arising under the constitution and laws of the United States.*" These two provisions, sir, cover the whole ground. They are, in truth, the key-stone of the arch. With these, it is a constitution; without them, it is a confederacy. In pursuance of these clear and express provisions, congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the supreme court. It then, sir, became a government. It then had the means of self protection; and, but for this, it would in all probability have been now among things which are past. Having constituted the government, and declared its powers, the people have further said, that since somebody must decide on the extent of these powers, the government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, sir, I repeat, how is it that a state legislature acquires any power to interfere? Who, or what, gives them the right to say to the people, "We, who are your agents and servants for one purpose, will undertake to decide, that your other agents and servants, appointed by you for another purpose, have transcended the author-

ity you gave them!'" The reply would be, I think, not impertinent—"Who made you a judge over another's servants? To their own masters they stand or fall."

Sir, I deny this power of state legislatures altogether. It cannot stand the test of examination. Gentlemen may say, that, in an extreme case, a state government might protect the people from intolerable oppression. Sir, in such a case, the people might protect themselves, without the aid of the state governments. Such a case warrants revolution. It must make, when it comes, a law for itself. A *nullifying* act of a state legislature cannot alter the case, nor make resistance any more lawful. In maintaining these sentiments, sir, I am but asserting the rights of the people. I state what they have declared, and insist on their right to declare it. They have chosen to repose this power in the general government, and I think it my duty to support it, like other constitutional powers.

For myself, sir, I do not admit the jurisdiction of South Carolina, or any other state, to prescribe my constitutional duty, or to settle, between me and the people, the validity of laws of congress, for which I have voted. I decline her umpirage. I have not sworn to support the constitution according to her construction of its clauses. I have not stipulated, by my oath of office, or otherwise, to come under any responsibility, except to the people, and those whom they have appointed to pass upon the question, whether laws, supported by my votes, conform to the constitution of the country. And, sir, if we look to the general nature of the case, could any thing have been more preposperous, than to make a government for the whole union, and yet leave its powers subject, not to one interpretation, but to thirteen, or twenty-four, interpretations? Instead of one tribunal, established by all, responsible to all, with power to decide for all—shall constitutional questions be left to four and twenty popular bodies, each at liberty to decide for itself, and none bound to respect the decisions of others; and each at liberty, too, to give a new construction on every new election of its own members? Would any thing, with such a principle in it, or rather with such a destitution of all principle, be fit to be called a government? No, sir. It should not be denominated a constitution. It should be called, rather, a collection of topics, for everlasting controversy; heads of debate for a disputatious people. It would not be a government. It would not be adequate to any practical good, nor fit for any country to live under. To avoid all possibility of being misunderstood, allow me to repeat again, in the fullest manner, that I claim no powers for the government by forced or unfair construction. I admit, that it is a government of strictly limited powers; of enumerated, specified, and particularised powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limits and extent may yet, in some cases, admit of doubt; and the general government would be good for nothing, it would be incapable of long existing, if some mode had not been provided, in which these doubts, as they should arise, might be peaceably, but authoritatively, solved. * * *

Let it be remembered, that the constitution of the United States is not unalterable. It is to continue in its present form no longer than the people, who established it, shall chuse to continue it. If they shall become convinced that they have made an injudicious or inexpedient partition and distribution of power, between the state governments and the general government, they can alter that distribution at will.

If any thing be found in the national constitution, either by original provision, or subsequent interpretation, which ought not to be in it, the people know how to get rid of it. If any construction be established, unacceptable to them, so as to become, practically, a part of the constitution, they will amend it at their own sovereign pleasure. But while the people chuse to maintain it as it is; while they are satisfied with it, and refuse to change it; who has given, or who can give, to the state legislatures a right to alter it, either by interference, construction, or otherwise? Gentlemen do not seem to recollect that the people have any power to do any thing for themselves: they imagine there is no safety for them, any longer than they are under the close guardianship of the state legislatures. Sir, the people have not trusted their safety, in regard to the general constitution, to these hands. They have required other security, and taken other bonds. They have chosen to trust themselves, first, to the plain words of the instrument, and to such construction as the government itself, in doubtful cases, should put on its own powers, under their oaths of office, and subject to their responsibility to them; just as the people of a state trusts their own state governments with a similar power. 2dly, they have reposed their trust in the efficacy of frequent elections, and in their own power to remove their own servants and agents, whenever they see cause. Thirdly, they have reposed trust in the judicial power, which, in order that it might be trust-worthy, they have made as respectable, as disinterested, and as independent as was practicable. Fourthly, they have seen fit to rely, in case of necessity, or high expediency, on their known and admitted power to alter or amend the constitution, peaceably and quietly, whenever experience shall point out defects or imperfections. And, *finally*, the people of the United States have, at no time, in no way, directly or indirectly, authorized any state legislature to construe or interpret *their* high instrument of government: much less to interfere, by their own power, to arrest its course and operation. * * *

APPENDIX.

Mr. Madison on the Constitutionality of the Tariff.

As the two following letters are *illustrative* of the *opinions* of the venerable Mr. Madison, one of the framers of the Constitution, on the subject of the Tariff, they are added as an appropriate commentary on the 1st art. 8th section of that instrument—p. 237, first part of this volume [4].

LETTER I.

MONTPELIER, September 18, 1828.

Dear Sir: Your late letter reminds me of our conversation on the constitutionality of the power in congress to impose a tariff for the encouragement of manufactures; and of my promise to sketch the grounds of the confident opinion I had expressed, that it was among the powers vested in that body. I had not forgotten my promise, and had even begun the task of fulfilling it; but frequent interruptions, from other causes, being followed by a bilious indisposition, I have not been able sooner to comply with your request. The subjoined view of the subject might have been advantageously expanded; but I leave that improvement to your own reflections and researches.

The constitution vests in congress, expressly, "the power to lay and collect taxes, duties, imposts, and excises;" and "the power to regulate trade."

That the former power, if not particularly expressed, would have been included in the latter as one of the objects of a general power to regulate trade, is not necessarily impugned by its being so expressed. Examples of this sort cannot sometimes be easily avoided, and are to be seen elsewhere in the Constitution. Thus the power "to define and punish offences against the law of nations," includes the power, afterwards particularly expressed, "to make rules concerning captures, &c. from offending neutrals." So also a power "to coin money," would doubtless include that of "regulating its value," had not the latter power been expressly inserted.—The term taxes, if standing *alone*, would certainly have included duties, imposts, and excises. In another clause it is said, "no tax or duties shall be laid on exports, &c." Here the two terms are used as synonymous. And in another clause, where it is said "no state shall lay any imposts, or duties, &c." the terms imposts and duties are synonymous. Pleonasms, tautologies, and the promiscuous use of terms and phrases, differing in their shades of meaning, (always to be expounded with reference to the contex and under the control of the general character and manifest scope of the instrument in which they are found) are to be ascribed, sometimes to the purpose of greater caution; sometimes to the imperfections of language, and sometimes to the imperfection of man himself. In this view of the subject, it was quite natural, however certainly the general power to regulate trade might include a power to impose duties on it, not to omit it in a clause enumerating the several modes of revenue, authorised by the Constitution.—In few cases could the "ex majori cautela" occur with more claim to respect.

Nor can it be inferred, that a power to regulate trade does not involve a power to tax it, from the distinction made in the original controversy with Great Britain, between a power to regulate trade with the Colonies, and a power to tax them.—A power to regulate trade between different parts of the Empire, was confessedly *necessary;* and was admitted to lie, as far as that was the case, in the British Parliament; the taxing part being at the same time denied to the Parliament, and asserted to be necessarily inherent in the Colonial Legislatures, as sufficient, and the only safe depositories of the taxing power. So difficult was it, nevertheless, to maintain the distinction in practice, that the ingredient of revenue was occasionally overlooked or disregarded in the British regulations, as in the duty on sugar and molasses imported in the Colonies. And it was fortunate that the attempt at an internal and direct tax, in the case of the Stamp Act, produced a radical examination of the subject before a regulation of trade with a view to revenue, had grown into an established authority. One thing at least is certain, that the main and admitted object of the Parliamentary *regulations* of trade with the Colonies, was the encouragement of *manufactures* in Great Britain.

But the present question is unconnected with the former relations between Great Britain and her colonies, which were of a peculiar, a complicated, and, in several respects, of an undefined character. It is a simple question under the Constitution of the United States, whether "the power to regulate trade with foreign nations" as a distinct and substantive item in the enumerated powers, embraces the object of encouraging by duties, restrictions and prohibitions, the manufactures and products of the country? And the affirmative must be inferred from the following considerations:

1. The meaning of the phrase "to regulate trade," must be sought in the general use of it; in other words, in the objects to which the power was generally understood to be applicable, when the phrase was inserted in the Constitution.

2. The power has been understood and used by all commercial and manufacturing nations, as embracing the object of encouraging manufactures. It is believed that not a single exception can be named.

3 This has been particularly the case with Great Britain, whose commercial vocabulary is the parent of ours. A primary object of her commercial regulations is well known to have been the protection and encouragement of her manufactures.

4. Such was understood to be a proper use of the power by the States most prepared for manufacturing industry, whilst retaining the power over their foreign trade.

5. Such a use of the power, by congress, accords with the intention and expectation of the states, in transferring the power over trade from themselves to the Government of the United States. This was emphatically the case in the Eastern, the more manufacturing members of the Confederacy.—Hear the language held in the Convention of Massachusetts:

By Mr. Dawes, an advocate for the constitution, it was observed, "Our manufactures "are another great subject which has received no encouragement by national duties on "foreign manufactures, and they never can by any authority in the old Confederation." Again, "If we wish to *encourage our own manufactures,* to preserve our own com- "merce, to raise the value of our own lands, we must give congress the powers in "question."—[*See volume* 1, *p.* 76.]

By Mr. Widgery, an opponent, "All we hear is, that the merchant and farmer will "flourish, and that the mechanic and tradesman are to make their fortunes directly, if "the Constitution goes down."—[*See volume* 1, *p.* 115.]

The Convention of Massachusetts* was the only one in New England whose debates have been preserved. But it cannot be doubted that the sentiment there expressed was common to the other states in that quarter, more especially to Connecticut and Rhode Island, the most thickly peopled of all the states, and having, of course, their thoughts most turned to the subject of manufactures. A like inference may be confidently applied to New Jersey, whose debates in Convention have not been preserved. In the populous and manufacturing state of Pennsylvania,† a partial account only of the debates having been published, nothing certain is known of what passed in her Convention on this point. But ample evidence may be found elsewhere, that regulations of trade, for the encouragement of manufactures, were considered as within the power to be granted to the new congress, as well as within the scope of the national policy. Of the states south of Pennsylvania, the only two in whose Convention the debates have been preserved are Virginia‡ and N. Carolina,§ and from these no adverse inferences can be drawn. Nor is there the slightest indication that either of the two states farthest south, whose debates in Convention, if preserved, have not been made public, viewed the encouragement of manufactures as not within the general power over trade to be transferred to the Government of the United States.

6. If congress have not the power, it is annihilated for the nation; a policy without example in any other nation and not within the reason of the solitary one in our own. The example alluded to, is the prohibition of a tax on exports, which resulted from the apparent impossibility of raising, in that mode a revenue from the states, proportioned to the ability to pay it—the ability of some being derived, in a great measure, not from their exports, but from their fisheries, from their freights, and from commerce at large, in some of its branches altogether external to the United States; the profits from all which, being invisible and intangible, would escape a tax, on exports. A tax on imports on the other hand, being a tax on consumption, which is in proportion to the ability of the consumers, whencesoever derived, was free from that inequality.

7. If revenue be the sole object of a legitimate impost, and the encouragement of domestic articles be not within the power of regulating trade, it would follow that no monopolizing or unequal regulations of foreign nations could be counteracted; that neither the staple articles of subsistence, nor the essential implements for the public safety, could, under any circumstances, be insured or fostered at home, by regulations of commerce, the usual and most convenient mode of providing for both; and that the American navigation, though the source of naval defence, of a cheapening competition in carrying our valuable and bulky articles to market, and of an independent carriage of them during foreign wars, when a foreign navigation might be withdrawn, must be at once abandoned, or speedily destroyed: it being evident that a tonnage duty in foreign ports against our vessels, and an exemption from such a duty in our ports, in favor of foreign vessels, must have the inevitable effect of banishing ours from the ocean.

To assume a power to protect our navigation, and the cultivation and fabrication of all articles requisite for the public safety, as incident to the war power, would be a more latitudinary construction of the text of the Constitution, than to consider it as embraced by the specified power to regulate trade; a power which has been exercised by all nations for those purposes, and which effects those purposes with less of interference with the authority and conveniency of the states, than might result from internal and direct

* See Vol. 1, of this work. † See Vol. 3. ‡ See Vol. 2. § See Vol. 3.

modes of encouraging the articles, any of which modes would be authorized, as far as deemed "necessary and proper," by considering the power as an incidental power.

8. That the encouragement of manufactures was an object of the power to regulate trade, is proved by the use made of the power for that object, in the first session of the first congress under the Constitution; when among the members present were so many who had been members of the Federal Convention which framed the Constitution, and of the State Conventions which ratified it; each of these classes consisting also of members who had opposed and who had espoused, the Constitution in its actual form. It does not appear from the printed proceedings of congress on that occasion, that the power was denied by any of them. And it may be remarked, that members from Virginia, in particular, as well of the anti-federal as the federal party, the names then distinguishing those who had opposed and those who had approved the Constitution, did not hesitate to propose duties and to suggest even prohibitions in favor of several articles of her productions. By one a duty was proposed on mineral coal, in favor of the Virginia coal pits; by another, a duty on hemp was proposed, to encourage the growth of that article; and by a third, a prohibition even of foreign beef was suggested, as a measure of sound policy. [See Note, at the end of these letters, page 351.]

A further evidence in support of the constitutional power to protect and foster manufactures by regulations of trade, an evidence that ought of itself, to settle the question, is the uniform and practical sanction given to the power, by the General Government, for nearly forty years; with a concurrence or acquiescence of every State Government, throughout the same period; and, it may be added, through all the vicissitudes of party which marked the period. No novel construction, however ingeniously devised, or however respectable and patriotic its patrons, can withstand the weight of such authorities, or the unbroken current of so prolonged and universal a practice. And well it is that this cannot be done, without the intervention of the same authority which made the Constitution. If it could be so done, there would be an end to that stability in Government, and in Laws, which is essential to good government and good laws, a stability, the want of which is the imputation which has at all times been levelled against republicanism, with most effect, by its most dextrous adversaries. The imputation ought never, therefore, to be countenanced, by innovating constructions, without any plea of a precipitancy, or a paucity of the constructive precedents they oppose; without any appeal to material facts newly brought to light; and without any claim to a better knowledge of the original evils and inconveniences, for which remedies were needed, the very best keys to the true object and meaning of all laws and constitutions.

And may it not be fairly left to the unbiassed judgment of all men of experience and of intelligence, to decide, which is most to be relied on for a sound and safe test of the meaning of a Constitution, a uniform interpretation by all the successive authorities under it, commencing with its birth, and continued for a long period, through the varied state of political contests; or the opinion of every new Legislature, heated as it may be by the strife of parties—or warped, as often happens by the eager pursuit of some favorite object—or carried away, possibly, by the powerful eloquence or captivating addresses of a few popular statesmen, themselves, perhaps, influenced by the same misleading causes? If the latter test is to prevail, every new legislative opinion might make a new Constitution, as the foot of every new Chancellor would make a new standard of measure.

It is seen, with no little surprise, that an attempt has been made, in a highly respectable quarter, and at length reduced to a resolution, formally proposed in congress, to substitute, for the power of congress to regulate trade so as to encourage manufactures, a power in the several states to do so, with the consent of that body; and this expedient is derived from a clause in the tenth section of article first of the Constitution, which says: "No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties, and imposts, laid by any state on imports and exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control fo the congress."

To say nothing of the clear indications in the Journal of the Convention of 1787, that the clause was intended merely to provide for expenses incurred by particular states, in their inspection laws, and in such improvements as they might choose to make in their harbors and rivers, with the sanction of Congress—objects to which the reserved power has been applied, in several instances, at the request of Virginia and Georgia—how could it ever be imagined that any state would wish to tax its own trade for the encouragement of manufactures, if possessed of the authority, or could, in fact, do so, if wishing it?

A tax on imports would be a tax on its own consumption; and the net proceeds going, according to the clause, not into its own treasury, but into the treasury of the United States, the state would tax itself separately for the equal gain of all the other states; and as far as the manufactures, so encouraged, might succeed in ultimately increasing the stock in market, and lowering the price by competition, this advantage, also, procured at the sole expense of the state, would be common to all the others.

But the very suggestion of such an expedient to any state, would have an air of mockery, when its *experienced* impracticability is taken into view. No one, who recollects or recurs to the period when the power over commerce was in the individual states, and separate attempts were made to tax, or otherwise regulate it, need be told that the attempts were not only abortive, but, by demonstrating the necessity of general and uniform regulations, gave the original impulse to the constitutional reform which provided for such regulations.

To refer a state, therefore, to the exercise of a power, as reserved to her by the constitution, the impossibility of exercising which was an inducement to adopt the constitution, is, of all remedial devices, the last that ought to be brought forward. And what renders it the more extraordinary, is, that, as the tax on commerce, as far as it could be separately collected, instead of belonging to the treasury of the state, as previous to the constitution, would be a tribute to the United States, the state would be in a worse condition, after the adoption of the constitution, than before, in reference to an important interest, the improvement of which was a particular object in adopting the constitution.

Were congress to make the proposed declaration of consent to state tariffs in favor of state manufactures, and the permitted attempts did not defeat themselves, what would be the situation of states deriving their foreign supplies through the ports of other states? It is evident that they might be compelled to pay, in their consumption of particular articles imported, a tax for the common treasury, not common to all the states, without having any manufacture or product of their own, to partake of the contemplated benefit.

Of the impracticability of separate regulations of trade, and the resulting necessity of general regulations, no state was more sensible than Virginia. She was accordingly among the most earnest for granting to congress a power adequate to the object. On more occasions than one, in the proceedings of her legislative councils, it was recited, "that the relative situation of the states had been found, on *trial*, to require *uniformity* in their commercial regulations as the *only* effectual policy for obtaining in the ports of foreign nations a stipulation of privileges reciprocal to those enjoyed by the subjects of such nations in the ports of the United States; for preventing animosities which cannot fail to arise among the several states from the interference of partial and separate regulations; and for deriving from commerce such aids to the public revenue as it ought to contribute, &c.

During the delays and discouragements experienced in the attempts to invest congress with the necessary powers, the state of Virginia made various trials of what could be done by her individual laws. She ventured on duties and imposts as a source of revenue: Resolutions were passed at one time to encourage and protect her own navigation and ship building; and in consequence of complaints and petitions from Norfolk, Alexandria, and other places, against the monopolizing navigation laws of Great Britain, particularly in the trade *between the United States and the British West Indies*, she deliberated, with a purpose controlled only by the inefficacy of separate measures, on the experiment of forcing a reciprocity by prohibitory regulations of her own. [See Journal of House of Delegates in 1785.]

The effect of her separate attempts to raise revenue by duties on imports, soon appeared in representations from her merchants that the commerce of the state was banished by them into other channels, especially, of Maryland, where imports were less burdened than in Virginia. [See Do. for 1786.]

Such a tendency of separate regulations was indeed too manifest to escape anticipation. Among the projects prompted by the want of a federal authority over commerce, was that of a concert first proposed on the part of Maryland for a uniformity of regulations between the two states, and commissioners were appointed for that purpose. It was soon perceived, however, that the concurrence of Pennsylvania was as necessary to Maryland as of Maryland to Virginia, and the concurrence of Pennsylvania was accordingly invited. But Pennsylvania could no more concur without New York than Maryland without Pennsylvania, nor New York without the concurrence of Boston, &c.

These projects were superseded for the moment by that of the convention at Annapolis in 1786, and forever by the convention at Philadelphia in 1787, and the constitution which was the fruit of it.

There is a passage in Mr. Neckar's work on the finances of France which affords a signal illustration of the difficulty of collecting, in contiguous communities, indirect taxes, when not the same in all, by the violent means resorted to against smuggling from one to another of them. Previous to the late revolutionary war in that country, the taxes were of very different rates in the different provinces; particularly the tax on salt, which was high in the interior provinces and low in the maritime, and the tax on tobacco, which was very high in general whilst in some of the provinces the use of the article was altogether free. The consequence was, that the standing army of patrols against smuggling had swoln to the number of twenty-three thousand; the annual arrest of men, women, and children, engaged in smuggling, to five thousand five hundred and fifty, and the number annually arrested on account of salt and tobacco alone, to seventeen or eighteen hundred, more than three hundred of whom were consigned to the terrible punishment of the gallies.

May it not be regarded as among the providential blessings to these states, that their geographical relations, multiplied as they will be by artificial channels of intercourse, give such additional force to the many obligations to cherish that union which alone secures their peace, their safety, and their prosperity! Apart from the more obvious and awful consequences of their entire separation into independent sovereignties, it is worthy of special consideration, that, divided from each other as they must be by narrow waters and territorial lines merely, the facility of surreptitious introductions of contraband articles, would defeat every attempt at revenue, in the easy and indirect modes of impost and excise; so that whilst their expenditures would be necessarily and vastly increased by their new situation, they would, in providing for them, be limited to direct taxes on land or other property, to abitrary assessments on invisible funds, and to the odious tax on persons.

You will observe that I have confined myself, in what has been said, to the constitutionality and expediency of the power in congress to encourage domestic products by regulations of commerce. In the exercise of the power, they are responsible to their constituents; whose right and duty it is, in that as in all other cases, to bring their measures to the test of justice and of the general good.

With great esteem and cordial respect,

Jos. C. Cabell, Esq. JAMES MADISON.

LETTER II.

Montpelier, October 30, 1828.

In my letter of September 18th, I stated briefly the grounds on which I rested my opinion, that a power to impose duties and restrictions on imports, with a view to encourage domestic productions, was constitutionally lodged in congress. In the observations then made was involved the opinion, also, that the power was properly there lodged. As this last opinion necessarily implies that there are cases in which the power may be usefully exercised by congress, the only body within our political system capable of exercising it with effect, you may think it incumbent on me to point out cases of that description.

I will premise that I concur in the opinion, that, as a *general* rule, individuals ought to be deemed the best judges of the best application of their industry and resources.

I am ready to admit, also, that there is no country in which the application may, with more safety, be left to the intelligence and enterprise of individuals, than the U. States.

Finally, I shall not deny, that, in all doubtful cases, it becomes every government to lean rather to a confidence in the judgment of individuals, than to interpositions controlling the free exercise of it.

With all these concessions, I think it can be satisfactorily shown, that there are exceptions to the general rule, now expressed by the phrase "Let us alone," forming cases which call for interpositions of the competent authority, and which are not inconsistent with the generality of the rule.

1. The theory of "Let us alone" supposes that all nations concur in a perfect freedom of commercial intercourse. Were this the case, they would, in a commercial view be but one nation, as much as the several districts composing a particular nation; and the theory would be as applicable to the former as to the latter. But this golden age of free trade has not yet arrived: nor is there a single nation that has set the example. No nation can, indeed, safely do so, until a reciprocity, at least, be ensured to it. Take, for a proof, the familiar case of the navigation employed in a foreign commerce. If a nation, adhering to the rule of never interposing a countervailing protection of its vessels, admits foreign vessels into its ports free of duty, whilst its own vessels are subject to a duty in foreign ports, the ruinous effect is so obvious, that the warmest advocate for the theory in question must shrink from a *universal* application of it.

A nation leaving its foreign trade, in all cases, to regulate itself, might soon find it regulated, by other nations, into a subserviency to a foreign interest. In the interval between the peace of 1783 and the establishment of the present constitution of the United States, the want of a general authority to regulate trade is known to have had this consequence. And have not the pretensions and policy latterly exhibited by Great Britain given warning of a like result from a renunciation of all countervailing regulations on the part of the United States? Were she permitted, by conferring on certain portions of her domain the name of colonies, to open from these a trade for herself, to foreign countries, and to exclude at the same time, a reciprocal trade to such colonies, by foreign countries, the use to be made of the monopoly need not to be traced. Its character will be placed in a just relief, by supposing that one of the colonial islands, instead of its present distance, happened to be in the vicinity of Great Britain; or that one of the islands in that vicinity should receive the name and be regarded in the light of a colony, with the peculiar privileges claimed for colonies. Is it not manifest, that, in this case, the favored island might be made the sole medium of the commercial intercourse with foreign nations, and the parent country thence enjoy every essential advantage, as to the terms of it, which would flow from an *unreciprocal* trade from her other ports, with other nations?

Fortunately the British claims, however speciously colored or adroitly managed, were repelled at the commencement of our commercial career as an independent people, and at successive epochs under the existing constitution, both in legislative discussions and in diplomatic negotiations. The claims were repelled on the solid ground that the colonial trade, as a *rightful* monopoly, was limited to the intercourse between the parent country and its colonies, and between one colony and another; the whole being, strictly, in the nature of a coasting trade from one to another port of the same nation, a trade with which no other nation has a right to interfere. It follows, of necessity, that the parent country, whenever it opens a colonial port for a direct trade to a foreign country, departs, itself, from the principle of colonial monopoly, and entitles the foreign country to the same reciprocity, in every respect, as in its intercourse with any other ports of the nation.

This is common sense and common right. It is still more, if more could be required. It is in conformity with the established usage of all nations, other than Great Britain, which have colonies. Some of those nations are known to adhere to the monopoly of their colonial trade, with all the rigor and constancy which circumstances permit. But it is also known, that, whenever, and from whatever cause, it has been found necessary or expedient to open their colonial ports to a foreign trade, the rule of reciprocity in favor of the foreign party was not refused, nor, as is believed, a right to refuse it, pretended.

It cannot be said that the reciprocity was dictated by a deficiency in the commercial marine. France, at least, could not be, in every instance, governed by that consideration—and Holland, still less: to say nothing of the navigating states of Sweden and Denmark, which have rarely, if ever, enforced a colonial monopoly. The remark is, indeed, obvious, that the shipping liberated from the usual conveyance of supplies from from the parent country to the colonies might be employed in the new channels opened for them, in supplies from abroad.

Reciprocity, or an equivalent for it, is the only rule of intercourse among independent communities; and no nation ought to admit a doctrine, or adopt an invariable policy, which would preclude the counteracting measures necessary to enforce the rule.

2. The theory supposes, moreover, a perpetual peace; a supposition, it is to be feared, not less chimerical than a universal freedom of commerce.

The effect of war among the commercial and manufacturing nations of the world, in raising the wages of labor, and the cost of its products; with a like effect on the charges of freight and insurance, need neither proof nor explanation. In order to determine, therefore, a question of economy, between depending on foreign supplies, and encouraging domestic substitutes, it is necessary to compare the probable periods of war with the probable periods of peace; and the cost of the domestic encouragement in times of peace, with the cost added to foreign articles in time of war.

During the last century, the periods of war and peace have been nearly equal. The effect of a state of war in raising the price of imported articles, cannot be estimated with exactness. It is certain, however, that the increased price of particular articles may make it cheaper to manufacture them at home.

Taking for the sake of illustration, an equality in the two periods, and the cost of an imported yard of cloth in time of war to be nine and a half dollars, and in time of peace to be seven dollars, whilst the same could at all times be manufactured at home for eight dollars, it is evident that a tariff of one dollar and a quarter on the imported yard would protect the home manufacture in time of peace, and avoid a tax of one dollar and a half imposed by a state of war.

It cannot be said that the manufactories which could not support themselves against foreign competition in periods of peace, would spring up of themselves at the recurrence of war prices. It must be obvious to every one, that, apart from the difficulty of great and sudden changes of employment, no prudent capitalists would engage in expensive establishments of any sort, at the commencement of a war of uncertain duration, with a certainty of having them crushed by the return of peace.

The strictest economy therefore suggests, as exceptions to the general rule, an estimate, in every given case, of war and peace, periods and prices, with inferences therefrom, of the amount of a tariff which might be afforded during peace, in order to avoid the tax resulting from war. And it will occur at once, that the inferences will be strengthened by adding, to the supposition of wars wholly foreign, that of wars in which our own country might be a party.

3. It is an opinion in which all must agree, that no nation ought to be unnecessarily dependent on others for the munitions of public defence, or for the materials essential to a naval force, where the nation has a maritime frontier or a foreign commerce to protect. To this class of exceptions to the theory may be added the instruments of agriculture, and of the mechanic arts which supply the other primary wants of the community. The time has been, when many of these were derived from a foreign source, and some of them might relapse into that dependence, were the encouragement of the fabrication of them at home withdrawn. But, as all foreign sources must be liable to interruptions too inconvenient to be hazarded, a provident policy would favor an internal and

independent source, as a reasonable exception to the general rule of consulting cheapness alone.

4. There are cases where a nation may be so far advanced in the prerequisites for a particular branch of manufactures, that this, if once brought into existence, would support itself; and yet, unless aided in its nascent and infant state, by public encouragement and a confidence in public protection, might remain, if not altogether, for a long time unattempted without success Is not our cotton manufacture a fair example? However favored by an advantageous command of the raw material, and a machinery which dispenses in so extraordinary a proportion with manuel labor, it is quite probable, that without the impulse given by a war cutting off foreign supplies, and the patronage of an early tariff, it might not even yet have established itself; and pretty certain, that it would be far short of the prosperous condition which enables it to face, in foreign markets, the fabrics of a nation that defies all other competitors. The number must be small, that would now pronounce this manufacturing boon not to have been cheaply purchased by the tariff, which nursed it into its present maturity.

5. Should it happen, as has been suspected, to be an object, though not of a foreign government itself, of its great manufacturing capitalists, to strangle in the cradle the infant manufactures of an extensive customer, or an anticipated rival, it would surely, in such a case, be incumbent on the suffering party, so far to make an exception to the "let alone" policy, as to parry the evil by apposite regulations of its foreign commerce.

6. It is a common objection to the public encouragement of particular branches of industry, that it calls off laborers from other branches found to be more profitable· and the objection is in general a weighty one. But it loses that character in proportion to the effect of the encouragement in attracting skilful laborers from abroad. Something of this sort has already taken place among ourselves, and much more of it is prospect; and, as far as it has taken or may take place, it forms an exception to the general policy in question.

The history of manufactures in Great Britain, the greatest manufacturing nation in the world, informs us that the woollen branch, till of late her greatest branch, owed both its original and subsequent growths to persecuted exiles from the Netherlands; and that her silk manufactures, now a flourishing and favorite branch, were not less indebted to emigrants flying from the persecuting edicts of France.—[Anderson's History of Commerce.]

It appears, indeed, from the general history of manufacturing industry, that the prompt and successful introduction of it into new situations, has been the result of emigrations from countries in which manufactures had gradually grown up to a prosperous state, as into Italy on the fall of the Greek empire; from Italy into Spain and Flanders, on the loss of liberty in Florence and other cities; and from Flanders and France, into England as above noticed.—[Franklin's Canada pamphlet.]

In the selection of cases here made, as exceptions to the "let alone" theory, none have been included which were deemed controvertible. And if I have viewed them, or a part of them only, in their true light, they show, what was to be shown, that the power granted to congress to encourage domestic products by regulations of foreign trade, was properly granted, inasmuch as the power is, in effect, confined to that body, and may, when exercised with a sound legislative discretion, provide the better for the safety and prosperity of the nation. With great esteem and regard,

Jos. C. Cabell, Esq. JAMES MADISON.

NOTE—[referred to in page 347.]

[*Extracts from Lloyd's Debates of the first session of the* FIRST *Congress.*]

Mr. Madison "moved to lay an impost of eight cents on all beer imported. He did not think this would be a monopoly; but he hoped it would be such an encouragement as to induce the manufacture to take deep root in every state in the Union."—*Lloyd's Debates of Congress, volume* 1, *page* 65.

The same.—"The states that are most advanced in population, and ripe for manufactures, ought to have their particular interests attended to in some degree. While these states retained the power of making regulations of trade, they had the power to protect and cherish such institutions. By adopting the present constitution, they have thrown the exercise of this power into other hands; they must have done this with an expectation that those interests would not be neglected here."—*Idem, p.* 24.

The same.—"There may be some manufactures which, being once formed, can advance towards perfection without any adventitious aid; while others, for want of the fostering hand of government, will be unable to go on at all. Legislative attention will therefore, be necessary to collect the proper objects for this purpose."—*Idem, p.* 26.

Mr. *Clymer* "did not object to this mode of encouraging manufactures, and obtaining revenue, by combining the two objects in one bill: he was satisfied that a political necessity existed for both the one and the other."—*Idem, p.* 31.

Mr. *Clymer* "hoped gentlemen would be disposed to extend a degree of patronage to a manufacture [steel] which a moments reflection would convince them was highly deserving protection."—*Idem, p.* 69.

Mr. *Carroll* "moved to insert window and other glass: a manufacture of this article was begun in Maryland, and attended with considerable success. If the legislature was to grant a small encouragement, it would be permanently established.—*Idem, p.* 94.

Mr. *Wadsworth*.—"By moderating the duties, we shall obtain revenue, and give that encouragement to manufactures which is intended."—*Idem, p.* 128.

Mr. *Ames* "thought this a useful and accommodating manufacture [nails] which yielded a clear gain of all it sold for, but the cost of the material; the labor employed in it would be thrown away probably in many instances. * * * He hoped the article would remain in the bill."—*Idem, p.* 81.

The same.—"The committee were already informed of the flourishing situation of the manufacture, [nails] but they ought not to join the gentleman from South Carolina, (Mr. Tucker,) it concluding that it did not therefore deserve legislative protection; he had no doubt but the committee would concur in laying a small protecting duty in favor of this manufacture."—*Idem, p.* 82.

Mr. *Fitzsimons* "was willing to allow a small duty, because it conformed to the policy of the states who thought it proper in this manner to protect their manufactures."—*Idem, p.* 83.

The same.—"It being my opinion than an enumeration of articles will tend to clear away difficulties, I wish as many to be selected as possible: for this reason I have prepared myself with an additional number: among these are some calculated to encourage the productions of our country, and protect our Infant Manufactures."—*Idem, p.* 17.

Mr. *Hartley*.—"If we consult the history of the ancient world, [Europe,] we shall see that they have thought proper for a long time past to give great encouragement to establish manufactures by laying such partial duties on the importation of foreign goods as to give the home manufactures a considerable advantage in the price when brought to market * * * I think it both politic and just, that the fostering hand of the general government should extend to all those manufactures which will tend to national utility. Our stock of materials is, in many instances, equal to the greatest demand, and our artisans sufficient to work them up, even for exportation. In those cases, I take it to be the policy of every enlightened nation to give their manufacturers that degree of encouragement necessary to perfect them, without oppressing the other parts of the community; and under this encouragement, the industry of the manufacturer will be employed to add to the wealth of the nation."—*Idem, p.* 22.

Mr. *White*.—In order to charge specified articles of manufacture so as to encourage our domestic ones, it will be necessary to examine the present state of each throughout the union."—*Idem, p.* 19.

Mr. *Bland* [of Va.] "thought that very little revenue was likely to be collected from the importation of this article [beef]; and as it was to be had in sufficient quantities within the U. States, perhaps a tax amounting to a prohibition would be proper."—*Ib. p.* 66.

"Mr. *Bland* informed the committee that there were mines opened in Virginia capable of supplying the whole of the United States; and if some restraint was laid on importation of foreign coals, those mines might be worked to advantage."—*Idem, p.* 97.

Mr. *Boudinot*.—"I shall certainly move for it [the article of glass] as I suppose we are capable of manufacturing this as well as many of the others. In fact, it is well known, that we have and can do it as well as most nations; the materials being almost all produced in our country."—*Idem, p.* 28.

The same.—"Let us take then the resolution of congress in 1783, and make it the basis of our system, adding only such protecting duties as are necessary to support the manufactures established by the legislatures of the manufacturing states."—*Idem, p.* 34.

Mr. *Sinnickson* "declared himself a friend to this manufacture, [beer] and thought that if the duty was laid high enough to effect a prohibition, the manufacture would increase, and of consequence the price would be lessened."—*Idem, p.* 65.

Mr. *Lawrence* "thought that if candles were an object of considerable importation, they ought to be taxed for the sake of obtaining revenue; and if they were not imported in considerable quantities, the burden upon the consumer would be small, while it tended to cherish a valuable manufacture."—*Idem, p.* 68.

Mr *Fitzsimons* "moved to lay a duty of two cents per pound on tallow candles. The manufacture of candles is an important manufacture, and far advanced towards perfection. I have no doubt but in a few years we shall be able to supply the consumption of every part of the continent."—*Idem, p.* 67.

The same.—Suppose 5s. cwt. were imposed, [on unwrought steel] it might be, as stated, a partial duty—but would not the evil be soon overbalanced by the establishment of such an important manufacture?"—*Idem, p.* 69

The same.—"The necessity of continuing those encouragements which the state legislatures have deemed proper, exists in a considerable degree. Therefore it will be politic in the government of the United States, to continue such duties until their object is accomplished."—*Idem, p.* 67.

Mr. *Smith* [of S. C.]—"The people of S. Carolina are willing to make sacrifices to encourage the manufacturing and maritime interests of their sister states."—*Ib. p.* 212.

Gen. Washington's speech to Congress, of January 11, 1790, *declares—*

"That the safety and interest of a free people require that congress should promote such manufactures as tend to render them independent of others for essential, particularly military supplies.

"The advancement of agriculture, commerce, and manufactures, by all proper means, will not, I trust, need recommendation."

Extract from the reply of the Senate, to the speech of Gen. Washington, Jan. 1790.

"Agriculture, commerce, and manufactures, forming the basis of the wealth and strength of our confederated republic, must be the frequent subject of our deliberations, and shall be advanced by all the proper means in our power."

Extract from the reply of the House of Representatives—

"We concur with you in the sentiment that "agriculture, commerce and manufactures, are entitled to Legislative protection."

His speech of December 1796, *holds out the same doctrine—*

"Congress have repeatedly, and not without success, directed their attention to the encouragement of manufactures. The object is of too much importance not to insure a continuance of these efforts in every way which shall appear eligible."

Extract from the reply of the Senate to the speech of Gen. Washington, Dec. 1796—

"The necessity of accelerating the establishment of certain useful branches of manufactures, by the intervention of legislative aid and protection, and the encouragement due to agriculture by the creation of boards, (composed of intelligent individuals,) to patronize the primary pursuit of society, are subjects which will readily engage our most serious attention."

Mr. Jefferson, in his message of 1802, *states, that—*

"To cultivate peace; maintain commerce and navigation; to foster our fisheries; and protect manufactures, adapted to our circumstances, &c., are the landmarks by which to guide ourselves in all our relations."

From Mr. Jefferson's message of 1808—

"The situation into which we have been thus forced, has impelled us to apply a portion of our industry and capital to internal manufacturing improvements. The extent of this conversion is daily increasing, and little doubt remains that the establishments formed and forming, will, under the auspices of cheaper materials and subsistence, the freedom of labor from taxation with us, and protecting duties and prohibitions, become permanent."

Extract from the message of Mr. Madison, December 5, 1815—

"Under circumstances giving powerful impulse to manufacturing industry, it has made among us a progress, and exhibited an efficiency, which justify the belief, that with a protection not more than is due to the enterprising citizens, whose interests are now at stake, it will become, at an early day, not only safe against occasional competions from abroad—but a source of domestic wealth, and even of external commerce. * * * In selecting the branches more especially entitled to public patronage, a preference is obviously claimed by such as will relieve the United States from a dependence on foreign supplies, ever subject to casual failures, for articles necessary for public defence, or connected with the primary wants of individuals. It will be an additional recommendation of particular manufactures, where the materials for them are extensively drawn from our agriculture, and consequently impart and insure to that great fund of national prosperity and independence an encouragement which cannot fail to be rewarded."

From the message of President Monroe, December 1818—

"It is deemed of importance to encourage our domestic manufactures. In what manner the evils which we have adverted to, may be remedied, and how it may be practicable in other respects to afford them further encouragement, paying due regard to the other great interests of the nation, is submitted to the wisdom of congress."

From the same, December 3d, 1822—

"Satisfied I am, whatever may be the abstract doctrine in favor of unrestricted commerce, provided all nations would concur in it, and it was not liable to be interrupted by war, which has never occurred, and cannot be expected, that there are strong reasons applicable to our situation and relations with other countries, which impose on us the obligation to cherish and sustain our manufactures.

From the same, December 1823—

"Having communicated my views to Congress at the commencement of the last session, respecting the encouragement which ought to be given to our manufactures, and the principle on which it should be founded, I have only to add that those views remain unchanged, and that the present state of those countries with which we have the most immediate political relations, and greatest commercial intercourse, tends to confirm them. Under this impression, I recommend a review of the tariff, for the purpose of affording such additional protection to those articles which we are prepared to manufacture, or which are more immediately connected with the defence and independence of the country."

W. H. Crawford, Secretary of the Treasury, in his Report, December, 1819, *says—*

"It is believed that the present is a favorable moment for affording efficient protection to that increasing and important interest, if it can be done consistently with the general interest of the nation."

Extract from the message of President Jefferson, Dec. 2, 1806—

Mr JEFFERSON.—The question now comes forward, to what objects shall surplusses 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 a 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 only by those 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 public education, roads, rivers, canals 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 legislatures 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 money to be applied. * * *

From the same, Nov. 8, 1808—

The probable accumulation of surplusses of revenue beyond what can be applied to the payment of the public debt, whenever the freedom and safety of our commerce shall be restored, merits the consideration of congress. Shall it lie unproductive in the public vaults? Shall the revenue be reduced? Or, shall it not rather be appropriated to the improvements of roads, canals, rivers, education, and other great foundations of prosperity and union, under the powers which congress may already possess, or such amendment of the constitution as may be approved by the states? While uncertain of the course of things, the time may be advantageously employed in obtaining the powers necessary for a system of improvement, should that be thought best. * * *

Mr. P. P. BARBOUR.—As to the post roads, and as to the express power to construct them, the text of the constitution was short; it was in these words: "Congress shall have power to establish post offices and post roads." The advocates of the resolutions say, that the power to establish, authorizes them to construct. We say, that it gives us power to designate what roads shall be mail roads, and the right of passage or way along them, when so designated. * * *

As early as February, 1792, congress passed an act, the title of which was "to establish post offices and post roads." The first section of this act established as many post offices as post roads. It was continued, amended, and finally repealed, by a series of acts from 1792 to 1810; all of which have the same title and the same provisions, declaring certain roads to be post roads; from all of which it is most manifest, that the legislature supposed they had established post roads in the sense of the constitution, when they declared certain roads, then in existence, to be post roads; and designated the routes along which they were to pass. As a further proof upon this subject, the statute book contained many acts, passed at various times, during a period of more than twenty years, discontinuing certain post roads. * * *

A strong argument, he thought, was derivable from the practice of Europe, with which the framers of the constitution must be supposed to have been intimately acquainted. Upon looking into the books upon public law, and particularly Martens, it would be found that the different states of Europe had established posts; and for mutual convenience, had combined them upon their frontiers, and had, by common consent, and sometimes by treaty, a list of which would be seen in the book just referred to, stipulated a free passage for the posts through the respective territories. It seemed to him, then, probable, that the constitution intended nothing more by this provision, than to enable congress to do by law, without consulting the states, that which he had shewn had long been done in Europe, either by acquiescence, or by treaty stipulation; and when it is considered that the roads were already in being, all the power which it was necessary to give was that of designating the mail routes through the country, that thereby there might be unity of design and continuity in the line of mails. As a still further proof of the propriety of his construction, he referred to the Federalist, Number 42, where it would be seen that this subject was disposed of in a single paragraph, declaring it to be such a harmless power, as not to require further comment. * * *

He had always thought that, as the states possessed both those rights at the adoption of the constitution, they still retained them, unless they had transferred them. Have they done so? Let the last clause but one of the 8th section of the first article answer

the question. In that clause, congress are authorized to derive jurisdiction from the states, over such district, not exceeding ten miles square, as, by the cession of particular states, and their acceptance, should become the seat of the federal government; and both jurisdiction and right of soil over such places as should be purchased with the assent of the legislatures of the states, for the erection of forts, arsenals, magazines, dock yards, and other needful buildings. It seemed to him impossible to conceive that the framers of the constitution could have thought it necessary to insert a distinct and substantive power, to purchase such inconsiderable spots as these, an acre of land for example, and at the same time intend to convey, by implication, the right to construct roads throughout the whole country, with the consequent right to use timber, &c. and to exercise jurisdiction over them. Gentlemen had said, unless congress had the power which they contend for, that the mail roads might be obstructed or discontinued at the will of the state authorities. That consequence did not at all follow from his position: for he admitted that we had a right, by the constitution, to the use of the roads, as a right of way; whenever, therefore, we had by law declared a particular road to be a mail road, we had, until the law was repealed, such an interest in the use of it, as that it was not competent for the state authorities to obstruct it. * * *

The power to construct roads, has no such necessary connexion with the powers of declaring war, and raising and supporting armies. It is said, however, that, for the want of them, vast injury was sustained during the war, and enormous sums of money expended. Sir, inconvenience will not justify a construction of the constitution in itself incorrect, for the purpose of removing that inconvenience; but he would furnish to the gentlemen a constitutional remedy. Transport your ordnance and other munitions of war in time of peace; build other armories, if those which we have be not enough, and establish arsenals and magazines in convenient places. But, it has been asked, if a road be indispensably necessary for our army, will you deny the power to make it? Cases of great urgency, or necessity, might be stated, in which he would not deny it; if, in time of war, an army should be so situated as not to be able to march to the attack of the enemy, or to retreat from one, without making a road, as if, for example, there were none in the direction required, in such a situation they would possess the power, as being for the particular purpose a necessary incident to the right of carrying on war. * * *

The next subject which the report discussed, was our *right* to make roads and canals for *commercial purposes;* and this was referred, as there was no pretence of special grant, to the power to regulate commerce amongst the several states; to regulate was to prescribe, to direct. He, therefore, understood the power to regulate commerce amongst the several states, to authorize us to prescribe the terms, manner, and conditions, on which the trade should be carried on; such, for example, as establishing ports, granting clearances, regulating the coasting trade, &c. The history of the times, upon adverting to it, would show that the object in granting this power, was to prevent those feuds and strifes which experience had shown would arise between the states, in consequence of some being *more* and others *less* advantageously situated for commerce, unless it was referred to some common head to prescribe general regulations in relation to it, which would bear alike on all. He, therefore, could not for a moment entertain the idea, that, under the power to regulate commerce, it was intended to make the way, or to dig the channel along which it was to pass. * * *

He came now to another proposition, which the report discusses, to wit: that we have *power* with the *assent of the states.* He believed it to be impossible to maintain this position. The argument in support of it, seemed to be this, that, though congress have no right of their own mere will to make the proposed improvements, yet, as the soil, say gentlemen, belongs to the several states, it is competent for them to yield their assent; and that, in that event, there cannot be a possible objection. This argument is met at the very threshold with this question: although one state may consent to have the public money expended within its limits, have the other nineteen consented that *their* money shall be so expended? If they have not, as he should attempt to prove, it scarcely required argument to shew that the consent of one state to receive the expenditure of the money of the other nineteen, did not justify us in making that expenditure without the consent of the others. But he would pursue this idea of the consent of the states a little more closely. If we have the power given us by the constitution, we do not want their assent; if we have it not, that assent, in the mode proposed, cannot give it to us. He would make a few remarks upon each branch of this proposition. To say that I have the power to do an act, which yet you have a right to say I shall not do, and upon your saying which, I must forbear, is equivalent to saying I have the power, and yet have it not. The principle is plainly this: every power, unless limited by the terms in which it is granted, is absolute; it conveys the ability to effect its object, without consulting the will of any but the person who is to exercise it; nor do the few cases mentioned in the constitution, in which the consent of the states is made necessary, form any exception to this principle; for, in those the consent is required only in getting the subject upon which the power is to operate; when that is done, the power over them is exercised entirely at the will of congress. In the whole mass of legislative powers, then, which the 8th section of the 1st article gives to congress, there is not one, to the exercise of which the assent of the states is necessary; and if it be not necessary to the express powers, it cannot be to those which are incidental.

It was as clear a principle, that, if we have not the power, the assent of the states in the mode proposed, cannot give it to us; the constitution has provided within itself, the way by which any enlargement of our powers shall be obtained; it is this—congress shall, whenever two thirds of both houses deem it proper, propose amendments, or, on the application of two-thirds of the state legislatures, shall call a convention to propose them; which, when ratified by three-fourths of the states, in either of the modes pointed out in the 6th article, shall be a part of the constitution. * * *

Gentlemen had said, that they disclaimed any use of the words, "common defence and general welfare," as giving any substantial power. It was perfectly indifferent to him from what words or what clause they derived it, or by what name they called it. If they possessed the power included in this proposition, the constitution, which affected to impose limitations upon us, and to give us a few delegated powers only, was mere paper and pack thread. * * *

Let us suppose that one party establishes a precedent, the other party gets into power, and, not liking the source from which it sprang, discards it, and fixes a different one. In the vicissitudes of political events, the first party comes into power again: here, then as far as previous decisions have gone, there is precedent against precedent, and liking the one first set, best, they therefore discard the second, and establish the first. Let us suppose another revolution to take place between those who are *in* and those who are *out* of power; and the same scene would be re-acted; and thus that constitution, which was intended to be settled upon the firmest foundations, would be subject to be whirled about, the sport of every political gust. * * * [See Mr. B's. speech of 1818.]

Mr. HEMPHILL.—Can it be supposed that the framers of the constitution, looking forward to the future glory of the nation, and being acquainted with the benefit of roads and canals to internal trade in other countries, could have intended to prostrate all power over this subject, in a national point of view? The framers of the constitution were too wise to attempt to particularize any of the incidental powers. They well knew the impracticability of it. To mention one, might be considered as the exclusion of others; and they left them all to the sound discretion of congress. * * The objects which clothe congress with power, must be national, and reaching in their considerations beyond state sovereignty.

On the subject of post roads, it is said that this clause of the constitution [art. 1, sec. 8,] gives the power only to select a road in being, and not the right to *create* or *make* a road. We do not resort to a dictionary on these occasions; but it is of importance to know the acceptation of the word, in state papers, in legislative acts, and in other parts of the same instrument. From these sources we shall discover, that the word *establish* means to *create*, and not merely to designate a thing in being. In the first treaty we had with France, it is stated to be the desire of the parties to *establish* suitable regulations between the two countries. A similar expression is used in our treaty with England. I have not taken much pains to search for the word in legislative acts; but the committee will recollect the phraseology in many of our acts of congress. There is an act to *establish* navy hospitals. Here land is to be purchased, work done, and a building erected. There is another to *establish* trading houses to trade with the Indians.—The word is used in the same sense in the articles of confederation. It speaks of the regulations to be *established* by congress. The word is used in no other sense in any part of the constitution. It begins with the words, *ordain* and *establish* this constitution. It speaks of such courts as shall be *established* from time to time, and that the ratification of nine states shall be sufficient for the *establishment* of this constitution.—It gives congress a power to *establish* an uniform rule of naturalization, and it is evidently used in the same sense, in the very clause now in question—to *establish* post offices and post roads. As to offices, it means to create; why change the words from those used in the articles of confederation, if it was not to enlarge the power? In that instrument, nothing is said concerning roads. The words to *establish* post roads, must mean, to make them, when necessary; or they are valueless. If congress are obliged to use the state roads, they can have no interest in the route. The mail is not to be opened, between the two offices, and the mail contractors would take care to select the best route for themselves.

The power to be exercised in this case is not *implied*—it is *expressly* given; as the word *establish*, must mean *to make a road wherever required*—otherwise, any state could shut up their roads, and prevent the United States from carrying the mail. When a fortification is made, will any one deny that a road can be made to it? And if congress can make a road for a mile, they can make one for a thousand miles, whenever the same necessity exists. Suppose an insurrection should break out, and a state through which it would be necessary to pass, should so far favor the insurgents, as to close her roads in that direction, could not congress open them? Or, in the case of a war with a foreign nation, if it should become necessary to construct new roads to carry on the war, could not congress make them?—I mean, constitutionally. And whatever can be done agreeably to the provisions of the constitution, in a state of war, can be done in peace, as preparatory to other wars. Whatever can be accomplished at one moment, can be effected at all moments. The constitution does not accommodate itself to time or circumstances, it remains fixed and unchangeable. * * * [See Mr. H's. speech of Mar. 25, 1830.]

ALIEN AND SEDITION LAWS.

The Resolutions of Virginia, attributed to the pen of Mr. Madison, in relation to the Alien and Sedition Laws.

VIRGINIA.—*House of Delegates*, Session of 1799—1800.

Report of the Committee to whom were referred the communications of various States, relative to the Resolutions of the last General Assembly of this state, concerning the Alien and Sedition Laws.

Whatever room might be found in the proceedings of some of the states, who have disapproved of the resolutions of the General Assembly of this Commonwealth, passed on the 21st day of December 1798, for painful remarks on the spirit and manner of those proceedings, it appears to the committee most consistent with the duty as well as dignity of the general assembly, to hasten an oblivion of every circumstance, which might be construed into a diminution of mutual respect, confidence and affection, among the members of the union.

The committee have deemed it a more useful task, to revise with a critical eye, the resolutions which have met with this disapprobation; to examine fully the several objections and arguments which have appeared against them; and, to inquire whether there be any errors of fact, of principle, or of reasoning, which the candor of the general assembly ought to acknowledge and correct.

The *first* of the resolutions is in the words following:

"*Resolved*, That the general assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the constitution of the United States, and the constitution of this state against every aggression, either foreign or domestic, and that they will support the government of the U. States in all measures warranted by the former."

No unfavorable comment can have been made on the sentiments here expressed. To maintain and defend the constitution of the United States, and of their own state, against every aggression, both foreign and domestic, and to support the government of the United States in all measures warranted by their constitution, are duties which the general assembly ought always to feel, and to whom, on such an occasion, it was evidently proper to express their sincere and firm adherence.

In their *next* resolution—"The general assembly most solemnly declares a warm attachment to the union of the states, to maintain which, it pledges all its powers; and, that for this end, it is their duty to watch over and oppose every infraction of those principles, which constitute the only basis of that union, because a faithful observance of them can alone secure its existence and the public happiness.

The observation just made is equally applicable to this solemn declaration, of warm attachment to the union, and this solemn pledge to maintain it; nor can any question arise among enlightened friends of the union, as to the duty of watching over and opposing every infraction of those principles which constitute its basis, and a faithful observance of which, can alone secure its existence, and the public happiness thereon depending.

The *third* resolution is in the words following:

"That the assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties, as limited by the plain sense and intention of the instrument constituting that compact—as no further valid than they are authorised by the grants enumerated in that compact; and that in case of a *deliberate*, *palpable* and *dangerous* exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.

On this resolution, the committee have bestowed all the attention which its importance merits: They have scanned it not merely with a strict, but with a severe eye: and they feel confidence in pronouncing, that, in its just and fair construction, it is unexceptionably true in its several positions as well as constitutional and conclusive in its inferences

The resolution declares, *first*, that "it views the powers of the federal government, as resulting from the compact to which the states are parties;" in other words, that the federal powers are derived from the constitution; and, that the constitution is a compact to which the states are parties.

Clear as the position must seem, that the federal powers are derived from the constitution, and from that alone, the committee are not unapprised of a late doctrine, which opens another source of federal powers, not less extensive and important, than it is new and unexpected. The examination of this doctrine will be most conveniently connected with a review of a succeeding resolution. The committee satisfy themselves here with briefly remarking, that in all the contemporary discussions and comments which the constitution underwent, it was constantly justified and recommended, on the ground that the powers not given to the government, were withheld from it; and, that if any doubt could have existed on this subject, under the original text of the constitution, it is

removed, as far as words could remove it, by the 12th amendment, now a part of the constitution, which expressly declares, "that the powers not delegated to the United States, by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

The other position involved in this branch of the resolution, namely, "that the states are parties to the constitution or compact," is, in the judgment of the committee, equally free from objection. It is indeed true, that the term 'states,' is sometimes used in a vague sense, and sometimes in different senses, according to the subject to which it is applied. Thus, it sometimes means the separate sections of territory occupied by the political societies within each; sometimes the particular governments, established by those societies; sometimes those societies as organized into those particular governments; and, lastly, it means the people composing those political societies, in their highest sovereign capacity. Although it might be wished that the perfection of language admitted less diversity in the signification of the same words, yet little inconvenience is produced by it, where the true sense can be collected with certainty from the different applications. In the present instance, whatever different constructions of the term 'states,' in the resolution, may have been entertained, all will at least concur in the last mentioned; because in that sense, the constitution was submitted to the 'states,' in that sense the 'states' ratified it: and, in that sense of the term 'states,' they are consequently parties to the compact, from which the powers of the federal government result.

The next position is, that the general assembly views the powers of the federal government, 'as limited by the plain sense and intention of the instrument constituting that compact,' and 'as no farther valid than they are authorized by the grants therein enumerated.' It does not seem possible, that any just objection can be against either of these clauses. The first amounts merely to a declaration that the compact ought to have the interpretation plainly intended by the parties to it; the other to a declaration that it ought to have the execution and effect intended by them. If the powers granted, be valid, it is solely because they are granted: and, if the granted powers are valid, because granted, all other powers not granted, must not be valid.

The resolution having taken this view of the federal compact, proceeds to infer, 'that in case of deliberate, palpable and dangerous exercise of other powers, not granted by the said compact, the states, who are parties thereto, have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.'

It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts—that, where resort can be had to no tribunal, superior to the authority of the parties, the parties themselves must be the rightful judges in the last resort, whether the bargain made has been pursued or violated. The constitution of the United States was formed by the sanction of the states, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the constitution, that it rests on this legitimate and solid foundation. The states, then, being the parties of the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority, to decide in the last resort, whether the compact made by them be violated; and, consequently, that, as the parties to it, they must themselves decide in the last resort, such questions as may be of sufficient magnitude to require their interposition.

It does not follow, however, that because the states, as sovereign parties to their constitutional compact, must ultimately decide whether it has been violated, that such a decision ought to be interposed, either in a hasty manner, or on doubtful and inferior occasions. Even in the case of ordinary conventions between different nations, where, by the strict rule of interpretation, a breach of a part may be deemed a breach of the whole; every part being deemed a condition of every other part, and of the whole, it is always laid down that the breach must be both wilful and material to justify an application of the rule. But in the case of an intimate and constitutional union, like that of the United States, it is evident that the interposition of the parties, in their sovereign capacity, can be called for by occasions only, deeply and essentially affecting the vital principles of their political system.

The resolution has, accordingly, guarded against any misapprehension of its object, by expressly requiring for such an interposition 'the case of a *deliberate*, *palpable*, and *dangerous* breach of the constitution, by the exercise of *powers not granted* by it.' It must be a case, not of a light and transient nature, but of a nature *dangerous* to the great purposes for which the constitution was established. It must be a case, moreover, not obscure or doubtful in its construction, but plain and *palpable*. Lastly, it must be a case not resulting from a partial consideration, or hasty determination; but a case stampt with a final consideration and *deliberate* adherence. It is not necessary, because the resolution does not require, that the question should be discussed, how far the exercise of any particular power, ungranted by the constitution, would justify the interposition of the parties to it. As cases might easily be stated, which none would contend ought to fall within that description; cases, on the other hand, might, with equal ease, be sta-

ted, so flagrant and so fatal, as to unite every opinion in placing them within the description.

But the resolution has done more than guard against misconstruction, by expressly referring to cases of a *deliberate*, *palpable* and *dangerous* nature. It specifies the object of the interposition which it contemplates, to be solely that of arresting the progress of the evil of usurpation, and of maintaining the authorities, rights and liberties appertaining to the states, as parties to the constitution.

From this view of the resolution, it would seem inconceiveable that it can incur any just disapprobation from those, who, laying aside all momentary impressions, and recollecting the genuine source and object of the federal constitution, shall candidly and accurately interpret the meaning of the general assembly. If the deliberate exercise of dangerous powers, palpably withheld by the constitution, could not justify the parties to it, in interposing even so far as to arrest the progress of the evil, and thereby to preserve the constitution itself, as well as to provide for the safety of the parties to it; there would be an end to all relief from usurped power, and a direct subversion of the rights specified or recognized under all the state constitutions, as well as a plain denial of the fundamental principle on which our independence itself was declared.

But it is objected, that the judicial authority is to be regarded as the sole expositor of the constitution in the last resort; and it may be asked for what reason, the declaration by the general assembly, supposing it to be theoretically true, could be required at the present day, and in so solemn a manner.

On this objection it might be observed, *first:* that there may be instances of usurped power, which the forms of the constitution would never draw within the control of the judicial department: *secondly*, that if the decision of the judiciary be raised above the authority of the sovereign parties to the constitution, the decisions of the other departments, not carried by the forms of the constitution before the judiciary, must be equally authoritative and final with the decisions of that department. But the proper answer to the objection is, that the resolution of the general assembly relates to those great and extraordinary cases, in which all the forms of the constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it. The resolution supposes that dangerous powers not delegated, may not only be usurped and executed by the other departments, but that the judicial department also, may exercise or sanction dangerous powers beyond the grant of the constitution; and consequently, that the ultimate right of the parties to the constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority, as well as by another; by the judiciary, as well as by the executive, or the legislature.

However true, therefore, it may be that the judicial department, is, in all questions submitted to it by the forms of the constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the government; not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power would annul the authority delegating it; and the concurrence of this department with the others, in usurped powers, might subvert forever, and beyond the possible reach of any rightful remedy, the very constitution, which all were instituted to preserve.

The truth declared in the resolution being established, the expediency of making the declaration at the present day, may safely be left to the temperate consideration and candid judgment of the American public. It will be remembered, that a frequent recurrence to fundamental principles, is solemnly enjoined by most of the state constitutions, and particularly by our own, as a necessary safeguard against the danger of degeneracy to which republics are liable, as well as other governments, though in a less degree than others. And a fair comparison of the political doctrines not unfrequent at the present day, with those which characterized the epoch of our revolution, and which form the basis of our republican constitutions, will best determine whether the declaratory recurrence here made to those principles, ought to be viewed as unseasonable and improper, or as a vigilant discharge of an important duty. The authority of constitutions over governments, and of the sovereignty of the people over constitutions, are truths which are at all times necessary to be kept in mind: and at no time, perhaps, more necessary than at present.

The *fourth* resolution stands as follows:

"That the general assembly doth also express its deep regret, that a spirit has in sundry instances, been manifested by the federal government, to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former articles of confederation, were the less liable to be misconstrued,) so as to destroy the meaning and effect of the particular enumeration which necessarily explains, and limits the general phrases; and so as to consolidate the states by degrees, into one sovereignty, the obvious tendency and inevitable result of which would be, to transform the present republican system of the United States into an absolute, or at best a mixed monarchy."

The *first* question here to be considered is, whether a spirit has in sundry instances been manifested by the federal government to enlarge its powers by forced constructions of the constitutional charter.

The general assembly having declared their opinion merely by regretting in general terms that forced constructions for enlarging the federal powers have taken place, it does not appear to the committee necessary to go into a specification of every instance to which the resolution may allude. The alien and sedition acts being particularly named in a succeeding resolution, are of course to be understood as included in the allusion. Omitting others which have less occupied public attention, or been less extensively regarded as unconstitutional, the resolution may be presumed to refer particularly to the bank law, which from the circumstances of its passage, as well as the latitude of construction on which it is founded, strikes the attention with singular force; and the carriage tax, distinguished also by circumstances in its history having a similar tendency. Those instances alone, if resulting from forced construction and calculated to enlarge the powers of the federal government, as the committee cannot but conceive to be the case, sufficiently warrant this part of the resolution. The committee have not thought it incumbent on them to extend their attention to laws which have been objected to, rather as varying the constitutional distribution of powers in the federal government, than as an absolute enlargement of them; because instances of this sort, however important in their principles and tendencies, do not appear to fall strictly within the text under review.

The other questions presenting themselves, are—1. Whether indications have appeared of a design to expound certain general phrases copied from the 'Articles of Confederation' so as to destroy the effect of the particular enumeration explaining and limiting their meaning. 2. Whether this exposition would by degrees consolidate the states into one sovereignty. 3. Whether the tendency and result of this consolidation would be to transform the republican system of the United States into a monarchy.

1. The general phrases here meant must be those 'of providing for the common defence and general welfare.'

In the 'Articles of Confederation,' the phrases are used as follows, in art VIII. 'all charges of war, and all other expenses that shall be incurred *for the common defence and general welfare*, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to, or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in congress assembled, shall from time to time direct and appoint.'

In the existing constitution, they make the following part of sec. 8. 'The congress shall have power, to lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defence and general welfare of the United States.'

This similarity in the use of these phrases in the two great federal charters, might well be considered, as rendering their meaning less liable to be misconstrued in the latter: because it will scarcely be said, that in the former, they were ever understood to be either a general grant of power, or to authorise the requisition or application of money by the old congress to the common defence and general welfare, except in the cases afterwards enumerated, which explained and limited their meaning; and if such was the limited meaning attached to these phrases in the very instrument revised and re-modeled by the present constitution, it can never be supposed that when copied into this constitution, a different meaning ought to be attached to them.

That notwithstanding this remarkable security against misconstruction, a design has been indicated to expound these phrases in the constitution, so as to destroy the effect of the particular enumeration of powers by which it explains and limits them, must have fallen under the observation of those who have attended to the course of public transactions. Not to multiply proofs on this subject, it will suffice to refer to the debates of the federal legislature, in which arguments have on different occasions been drawn, with apparent effect, from these phrases, in their indefinite meaning.

To these indications might be added, without looking farther, the official report on manufactures, by the late secretary of the treasury, made on the 5th of December, 1791; and the report of a committee of congress, in January, 1797, on the promotion of agriculture. In the first of these it is expressly contended to belong "to the discretion of "the national legislature to pronounce upon the objects which concern the *general* "*welfare*, and for which, under that description, an appropriation of money is requisite "and proper. And there seems to be no room for a doubt, that whatever concerns the "general interests of LEARNING, of AGRICULTURE, of MANUFACTURES, and of COMMERCE, "are within the sphere of the national councils, *as far as regards an application of* "*money*." The latter report assumes the same latitude of power in the national councils, and applies it to the encouragement of agriculture. by means of a society to be established at the seat of government. Although neither of these reports may have received the sanction of a law carrying it into effect; yet, on the other hand, the extraor-

dinary doctrine contained in both, has passed without the slightest positive mark of disapprobation from the authority to which it was addressed.

Now, whether the phrases in question be construed to authorise every measure relating to the common defence and general welfare, as contended by some; or every measure only in which there might be an application of money, as suggested by the caution of others; the effect must substantially be the same, in destroying the import and force of the particular enumeration of powers which follow these general phrases in the constitution. For, it is evident, that there is not a single power whatever, which may not have some reference to the common defence, or the general welfare; nor a power of any magnitude, which, in its exercise, does not involve or admit an application of money. The government, therefore, which possesses power in either one or other of these extents, is a government without the limitations formed by a particular enumeration of powers; and consequently, the meaning and effect of this particular enumeration, is destroyed by the exposition given to these general phrases.

This conclusion will not be affected by an attempt to qualify the power over the "general welfare," by referring it to cases where the *general welfare* is beyond the reach of *separate* provisions by the *individual states;* and leaving to these their jurisdictions in cases, to which their separate provisions may be competent. For, as the authority of the individual states must in all cases be incompetent to general regulations operating through the whole, the authority of the United States would be extended to every object relating to the general welfare, which might, by any possibility, be provided for by the general authority. This qualifying construction, therefore, would have little, if any tendency, to circumscribe the power claimed under the latitude of the terms 'general welfare.'

The true and fair construction of this expression, both in the original and existing federal compacts, appears to the committee too obvious to be mistaken. In both, the congress is authorised to provide money for the common defence and *general welfare*. In both, is subjoined to this authority, an enumeration of the cases, to which their powers shall extend. Money cannot be applied to the *general welfare*, otherwise than by an application of it to some *particular* measure, conducive to the general welfare. Whenever, therefore, money has been raised by the general authority, and is to be applied to a particular measure, a question arises, whether the particular measure be within the enumerated authorities vested in congress. If it be, the money requisite for it, may be applied to it; if it be not, no such application can be made. This fair and obvious interpretation coincides with, and is enforced by, the clause in the constitution, which declares, that 'no money shall be drawn from the treasury, but in consequence of appropriations by law.' An appropriation of money to the general welfare, would be deemed rather a mockery than an observance of this constitutional injunction.

2. Whether the exposition of the general phrases here combatted, would not, by degrees, consolidate the states into one sovereignty, is a question, concerning which the committee can perceive little room for difference of opinion. To consolidate the states into one sovereignty, nothing more can be wanted, than to supersede their respective sovereignties in the cases reserved to them, by extending the sovereignty of the United States, to all cases of the 'general welfare,' that is say, to *all cases whatever*.

3. That the obvious tendency and inevitable result of a consolidation of the states into one sovereignty, would be to transform the republican system of the United States into a monarchy, is a point which seems to have been sufficiently decided by the general sentiment of America. In almost every instance of discussion, relating to the consolidation in question, its certain tendency to pave the way to monarchy, seems not to have been contested. The prospect of such a consolidation, has formed the only topic of controversy. It would be unnecessary, therefore, for the committee to dwell long on the reasons which support the position of the general assembly. It may not be improper, however, to remark two consequences, evidently flowing from an extension of the federal powers to every subject falling within the idea of the 'general welfare.'

One consequence must be, to enlarge the sphere of discretion allotted to the executive magistrate. Even within the legislative limits properly defined by the constitution, the difficulty of accommodating legal regulations to a country so great in extent, and so various in its circumstances, has been much felt; and has led to occasional investments of power in the executive, which involve perhaps as large a portion of discretion, as can be deemed consistent with the nature of the executive trust In proportion as the objects of legislative care might be multiplied, would the time allowed for each be diminished, and the difficulty of providing uniform and particular regulations for all, be increased. From these sources would necessarily ensue a greater latitude to the agency of that department which is always in existence, and which could best mould regulations of a general nature, so as to suit them to the diversity of particular situations. And it is in this latitude, as a supplement to the deficiency of the laws, that the degree of executive prerogative materially consists.

The other consequence would be, that of an excessive augmentation of the offices, honors and emoluments depending on the executive will. Add to the present legi-

mate stock, all those of every description which a consolidation of the states would take from them, and turn over to the federal government, and the patronage of the executive would necessarily be as much swelled in this case, as its prerogative would be in the other.

This disproportionate increase of prerogative and patronage, must evidently, either enable the chief magistrate of the union, by quiet means, to secure his re-election from time to time, and finally, to regulate the succession as he might please; or, by giving so transcendent an importance to the office, would render the elections to it so violent and corrupt, that the public voice itself might call for an hereditary, in place of an elective succession. Whichever of these events might follow, the transformation of the republican system of the United States into a monarchy, anticipated by the general assembly from a consolidation of the states into one sovereignty, would be equally accomplished; and whether it would be into a mixed or an absolute monarchy, might depend on too many contingencies to admit of any certain foresight.

The resolution *next* in order, is contained in the following terms:

"That the general assembly doth particularly protest against the palpable and alarming infractions of the constitution, in the two late cases of the 'Alien and Sedition Acts,' passed at the last session of congress; the first of which exercises a power no where delegated to the federal government; and which, by uniting legislative and judicial powers to those of executive, subverts the general principles of a free government, as well as the particular organization and positive provisions of the federal constitution; and the other of which acts exercises, in like manner, a power not delegated by the constitution; but, on the contrary, expressly and positively forbidden by one of the amendments thereto: a power, which, more than any other ought to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right."

The subject of this resolution having, it is presumed, more particularly led the general assembly into the proceedings which they communicated to the other states, and being in itself of peculiar importance; it deserves the most critical and faithful investigation; for the length of which no other apology will be necessary.

The subject divides itself into, *first*, "THE ALIEN ACT," *secondly*, "THE SEDITION ACT."

Of the "ALIEN ACT," it is affirmed by the resolution, 1st. That it exercises a power no where delegated to the federal government 2d. That it unites legislative and judicial powers to those of the executive. 3d. That this union of power, subverts the general principles of free government. 4th. That it subverts the particular organization and positive provisions of the federal constitution.

In order to clear the way for a correct view of the first position, several observations will be premised.

In the first place; it is to be borne in mind, that it being a characteristic feature of the federal constitution, as it was originally ratified, and an amendment thereto having precisely declared, 'That the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people;' it is incumbent in this, as in every other exercise of power by the federal government, to prove from the constitution, that it grants the particular power exercised.

The next observation to be made, is, that much confusion and fallacy have been thrown into the question, by blending the two cases of *aliens, members of a hostile nation;* and *aliens, members of friendly nations.* These two cases are so obviously, and so essentially distinct, that it occasions no little surprise that the distinction should have been disregarded: and the surprise is so much the greater, as it appears that the two cases are actually distinguished by two separate acts of congress, passed at the same session, and comprised in the same publication; the one providing for the case of 'alien enemies;' the other 'concerning aliens' indiscriminately, and consequently extending to aliens of every nation in peace and amity with the United States. With respect to alien enemies, no doubt has been intimated as to the federal authority over them; the constitution having expressly delegated to congress the power to declare war against any nation, and of course to treat it and all its members as enemies. With respect to aliens, who are not enemies, but members of nations in peace and amity with the United States, the power assumed by the act of congress, is denied to be constitutional; and it is accordingly against this act, that the protest of the general assembly is expressly and exclusively directed.

A third observation is, that were it admitted, as is contended, that the 'act concerning aliens,' has for its object, not a *penal*, but a *preventive* justice, it would still remain to be proved that it comes within the constitutional power of the federal legislature: and if within its power, that the legislature has exercised it in a constitutional manner

In the administration of preventive justice, the following principles have been held sacred; that some probable ground of suspicion be exhibited before some judicial authority; that it be supported by oath or affirmation; that the party may avoid being

thrown into confinement, by finding pledges or sureties for his legal conduct sufficient in the judgment of some judicial authority; that he may have the benefit of a writ of habeas corpus, and thus obtain his release, if wrongfully confined; and that he may at any time be discharged from his recognizance, or his confinement, and restored to his former liberty and rights, on the order of the proper judicial authority, if it shall see sufficient cause.

All these principles of the only preventive justice known to American jurisprudence, are violated by the alien act. The ground of suspicion is to be judged of not by any judicial authority, but by the executive magistrate alone: no oath or affirmation is required; if the suspicion be held reasonable by the president, he may order the suspected alien to depart the territory of the United States, without the opportunity of avoiding the sentence, by finding pledges for his future good conduct; as the president may limit the time of departure as he pleases, the benefit of the writ of habeas corpus, may be suspended with respect to the party, although the constitution ordains, that it shall not be suspended, unless when the public safety may require it in case of rebellion or invasion; neither of which existed at the passage of the act: and the party, being under the sentence of the president, either removed from the United States, or being punished by imprisonment, or disqualification ever to become a citizen on conviction of not obeying the order of removal, he cannot be discharged from the proceedings against him, and restored to the benefits of his former situation, although the *highest judicial authority* should see the most sufficient cause for it.

But, in the last place, it can never be admitted, that the removal of aliens, authorised by the act, is to be considered, not as punishment for an offence; but as a measure of precaution and prevention. If the banishment of an alien from a country into which he has been invited, as the asylum most auspicious to his happiness: a country where he may have formed the most tender connections, where he may have invested his entire property, and acquired property of the real and permament, as well as the moveable and temporary kind; where he enjoys under the laws, a greater share of the blessings of personal security, and personal liberty, than he can elsewhere hope for, and where he may have nearly completed his probationary title to citizenship: if, moreover, in the execution of the sentence against him, he is to be exposed, not only to the ordinary dangers of the sea, but to the peculiar casualties incident to a crisis of war, and of unusual licentiousness on that element, and possibly to vindictive purposes which his emigration itself may have provoked; if a banishment of this sort be not a punishment, and among the severest of punishments, it will be difficult to imagine a doom to which the name can be applied. And if it be a punishment, it will remain to be inquired, whether it can be constitutionally inflicted, on mere suspicion, by the single will of the executive magistrate, on persons convicted of no personal offence against the laws of the land, nor involved in any offence against the law of nations, charged on the foreign state of which they are members.

One argument offered in justification of this power exercised over aliens, is, that the admission of them into the country being of favor, not of right, the favor is all times revocable.

To this argument it might be answered, that allowing the truth of the inference, it would be no proof of what is required. A question would still occur, whether the constitution had vested the discretionary power of admitting aliens, in the federal government or in the state governments.

But it cannot be a true inference, that because the admission of an alien is a favor, the favor may be revoked at pleasure. A grant of land to an individual, may be of favor, not of right; but the moment the grant is made, the favor becomes a right, and must be forfeited before it can be taken away. To pardon a malefactor may be a favor, but the pardon is not, on that account, the less irrevocable. To admit an alien to naturalization is as much a favor, as to admit him to reside in the country, yet it cannot be pretended, that a person naturalized can be deprived of the benefits any more than a native citizen can be disfranchised.

Again, it is said, that aliens not being parties to the constitution, the rights and privileges which it secures, cannot be at all claimed by them.

To this reasoning also, it might be answered, that although aliens are not parties to the constitution, it does not follow that the constitution has vested in congress an absolute power over them. The parties to the constitution may have granted, or retained, or modified the power over aliens, without regard to that prrticular consideration.

But a more direct reply is, that it does not follow, because aliens are not parties to the constitutions, as citizens are parties to it, that whilst they actually conform to it, they have no right to its protection. Aliens are not more parties to the laws, than they are parties to the constitution; yet, it will not be disputed, that as they owe on one hand, a temporary obedience, they are entitled in return to their protection and advantage.

If aliens had no rights under the constitution, they might not only be banished, but

even capitally punished, without a jury or the other incidents to a fair trial. But so far has a contrary principle been carried, in every part of the United States, that except on charges of treason, an alien has, besides all the common privileges, the special one of being tried by a jury, of which one half may be also aliens.

It is said, further, that by the law and practice of nations, aliens may be removed at discretion, for offences against the law of nations; that congress are authorized to define and punish such offences: and that to be dangerous to the peace of society is, in aliens one of those offences.

The distinction between alien enemies and alien friends, is a clear and conclusive answer to this argument. Alien enemies are under the law of nations, and liable to be punished for offences against it. Alien friends, except in the single case of public ministers, are under the municipal law, and must be tried and punished according to that law only.

This argument also, by referring the alien act, to the power of congress to define and *punish* offences against the law of nations, yields the point that the act is of a *penal*, not merely of a preventive operation. It must, in truth be so considered. And if it be a penal act, the punishment it inflicts, must be justified by some offence that deserves it.

Offences for which aliens, within the jurisdiction of a country, are punishable, are first, offences committed by the nation of which they make a part, and in whose offences they are involved: secondly, offences committed by themselves alone, without any charge against the nation to which they belong. The first is the case of alien enemies; the second, the case of alien friends. In the first case, the offending nation can no otherwise be punished than by war, one of the laws of which authorises the expulsion of such of its members, as may be found within the country, against which the offence has been committed. In the second case, the offence being committed by the individual, not by his nation, and against the municipal law, not against the law of nations; the individual only, and not the nation, is punishable; and the punishment must be conducted according to the municipal law, not according to the law of nations. Under this view of the subject, the act of congress, for the removal of alien enemies, being conformable to the law of nations, is justified by the constitution: and the 'act' for the removal of alien friends, being repugnant to the constitutional principles of municipal law, is unjustifiable.

Nor is the act of congress for the removal of alien friends, more agreeable to the general practice of nations, than it is within the purview of the law of nations. The general practice of nations, distinguishes between alien friends and alien enemies. The latter it has proceeded against, according to the law of nations, by expelling them as enemies. The former it has considered as under a local and temporary allegience, and entitled to a correspondent protection. If contrary, instances are to be found in barbarous countries, under undefined prerogatives, or amid revolutionary dangers; they will not be deemed fit precedents for the government of the United States, even, if not beyond its constitutional authority.

It is said that congress may grant letters of marque and reprisal; that reprisals may be made on persons, as well as property; and that the removal of aliens may be considered as the exercise in an inferior degree, of the general power of reprisal on persons.

Without entering minutely into a question that does not seem to require it, it may be remarked, that reprisal is a seizure of foreign persons or property, with a view to obtain that justice for injuries done by one state or its members, to another state or its members; for which, a refusal of the aggressors requires such a resort to force under the law of nations. It must be considered as an abuse of words, to call the removal of persons from a country, a seizure or a reprisal on them: nor is the distinction to be overlooked between reprisals on persons within the country and under the faith of its laws and on persons out of the country. But laying aside these considerations, it is evidently impossible to bring the alien act within the power of granting reprisals: since it does not allege or imply any injury received from any particular nation, for which this proceeding against its members was intended as a reparation.

The proceeding is authorized against aliens *of every nation*; of nations charged neither with any similar proceeding against American citizens, nor with any injuries for which justice might be sought, in the mode prescribed by the act. Were it true, therefore, that good causes existed for reprisals against one or more foreign nations, and that neither the persons nor property of its members, under the faith of our laws, could plead an exemption; the operation of the act ought to have been limited to the aliens among us, belonging to such nations. To license reprisals against all nations, for aggressions charged on one only, would be a measure as contrary to every principle of justice and public law, as to a wise policy, and the universal practice of nations.

It is said, that the right of removing aliens, is an incident to the power of war, vested in congress by the constitution.

This is a former argument in a new shape only; and is answered by repeating, that the removal of alien enemies is an incident to the power of war; that the removal of alien friends, is not an incident to the power of war.

It is said, that congress are, by the constitution to protect each state against invasion; and that the means of *preventing* invasion are included in the power of protection against it.

The power of war in general having been before granted by the constitution, this clause must either be a mere specification for greater caution and certainty, of which there are other examples in the instrument; or be the injunction of a duty, superadded to a grant of the power. Under either explanation, it cannot enlarge the powers of congress on the subject. The power and the duty to protect each state against an invading enemy, would be the same under the general power, if this regard to greater caution had been omitted.

Invasion is an operation of war. To protect against invasion is an exercise of the power of war. A power, therefore, not incident to war, cannot be incident to a particular modification of war. And as the removal of alien friends, has appeared to be no incident to a general state of war, it cannot be incident to a partial state, or a particular modification of war.

Nor can it ever be granted, that a power to act on a case when it actually occurs, includes a power over all the means that may *tend to prevent* the occurrence of the case. Such a latitude of construction would render unavailing, every practical definition of particular and limited powers. Under the idea of preventing war in general, as well as invasion in particular, not only an indiscriminate removal of all aliens might be enforced, but a thousand other things still more remote from the operations and precautions appurtenant to war, might take place. A bigotted or tyrannical nation might threaten us with war, unless certain religious or political regulations were adopted by us; yet it never could be inferred, if the regulations which would prevent war, were such as congress had otherwise no power to make, that the power to make them would grow out of the purpose they were to answer. Congress have power to suppress insurrections, yet it would not be allowed to follow, that they might employ all the means tending to prevent them: of which a system of moral instruction for the ignorant, and of provident support for the poor, might be regarded as among the most efficacious.

One argument for the power of the general government to remove aliens, would have been passed in silence, if it had appeared under any authority inferior to that of a report made during the last session of congress, to the house of representatives by a committee and approved by the house. The doctrine on which this argument is founded, is of so new and so extraordinary a character, and strikes so radically at the political system of America, that it is proper to state it in the very words of the report.

"The act [concerning aliens] is said to be unconstitutional, because to remove aliens "is a direct breach of the constitution, which provides, by the 9th section of the 1st ar-"ticle: that the migration or importation of such persons as any of the states shall think "proper to admit, shall not be prohibited by the congress, prior to the year 1808."

Among the answers given to this objection to the constitutionality of the act, the following very remarkable one is extracted:

"Thirdly, that as the constitution has *given to the states*, no power to remove aliens, "during the period of the limitation under consideration, in the mean time, on the con-"struction assumed, there would be no authority in the country empowered to send "away dangerous aliens, which cannot be admitted.

The reasoning here used, would not in any view, be conclusive; because there are powers exercised by most other governments, which, in the United States are withheld by the people, both from the general government and from the state governments. Of this sort are many of the powers prohibited by the declarations of right prefixed to the constitutions, or by the clauses in the constitutions, in the nature of such declarations. Nay, so far is the political system of the United States distinguishable from that of other countries, by the caution with which powers are delegated and defined, that in one very important case, even of commercial regulation and revenue, the power is absolutely locked up against the hands of both governments. A tax on exports can be laid by no constitutional authority whatever. Under a system thus peculiarly guarded, there could surely be no absurdity in supposing, that alien friends, who if guilty of treasonable machinations may be punished, or if suspected on probable grounds, may be secured by pledges or imprisonment, in like manner with permanent citizens, were never meant to be subjected to banishment by any arbitrary and unusual process, either under the one government or the other.

But it is not the inconclusiveness of the general reasoning in this passage, which chiefly calls the attention to it. It is the principle assumed by it, that the powers held by the states, are given to them by the constitution of the United States; and the inference from this principle, that the powers supposed to be necessary which are not so given to the state governments, must reside in the government of the United States.

The respect which is felt for every portion of the constituted authorities, forbids some of the reflections which this singular paragraph might excite; and they are the more readily suppressed, as it may be presumed, with justice perhaps, as well as candor, that inadvertence may have had its share in the error. It would be an unjustifiable delicacy, nevertheless, to pass by so portentous a claim, proceeding from so high an authority without a monitory notice of the fatal tendencies with which it would be pregnant.

Lastly, it is said, that a law on the same subject with the alien act, passed by this state originally in 1785, and re-enacted in 1792, is a proof that a summary removal of suspected aliens, was not heretofore regarded by the Virginia legislature, as liable to the objections now urged against such a measure.

This charge against Virginia vanishes before the simple remark, that the law of Virginia relates to "suspicious persons being the subjects of any foreign power or state, who shall have *made a declaration of war*, or actually *commenced hostilities*, or from whom the president shall apprehend *hostile designs;*" whereas the act of congress relates to aliens, being the subjects of foreign powers and states, who have *neither declared war, nor commenced hostilities, nor from whom hostile designs are apprehended.*

II. It is next affirmed of the alien act, that it unites legislative, judicial, and executive powers in the hands of the president.

However difficult it may be to mark, in every case, with clearness and certainty, the line which divides legislative power from the other departments of power, all will agree that the powers referred to these departments may be so general and undefined, as to be of a legislative, not of an executive or judicial nature; and may for that reason be unconstitutional. Details to a certain degree, are essential to the nature and character of a law; and on criminal subjects, it is proper, that details should leave as little as possible to the discretion of those who are to apply and execute the law. If nothing more were required, in exercising a legislative trust, than a general conveyance of authority, without laying down any precise rules, by which the authority conveyed, should be carried into effect; it would follow that the whole power of legislation might be transferred by the legislature from itself, and proclamations might become substitutes for laws.—A delegation of power in this latitude, would not be denied to be a union of the different powers.

To determine then, whether the appropriate powers of the distinct departments are united by the act authorising the executive to remove aliens, it must be inquired whether it contains such details, definitions and rules, as appertain to the true character of a law; especially, a law by which personal liberty is invaded, property deprived of its value to the owner, and life itself indirectly exposed to danger.

The alien act declares, "that it shall be lawful for the president to order all such aliens as he shall judge *dangerous* to the peace and safety of the United States, or shall have reasonable ground to *suspect*, are concerned in any treasonable, or *secret machinations*, against the government thereof, to depart," &c.

Could a power be well given in terms less definite, less particular, and less precise? To be *dangerous to the public safety;* to be *suspected of secret machinations* against the government: these can never be mistaken for legal rules or certain definitions. They leave every thing to the President. His will is the law.

But, it is not a legislative power only that is given to the president. He is to stand in the place of the judiciary also. His suspicion is the only evidence which is to convict: his order, the only judgment which is to be executed.

Thus, it is, the president whose will is to designate the offensive conduct; it is his will that is to ascertain the individuals on whom it is charged; and it is his will, that is to cause the sentence to be executed. It is rightly affirmed, therefore, that the act unites legislative and judicial powers to those of the executive.

III It is affirmed, that this union of power subverts the general principle of free government.

It has become an axiom in the science of government, that a separation of the legislative, executive, and judicial departments, is necessary to the preservation of public liberty. No where has this axiom been better understood in theory, or more carefully pursued in practice, than in the United States.

IV. It is affirmed that such a union of powers subverts the particular organization and positive provisions of the federal constitution.

According to the particular organization of the constitution, its legislative powers are vested in the congress, its executive powers in the president, and its judicial powers in a supreme and inferior tribunals. The union of any two of these powers, and still more of all three, in any one of these departments, as has been shewn to be done by the alien act, must consequently subvert the constitutional organization of them.

That positive provisions in the constitution, securing to individuals the benefits of fair trial, are also violated by the union of powers in the alien act, necessarily results from the two facts, that the act relates to alien friends, and that alien friends being under the municipal law only, are entitled to its protection.

The *second* object against which the resolution protests, is THE SEDITION ACT.

Of this act it is affirmed, 1. That it exercises in like manner a power not delegated by the constitution. 2. That the power, on the contrary, is expressly and positively forbidden by one of the amendments to the constitution. 3. That this is a power which more than any other ought to produce universal alarm; because it is levelled against the right of freely examining public characters and measures, and of free communication thereon, which has ever been justly deemed the only effectual guardian of every other right.

1. That it exercises a power not delegated by the constitution.

Here again it will be proper to recollect, that the federal government being composed of powers specifically granted with a reservation of all others to the states or to the people, the positive authority under which the sedition act could be passed must be produced by those who assert its constitutionality. In what part of the constitution, then, is this authority to be found?

Several attempts have been made to answer this question, which will be examined in their order. The committee will begin with one, which has filled them with equal astonishment and apprehension; and which they cannot but persuade themselves, must have the same effect on all, who will consider it with coolness and impartiality, and with a reverence for our constitution, in the true character in which it issued from the sovereign authority of the people. The committee refer to the doctrine lately advanced as a sanction to the sedition act; "that the common or unwritten law," a law of vast extent and complexity, and embracing almost every possible subject of legislation, both civil and criminal, makes a part of the law of these states, in their united and national capacity.

The novelty, and, in the judgment of the committee, the extravagance of this pretension, would have consigned it to the silence, in which they have passed by other arguments, which an extraordinary zeal for the act has drawn into the discussion; but the auspices, under which this innovation presents itself, have constrained the committee to bestow on it an attention, which other considerations might have forbidden.

In executing the task, it may be of use to look back to the colonial state of this country, prior to the revolution; to trace the effect of the revolution which converted the colonies into independent states; to inquire into the import of the articles of confederation, the first instrument by which the union of the states was regularly established; and, finally, to consult the constitution of 1787, which is the oracle that must decide the important question.

In the state prior to the revolution, it is certain that the common law, under different limitations, made a part of the colonial codes. But whether it be understood that the original colonists brought the law with them, or made it their law by adoption; it is equally certain, that it was the separate law of each colony within its respective limits, and was unknown to them, as a law pervading and operating through the whole, as one society.

It could not possibly be otherwise. The common law was not the same in any two of the colonies; in some the modifications were materially and extensively different.—There was no common legislature, by which a common will could be expressed in the form of a law; nor any common magistracy, by which such a law could be carried into practice. The will of each colony alone and separately had its organs for these purposes.

This stage of our political history, furnishes no foothold for the patrons of this new doctrine.

Did then, the principle or operation of the great event which made the colonies independent states, imply or introduce the common law, as a law of the union?

The fundamental principle of the revolution was, that the colonies were co-ordinate members with each other, and with Great Britain; of an empire, united by a common executive sovereign, but not united by any common legislative sovereign. The legislative power was maintained to be as complete in each American parliament, as in the British parliament And the royal prerogative was in force in each colony, by virtue of its acknowledging the king for its executive magistrate, as it was in Great Britain, by virtue of a like acknowledgment there. A denial of these principles by Great Britain, and the assertion of them by America, produced the revolution.

There was a time indeed, when an exception to the legislative separation of the several component and co-equal parts of the empire, obtained a degree of acquiescence. The British parliament was allowed to regulate the trade with foreign nations, and between the different parts of the empire. This was, however, mere practice with out right, and contrary to the true theory of the constitution. The convenience of some regulations, in both cases, was apparent; and, as there was no legislature with power over the whole, nor any constitutional pre-eminence among the legislatures of the several parts, it was natural for the legislature of that particular part which was the eldest and the largest, to assume this function, and for the others to acquiesce in it. This tacit arrangement was the less criticised, as the regulations established by the British parliament operated in favor of that part of the empire, which seemed to bear the principal share of the public burdens, and were regarded as an indemnification of its advances for the other parts. As long as this regulating power was confined to the two objects of conveniency and equity, it was not complained of, nor much inquired into. But, no sooner was it perverted to the selfish views of the party assuming it, than the injured parties began to feel and to reflect; and the moment the claim to a direct and indefinite power was ingrafted on the precedent of the regulating power, the whole charm was dissolved, and every eye opened to the usurpation. The assertion by Great Britain of a power to make laws for the other members of the empire *in all cases whatsoever* ended in the discovery, that she had a right to make laws for them *in no cases whatsoever*.

Such being the ground of our revolution, no support nor colour can be drawn from it, for the doctrine that the common law is binding on these states as one society. The doctrine, on the contrary, is evidently repugnant to the fundamental principle of the revolution.

The articles of confederation, are the next source of information on this subject.

In the interval between the commencement of the revolution and the final ratification of these articles, the nature and extent of the union was determined by the circumstances of the crisis, rather than by any accurate delineation of the general authority. It will not be alledged, that the 'common law' could have had any legitimate birth as a law of the United States during that state of things. If it came as such into existence at all, the charter of confederation must have been its parent.

Here again, however, its pretensions are absolutely destitute of foundation. This instrument does not contain a sentence or a syllable that can be tortured into a countenance of the idea, that the parties to it were, with respect to the objects of the common law, to form one community. No such law is named, or implied, or alluded to, as being in force, or as brought into force by that compact. No provision is made by which such a law could be carried into operation; whilst, on the other hand, every such inference or pretext is absolutely precluded by article 2, which declares 'that each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in congress assembled.'

Thus far it appears, that not a vestige of this extraordinary doctrine can be found in the origin or progress of American institutions. The evidence against it has, on the contrary, grown stronger at every step, till it has amounted to a formal and positive exclusion, by written articles of compact among the parties concerned.

Is this exclusion revoked, and the common law introduced as national law, by the present constitution of the United States? This is the final question to be examined.

It is readily admitted, that particular parts of the common law may have a sanction from the constitution, so far as they are necessarily comprehended in the technical phrases which express the powers delegated to the government; and so far also, as such other parts may be adopted by congress as necessary and proper for carrying into execution the powers expressly delegated. But, the question does not relate to either of these portions of the common law. It relates to the common law beyond these limitations.

The only part of the constitution which seems to have been relied on in this case, is the 2d section of article III. 'The judicial power shall extend to all cases, *in law and equity*, arising *under this constitution*, the laws of the United States, and treaties made or which shall be made under their authority.'

It has been asked, what cases, distinct from those arising under the laws and treaties of the United States, can arise under the constitution, other than those arising under the common law; and it is inferred, that the common law is accordingly adopted or recognized by the constitution.

Never, perhaps, was so broad a construction applied to a text so clearly unsusceptible of it. If any colour for the inference could be found, it must be in the impossibility of finding any other cases in law and equity, within the provisions of the constitution, to satisfy the expression; and rather than resort to a construction affecting so essentially the whole character of the government, it would perhaps be more rational to consider the expression as a mere pleonasm or inadvertence. But it is not necessary to decide on such a dilemma. The expression is fully satisfied, and its accuracy justified, by two descriptions of cases, to which the judicial authority is extended, and neither of which implies that the common law is the law of the United States. One of these descriptions comprehends the cases growing out of the restrictions on the legislative power of the states. For example, it is provided that 'no state shall emit bills of credit,' or 'make any thing but gold and silver coin a tender in payment of debts.' Should this prohibition be violated, and a suit *between citizens of the same state* be the consequence, this would be a case arising under the constitution before the judicial power of the United States. A second description comprehends suits between citizens and foreigners, of citizens of different states, to be decided according to the state or foreign laws; but submitted by the constitution to the judicial power of the United States; the judicial power being, in several instances, extended beyond the legislative power of the United States.

To this explanation of the text, the following observations may be added.

The expression, 'cases in law and equity,' is manifestly confined to cases of a civil nature; and would exclude cases of criminal jurisdiction. Criminal cases in law and equity, would be a language unknown to the law.

The succeeding paragraph of the same section, is in harmony with this construction. It is in these words: 'In all cases affecting ambassadors, or other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. *In all* the other cases [including cases of law and equity arising under the constitution] the supreme court shall have *appellate* jurisdiction both as to law and *fact*; with such exceptions, and under such regulations, as congress shall make.'

This paragraph, by expressly giving an *appellate* jurisdiction, in cases of law and equity arising under the constitution, to *fact*, as well as to law, clearly excludes crimi-

nal cases, where the trial by jury is secured; because the fact in such cases, is not a subject of appeal. And, although the appeal is liable to such *exceptions* and regulations as congress may adopt, yet it is not to be supposed that an *exception* of *all* criminal cases could be contemplated; as well because a discretion in congress to make or omit the exception would be improper, as because it would have been unnecessary. The exception could as easily have been made by the constitution itself, as referred to the congress.

Once more: the amendment last added to the constitution, deserves attention as throwing light on this subject 'The judicial power of the United States shall not be construed to extend to any suit in *law* or *equity*, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign power.' As it will not be pretended that any criminal proceeding could take place against a state; the terms *law* or *equity*, must be understood as appropriate to *civil*, in exclusion of *criminal* cases.

From these considerations, it is evident that this part of the constitution, even if it could be applied at all, to the purpose for which it has been cited, would not include any cases whatever of a criminal nature; and consequently, would not authorise the inference from it, that the judicial authority extends to *offences* against the common law, as offences arising under the constitution.

It is further to be considered, that even if this part of the constitution could be strained into an application to every common law case, criminal as well as civil, it could have no effect in justifying the sedition act; which is an exercise of legislative and not of judicial power: and it is the judicial power, only, of which the extent is defined in this part of the constitution.

There are two passages in the constitution, in which a description of the law of the United States, is found. The first is contained in art. III, sec. 2, in the words following: 'This constitution, the laws of the U. S. and treaties made, or which shall be made under this authority.' The second, is contained in the second paragraph of art. VI, as follows: 'This constitution, and the laws of the United States which, shall be 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.' The first of these descriptions was meant as a guide to the judges of the United States; the second as a guide to the judges of the several states. Both of them consist of an enumeration, which was evidently meant to be precise and complete. If the common law had been understood to be a law of the United States, it is not possible to assign a satisfactory reason why it was not expressed in the enumeration.

In aid of these objections, the difficulties and confusion inseparable from a constructive introduction of the common law, would afford powerful reasons against it.

Is it to be the common law with, or without the British statutes?

If without the statutory amendments, the vices of the code would be insupportable.

If with these amendments, what period is to be fixed for limiting the British authority over our laws?

Is it to be the date of the eldest or the youngest of the colonies?

Or are the dates to be thrown together, and a medium deduced?

Or, is our independence to be taken for the date?

Is, again, regard to be had to the various changes in the common law made by the local codes of America?

Is regard to be had to such changes, subsequent, as well as prior, to the establishment of the constitution?

Is regard to be had to future, as well as past changes?

Is the law to be different in every state, as differently modified by its code; or are the modifications of any particular state, to be applied to all?

And on the latter supposition, which among the state codes would form the standard?

Questions of this sort might be multiplied with as much ease as there would be difficulty in answering them.

The consequences flowing from the proposed construction, furnish other objections equally conclusive: unless the text were peremptory in its meaning, and consistent with other parts of the instrument.

These consequences may be in relation to the legislative authority of the United States; to the executive authority; to the judicial authority; and to the governments of the several states.

If it be understood, that the common law is established by the constitution, it follows that no part of the law can be altered by the legislature; such of the statutes already passed, as may be repugnant thereto, would be nullified; particularly the 'sedition act' itself, which boasts of being a melioration of the common law; and the whole code, with all its incongruities, barbarisms, and bloody maxims, would be inviolably saddled on the good people of the United States.

Should this consequence be rejected, and the common law be held, like other laws, liable to revision and alteration, by the authority of congress, it then follows, that the authority of congress is co-extensive with the objects of common law; that is to say, with every object of legislation: for, to every such object, does some branch or other of

the common law extend. The authority of congress would, therefore, be no longer under the limitations, marked out in the constitution. They would be authorised, to legislate in all cases whatsoever.

In the next place, as the president possesses the executive powers of the constitution, and is to see that the laws be faithfully executed, his authority also must be co-extensive with every branch of the common law. The additions which this would make to this power, though not readily to be estimated, claim the most serious attention.

This is not all; it will merit the most profound consideration, how far an indefinite admission of the common law, with a latitude in construing it, equal to the construction by which it is deduced from the constitution, might draw after it the various prerogatives making part of the unwritten law of England. The English constitution itself, is nothing more than a composition of unwritten laws and maxims.

In the third place, whether the common law be admitted as of legal or of constitutional obligation, it would confer on the judicial department, a discretion little short of a legislative power.

On the supposition of its having a constitutional obligation, this power in the judges would be permanent and irremediable by the legislature. On the other supposition, the power would not expire, until the legislature should have introduced a full system of statutory provisions. Let it be observed, too, that besides all the uncertainties above enumerated, and which present an immense field for judicial discretion, it would remain with the same department to decide what parts of the common law would, and what would not, be properly applicable to the circumstances of the United States.

A discretion of this sort has always been lamented as incongruous and dangerous, even in the colonial and state courts; although so much narrowed by positive provisions in the local codes on all the principal subjects embraced by the common law. Under the United States, where so few laws exist on those subjects, and where so great a lapse of time must happen before the vast chasm could be supplied, it is manifest that the power of the judges over the law would, in fact, erect them into legislators; and, that for a long time, it would be impossible for the citizens to conjecture, either what was, or would be law.

In the last place, the consequence of admitting the common law as the law of the United States, on the authority of the individual states, is as obvious as it would be fatal.—As this law relates to every subject of legislation, and would be paramount to the constitutions and laws of the states; the admission of it would overwhelm the residuary sovereignty of the states, and by one constructive operation, new model the whole political fabric of the country.

From the review thus taken of the situation of the American colonies, prior to their independence; of the effect of this event on their situation; of the nature and import of the articles of confederation; of the true meaning of the passage in the existing constitution from which the common law has been deduced; of the difficulties and uncertainties incident to the doctrine; and of its vast consequences in extending the powers of the federal government, and in superseding the authorities of the state governments, the committee feel the utmost confidence in concluding, that the common law never was, nor by any fair construction, ever can be deemed a law for the American people as one community; and they indulge the strongest expectation that the same conclusion will finally be drawn by all candid and accurate inquirers into the subject. It is, indeed, distressing to reflect, that it ever should have been made a question, whether the constitution, on the whole face of which is seen so much labor to enumerate and define the several objects of federal power, could intend to introduce in the lump, in an indirect manner, and by a forced construction of a few phrases, the vast and multifarious jurisdiction involved in the common law; a law filling so many ample volumes; a law overspreading the entire field of legislation; and a law that would sap the foundation of the constitution as a system of limited and specified powers. A severer reproach could not, in the opinion of the committee, be thrown on the constitution, on those who framed, or on those who established it, than such a supposition would throw on them.

The argument then, drawn from the common law, on the ground of its being adopted or recognised by the constitution, being inapplicable to the sedition act, the committee will proceed to examine the other arguments which have been founded on the constitution.

They will waste but little time on the attempt to cover the act by the preamble to the constitution; it being contrary to every acknowledged rule of construction, to set up this part of an instrument, in opposition to the plain meaning, expressed in the body of the instrument. A preamble usually contains the general motives or reasons, for the particular regulations or measures which follow it; and is always understood to be explained and limited by them. In the present instance, a contrary interpretation would have the inadmissible effect of rendering nugatory or improper, every part of the constitution which succeeds the preamble.

The paragraph in art. 1, sec. 8, which contains the power to lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defence and general welfare, having been already examined, will also require no particular attention in this place. It will have been seen that in its fair and consistent meaning, it cannot enlarge the enumerated powers vested in congress.

The part of the constitution which seems most to be recurred to, in defence of the "sedition act," is the last clause of the above section, empowering congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all powers vested by this constitution in the government of the U. States, or in any department or officer thereof."

The plain import of this clause is, that congress shall have all the incidental or instrumental powers, necessary and proper for carrying into execution all the express powers; whether they be vested in the government of the United States, more collectively, or in the several departments, or officers thereof. It is not a grant of new powers to congress, but merely a declaration, for the removal of all uncertainty, that the means of carrying into execution, those otherwise granted, are included in the grant.

Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is, whether the power be expressed in the constitution. If it be, the question is decided. If it be not expressed, the next enquiry must be, whether it is properly an incident to an express power, and necessary to its execution. If it be, it may be exercised by congress. If it be not, congress cannot exercise it.

Let the question be asked then, whether the power over the press, exercised in the "sedition act," be found among the powers expressly vested in the congress? This is not pretended.

Is there any express power, for executing which, it is a necessary and proper power?

The power which has been selected, as least remote, in answer to this question, is that "of suppressing insurrections;" which is said to imply a power to *prevent* insurrections, by punishing whatever may *lead* or *tend* to them. But it surely cannot, with the least plausibility, be said, that the regulation of the press, and a punishment of libels, are exercises of a power to suppress insurrections. The most that could be said, would be, that the punishment of libels, if it had the tendency ascribed to it, might prevent the occasion of passing or executing laws, necessary and proper for the suppression of insurrections.

Has the federal government no power then, to prevent, as well as to punish, resistance to the laws?

They have the power which the constitution deemed most proper in their hands for the purpose. The congress has power, before it happens, to pass laws for punishing it; and the executive and judiciary have power to enforce those laws when it does happen.

It must be recollected by many, and could be shewn to the satisfaction of all, that the construction here put on the terms 'necessary and proper,' is precisely the construction which prevailed during the discussions and ratifications of the constitution. It may be added, and cannot too often be repeated, that it is a construction absolutely necessary to maintain their consistency with the peculiar character of the government, as possessed of particular and definite powers only; not of the general and indefinite powers vested in ordinary governments. For if the power to *suppress insurrections*, includes a power to *punish libels;* or if the power to *punish*, includes a power to *prevent*, by all the means that may have that *tendency*, such is the relation and influence among the most remote subjects of legislations, that a power over a very few, would carry with it a power over all. And it must be wholly immaterial, whether unlimited powers be exercised under the name of unlimited powers, or be exercised under the name of unlimited means of carrying into execution, limited powers.

This branch of the subject will be closed with a reflection which must have weight with all; but more especially with those who place peculiar reliance on the judicial exposition of the constitution, as the bulwark provided against undue extensions of the legislative power. If it be understood that the powers implied in the specified powers, have an immediate and appropriate relation to them, as means necessary and proper for carrying them into execution, questions, on the constitutionality of laws passed for this purpose, will be of a nature sufficiently precise and determinate for judicial cognizance and control. If, on the other hand, congress are not limited in the choice of means by any such appropriate relation of them to the specified powers; but may employ all such means they may deem fitted to *prevent* as well as to *punish* crimes subjected to their authority; such as may have a *tendency* only to *promote* an object for which they are authorized to provide; every one must perceive that questions relating to means of this sort, must be questions for mere policy and expediency; on which legislative discretion alone can decide, and from which the judicial interposition and control are completely excluded.

II. The next point which the resolution requires to be proved is, that the power over the press exercised by the sedition act, is positively forbidden by one of the amendments to the constitution.

The amendment stands in these words—'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, *or abridging the freedom of speech, or of the press;* or the right of the people peaceably to assemble, and to petition to the government for a redress of grievances.'

In the attempts to vindicate the 'sedition act,' it has been contended, 1. That the 'freedom of the press' is to be determined by the meaning of these terms in the common law. 2. That the article supposes the power over the press to be in congress, and prohibits them only from *abridging* the freedom allowed to it by the common law.

Although it will be shewn, on examining the second of these positions, that the amendment is a denial to congress of all power over the press; it may not be useless to make the following observations on the first of them.

It is deemed to be a sound opinion, that the sedition act, in its definition of some of the crimes created, is an abridgment of the freedom of publication, recognized by principles of the common law in England.

The freedom of the press, under the common law, is in the defences of the sedition act, made to consist in an exemption from all *previous* restraint on printed publications, by persons authorised to inspect and prohibit them. It appears to the committee, that this idea of the freedom of the press, can never be admitted to be the American idea of it: since a law inflicting penalties on printed publications, would have a similar effect with a law authorising a previous restraint on them. It would seem a mockery to say, that no laws should be passed, preventing publications from being made, but that laws might be passed for punishing them in case they should be made.

The essential difference between the British government, and the American constitutions, will place this subject in the clearest light.

In the British government, the danger of encroachments on the rights of the people, is understood to be confined to the executive magistrate. The representatives of the people in the legislature, are not only exempt themselves, from distrust, but are considered as sufficient guardians of the rights of their constituents against the danger from the executive. Hence it is a principle, that the parliament is unlimited in its power; or, in their own language, is omnipotent. Hence, too, all the ramparts for protecting the rights of the people, such as their magna charta, their bill of rights, &c are not reared against the parliament, but against the royal prerogative. They are merely legislative precautions, against executive usurpations. Under such a government as this, an exemption of the press from previous restraint by licensers appointed by the king, is all the freedom that can be secured to it.

In the United States, the case is altogether different.—The people, not the government, possess the absolute sovereignty. The legislature, no less than the executive, is under limitations of power. Encroachments are regarded as possible from the one, as well as from the other. Hence in the United States, the great and essential rights of the people are secured against legislative, as well as executive ambition. They are secured not by laws paramount to prerogative; but by constitutions paramount to laws. This security of the freedom of the press requires, that it should be exempt, not only from previous restraint by the executive, as in Great Britain; but from legislative restraint also; and this exemption to be effectual, must be an exemption, not only from the previous inspection of licenses, but from the subsequent penalty of laws.

The state of the press, therefore, under the common law, cannot in this point of view, be the standard of its freedom in the United States.

But there is another view, under which it may be necessary to consider this subject. It may be alledged, that, although the security for the freedom of the press, be different in Great Britain and in this country; being a legal security only in the former, and a constitutional security in the latter; and although there may be a further difference, in an extension of the freedom of the press, here, beyond an exemption from previous restraint, to an exemption from subsequent penalties also; yet that the actual legal freedom of the press, under the common law, must determine the degree of freedom, which is meant by the terms, and which is constitutionally secured against both previous and subsequent restraints.

The committee are not unaware of the difficulty of all general questions, which may turn on the proper boundary between the liberty and licentiousness of the press. They will leave it, therefore, for consideration only, how far the difference between the nature of the British government, and the nature of the American governments, and the practice under the latter, may shew the degree of rigor in the former, to be inapplicable to, and not obligatory in the latter.

The nature of governments elective, limited and responsible, in all their branches, may well be supposed to require a greater freedom of animadversion, than might be tolerated by the genius of such a government as that of Great Britain. In the latter, it is a maxim, that the king, an hereditary, not a responsible magistrate, can do no wrong; and that the legislature, which in two thirds of its composition, is also hereditary, not responsible, can do what it pleases. In the United States, the executive magistrates are not held to be infalliable, nor the legislatures to be omnipotent; and both being elective, are both responsible. Is it not natural and necessary, under such different circumstances, that a different degree of freedom, in the use of the press, should be contemplated?

Is not such an inference favored by what is observable in Great Britain itself? Notwithstanding the general doctrine of the common law, on the subject of the press, and the occasional punishment of those, who use it with a freedom offensive to the government; it is well known, that with respect to the responsible members of the government, where the reasons operating here, become applicable there, the freedom exercised by the press, and protected by public opinion, far exceeds the limits prescribed by the ordinary rules of law. The ministry, who are responsible to impeachment, are at all times, animadverted on, by the press, with peculiar freedom; and during the elections

for the house of commons, the other responsible part of the government, the press is employed with as little reserve towards the candidates.

The practice in America must be entitled to much more respect. In every state, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men, of every description, which has not been confined to the strict limits of the common law. On this footing, the freedom of the press has stood; on this foundation it yet stands. And it will not be a breach, either of truth or of candor, to say, that no persons or presses are in the habit of more unrestrained animadversions on the proceedings and functionaries of the state governments, than the persons and presses most zealous in vindicating the act of congress for punishing similar animadversions on the government of the United States.

The last remark will not be understood, as claiming for the state governments, an immunity greater than they have heretofore enjoyed. Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true, than in that of the press. It has accordingly been decided by the practice of the states, that it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits. And can the wisdom of this policy be doubted by any one who reflects, that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity, over error and oppression; who reflect, that to the same beneficent source, the United States owe much of the lights which conducted them to the ranks of a free and independent nation; and which have improved their political system into a shape so auspicious to their happiness. Had "Sedition Acts," forbidding every publication that might bring the constituted agents into contempt or disrepute, or that might excite the hatred of the people against the authors of unjust or pernicious measures, been uniformly enforced against the press; might not the United States have been languishing at this day, under the infirmities of a sickly confederation? Might they not, possibly, be miserable colonies, groaning under a foreign yoke?

To these observations one fact will be added, which demonstrates that the common law cannot be admitted as the *universal* expositor of American terms, which may be the same with those contained in that law. The freedom of conscience, and of religion, are found in the same instruments which assert the freedom of the press. It will never be admitted, that the meaning of the former, in the common law of England, is to limit their meaning in the United States.

Whatever weight may be allowed to these considerations, the committee do not, however, by any means, intend to rest the question on them. They contend that the article of the amendment, instead of supposing in congress a power that might be exercised over the press, provided its freedom was not abridged, was meant as a positive denial to congress, of any power whatever on the subject.

To demonstrate that this was the true object of the article, it will be sufficient to recall the circumstances which led to it, and to refer to the explanation accompanying the article.

When the constitution was under discussion which preceded its ratification, it is well known, that great apprehensions were expressed by many, lest the omission of some positive exception from the powers delegated, of certain rights, and of the freedom of the press particularly, might expose them to the danger of being drawn by construction within some of the powers vested in congress; more especially of the power to make all laws necessary and proper for carrying their other powers into execution. In reply to this objection, it was invariably urged to be a fundamental and characteristic principle of the constitution, that all powers not given by it were reserved; that no powers were given beyond those enumerated in the constitution, and such as was fairly incident to them; that the power over the rights in question, and particularly over the press, was neither among the enumerated powers, nor incident to any of them; and consequently, that an exercise of any such power, would be manifest usurpation. It is painful to remark how much the arguments now employed in behalf of the sedition act, are at variance with the reasoning which then justified the constitution, and invited its ratification.

From this posture of the subject, resulted the interesting question in so many of the conventions, whether the doubts and dangers ascribed to the constitution, should be removed by any amendments previous to the ratification, or be postponed, in confidence that as far as they might be proper, they would be introduced in the form provided by the constitution. The latter course was adopted; and in most of the states, ratifications were followed by propositions and instructions for rendering the constitution more explicit, and more safe to the rights not meant to be delegated by it. Among those rights, the freedom of the press, in most instances, is particularly and emphatically mentioned. The firm and very pointed manner in which it is asserted in the proceedings of the convention of this state will be hereafter seen.

In pursuance of the wishes thus expressed, the first congress that assembled under the constitution, proposed certain amendments, which have since, by the necessary ratifications, been made a part of it; among which amendments is the article containing, among other prohibitions on the congress, an express declaration that they should make no law abridging the freedom of the press.

Without tracing farther the evidence on this subject, it would seem scarcely possible to doubt, that no power whatever over the press, was supposed to be delegated by the constitution, as it originally stood; and that the amendment was intended as a positive and absolute reservation of it

But the evidence is still stronger. The proposition of amendments made by congress, is introduced in the following terms—

"*The conventions of a number of the states having at the time of their adopting the constitution, expressed a desire, in order to prevent misconstructions or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the government, will best insure the beneficent ends of its institutions.*"

Here is the most satisfactory and authentic proof, that the several amendments proposed, were to be considered as either declaratory or restrictive; and whether the one or the other, as corresponding with the desire expressed by a number of the states, and as extending the ground of public confidence in the government.

Under any other construction of the amendment relating to the press, than that it declared the press to be wholly exempt from the power of congress, the amendment could neither be said to correspond with the desire expressed by a number of the states, nor be calculated to extend the ground of public confidence in the government.

Nay, more; the construction employed to justify the "Sedition Act," would exhibit a phenomenon, without a parallel in the political world. It would exhibit a number of respectable states, as denying first, that any power over the press was delegated by the constitution; as proposing next, that an amendment to it should explicitly declare that no such power was delegated; and finally, as concurring in an amendment actually recognizing or delegating such a power.

Is then the federal government, it will be asked, destitute of every authority for restraining the licentiousness of the press, and for shielding itself against the libellous attacks which may be made on those who administer it.

The constitution alone can answer this question. If no such power be expressly delegated, and if it be not both necessary and proper to carry into execution an express power; above all, if it be expressly forbidden, by a declaratory amendment to the constitution, the answer must be that the federal government is destitute of all such authority.

And might it not be asked in turn, whether it is not more probable, under all the circumstances which have been reviewed, that the authority should be withheld by the constitution, than that it should be left to a vague and violent construction; whilst so much pains were bestowed in enumerating other powers, and so many less important powers are included in the enumeration?

Might it not be likewise asked, whether the anxious circumspection which dictated so many *peculiar* limitations on the general authority, would be unlikely to exempt the press altogether from that authority? The peculiar magnitude of some of the powers necessarily committed to the federal government; the peculiar duration required for the functions of some of its departments; the peculiar distance of the seat of its proceedings from the great body of its constituents; and the peculiar difficulty of circulating an adequate knowledge of them through any other channel; will not these considerations, some or other of which produced other exceptions from the powers of ordinary governments, altogether, account for the policy of binding the hand of the federal government from touching the channel which alone can give efficacy to its responsibility to its constituents; and of leaving those who administer it, to a remedy for their injured reputations, under the same laws, and in the same tribunals, which protect their lives, their liberties, and their properties?

But the question does not turn either on the wisdom of the constitution, or on the policy which gave rise to its particular organization. It turns on the actual meaning of the instrument; by which it has appeared, that a power over the press is clearly excluded, from the number of powers delegated to the federal government.

3. And in the opinion of the committee, well may it be said, as the resolution concludes with saying, that the unconstitutional power exercised over the press by the "sedition act," ought "more than any other, to produce universal alarm; because it is levelled against that right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right."

Without scrutinizing minutely into all the provisions of the "sedition act," it will be sufficient to cite so much of section 2, as follows:—"And be it further enacted, That if any person shall write, print, utter, or publish, or shall cause or procure to be written, printed, uttered, or published, or shall knowingly and willingly assist or aid in writing, printing, uttering or publishing, any false, scandalous, and malicious writing or writings against the government of the United States, or either house of the congress of the United States, *with an intent to defame the said government, or either house of the said congress, or the president, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States, &c. Then such person being thereof convicted before any court*

of the United States, having jurisdiction thereof, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years."

On this part of the act, the following observations present themselves.

1. The constitution supposes that the president, the congress, and each of its houses, may not discharge their trusts, either from defect of judgment or other causes. Hence, they are all made responsible to their constituents, at the returning periods of election; and the president, who is singly entrusted with very great powers, is, as a further guard, subjected to an intermediate impeachment.

2. Should it happen, as the constitution supposes it may happen, that either of these branches of the government may not have duly discharged its trust; it is natural and proper, that according to the cause and degree of their faults, they should be brought into contempt or disrepute, and incur the hatred of the people.

3. Whether it has, in any case, happened that the proceedings of either, or all of those branches, evinces such a violation of duty as to justify a contempt, a disrepute, or hatred among the people, can only be determined by a free examination thereof, and a free communication among the people thereon.

4. Whenever it may have actually happened, that proceedings of this sort are chargeable on all or either of the branches of the government, it is the duty as well as right of intelligent and faithful citizens to discuss and promulge them freely, as well to control them by the censorship of the public opinion, as to promote a remedy according to the rules of the constitution. And it cannot be avoided, that those who are to apply the remedy must feel, in some degree, a contempt or hatred against the transgressing party.

5. As the act was passed on July 14, 1798, and is to be in force until March 3, 1801, it was of course, that during its continuance, two elections of the entire house of representatives, an election of a part of the senate, and an election of a president, were to take place.

6. That consequently, during all these elections intended by the constitution, to preserve the purity, or to purge the faults of the administration, the great remedial rights of the people were to be exercised, and the responsibility of their public agents to be skreened, under the penalties of this act.

May it not be asked of every intelligent friend to the liberties of his country, whether the power exercised in such an act as this, ought not to produce great and universal alarm? Whether a rigid execution of such an act, in time past, would not have repressed that information and communication among the people which is indispensable to the just exercise of their electoral rights? And whether such an act, if made perpetual, and enforced with rigour, would not, in time to come, either destroy our free system of government, or prepare a convulsion that might prove equally fatal to it?

In answer to such questions, it has been pleaded that the writings and publications forbidden by the act, are those only which are false and malicious. and intended to defame; and merit is claimed for the privilege allowed to authors to justify, by proving the truth of their publications, and for the limitations to which the sentence of fine and imprisonment is subjected.

To those who concurred in the act, under the extraordinary belief that the option lay between the passing of such an act, and leaving in force the common law of libels, which punishes truth equally with falsehood; and submits the fine and imprisonment to the indefinite discretion of the court, the merit of good intentions ought surely not to be refused. A like merit may perhaps be due for the discontinuance of the *corporal punishment*, which the common law also leaves to the discretion of the court. This merit of *intention*, however, would have been greater, if the several mitigations had not been limited to so short a period; and the apparent inconsistency would have been avoided, between justifying the act at one time, by contrasting it with the rigors of the common law, otherwise in force; and at another time, by appealing to the nature of the crisis, as requiring the temporary rigor exerted by the act.

But, whatever may have been the meritorious intentions of all or any who contributed to the sedition act; a very few reflections will prove, that its baleful tendency is little diminished by the privilege of giving in evidence the truth of the matter contained in political writings.

In the first place, where simple and naked facts alone are in question, there is sufficient difficulty in some cases, and sufficient trouble and vexation in all, of meeting a prosecution from the government, with the full and formal proof necessary in a court of law.

But in the next place, it must be obvious to the plainest minds, that opinions and inferences, and conjectural observations, are not only in many cases inseparable from the facts, but may often be more the objects of the prosecution than the facts themselves; or may even be altogether abstracted from particular facts; and that opinions and inferences, and conjectural observations, cannot be subjects of that kind of proof which appertains to facts, before a court of law.

Again: It is no less obvious that the *intent* to defame or bring into contempt or disrepute, or hatred, which is made a condition of the offence created by the act, cannot prevent its pernicious influence on the freedom of the press. For, omitting the inquiry, how far the malice of the intent is an inference of the law from the mere publication; it is manifestly impossible to punish the intent to bring those who administer the govern-

ment into disrepute or contempt, without striking at the right of freely discussing public characters and measures: because those who engage in such discussions, must expect and *intend* to excite these unfavorable sentiments, so far as they may be thought to be deserved. To prohibit, the intent to excite those unfavorable sentiments against those who administer the government, is equivalent to a prohibition of the actual excitement of them; and to prohibit the actual excitement of them, is equivalent to a prohibition of discussions having that tendency and effect; which, again, is equivalent to a protection of those who administer the government, if they should at any time deserve the contempt or hatred of the people, against being exposed to it, by free animadversions on their characters and conduct. Nor can there be a doubt, if those in public trust be shielded by penal laws from such strictures of the press, as may expose them to contempt or disrepute, or hatred, where they may deserve it, that in exact proportion as they may deserve to be exposed, will be the certainty and criminality of the intent to expose them and the vigilance of prosecuting and punishing it; nor a doubt that a government thus intrenched in penal statutes, against the just and natural effects of a culpable administration, will easily evade the responsibility which is essential to a faithful discharge of its duty.

Let it be recollected lastly, that the right of electing the members of the government constitutes more particularly the essence of a free and responsible government. The value and efficacy of this right, depends on the knowledge of the comparative merits and demerits of the candidates for public trust; and on the equal freedom, consequently of examining and discussing these merits and demerits of the candidates respectively. It has been seen that a number of important elections will take place while the act is in force; although it should not be continued beyond the term to which it is limited.—Should there happen then, as is extremely probable in relation to some or other of the branches of the government, to be competitions between those who are, and those who are not members of the government, what will be the situations of the competitors?—Not equal; because the characters of the former will be covered by the "sedition act" from animadversions exposing them to disrepute among the people; whilst the latter may be exposed to the contempt and hatred of the people, without a violation of the act. What will be the situation of the people? Not free; because they will be compelled to make their election between competitors, whose pretensions they are not permitted by the act equally to examine, to discuss, and to ascertain. And from both these situations will not those in power derive an undue advantage for continuing themselves in it; which by impairing the right of election; endangers the blessings of the government founded on it.

It is with justice, therefore, that the general assembly have affirmed in the resolution, as well that the right of freely examining public characters and measures, and of communication thereon, is the only effectual guardian of every other right; as that this particular right is levelled at, by the power exercised in the "sedition act."

The resolution next in order is as follows:

That this state having by its convention, which ratified the federal constitution, expressly declared, that among other essential rights, "the liberty of conscience and of the press cannot be cancelled, abridged, restrained or modified by any authority of the U. States," and from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition, having, with other states, recommended an amendment for that purpose, which amendment was in due time annexed to the constitution; it would mark a reproachful inconsistency, and criminal degeneracy, if an indifference were not shown, to the most palpable violation of one of the rights thus declared and secured; and to the establishment of a precedent, which may be fatal to the other.

To place this resolution in its just light, it will be necessary to recur to the act of ratification by Virginia, which stands in the ensuing form:

"We, the delegates of the people of Virginia, duly elected in pursuance of a recommendation from the general assembly, and now met in convention, having fully and freely investigated and discussed the proceedings of the federal convention, and being prepared as well as the most mature deliberation hath enabled us, to decide thereon; DO, in the name and in behalf of the people of Virginia, declare and make known, that the powers granted under the constitution, being derived from the people of the United States, may be resumed by them, whensoever the same shall be perverted to their injury or oppression; and that every power not granted thereby, remains with them, and at their will. That therefore, no right of any denomination can be cancelled, abridged, restrained or modified by the congress, by the senate or house of representatives acting in any capacity, by the president, or any department or officer of the United States, except in those instances in which power is given by the constitution for those purposes; and that among other essential rights, the liberty of conscience, and of the press, cannot be cancelled, abridged, restrained or modified by any authority of the United States." *

Here is an express and solemn declaration by the convention of the state, that they ratified the constitution in the sense that no right of any denomination can be cancelled, abridged, restrained or modified by the government of the United States, or any part of it, except in those instances in which power is given by the constitution; and in the sense particularly, "that among other essential rights, the liberty of conscience and

* See page 215—first part of this volume [4].

freedom of the press cannot be cancelled, abridged, restrained or modified by any authority of the United States."

Words could not well express, in a fuller or more forcible manner, the understanding of the convention, that the liberty of conscience and the freedom of the press, were *equally* and *completely* exempted from all authority whatever of the United States.

Under an anxiety to guard more effectually these rights against every possible danger, the convention, after ratifying the constitution, proceeded to prefix to certain amendments proposed by them, a declaration of rights, in which are two articles providing, the one for the liberty of conscience, the other for the freedom of speech, and of the press.

Similar recommendations having proceeded from a number of other states; and congress, as has been seen, having in consequence thereof, and with a view to extend the ground of public confidence, proposed among other declaratory and restrictive clauses, a clause expressly securing the liberty of conscience and of the press; and Virginia having concurred in the ratifications which made them a part of the constitution, it will remain with a candid public to decide, whether it would not mark an inconsistency and degeneracy, if an indifference were not shown to a palpable violation of one of those rights, the freedom of the press; and to a precedent therein, which may be fatal to the other, the free exercise of religion.

That the precedent established by the violation of the former of these rights, may, as is affirmed by the resolution, be fatal to the latter, appears to be demonstrable, by a comparison of the grounds on which they respectively rest; and from the scope of reasoning, by which the power of the former has been vindicated.

First, Both of these rights, the liberty of conscience and of the press, rest equally on the original ground of not being delegated by the constitution, and consequently withheld from the government. Any construction, therefore, that would attack this original security for the one, must have the like effect on the other.

Secondly, They are both equally secured by the supplement to the constitution; being both included in the same amendment, made at the same time, and by the same authority. Any construction or argument then, which would turn the amendment into a grant or acknowledgement of power with respect to the press, might be equally applied to the freedom of religion

Thirdly, If it be admitted that the extent of the freedom of the press, secured by the amendment, is to be measured by the common law on this subject; the same authority may be resorted to, for the standard which is to fix the extent of the "free exercise of religion." It cannot be necessary to say what this standard would be; whether the common law be taken solely as the unwritten, or as varied by the written law of England.

Fourthly, If the words and phrases in the amendment are to be considered as chosen with a studied discrimination, which yields an argument for a power over the press, under the limitation that its freedom be not abridged; the same argument results from the same consideration, for a power over the exercise of religion, under the limitation that its freedom be not prohibited.

For, if congress may regulate the freedom of the press provided they do not abridge it, because it is said only, "they shall not abridge it," and is not said, "they shall make no law respecting it:" the analogy of reasoning is conclusive, that congress may *regulate* and even *abridge* the free exercise of religion, provided they do not *prohibit it;* because it is said only "they shall not prohibit it;" and is *not* said, "they shall make no law *respecting*, or no law *abridging* it."

The general assembly were governed by the clearest reason, then, in considering the "sedition act," which legislates on the freedom of the press, as establishing a precedent that may be fatal to the liberty of conscience: and it will be the duty of all, in proportion as they value the security of the latter, to take the alarm at every encroachment on the former.

The two concluding resolutions only remain to be examined. They are in the words following—

That the good people of this commonwealth, having ever felt, and continuing to feel, the most sincere affection for their brethren of the other states, the truest anxiety for establishing and perpetuating the union of all; and the most scrupulous fidelity to that constitution, which is the pledge of mutual friendship, and the instrument of mutual happiness; the general assembly doth solemnly appeal to the like dispositions in the other states, in confidence that they will concur with this commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional; and that the necessary and proper measures will be taken by each, for co-operating with this state, in maintaining unimpaired, the authorities, rights, and liberties reserved to the states respectively, or to the people.

That the governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other states, with a request that the same may be communicated to the legislature thereof; and that a copy be furnished to each of the senators and representatives, representing this state in the congress of the U. States.

The fairness and regularity of the course of proceeding, here pursued, have not protected it against objections even from sources too respectable to be disregarded.

It has been said that it belongs to the judiciary of the United States, and not the state legislatures, to declare the meaning of the federal constitution.

But a declaration, that proceedings of the federal government are not warranted by the constitution, is a novelty neither among the citizens, nor among the legislatures of the states; nor are the citizens or the legislature of Virginia, singular in the example of it.

Nor can the declarations of either, whether affirming or denying the constitutionality of measures of the federal government; or whether made before or after judicial decisions thereon, be deemed in any point of view, an assumption of the office of the judge. The declarations, in such cases, are expressions of opinion, unaccompanied with any other effect than what they may produce on opinion, by exciting reflection. The expositions of the judiciary, on the other hand, are carried into immediate effect by force. The former may lead to a change in the legislative expression of the general will; possibly to a change in the opinion of the judiciary; the latter enforces the general will, whilst that will and that opinion continue unchanged.

And if there be no impropriety in declaring the unconstitutionality of proceedings in the federal government, where can be the impropriety of communicating the declaration to other states, and inviting their concurrence in a like declaration? What is allowable for one, must be allowable for all; and a free communication among the states, where the constitution imposes no restraint, is as allowable among the state governments, as among other public bodies or private citizens.—This consideration derives a weight, that cannot be denied to it, from the relation of the state legislatures to the federal legislature as the immediate constituents of one of its branches.

The legislatures of the states have a right also to originate amendments to the constitution, by a concurrence of two-thirds of the whole number, in applications to congress for the purpose. When new states are to be formed by a junction of two or more states or parts of states, the legislatures of the states concerned, are as well as congress, to concur in the measure. The states have a right also to enter into agreements or compacts, with the consent of congress. In all such cases, a communication among them results from the object which is common to them.

It is lastly to be seen, whether the confidence expressed by the resolution, that the *necessary and proper measures* would be taken by the other states for co-operating with Virginia in maintaining the rights reserved to the states, or to the people, be in any degree liable to the objections which have been raised against it.

If it be liable to objection, it must be because either the object or the means are objectionable.

The object being to maintain what the constitution has ordained, is in itself a laudable object.

The means are expressed in the terms 'the necessary and proper measures.' A proper object was to be pursued, by means both necessary and proper.

To find an objection, then, it must be shown that some meaning was annexed to these general terms, which was not proper; and, for this purpose, either that the means used by the general assembly were an example of improper means, or that there were no proper means to which the terms could refer.

In the example given by the state, of declaring the alien and sedition acts, to be unconstitutional, and of communicating the declaration to other states, no trace of improper means has appeared. And if the other states had concurred in making a like declaration, supported too by the numerous applications flowing immediately from the people, it can scarcely be doubted, that these simple means would have been as sufficient, as they are unexceptionable.

It is no less certain that other means might have been employed, which are strictly within the limits of the constitution. The legislatures of the states might have made a direct representation to congress, with a view to obtain a rescinding of the two offensive acts; or, they might have represented to their respective senators in congress their wish, that two-thirds thereof, would propose an explanatory amendment to the constitution: or two-thirds of themselves, if such had been their option, might, by an application to congress, have obtained a convention for the same object.

These several means, though not equally eligible in themselves, nor probably to the states, were all constitutionally open for consideration. And if the general assembly, after declaring the two acts to be unconstitutional, the first and most obvious proceeding on the subject, did not undertake to point out to the other states a choice among the farther measures that might become necessary and proper, the reserve will not be misconstrued by liberal minds into any culpable imputation.

These observations appear to form a satisfactory reply to every objection which is not founded on a misconception of the terms employed in the resolutions. There is one other, however, which may be of too much importance not to be added. It cannot be forgotten, that among the arguments addressed to those who apprehend danger to liberty from the establishment of the general government over so great a country, the appeal was emphatically made to the intermediate existence of the state governments, between the people and that government, to the vigilance with which they would descry the first symptoms of usurpation, and to the promptitude with which they would sound

the alarm to the public. This argument was probably not without its effect; and if it was a proper one then, to recommend the establishment of the constitution, it must be a proper one now, to assist in its interpretation.

The only part of the two concluding resolutions that remains to be noticed, is the repetition in the first of that warm affection to the Union and its members, and of that scrupulous fidelity to the constitution, which have been invariably felt by the people of this state. As the proceedings were introduced with these sentiments, they could not be more properly closed than in the same manner. Should there be any so far misled as to call in question the sincerity of these professions, whatever regret may be excited by the error, the general assembly cannot descend into a discussion of it. Those, who have listened to the suggestion, can only be left to their own recollection of the part which this state has borne in the establishment of our national independence, in the establishment of our national constitution, and in maintaining under it the authority and laws of the union, without a single exception of internal resistance or commotion. By recurring to the facts, they will be able to convince themselves, that the representatives of the people of Virginia, must be above the necessity of opposing any other shield to attacks on their national patriotism, than their own conscientiousness, and the justice of an enlightened public; who will perceive in the resolutions themselves, the strongest evidence of attachment both to the constitution and the union, since it is only by maintaining the different governments and departments within their respective limits, that the blessings of either can be perpetuated.

The extensive view of the subject, thus taken by the committe, has led them to report to the house, as the result of the whole, the following resolution:

Resolved, That the general assembly, having carefully and respectfully attended to the proceedings of a number of the states, in answer to their resolutions of December 21, 1798, and having accurately and fully re-examined and re-considered the latter, find it to be their indispensable duty to adhere to the same, as founded in truth, as consonant with the constitution, and as conducive to its preservation; and more especially to be their duty to renew, as they do hereby renew their PROTEST against "the Alien and Sedition Acts," as palpable and alarming infractions of the constitution.

KENTUCKY RESOLUTIONS.

[Doubts having been expressed to the editor, as to the authorship of the following resolutions, the subjoined extract of a letter is inserted, as furnishing conclusive evidence as to the identity of the illustrious writer. *See pages 344-45 of Mr. Jefferson's Memoirs.*]

"*To —— Nicholas.*

"MONTICELLO, December 11, 1821.

"*Dear Sir*, Your father, Colonel W. C. Nicholas and myself happening to be together, the engaging the co-operation of Kentucky in an energetic protestation against the constitutionality of those laws [the alien and sedition laws] became a subject of consultation. Those gentlemen pressed me strongly to sketch resolutions for that purpose, your father undertaking to introduce them to that legislature, with a solemn assurance, which I strictly required, that it should not be known from what quarter they came.—I drew and delivered them to him, and in keeping their origin secret, he fulfilled his pledge of honor. Some years after this, colonel Nicholas asked me if I would have any objection to its being known that I had drawn them. I pointedly enjoined that it should not. Whether he had unguardedly intimated it before to any one, I know not: but I afterwards observed in the papers repeated imputations of them to me; on which, as has been my practice on all occasions of imputation, I have observed entire silence. The question, indeed, has never before been put to me, nor should I answer it to any other than yourself; seeing no good end to be proposed by it, and the desire of tranquility inducing with me a wish to be withdrawn from public notice. Your father's zeal and talents were too well known, to derive any additional distinction from the penning these resolutions. That circumstance, surely, was of far less merit than the proposing and carrying them through the legislature of his state. The only fact in this statement, on which my memory is not distinct, is the time and occasion of the consultation with your father and Colonel Nicholas. It took place here I know; but whether any other person was present, or communicated with, is my doubt. I think Mr. Madison was either with us, or consulted, but my memory is uncertain as to minute details."

TH: JEFFERSON.

KENTUCKY LEGISLATURE. *In the House of Representatives, November* 10, 1798:

The house, according to the standing order of the day, resolved itself into a committee of the whole, on the state of the commonwealth, Mr. CALDWELL in the chair, And after some time spent therein, the speaker resumed the chair, and Mr. Caldwell reported, that the committee had, according to order, had under consideration the governor's address, and had come to the following resolutions thereupon, which he delivered in at the clerk's table, where they were twice read, and agreed to by the house.

1. *Resolved*, That the several states composing the United States of America, are not united on the principle of unlimited submission to the general government; but that by compact under the style and title of a constitution for the United States, and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving each state to itself, the residuary mass of right to their own self government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritive, void, and of no force; that to this compact each state acceded as a state, and as an integral party, its co-states forming as to itself, the other party; that the government created by this compact was not made the exclusive or final *judge* of the extent of the powers delegated to itself—since that would have made its discretion, and not the constitution, the measure of its powers; but that as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions, as of the mode and measure of redress.

2. *Resolved*, That the constitution of the United States having delegated to congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offences against the laws of nations, and no other crimes whatever, and it being true as a general principle, and one of the amendments to the constitution having also declared "That the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people; therefore also the same act of congress, passed on the 14th day of July, 1798, and entitled "An act in addition to the act entitled an act, for the punishment of certain crimes against the United States;" as also the act passed by them on the 27th day of June, 1798, entitled "An act to punish frauds committed on the Bank of the United States," (and all other of their acts which assume to create, define, or punish crimes other than those enumerated in the constitution,) are altogether void and of no force, and that the power to create, define, and punish such other crimes, is reserved, and of right, appertains solely and exclusively to the respective states, each within its own territory.

3. *Resolved*, That it is true as a general principle, and is also expressly declared by one of the amendments to the constitution, that "The powers not delegated to the U. States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people;" and that no power over the freedom of religion, freedom of speech, or freedom of the press, being delegated to the United States by the constitution, nor prohibited by it to the states, all lawful powers respecting the same, did of right remain, and were reserved to the states, or to the people; that thus was manifested their determination to retain to themselves, the right of judging how far the licentiousness of speech and of the press, may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use, should be tolerated rather than the use should be destroyed: and thus also, they guarded against all abridgement by the United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same, as this state by a law passed on the general demand of its citizens, had already protected them from all human restraints or interference: And that in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the constitution, which expressly declares, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press," thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch, that whatever violates either, throws down the sanctuary which covers the others, and libels, falsehoods, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals: That, therefore, the act of the congress of the United States, passed on the 14th day of July, 1798, entitled, "An act in addition to the act, for the punishment of certain crimes against the United States," which does abridge the freedom of the press, is not law, but is altogether void and of no effect.

4. *Resolved*, That alien friends are under the jurisdiction and protection of the laws of the state wherein they are; that no power over them has been delegated to the United States, nor prohibited to the individual states distinct from their power over citizens: and it being true as a general principle, and one of the amendments to the constitution having also declared, "that the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people," the act of the congress of the United States, passed on the 22d day of June, 1798, entitled "an act concerning aliens," which assumes power over alien friends not delegated by the constitution, is not law, but is altogether void and of no force.

5. *Resolved*, That in addition to the general principle as well as the express declaration, that powers not delegated are reserved, another and more special provision inserted in the constitution from abundant caution has declared, "that 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 1808." That this commonwealth

does admit the migration of alien friends described as the subject of the said act concerning aliens; that a provision against prohibiting their migration, is a provision against all acts equivalent thereto, or it would be nugatory; that to remove them when migrated, is equivalent to a prohibition of their migration, and is therefore contrary to the said provision of the constitution, and void.

6. *Resolved*, That the imprisonment of a person under the protection of the laws of this commonwealth on his failure to obey the simple *order* of the president, to depart out of the United States, as is undertaken by the said act, entitled "an act concerning aliens," is contrary to the constitution; one amendment to which has provided, that "no person shall be deprived of liberty without due process of law," and that another having provided, "that in all criminal prosecutions, the accused shall enjoy the right to a public trial by an impartial jury, 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 for his defence," the same act undertaking to authorize the president to remove a person out of the United States who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favor, without defence, without counsel, is contrary to these provisions also of the constitution, is therefore not law, but utterly void and of no force.

That transferring the power of judging any person who is under the protection of the laws, from the courts to the president of the United States, as is undertaken by the same act, concerning aliens, is against the article of the constitution, which provides, that "the judicial power of the United States, shall be vested in courts, the judges of which shall hold their offices during good behaviour," and that the said act is void for that reason also; and it is further to be noted, that this transfer of judiciary power is to that magistrate of the general government who already possesses all the executive, and a qualified negative in all the legislative powers.

7. *Resolved*, That the construction applied by the general government (as is evinced by sundry of their proceedings, to those parts of the constitution of the United States which delegate to congress a power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare of the United States, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the constitution in the government of the United States, or any department thereof, goes to the destruction of all the limits prescribed to their power by the constitution—That words meant by that instrument to be subsidiary only to the execution of the limited powers, ought not to be so construed as themselves to give unlimited powers, nor apart so to be taken, as to destroy the whole residue of the instrument; that the proceedings of the general government under colour of these articles, will be a fit and necessary subject for revisal and correction at a time of greater tranquility, while those specified in the preceding resolutions call for immediate redress.

8. *Resolved*, That the preceding resolutions be transmitted to the senators and representatives in congress from the commonwealth, who are hereby enjoined to present the same to their respective houses, and to use their best endeavors to procure at the next session of congress, a repeal of the aforesaid unconstitutional and obnoxious acts.

9. *Resolved, lastly*, That the governor of this commonwealth be, and he is hereby authorised and requested to communuicate the preceding resolutions to the legislatures of the several states, to assure them that this commonwealth considers union for specified national purposes, and particularly for those specified in their late federal compact, to be friendly to the peace, happiness, and prosperity of all the states: that, faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation; that it does also believe that to take from the states all the powers of self-government, and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these states: and that therefore, this commonwealth is determined, as it doubts not its co-states are tamely to submit to undelegated and consequently unlimited powers in no man or body of men on earth: that if the acts before specified should stand, these conclusions would flow from them; that the general government may place any act they think proper on the list of crimes, and punish it themselves, whether enumerated or not enumerated by the constitution, as recognizable by them; that they may transfer its cognizance to the president or any other person, who may himself be the accuser, counsel, judge, and jury, whose *suspicions* may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction: That a very numerous and valuable description of the inhabitants of these states, being by this precedent reduced as outlaws to the absolute dominion of one man, and the barrier of the constitution thus swept away from us all, no rampart now remains against the passions and the power of a majority of congress, to protect from a like exportation or other more grievous punishment the minority of the same body, the legislatures, judges, governors, and counsellors of the states, nor their other peaceful inhabitants who may venture to reclaim the constitutional rights and liberties of the states and people, or who

for other causes, good or bad, may be obnoxious to the views, or marked by the suspicions of the president, or be thought dangerous to his or their elections, or other interests public or personal: That the friendless alien has indeed been selected as the safest subject of a first experiment; but the citizen will soon follow, or rather has already followed; for, already has a sedition act marked him as its prey: that these and successive acts of the same character, unless arrested on the threshold may tend to drive these states into revolution and blood, and will furnish new calumnies against republican governments, and new pretexts for those who wish it to be believed, that man cannot be governed but by a rod of iron; that it would be a dangerous delusion, were a confidence in the men of our choice, to silence our fears for the safety of our rights; that confidence is every where the parent of despotism: free government is founded in jealousy and not in confidence; it is jealousy and not confidence which prescribes limited constitutions to bind down those whom we are obliged to trust with power; that our constitution has accordingly fixed the limits to which and no further our confidence may go; and let the honest advocate of confidence read the alien and sedition acts, and say if the constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits? Let him say what the government is, if it be not a tyranny, which the men of our choice have conferred on the president, and the president of our choice has assented to and accepted over the friendly strangers, to whom the mild spirit of our country and its laws had pledged hospitality and protection: that the men of our choice have more respected the bare suspicions of the president, than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of power, then let no more be heard of confidence in man, but bind him down from mischief, by the chains of the constitution. That this commonwealth does therefore, call on its co-states for an expression of their sentiments on the acts concerning aliens, and for the punishment of certain crimes herein before specified, plainly declaring, whether these acts are or are not authorized by the federal compact? And it doubts not that their sense will be so announced, as to prove their attachment unaltered to limited government, whether general or particular, and that the rights and liberties of their co-states, will be exposed to no dangers by remaining embarked on a common bottom with their own: That they will concur with this commonwealth in considering the said acts as so palpably against the constitution, as to amount to an undisguised declaration, that the compact is not meant to be the measure of the powers of the general government, but that it will proceed in the exercise over these states of all powers whatsoever. That they will view this as seizing the rights of the states, *and consolidating them in the hands of the general government* with a power assumed to bind the states, (not merely in cases made federal,) but in all cases whatsoever, by laws made, not with their consent, but by others against their consent: That this would be to surrender the form of government we have chosen, and to live under one deriving its powers from its own will, and not from our authority: and that the co-states *recurring to their natural right* in cases not made *federal*, will *concur in declaring these acts void and of no force*, and will each unite with this commonwealth in requesting their repeal at the next session of congress.

EDMUND BULLOCK, *S. H. R.*
JOHN CAMPBELL, *S. S. P. T.*

Passed the house of representatives, November 10th, 1798.
Attest, THOMAS TODD, *C. H. R.*
In SENATE, Nov. 13th, 1798, unanimously concurred in.
Attest, B. THURSTON, *Clk. Sen.*
Approved, November 16th, 1798.
JAMES GARRARD, *G K.*
By the Governor: HARRY TOULMIN, *Secretary of State.*

KENTUCKY LEGISLATURE. *In the House of Representatives, November* 14, 1799.

The house, according to the standing order of the day, resolved itself into a committee of the whole house, on the state of the commonwealth: Mr. DESHA in the chair; and after some time spent therein, the speaker resumed the chair, and Mr. Desha reported, that the committee had taken under consideration sundry resolutions passed by several state legislatures, on the subject of the alien and sedition laws, and had come to a resotion thereupon, which he delivered in at the clerk's table, where it was read, and *unanimously* agreed to by the house, as follows:

The representatives of the good people of this commonwealth in general assembly convened, having maturely considered the answers of sundry states in the union, to their resolutions passed at the last session, respecting certain unconstitutional laws of congress, commonly called the alien and sedition laws, would be faithless indeed to themselves, and to those they represent, were they silently to acquiesce in the principles and doctrines attempted to be maintained in all those answers, that of Virginia only excepted. To again enter the field of argument, and attempt more fully or forcibly to expose the unconstitutionality of those obnoxious laws, would, it is apprehended, be as unnecessary as unavailing. We cannot however but lament, that in the discussion of those

interesting subjects, by sundry of the legislatures of our sister states, unfounded suggestions, and uncandid insinuations, derogatory to the true character and principles of the good people of this commonwealth, have been substituted in place of fair reasoning and sound argument. Our opinions of these alarming measures of the general government, together with our reasons for those opinions, were detailed with decency and with temper, and submitted to the discussion and judgment of our fellow citizens throughout the union. Whether the like decency and temper have been observed in the answers of most of those states who have denied or attempted to obviate the great truths contained in those resolutions, we have now only to submit to a candid world. Faithful to the true principles of the federal union, unconscious of any designs to disturb the harmony of that union, and anxious only to escape the fangs of despotism, the good people of this commonwealth are regardless of censure or calumniation. Least, however, the silence of this commonwealth should be construed into an acquiescence in the doctrines and principles advanced and attempted to be maintained by the said answers, or least those of our fellow citizens throughout the union, who so widely differ with us on these important subjects, should be deluded by the expectation, that we shall be deterred from what we conceive our duty; or shrink from the principles contained in those resolutions; therefore,

Resolved, That this commonwealth considers the federal union upon the terms and for the purposes specified in the late compact, as conducive to the liberty and happiness of the several states; That it does now unequivocally declare its attachment to the union, and to that compact, agreeable to its obvious and real intention, and will be among the last to seek its dissolution; That if those who administer the general government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, an annihilation of the state governments, and the erection upon their ruins, of a general consolidated government, will be the inevitable consequence: That the principle and construction contended for by sundry of the state legislatures, that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism; since the *discretion* of those who administer the government, and not the *constitution*, would be the measure of their powers. That the several states who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction, and *that a nullification by those sovereignties, of all unauthorized acts done under color of that instrument, is the rightful remedy:* That this commonwealth does, upon the most deliberate reconsideration declare, that the said alien and sedition laws are, in their opinion, palpable violations of the said constitution; and however cheerfully it may be disposed to surrender its opinion to a majority of its sister states in matters of ordinary or doubtful policy; yet in momentous regulations like the present, which so vitally wound the best rights of the citizen, it would consider a silent acquiescence as highly criminal. That although this commonwealth, as a party to the federal compact, will bow to the laws of the union, yet it does at the same time declare, that it will not now, nor ever hereafter, cease to oppose in a constitutional manner, every attempt, from what quarter soever offered, to violate that compact. And, finally, in order that no pretexts or arguments may be drawn from a supposed acquiescence on the part of this commonwealth in the constitutionality of those laws, and be thereby used as precedents for similar future violations of the federal compact; this commonwealth does now enter against them, its SOLEMN PROTEST.

Extract, &c. Attest: THOMAS TODD, C. H. R.

In Senate, Nov. 22, 1799. Read and concurred in.
Attest: B. THURSTON, C. S.

NULLIFICATION—LETTER OF JAMES MADISON.

To the Editor of the North American Review.

MONTPELIER, AUGUST, 1830.

Dear Sir: I have duly received your letter, in which you refer to the "nullifying doctrine," advocated as constitutional right, by some of our distinguished fellow-citizens; and to the proceedings of the Virginia Legislature in '98 and '99, as appealed to in behalf of that doctrine; and you express a wish for my ideas on those subjects.

I am aware of the delicacy of the task in some respects, and the difficulty in every respect, of doing full justice to it. But, having, in more than one instance, complied with a like request from other friendly quarters, I do not decline a sketch of the views which I have been led to take of the doctrine in question, as well as some others connected with them; and of the grounds from which it appears, that the proceedings of Virginia have been misconceived by those who have appealed to them. In order to understand the true character of the constitution of the United States, the error, not uncommon, must be avoided, of viewing it through the medium, either of a consolidated government, or of a confederated government, whilst it is neither the one nor the other; but a mixture of both. And having, in no model, the similitudes and analogies applicable to other systems of government, it must, more than any other, be its own interpreter, according to its text and *the facts of the case.*

From these it will be seen, that the characteristic peculiarities of the constitution are, 1, the mode of its formation; 2, the division of the supreme powers of government between the states in their united capacity, and the states in their individual capacities.

1 It was formed, not by the governments of the component states, as the federal government for which it was substituted was formed. Nor was it formed by a majority of the people of the United States, as a single community, in the manner of a consolidated government.

It was formed by the states, that is, by the people in each of the states, acting in their highest sovereign capacity; and formed consequently by the same authority which formed the state constitutions

Being thus derived from the same source as the constitutions of the states, it has, within each state, the same authority as the constitution of the state: and is as much a constitution, in the strict sense of the term, within its prescribed sphere, as the constitutions of the states are, within their respective spheres: but with this obvious and essential difference, that, being a compact among the states in their highest sovereign capacity, and constituting the people thereof one people for certain purposes, it cannot be altered or annulled at the will of the states individually, as the constitution of a state may be at its individual will.

2. And that it divides the supreme powers of government, between the government of the United States, and the governments of individual states, is stamped on the face of the instrument; the powers of war and of taxation, of commerce, and of treaties, and other enumerated powers vested in the government of the United States, being of as high and sovereign a character, as any of the powers reserved to the state governments.

Nor is the government of the United States, created by the constitution, less a government in the strict sense of the term, within the sphere of its powers, than the governments created by the constitution of the states are, within their several spheres. It is like them, organized into legislative, executive, and judiciary departments. It operates, like them, directly on persons and things. And, like them, it has at command a physical force for executing the powers committed to it. The concurrent operation in certain cases, is one of the features marking the peculiarity of the system,

Between these different constitutional governments, the one operating in all the states, the others operating separately in each, with the aggregate powers of government divided between them, it could not escape attention, that controversies would arise concerning the boundaries of jurisdiction; and that some provision ought to be made for such occurrences. A political system that does not provide for a peaceful and authoritative termination of occurring controversies, would not be more than the shadow of a government; the object and end of a real government being, the substitution of law and order, for uncertainty, confusion, and violence.

That to have left a final decision, in such cases, to each of the states, then thirteen, and already twenty-four, could not fail to make the constitution and laws of the United States different in different states, was obvious; and not less obvious, that this diversity of independent decisions, must altogether distract the government of the union, and speedily put an end to the union itself. A uniform authority of the laws is in itself a vital principle. Some of the most important laws could not be partially executed.— They must be executed in all the states, or they could be duly executed in none. An impost, or an excise for example, if not in force in some states, would be defeated in others. It is well known that this was among the lessons of experience, which had a primary influence in bringing about the existing constitution. A loss of its general authority would moreover revive the exasperating questions between the states holding ports for foreign commerce, and the adjoining states without them; to which are now

added, all the inland states, necessarily carrying on their foreign commerce through other states.

To have made the decisions under the authority of the individual states, co-ordinate in all cases, with decisions under the authority of the United States, would unavoidably produce collisions incompatible with the peace of society, and with that regular and efficient administration, which is of the essence of free government. Scenes could not be avoided, in which a ministerial officer of the United States, and the correspondent officer of an individual state, would have rencounters in executing conflicting decrees; the result of which would depend on the comparative force of the local *posses* attending them; and that, a casualty depending on the political opinions and party feelings in different states.

To have referred every clashing decision, under the two authorities, for a final decision, to the states, as parties to the constitution, would be attended with delays, with inconveniences, and with expenses, amounting to a prohibition of the expedient; not to mention its tendency to impair the salutary veneration for a system requiring such frequent interpositions; nor the delicate questions which might present themselves as to the form of stating the appeal, and as to the quorum for deciding it.

To have trusted to negotiation for adjusting disputes between the government of the United States and the state governments, as between independent and separate sovereignties, would have lost sight altogether of a constitution and government for the union; and opened a direct road from a failure of that resort to the *ultima ratio* between nations wholly independent of and alien to each other. If the idea had its origin in the process of adjustment, between separate branches of the same government, the analogy entirely fails. In the case of disputes between the independent parts of the same government, neither part being able to consummate its will, nor the government to proceed without a concurrence of the parts, necessity brings about an accommodation. In disputes between a state government and the government of the United States, the case is practically as well as theoretically different; each party possessing all the departments of an organized government, legislative, executive, and judicial; and having each a physical force to support its pretensions. Although the issue of negotiation might sometimes avoid this extremity, how often would it happen, among so many states, that an unaccommodating spirit in some would render that resource unavailing? A contrary supposition would not accord with a knowledge of human nature, or the evidence of our own political history.

"The constitution, not relying on any of the preceding modifications, for its safe and successful operation, has expressly declared, on the one hand—1. "that the constitution, and the laws made in pursuance thereof, and all treaties made under the authority of the United States, shall be the supreme law of the land; 2. that the judges of every state shall be bound thereby, any thing in the constitution and laws of any state, to the contrary notwithstanding; 3. that the judicial power of the United States shall extend to all cases in law and equity arising under the constitution, the laws of the U. States, and treaties made under their authority, &c."

On the other hand, as a security of the rights and powers of the states, in their individual capacities, against an undue preponderance of the powers granted to the government over them in their united capacity, the constitution has relied on—1. The responsibility of the senators and representatives in the legislature of the United States to the legislatures and the people of the states. 2. The responsibility of the president to the people of the United States. And 3d. The liability of the executive and judicial functionaries of the United States to impeachment by the representatives of the people of the states, in one branch of the legislature of the United States, and trial by the representatives of the states, in the other branch; the state functionaries, legislative, executive and judicial, being, at the same time, in their appointment and responsibility, altogether independent of the agency or authority of the United States.

How far this structure of the government of the United States is adequate and safe for its object, time alone can absolutely determine. Experience seems to have shown, that whatever may grow out of future stages of our national career, there is, as yet, a sufficient control, in the popular will, over the executive and legislative departments of the government. When the alien and sedition laws were passed, in contravention to the opinions and feelings of the community, the first elections that ensued, put an end to them. And whatever may have been the character of other acts, in the judgment of many of us, it is but true, that they have generally accorded with the view of a majority of the states and of the people. At the present day it seems well understood, that the laws which have created most dissatisfaction, have had a like sanction within doors: and that, whether continued, varied, or repealed, a like proof will be given of the sympathy and responsibility of the representative body, to the constituent body. Indeed, the great complaint now is, against the results of this sympathy and responsibility in the legislative policy of the nation.

With respect to the judicial power of the United States, and the authority of the supreme court in relation to the boundary of jurisdiction between the federal and the state governments, I may be permitted to refer to the thirty-ninth number of the "Federal-

ist,"* for the light in which the subject was regarded by its writer, at the period when the constitution was depending; and it is believed, that the same was the prevailing view then taken of it, that the same view has continued to prevail, and that it does so at this time, notwithstanding the eminent exceptions to it.

But it is perfectly consistent with the concession of this power to the supreme court, in cases falling within the course of its functions, to maintain that the power has not always been rightly exercised. To say n thing of the period, happily a short one, when judges in their seats did not abstain from intemperate and party harrangues, equally at variance with their duty and their dignity; there have been occasional decisions from the bench, which have incurred serious and extensive disapprobation. Still it would seem, that, with but few exceptions, the course of the judiciary has been hitherto sustained by the predominant sense of the nation.

Those who have denied or doubted the supremacy of the judicial power of the United States, and denounce at the same time a nullifying power in a state, seem not to have sufficiently adverted to the utter inefficiency of a supremacy in a law of the land, without a supremacy in the exposition and execution of the law; nor to the destruction of all equipoise between the federal government and the state governments, if, whilst the functionaries of the federal government are directly or indirectly elected by and responsible to the states, and the functionaries of the states are, in their appointment and responsibility, wholly independent of the United States, no constitutional control of any sort belonged to the United States over the states. Under such an organization, it is evident that it would be in the power of the states, individually, to pass unauthorised laws, and to carry them into complete effect, any thing in the constitution and laws of the United States to the contrary notwithstanding. This would be a nullifying power in its plenary character; and whether it had its final effect, through the legislative, executive, or judiciary organ of the state, would be equally fatal to the constituted relation between the two governments.

Should the provisions of the constitution as here reviewed, be found not to secure the government and rights of the states, against usurpations and abuses on the part of the United States, the final resort within the purview of the constitution, lies in an amendment of the constitution, according to a process applicable by the states.

And in the event of a failure of every constitutional resort, and an accumulation of usurpations and abuses, rendering passive obedience and non-resistance a greater evil than resistance and revolution, there can remain but one resort, the last of all—an appeal from the cancelled obligations of the constitutional compact, to original rights and the law of self-preservation. This is the *ultima ratio* under all governments, whether consolidated, confederated, or a compound of both; and it cannot be doubted, that a single member of the union, in the extremity supposed, but in that only, would have a right, as an extra and ultra-constitutional right, to make the appeal.

This brings us to the expedient lately advanced, which claims for a single state a right to appeal against an exercise of power by the government of the United States decided by the state to be unconstitutional, to the parties to the constitutional compact; the decision of the state to have the effect of nullifying the act of the government of the United States, unless the decision of the state be reversed by three-fourths of the parties.

The distinguished names and high authorities which appear to have asserted and given a practical scope to this doctrine, entitle it to a respect which it might be difficult otherwise to feel for it.

If the doctrine were to be understood as requiring the three-fourths of the states to sustain, instead of that proportion to reverse the decision of the appealing state, the decision to be without effect during the appeal, it would be sufficient to remark, that this extra-constitutional course might well give way to that marked out by the constitution, which authorizes two-thirds of the states to institute, and three-fourths to effectuate, an amendment to the constitution, establishing a permanent rule of the highest authority, in place of an irregular precedent of construction only.

But it is understood that the nullifying doctrine imports that the decision of the state is to be presumed valid, and that it overrules the law of the United States unless overruled by three-fourths of the states.

Can more be necessary to demonstrate the inadmissibility of such a doctrine, than that it puts it in the power of the smallest fraction, over one-fourth of the United States, that is, of seven states out of twenty-four, to give the law and even the constitution to seventeen states, each of the seventeen having, as parties to the constitution, an equal right

* No. 39.—It is true, that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact; and that it ought to be established under the general, rather than under the local governments; or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combatted.

with each of the seven, to expound it, and to insist on the exposition? That the seven might in particular instances be right, and the seventeen wrong, is more than possible. But to establish a positive and permanent rule, giving such a power, to such a minority, over such a majority, would overturn the first principle of free government, and in practice necessarily overturn the government itself.

It is to be recollected that the constitution was proposed to the people of the states as *a whole*, and unanimously adopted by the states as *a whole*, it being a part of the constitution that not less than three-fourths of the states should be competent to make any alteration in what had been unanimously agreed to. So great is the caution on this point, that in two cases where peculiar interests were at stake, a proportion even of three-fourths is distrusted, and unanimity required to make an alteration.

When the constitution was adopted as a whole, it is certain that there were many parts, which, if separately proposed, would have been promptly rejected. It is far from impossible, that every part of the constitution might be rejected by a majority, and yet taken together as a whole, be unanimously accepted. Free constitutions will rarely, if ever, be formed, without reciprocal concessions; without articles conditioned on and balancing each other. Is there a constitution of a single state out of the twenty-four, that would bear the experiment of having its component parts submitted to the people, and separately decided on?

What the fate of the constitution of the United States would be, if a small proportion of the states could expunge parts of it particularly valued by a large majority, can have but one answer.

The difficulty is not removed by limiting the doctrine to cases of construction. How many cases of that sort, involving cardinal provisions of the constitution, have occurred? How many now exist? How many may hereafter spring up? How many might be ingeniously created, if entitled to the privilege of a decision in the mode proposed?

Is it certain that the principle of that mode would not reach further than is contemplated? If a single state can of right require three-fourths of its co-states to overrule its exposition of the constitution, because that proportion is authorized to amend it, would the plea be less plausible that, as the constitution was unanimously established, it ought to be unanimously expounded?

The reply to all such suggestions seems to be unavoidable and irresistible; that the constitution is a compact, that its text is to be expounded according to the provisions for expounding it, making a part of the compact; and that none of the parties can rightfully renounce the expounding provision more than any other part. When such a right accrues, as may accrue, it must grow out of abuses of the compact releasing the sufferers from their fealty to it.

In favor of the nullifying claim for the states, individually, it appears, as you observe, that the proceedings of the legislature of Virginia, in '98 and '99, against the alien and sedition acts, are much dwelt upon.

It may often happen, as experience proves, that erroneous constructions not anticipated may not be sufficiently guarded against, in the language used; and it is due to the distinguished individuals, who have misconceived the intention of those proceedings, to suppose that the meaning of the legislature, though well comprehended at the time, may not now be obvious to those unacquainted with the contemporary indications and impressions.

But it is believed, that, by keeping in view the distinction between the governments of the states, and the states in the sense in which they were parties to the constitution; between the rights of the parties, in their concurrent and in their individual capacities; between the several modes and objects of interposition against the abuses of power, and especially between interpositions within the purview of the constitution, and interpositions appealing from the constitution to the rights of nature paramount to all constitutions; with an attention, always, of explanatory use, to the views and arguments which were combatted, the resolutions of Virginia, as vindicated in the report on them, will be found entitled to an exposition, showing a consistency in their parts, and an inconsistency of the whole with the doctrine under consideration.

That the legislature could not have intended to sanction such a doctrine, is to be inferred from the debates in the house of delegates, and from the address of the two houses to their constituents, on the subject of the resolutions. The tenor of the debates, which were ably conducted, and are understood to have been revised for the press by most, if not all, of the speakers, discloses no reference whatever to a constitutional right in an individual state, to arrest by force the operation of a law of the United States. Concert among the states for redress against the alien and sedition laws, as acts of usurped power, was a leading sentiment; and the attainment of a concert, the immediate object of the course adopted by the legislature, which was that of inviting the other states "to *concur* in declaring the acts to be unconstitutional, and to *co-operate* in the necessary and proper measures in maintaining unimpaired the authorities, rights, and liberties reserved to the states respectively, and to the people." * That, by the necessary and proper measures to be *concurrently* and *co-operatively* taken, were meant measures known to

* See the concluding resolutions of 1798.

the constitution, particularly the ordinary control of the people and legislatures of the states over the government of the United States, cannot be doubted; and the interposition of this control, as the event showed, was equal to the occasion.

It is worthy of remark, and explanatory of the intentions of the legislature, that the words, "not law, but utterly null, void, and of no force or effect," which had followed, in one of the resolutions, the word "unconstitutional," was struck out by common consent. Though the words were, in fact, synonymous with "unconstitutional," yet, to guard against a misunderstanding of this phrase as more than declaratory of opinion, the word "unconstitutional" alone was retained, as not liable to that danger.

The published address of the legislature to the people, their constituents, affords another conclusive evidence of its views. The address warns them against the encroaching spirit of the general government, argues the unconstitutionality of the alien and sedition acts, points to other instances in which the constitutional limits had been overleaped; dwells upon the dangerous mode of deriving power by implication; and in general, presses the necessity of watching over the consolidating tendency of the federal policy. But nothing is said that can be understood to look to means in maintaining the rights of the states, beyond the regular ones, within the forms of the constitution.

If any further lights on the subject could be needed, a very strong one is reflected in the answers to the resolutions, by the states which protested against them. The main objection of these, beyond a few general complaints of the inflammatory tendency of the resolutions, was directed against the assumed authority of a state legislature to declare a law of the United States unconstitutional, which they pronounced an unwarrantable interference with the exclusive jurisdiction of the supreme court of the United States. Had the resolutions been regarded as avowing and maintaining a right, in an individual state, to arrest, by force, the execution of a law of the United States, it must be presumed that it would have been a conspicuous object of their denunciation.

With cordial salutations, JAMES MADISON.

INTERNAL IMPROVEMENT.

Extract from Mr. Madison's Message to Congress, December 5, 1815, (omitted under its appropriate head).

"Among the means of advancing the public interest, the occasion is a proper one for recalling the attention of congress to the *great importance of establishing throughout our country the roads and canals which can best be executed under the national authority.* No objects within the circle of political economy so richly repay the expense bestowed on them; there are none, the utility of which is more universally ascertained and acknowledged; none that do more honor to the government *whose wise and enlarged patriotism duly appreciates them.* Nor is there any country which presents a field, where nature invites more the art of man, to complete her own work for their accommodation and benefit. These considerations are strengthened, moreover, by the political effect of these facilities for intercommunication, in *bringing and binding more closely together the various parts of our extended confederacy.*

"Whilst the states, individually, with a laudable enterprise and emulation, avail themselves of their local advantages, by new roads, by navigable canals, and by improving the streams susceptible of navigation, the *general government is the more urged to similar undertakings*, requiring a national jurisdiction, and national means, by the prospect of thus systematically completing so inestimable a work. And it is a happy reflection, that any defect of constitutional authority which may be encountered, can be supplied in a mode which the constitution itself has providently pointed out."

Chart of STATE *Constitutions* [*Maine, N. Hampshire, Mass.*]

1. MAINE. 1819.	2. NEW HAMPSHIRE. 1792.	3. MASSACHUSETTS. 1780. (Amended 1821.)	*Date of Constitu'n.*	
Legislature of Maine, annually; senate and house of representatives.	General court annually; senate of 12, and house of representatives.	General court annually; senate of 40, and house of representatives.	*Name and term of office.*	LEGISLATIVE.
First Wednesday in January.	First Wednesday in June.	Last Wednesday in May and in January.	*Time of Meeting.*	LEGISLATIVE.
Five years' citizenship, one year state and three months' district residence. Senators, age 25.	Freehold; district residence. Senators, age 30, 7 years' state residence; representatives, 2 years'.	Senators, freehold of £300 or personal estate of £600, five years' residence. Representatives, freehold of £100 or ratable estate of £200, 1 year's residence.	*Qualification.*	LEGISLATIVE.
In proportion to population.	Senators in proportion to taxation; representatives, to number of ratable polls.	Senators, in proportion to taxation; representatives to number of ratable polls.	*Apportionment.*	LEGISLATIVE.
By the people; annually.	By the people; annually.	By the people; annually.	*Election.*	EXECUTIVE.
Citizenship; five years' state residence; age 30.	Freehold; age 30; 7 years' residence.	Freehold of £1000; 7 years' res.; of the christian relig'n.	*Qualifications.*	EXECUTIVE.
Qualified negative; official patronage and pardoning power, jointly with council.	Qualified negative; official patronage and pardoning power, jointly with council.	Qualified negative; official patronage and pardoning power, jointly with council.	*Powers.*	EXECUTIVE.
President of senate.	President of senate.	Lieutenant-governor.	*Succes'r. on death.*	EXECUTIVE.
Seven; by legislature; citizenship and state residence; to advise the governor in the executive part of government.	Five; by the people; freehold, age 30, 7 years' state residence; official patronage and power to reprieve and pardon jointly with the governor.	Nine, besides the lieutenant governor; by legislature, from those elected by the people as counsellors and senators: those left constitute the senate.	Council; *Number. Election. Qualifications. Powers.*	EXECUTIVE.
By governor and council; during good behavior till age of 70. Justices of peace for 7 years.	By governor and council; judges of supreme court during good behavior till age of 70.	By governor and council; during good behavior. Justices of the peace for seven years.	*Appoin't. Term of Office.*	JUDICIAL.
By impeachment.	By impeachment.	By impeachment: by governor and council, on address of both houses of the legislature.	*How removeable*	JUDICIAL.
Citizenship, and 3 months' state residence.	Residence and payment of taxes.	Citizenship, one year's state and 6 months' district residence, and payment of taxes.	*Qualification of Voters.*	
Second Monday in September.	In March.	Governor and senate, first Monday in April. Representatives May.	*Day of General Election.*	
The sense of the people may be taken on amendments proposed by 2 thirds of legislature.	The sense of the people to be taken septennially on the subject of a revision of the constitution.	The sense of the people to be taken on any amendments agreed to by a majority of senate and two thirds of representatives, at two successive sessions.	*Provision for amending the constitution.*	

Nota Bene.—The Senate have no power to originate *money bills*, except in Connecticut, New York, Ohio, N. Carolina, Tennessee, Illinois & Missouri.—Neither in N. Jersey nor Maryland can the Senate originate or alter such bills. In Alabama, Indiana, Illinois and Missouri, the legislatures are restricted in their power of erecting *banks*. In Massachusetts *only*, the constitu-

Date of Constitu'n.	4. RHODE ISLAND. Charter of Charles II. 1663	5. CONNECTICUT. 1818	6. VERMONT. 1793
LEGISLATIVE. *Name and term of office.*	General assembly, council of 12, including governor & deputy-governor, and house of representatives.	General assembly, annually; senate of 12, and house of representatives.	General assembly, or house of representatives, annually.
Time of Meeting.	First Wednesday of May & last Wednesday of October.	First Wednesday of May.	Second Thursday of Oct'r.
Qualification.		Citizenship; freehold, and 6 months' residence; or year's performance of militia duty; or paying a tax. Blacks excluded.	Two years' state & 1 years' township residence.
Apportionment.		Senate by general ticket; representatives by towns.	By towns.
EXECUTIVE. *Election.*	By the people.	By the people; annually.	By the people; annually.
Qualifications.		An elector; age 30 years.	Four years' residence.
Powers.	A vote in the council; but no negative on acts of both houses.	Qualified negative with power to reprieve till end of next session of legislature.	See *Executive Council.*
Succes'r. on death.	Deputy-governor.	Lieutenant-governor, who is *ex officio*, presd't. of senate.	Lieutenant-governor.
Council; *Number. Election Qualifications. Powers.*		None.	The executive council consists of the gov. lieut-gov. and 12 counsellors, elected annually by the people. It is possessed of all powers usually vested in a governor; & all legislative powers, except that of originating bills and pardoning. but they reprieve till the end of next session of assembly.
JUDICIAL. *Appoin't. Term of Office.*	Annually elected by the legislature.	By general assembly; supreme and superior courts during good behavior till 70; all others annually.	By legislature and executive council annually. Executive council, justices of peace for whole state *ex officio*.
How removeable		By impeachment; by governor, on address of 2 thirds of the legislature.	
Voters. Qualifica'n	Rhode Island has no written constitution, being still governed by the original charter granted by king Charles II of Great Britain.	Same as Qualifications of legislature.	One year's residence.
Gen. Elecn.		In April.	First Tuesday in Sept.
Provision for amending the constitution.		Amendments may be proposed by a majority of house of rep's. on which the sense of the people shall be taken, if ratified next session by both houses.	The council of censors, who are elected septennially for the purpose of inquiring into violations of the constitution, &c., may call a convention.

tion gives *titles* to officers of government. The governor is styled "*His Excellency*"—the lt.-gov. "*His Honor.*" All *religious* persuasions are equally under the protection of the law. In Mass. and Maryland, a belief in the christian religion is required to qualify for office. In Penn. Miss'pi. and Tennessee, the belief in a God and a future state of rewards and punishments is required as a qualification for office: and in N. Carolina, a similar belief is necessary. In the other

Chart of STATE *Constitutions* [*N. Y., N. J., Penn.*] *continued.*

7. NEW YORK. 1821	8. NEW JERSEY. 1776	9. PENNSYLVANIA. 1790	*Date of Constitu'n.*	
Senate, 32, ¼th annually; & assembly of 128, annually.	Legislative council and general assembly, annually.	Gen. assembly; the house of reprentatives and one fourth of the senate chosen annual.	*Name and term of office.*	LEGISLATIVE
First Tuesday in January.	Fourth Tuesday in Oct.	First Tuesday in Decemb'r.	*Meeting.*	LEGISLATIVE
Senators must be freeholders.	One year county residence. For council a freehold worth £1000; assembly, 500, proclamation money.	Citizenship. Senate, age 25, 4 years' state & 1 dist. res. Reps. age 21, three years' state & 1 county residence.	*Qualification.*	LEGISLATIVE
In proportion to the population.	Council, 1 for each county; assem'y. in prop'n. to pop'n.	In proportion to taxable inhabitants.	*Apportionment.*	LEGISLATIVE
By the people; biennially.	By legislature; annually.	By the people; for 3 years. Eligible 9 out of 12 years.	*Election. Term.*	EXECUTIVE
Native citizen; freeholder; age 30; 5 years' residence.		Age 30; 7 years' citizenship and residence.	*Qualification.*	EXECUTIVE
Qualified negative; official patronage, with consent of senate; pardoning power except in cases of treason—can reprieve till end of next session of legislature.	A casting vote in legislative council, of which he is president. The council possesses the pardon'g power, is court of appeals in last resort. The gov. is chan'r. & surrog.-gen.	Qualified negative; extensive, uncontrolled official patronage; the pardoning power.	*Powers.*	EXECUTIVE
Lieut-governor, who is, *ex officio*, president of senate.	V-president of the council.	Speaker of the Senate.	*Succes'r.*	EXECUTIVE
None.	None.	None.	Council; *Number. Election. Qualifications. Powers.*	EXECUTIVE
By gov. by consent of senate; during good behavior till 60. Justices of peace, 4 years. Senate, chancellor, & supreme judges, a court for trial of impeachments and correction of errors.	By legislature; judges of the supreme court for 7, of the inferior courts for 5, years.	By the governor; during good behavior.	*Appoin't. Term of Office.*	JUDICIAL
By two thirds of the assembly and majority of senate, by joint resolution.	By impeachment.	By impeachment; and by the governor, on address of two thirds of the legislature.	*How removeable*	JUDICIAL
Citizenship, a certain state & district residence, having paid tax, or performed militia duty, or been assessed, or having labored on highway. Freehold for people of color	One year's county residence and an estate worth £50 proclamation money.	Citizenship, two years' residence, and pay't. of taxes.	*Qualification of Voters.*	
In October or Nov. as may be provided by law.	Second Tuesday in Octob'r. May adjourn fr. day to day.	Second Tuesday in Oct'r.	*General Election.*	
Amend's. may be proposed to the people if passed by a maj. at one sess. of the legislature, and by two thirds at the succeeding session.	None.	None.	*Provision for amending the constitution.*	

states no religious test is required. Persons conscientiously scrupulous of taking an *oath*, are permitted to *affirm:* an equivalent for militia duty, is allowed, to those who entertain *conscientious* scruples against bearing arms. Ministers of the Gospel are ineligible for legislators in Ma-

	Date of Constitu'n.	10. DELAWARE. 1792. (Amended 1802.)	11. MARYLAND. 1776. (Amended.)	12. VIRGINIA. [Adopted 4th Jan. 1830.]
LEGISLATIVE.	*Name and term of office.*	Gen. assembly; the house of repre's. and one third of the senate, chosen annually.	General assembly; senate of 15, chosen by electors appointed by the people every 5th year; house of delegates annually.	General assembly; house of delegates 134, chosen annually; senate 32, divided into 4 classes, one-fourth displaced annually.
	Time of Meeting.	First Tuesday in January.	First Monday in Decemb'r.	Once a year, or oftener.
	Qualification.	Freehold; citizenship; three years' state and 1 county residence. Senators 27, representatives 24 years age.	Senators, 25 years of age, 3 years' state and one county residence. Delegates, one years' county residence.	Senate, 35 years, delegate, 25 years, resident and freeholder.
	Apportionment.	By counties.	By counties and cities.	Counties, cities, towns, and boroughs, acc'g. to pop'n.
EXECUTIVE.	*Election. Term.*	By the people; for 3 years. Eligible 3 out of 6 years.	By the legislature; annually. Eligible 3 years out of 7.	Joint vote of both houses; Eligible 3 years—inelligle, 3 years next afterwards.
	Qualifications.	Age 36; 12 years' citizenship, 6 years' residence.	Age 25; 5 years' residence.	Age 30; 5 years' residence.
	Powers.	Extensive, uncontrolled official patronage; pardoning power.	Official patronage, with advice and consent of council; pardoning power.	Grant reprieves and pardons, to fill, *pro tempore*, vacancies.
	Succes'r. on death.	Speaker of the senate.	First named of council until next meeting of legislature.	Senior councillor, lieutenant-governor to act.
	Council; *Number. Election. Qualifications. Powers.*	None.	Five; elected by legislature; age 25, and 3 years' residence; advise the governor, and consent to his appointments.	Three to remain in office 3 years, elected by joint vote of both houses; advisers of the governor.
JUDICIAL.	*Appoin't. Term of Office.*	By gov.; during good behavior. Justices of the peace for seven years.	Governor, by consent of the council; during good behavior.	El'd. by joint vote of 2 ho's. during good behavior. Justices ap. by gov. on rec. of co. ct
	How removeable	By impeachment; & by the governor, on address of two thirds of the legislature.	By conviction of misbehavior in a court of law; by governor, on address of two thirds of legislature.	By a vote of two-thirds of members present; 20 days notice, and a copy of the cause alleged required.
	Qualification of Voters.	Two years' residence, and payment of taxes. Blacks excluded.	Citizenship; state residence of 1 year, county or city, 6 months. Blacks excluded.	White male citizen; 21 yrs' age; dist. res. freehold, $25. leasehold es. $20; houseк'r. and head of family, assess'd.
	Day of General Election.	First Tuesday in October.	First Monday in October for delegates; first Monday in September, every 5th year, for electors of senate.	No day appointed in constitution. [Vote, openly or *viva voce*.]
	Provision for amending the constitution.	Amendments may be passed at one session, and, if approved by the governor, ratified by three fourths of the next. A convention may be called by an expression of the will of the people at their annual election.	The legislature may pass bills amending the constitution, which, to be valid, must be confirmed at the next session.	None, in the constitution.

ryland, Virginia, North Carolina and Tennessee—in New York, Delaware, and Louisiana, they are incapacitated from holding any civil office and in Missouri, for justices of the peace only. The only states that make provision for religious establishments are N. Hampshire and Massachusetts.

Chart of STATE *Constitutions* [*N. Car.*, *S. Car.*, *Geo.*,] *continued.*

13. NORTH CAROLINA 1776	14. SOUTH CAROLINA. 1790. (Amended.)	15. GEORGIA. 1798. (Amended.)	*Date of Constitu'n.*	
General assembly; senate and house of commons, chosen annually.	General assembly; senate of 45, one half biennially, and house of representatives of 124 members, biennially.	General assembly, annually; senate and house of representatives.	*Name and term of office.*	LEGISLATIVE.
	Fourth Monday in Nov'r.	Second Tuesday in Jan'y.	*Time of Meeting.*	
Freehold, and 1 year county residence.	Citizenship; freehold. Senators, age 30, 5 years' state residence; representatives, 3 years' state residence.—Blacks excluded.	Freehold, or taxable prop. 5 years' state, 1 county res. Senators, age 25, 9 years citizenship; representatives, 7 years citizenship.	*Qualification.*	
Senate, 1 for each county; house of commons, two for each county, and 1 for each of certain specified towns.	Senators by districts; representatives in proportion to population and amount of taxes paid.	Senators, one for each county; rep's. in proportion to population, excluding two fifths of people of color.	*Apportionment.*	
By the legislature; annually Eligible 3 years out of 6.	By the legislature; biennially. Eligible 1 term in 3.	By the legislature; biennially.	*Election. Term.*	EXECUTIVE.
Freehold; age 30; 5 years' residence.	Freehold; age 30; residence and citizenship of 10 years.	Freehold and other property; age 30; 12 years' citizenship, and 6 residence.	*Qualifications.*	
The pardoning power.	The pardoning power.	Qualified negative; pardoning power; reprieves only in cases of treason.	*Powers.*	
Speaker of senate.	Lieutenant governor.	President of the senate.	*Succes'r. on death.*	
Seven; by legislature, annually.	None.	None.	Council; *Number. Election. Qualifications. Powers.*	
By legislature; good behavior.	Judges of superior courts by legislature; others as hitherto; good behavior.	Elected by people; judges of superior courts for 3 years; of the inferior courts, and justices of peace, annually.	*Appoin't. Term of Office.*	JUDICIAL.
By impeachment.	By impeachment.	By impeachment; & by the governor, on address of two thirds of the legislature.	*How removeable*	
For senators, freehold and a year's residence; for house of commons, a year's residence and payment of taxes.	Citizenship; 2 years' state residence; a freehold, or 6 months district residence & payment of taxes. Blacks excluded.	Citizenship 6 months county residence, and payment of taxes if assessed.	*Qualification of Voters.*	
No day appointed by constitution.	Second Monday in Oct. and day following biennially.	First Monday in November.	*General Election.*	
None.	A convention may be called by two thirds of the legislature. Amendments may be made by same maj. if passed at two successive sessions.	By two thirds of the legislature at two successive sessions.	*Provision for amending the constitution.*	

The duties of the *Executives*, in addition to the above, are, generally, to see the laws executed and act as commanders-in-chief of the militia. In Louisiana, a biennial tour through the differ-

	Date of Constitu'n.	16. OHIO. 1802	17. KENTUCKY. 1799	18. TENNESSEE. 1796
LEGISLATIVE.	*Name and term of office.*	General assembly; house of representatives and one half of the senate, chos'n. annually	General assembly; house of representatives and one fourth of the senate chosen annually.	General assembly; senate and house of representatives, chosen biennially.
	Time of Meeting.	First Monday in Decemb'r.	First Monday in Nov'r.	Third Monday in September, every second year.
	Qualification.	Citizenship; payment of taxes. Senators age 30, 2 years district residence; representatives, age 25, one years' county residence.	Citizenship. Senators, age 35, 6 years' state, 1 district residence; representatives, age 24, 2 years state, and 1 district residence.	Three years' state, and one county residence, and freehold of 200 acres.
	Apportionment.	In proportion to white male population, above 21 years of age.	In proportion to the number of qualified electors.	In proportion to the number of taxable inhabitants.
EXECUTIVE.	*Election. Term*	Biennially; by the people. Eligible 6 out of 8 years.	Quadrennially; by the people. Eligible four out of eleven years.	Biennially; by the people. Eligible 6 out of 8 years.
	Qualification.	Age 30; 12 years' citizenship; 4 years' residence.	Age 35; citizenship; six years' residence.	Freehold of 500 acres; age 35; 4 years' residence.
	Powers.	The pardoning power.	Qualified negative; official patronage, with consent of senate; the pardoning power; reprieves for treason.	The pardoning power.
	Succes'r. on death.	Speaker of the senate.	Lieutenant-governor, who is, *ex officio*, speaker of the senate.	Speaker of the senate.
	Council; *Number. Election. Qualifications Powers.*	None.	None.	None.
JUDICIAL.	*Appoin't. Term of Office.*	By legislature for 7 years Justices of the peace by the people for three years.	By governor; good behavior.	By legislature; good behavior.
	How removeable	By impeachment.	By impeachment; and by governor on address of two thirds of legislature.	By impeachment.
	Qualification of Voters	One years residence and being assessed with taxes, or laboring on highway. Blacks excluded.	Citizenship; 2 year's state, or one district residence.—Blacks excluded.	A freehold, or six months' county residence.
	Day of General Election.	Second Tuesday in October	First Monday in Aug. continued 3 days on request of any one of the candidates.	Biennially; on first Thursday in August, and day following.
	Provision for amending the constitution.	The sense of the people may be taken for calling a convention, when 2 thirds of the legislature deem it necessary.	The sense of the people taken for calling a convention, when the legislature pass a law for that purpose within the first 20 days of their stated annual session.	The sense of the people may be taken for calling a convention, when two thirds of the legislature deem it necessary.

ent counties is enjoined on the governor, to inspect the militia, inform himself of the actual condition of the state, &c.

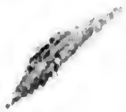
Chart of STATE *Constitutions* [*Miss., Alabama, Lou.*] *continued.*

19. MISSISSIPPI. 1817	20. ALABAMA. 1819	21. LOUISIANA. 1812	*Date of Constitu'n.*	
General assembly; senate 1 third annually, house of representatives annually.	General assembly; house of representatives and ⅓ of senate, chosen annually:	General assembly; house of representatives and 1 half the senate chosen biennially	*Name and term of office.*	LEGISLATIVE.
First Monday in November	Fourth Monday in Octob'r.	First Monday in January.	*Time of Meeting.*	LEGISLATIVE.
Citizenship; freehold, or an interest in real estate. Senators, age 26, 4 years' state, 1 dist residence; representatives, age 22, 2 years state 1 district residence.	Citizenship; 2 years' state & 1 district residence. Senators 27 years of age. Blacks excluded.	Citizenship; freehold Sen's 27, 4 years' state, 1 district residence; representatives, 2 years state, one city residence. Blacks excluded.	*Qualifications.*	LEGISLATIVE.
In proportion to white population.	In proportion to white population.	Rep's. pro'n. to qua'd. el'ts. Senators by fixed districts.	*Apportionment.*	LEGISLATIVE.
By the people; biennially.	By the people; biennially. Eligible 4 out of 6 years.	By the people quadrienally. Ineligible every 2d term.	*Election. Term.*	EXECUTIVE.
Freehold; age 30; 20 years' citizenship; 5 years' residence.	Age 30; a native citizen of the United States; 4 years' residence.	Freehold of $5000; age 35; citizenship; six years' residence.	*Qualifications.*	EXECUTIVE.
Qualified negative; the pardoning power, except for treason, consent of senate for which is necessary.	Qualified negative: the pardoning power; in cases of treason, consent of senate necessary.	Qualified negative; official patronage; pardoning power with consent of senate; reprieves in cases of treason.	*Powers.*	EXECUTIVE.
Lieutenant-governor, who is, *ex officio*, president of the senate.	President of the senate.	President of the senate.	*Succes'r. on death.*	EXECUTIVE.
None.	None.	None.	Council; *Number. Election. Qualification. Powers.*	EXECUTIVE.
By legislature; good behavior, till 65. Justices of the peace for such term as may be fixed by law.	By legislature; good behavior, till 70.	By governor; good behavior.	*Appoin't. Term of Office.*	JUDICIAL.
By impeachment: and by governor, on address of two thirds of leg'e. The judge must be heard in defence.	By impeachment; and by governor, on address of ⅔ of legislature. The judge must be heard in defence.	By impeachment; and by gov., on address of three fourths of the legislature.	*How removeable*	JUDICIAL.
Citizenship, 1 year's state, & 6 months' district residence, payment of taxes, or enrolment in the militia. Blacks excluded.	Citizenship; 1 year's state & three months' district residence. Blacks excluded.	Citizenship; 1 year's county residence; payment of taxes. Blacks excluded.	*Qualification of Voters.*	
First Monday in August, & day following.	1st Monday in Aug. and day fol'g, until altered by law.	Biennially; on the 1st Monday in July.	*General Election.*	
The sense of the people may be taken for calling a convention, when two thirds of the legislature deem it necessary.	Two thirds of the leg. may propose amend's; if ratified by the people at next elec'n. and 2-3ds of the subsequent legislature, become valid.	A convention to be called if voted for by the people two suc'e. years; the vote being authorized by leg. within 1st 20 days of annual session.	*Provision for amending the constitution.*	

Manner of choosing Presidential Electors.—18 states choose by *general ticket*, to wit:—N. Hampshire, Mass. R. Island, Conn., Vt., N. Jersey, Penn., Va., N. Car., Geo., Ky., Ohio, Indiana, Ill's., Mo., Lou., Miss., and Ala.—4 by *districts*, Maine, N. York, Md., & Tenn.—2 by

	Date of Constitu'n	22. INDIANA. 1816	23. ILLINOIS. 1818	24. MISSOURI. 1820
LEGISLATIVE.	*Name and term of office.*	General assembly; house of representatives and 1 third of senate, chosen annually.	General assembly; house of representatives and one half the senate, chosen biennially.	General assembly; house of representatives and one half of senate, chosen biennually.
	Time of Meeting.	First Monday in Decemb'r.	First Monday in December every second year.	First Monday in November, every second year.
	Qualification.	Citizenship; one year's district residence; payment of taxes. Senators, age 25, 2 years state residence.	Citizenship: a year's district residence; payment of taxes; senators, twenty-five years of age.	Citizenship; district residence, one year; taxation. Senators, age 30; state res. 4 years' representatives, 24 age, 2 years' state residence. Blacks excluded.
	Apportionment.	In proportion to white male inhabitants above 21 years of age.	In proportion to white population.	In proportion to white population.
EXECUTIVE.	*Election. Term.*	By the people; triennially. Eligible six in any term of nine years.	By the people; quadriennially. Ineligible every second term.	Quadrennially; by the people. Ineligible every second term.
	Qualifications.	Age 30; 10 years' citizenship; 5 years' residence.	Age 30; 30 years' citizenship; two years' residence.	Age 35; an inhabitant of Missouri at the time of [illegible]sion, or native born citizen of the United States.
	Powers.	Qualified negative; official patronage, with consent of senate; pardoning power.	Qualified negative. Official patronage, with consent of senate: pardoning power.	Qualified negative; official patronage, with consent of senate; pardoning power.
	Succes'r. on death.	Lieutenant-governor, who is *ex-officio*, president of the senate.	Lieutenant-governor, who is, *ex-officio*, speaker of the senate.	Lieutenant-governor, who is, *ex-officio*, president of the senate.
	Council; *Number. Election. Qualifications. Powers.*	None.	The judges of the supreme court, with the governor, form a council, which possesses a qualified negative on legislative acts.	None.
JUDICIAL.	*Appoin't. Term of Office.*	By governor for 7 years.—Justices of the peace elected by the people for 5 years.	By legislature; good behavior.	By governor; good behavior until 65 years of age.
	How removeable	By impeachment.	By impeachment; and by governor, on address of two thirds of legislature.	By impeachment; by governor, on address of two thirds of leg. The judge must be heard in defence.
	Qualific'n. of Voters.	Citizenship; 1 year's residence. Blacks excluded.	6 months' residence. Blacks excluded.	Citizenship: 1 year state, 3 mo. dist. res. Blacks excl'd.
	General Election.	First Monday in August.	Biennially; on the 1st Monday in August.	On the first Monday in August; biennially.
	Provision for amending the constitution.	The sense of the people to be taken every twelfth year, as to the calling a convention,	The sense of the people may be taken for calling a convention, when 2 thirds of the legislature deem it necessary.	Two thirds of the legislature may propose amendments, which may be ratified by two thirds of the next legislature at their first session.

Legislature, Delaware and South Carolina. The *number* of electors is equal to the number of Senators and Representatives in Congress—the time of election is *November*, in all the states, except Pennsylvania and Ohio, where the 31st of October is fixed.



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