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Treasury Department.

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of speculation; what then is the situation of your officer? He must subject himself to suspicion: indeed, it is as much as his reputation is worth to come into a place of this kind; he can hardly preserve his integrity. His honor, credit, and character, must inevitably be injured. He cannot prove himself innocent of the suspicion, because it is the negative side of the question. He can offer nothing more in his defence than a mere denial of the crime.

There is another point which ought to be well considered: This officer is to digest and form the accounts. He can consequently give the business such complexity, as to render it impossible to detect his impositions; and as the inferior officers, who might discover the fraud, are to be appointed by the principal, will they not consequently be men after his own heart?

Taking these circumstances together, it must be very disagreeable to the person appointed, provided he is an honest, upright man; it will be disagreeable also to the people of the Union, who will always have reason to suspect, that a partiality is shown to the collectors, and other officers of the State to which he belonged. This has absolutely been the case, and was productive of very great dissatisfaction. I would be glad to know of the gentlemen, who are for vesting these powers in a single person, where they will find the man who is capable of performing the duties of a financier? For it is not the mere calling him a financier, and giving him a large salary, that will enable him to perform his functions in such a manner as to give satisfaction. We had once a gentleman who filled such a department, and I believe the only one in the United States who had knowledge and abilities by any means competent to the business; but that gentleman is now employed in another branch of the Government, and cannot be called to this trust. During the late war, Congress thinking it necessary to employ a financier, were led to inquire for a proper character to fill such an office; but not being able to discover such a one in this country, in whose abilities they had sufficient confidence, they wrote to Doctor Price a letter, to induce him to come to America, and accept of an appointment under them, for the superintendence of their finances. He wrote, in answer, that he felt with gratitude the honor which they had done him by their application, and signified, that he was desirous of rendering every service in his power to aid the glorious cause in which America was embarked; but, from his advanced situation in life, and infirmities of body, he was under the necessity of declining. This circumstance serves to show how difficult it is to get a proper person for so arduous an undertaking. But it appears to me, that if we could fix upon a person equal to the office, involving him in forming accounts, and such trifling business, would divert his attention from the more important duties he is called upon to perform. The proper business of finance, I take it, ought to be to consider of the means to improve the revenue, and introducing

economy into the expenditures; to recommend general systems of finance, without having any thing to do with the actual administration of them, because, if he engages in the executive business, we shall be deprived of his talents in more important concerns. If it should be granted that there is a person of abilities to be found, adequate to the duties of the office, I want to know where the advantage arises of appointing him alone in preference to a Board? If you have commissioners, you have an opportunity of taking one from each grand division of the United States, namely, the Eastern, the Middle, and Southern Districts. If this person is a member of the Board, is it not evident you will have every advantage from his abilities in such a situation, as you would if he were placed in office without control? If he was possessed of such genius, he could employ it more usefully as a Commissioner of the Board of Treasury, than when left to perform all the drudgery of the executive part; because while his fine imagination was busied in reducing a chaos to a beautiful system, his colleagues might perform those parts which required less elevation of thought; by dividing the burthen, the business would be done with more regularity and facility. Surely no advantage to the public would arise from giving him the sole management of the business, but much inconvenience might; besides, it must unavoidably, as I said before, subject him to suspicions unfavorable to his reputation. This has absolutely been realized; it is not a mere chimera, a matter of speculation. We have had a Board of Treasury, and we have had a Financier. Have not express charges, as well as vague rumors, been brought against him at the bar of the public? They may be unfounded, it is true; but it shows that a man cannot serve in such a station without exciting popular clamor. It is very well known, I dare say, to many gentlemen in this House, that the noise and commotion were such as obliged Congress once more to alter their Treasury Department, and place it under the management of a Board of Commissioners. We have seen speculations excited from this quarter against the Government itself, and painful insinuations of design by his appointment to the Senate. I mention these circumstances to exhibit to your view the inconveniencies to which an officer is subjected by constituting an office of this nature. If the gentleman I have alluded to had been a member of the Board of Treasury, he would not have been subjected to the charges which were brought against him. In such a situation, he could have rendered the services his great abilities enabled him to do, without exposing his character to be torn to pieces by malevolence or detraction.

We are to pay some attention to the prejudices and wishes of our constituents, especially when their sentiments have been strongly declared for or against this or that mode of administration. We find such an officer unprecedented in the several States; and I believe it

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would not be agreeable to have a single officer, and his assistants, collecting the money, or controlling the revenue arising in those States; yet you make it one of his powers that money shall not be drawn without a warrant from the financier. Here is no person of this kind mentioned in the constitution; not even the President, nor Vice President and Senate, have a control over the Treasury; yet we put all this power into the hands of one great man, who is to be the head of the department. It appears to me, that by so doing, we shall establish an office giving one person a greater influence than the President of the United States has, and more than is proper for any person to have in a republican Government.

Perhaps it may be objected, that we should study economy. If we employ three persons to conduct this business, we shall have to pay them more than would be required for a salary for an individual. But this I take to be a very light consideration, compared with securing the public treasury. A single officer to have the command of three or four millions of money, possesses a power very unsafe in a republic; but I apprehend we may employ three commissioners for the same sum that we shall be obliged to pay for one financier; if we have great officers we must allow large salaries.

I am desirous of supporting the President; but the Senate requires to be supported also in their constitutional rights. To this body belongs the confidence of the States; while the President rests his support upon them he will be secure. They, with this House, can give him proper information of what is for the public interest, and, by pursuing their advice, he will continue to himself that good opinion which is justly entertained of him. If we are to establish a number of such grand officers as these, the consequences appear to me pretty plain. These officers, bearing the titles of minister at war, minister of state, minister for the finances, minister of foreign affairs, and how many more ministers I cannot say, will be made necessary to the President. If by this establishment we make them more respectable than the other branches of the Government, the President will be induced to place more confidence in them than in the Senate; the people will also be led to consider them as more consequential persons. But all high officers of this kind must have confidence placed in them; they will in fact be the chancellors, the ministers of the nation. It will lead to the establishment of a system of favoritism, and the principal magistrate will be governed by these men. An oligarchy will be confirmed upon the ruin of the democracy; a Government most hateful will descend to our posterity, and all our exertions in the glorious cause of freedom will be frustrated: we shall go on till we reduce the powers of the President and Senate to nothing but a name. This surely, sir, does not comport with the conduct of the House. We have been very tenacious of giving a title to the President, lest it

should be implied we desired to increase his power. We would call him by no other appellation than merely President of the United States. I confess I was not such a stickler about titles as all this, because I did not consider that the liberties of the people could be hurt by such means; but I am not clear that the constitution authorizes us to bestow titles; it is not among the enumerated powers of Congress. But if the constitution did authorize it—[A call to order was made by some of the members, and Mr. GERRY was desired to confine himself to the point; the subject of titles was not before the House.] Mr. GERRY proceeded, and said the Senate were constitutionally the highest officers of Government, except the President and Vice-President; that the House was about to supersede them, and place over their heads a set of ministers who were to hold the reins of Government, and all this to answer no good purpose whatever; because the same services could be obtained from subordinate officers.

In short, a Board of Treasury would conduct the business of finance with greater security and satisfaction than a single officer. He had a very good opinion of the gentleman who formerly administered the finances of the United States, and doubted if another of equal qualities could be found; but it was impossible for any person to give satisfaction in such a station. Jealousy would unavoidably be entertained; besides, no inconvenience resulted from the present arrangement of that department; therefore, there could be no good reason to induce a change. If the House was truly republican and consistent, they would not admit officers, with or without titles, to possess such amazing powers as would eventually end in the ruin of the Government. Under these impressions, he moved to amend the resolution so as to read, "there shall be established a Treasury Department, at the head of which there shall be three commissioners, to be denominated the Board of Treasury."

Mr. WADSWORTH.—My official duty has led me often to attend at the treasury of the United States, and, from my experience, I venture to pronounce that a Board of Treasury is the worst of all institutions. They have doubled our national debt. (I do not mean by this observation to censure any man who has been in that office: I presume they were honest men, and did as well as could be done under such a system.) But I do not remember a single instance, in any one board, that I found them to have a system that would give even tolerable satisfaction; there appeared a want of confidence in the members of them all: they seemed to have no fixed principles to guide them, nor responsibility for their conduct.

I have had also transactions at the treasury whilst it was managed by a Superintendent of Finance. As to what fell from the gentleman last up, (though without intention, I dare say, to affect or prejudice the character of that officer, it may

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possibly have such an effect,) I think it necessary to state my sentiments, which are formed from my own experience as well as from report. I had great transactions with him, and must say that there did appear to be system in his management, and responsibility in his negotiations. I dare risk my fortune and character with him, because there was unity in the officer, and somebody in whom I could confide. The nature of the office is better calculated to give satisfaction than the other. I will not pretend to enumerate the savings he made, by introducing economy throughout the whole departments under Congress, because I do not know them all; but they were very considerable. The administration of the finances was clear to the meanest capacity. Receipts and expenditures were stated simply; they were published to the world. The heads of the Treasury Department, the Board of Commissioners, I do not believe have closed their accounts to this very day. I do not say it is for want of ability, will, or honesty, that this event has not taken place. I conceive it to be owing to their want of system in conducting their business. I wish the committee had before them the transactions of the board for one single month; they would find what I have remarked to be too well founded. Instead of system and responsibility, they would find nothing but confusion and disorder, without a possibility of checking their accounts. I know I am heard by one gentleman who is acquainted with these truths by experience.*

I admit the truth of one of the gentleman's observations: he says, the officer must risk his reputation. Yes, sir, an officer who is highly responsible must always risk his character; but a patriot spirit will submit to this to save his country. I know that clamor was raised, as he has said, against the financier; and I know clamor may be excited by envy, as well as by prudence or justice. Clamor has been set up against the office of President, under the present constitution. It is difficult to reconcile suspicious minds to a grant of power, lest it be employed against them. So many men have betrayed their trust, that they can have confidence in none but themselves. But notwithstanding all that has been said with respect to the outcry and disturbance, on account of the finances being directed by a superintendent, I will venture to assert, that it has not been greater than that which was raised against boards. But be that as it may, the public business was better conducted, and the general interests better served; our armies were supplied with certainty and moved with celerity, which was an important object at that period of the war.

I do not know that I have it in my power to justify all the transactions which took place under that administration; but those which came

within my knowledge seemed to be directed with great precision to their object, namely, providing for the public defence and promoting the welfare of the Union. They bespoke their conductor to be master of the science in which he was engaged. The whole accounts of these transactions have been long delivered to Congress, and the reason why they are not decided upon is, because their Board of Treasury has been without power or system to determine on them. I do not wish to hurt the feelings of the gentlemen in that office; I have a high respect for them all, and think any one of them would be equal to the task, individually, which all three together cannot perform.

As to its being unpopular to have a Secretary of the Treasury, I shall only set my opinion against his. I think it the most popular step we can take; it seems to be a prevailing sentiment among all conditions of men, that we ought to have the highest degree of responsibility in every department of Government. As to his being called a minister or a great man, I have little to fear. The people of America will not be scared by men who style themselves most sacred, most omnipotent; and surely the gentleman does not suppose that our Secretary of the Treasury will be the greatest man on earth! If we fear no other, I trust we shall not dread him. As to giving him a large salary, it is hardly possible it would be so much as three commissioners of the treasury would expect. For my part, I see no obligation we are under of giving him a large salary; we shall, I trust, give him a decent one. As to the name of the officer, I shall give that up wholly to the gentleman: he may christen him as he pleases. I will never differ about words when I contend for substance.

I beg leave to repeat once more, that under boards of treasury, there never was a possibility of the public knowing their situation; there is no possibility of getting on with the public accounts and closing them; there has not been the transactions of more than one of the great departments completely settled, owing to a radical defect in their constitution; they cannot proceed with that unity and decision necessary to insure justice. As to what the gentleman said, with respect to the difficulty of getting a proper officer to fill the department, I will just observe, that I do not believe it impossible, and am therefore prepared to attempt it.

Mr. GERRY asked, what he had said that induced the gentleman (Mr. WADSWORTH) to believe it tended to prejudice the reputation of the late financier?

Mr. WADSWORTH replied, that he (Mr. GERRY) had mentioned a clamor raised against him, and that it had not subsided, because his accounts were unsettled; he had therefore endeavored to show the cause to which these circumstances were owing.

Mr. GERRY stated, that if such powers were given to a financier, he would be obnoxious and the people suspicious. These suspicions would

* It is presumable he alluded to Mr. GERRY, a member of a Committee of Congress, appointed to superintend the Treasury.

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injure his reputation, because it would be out of his power to prove them groundless. I mentioned a fact said to prove this position; the fact is notorious; but I did not mention it with a view to prejudice the gentleman, because I believe the insinuations charged against him in the public papers are without good grounds.

Mr. WADSWORTH had understood the gentleman as he explained himself, but nevertheless the expressions were so loose as to leave suspicion room to maintain its ground; he had recapitulated facts also with an intention to do justice to a character that had been, he apprehended, unjustly and wantonly aspersed.

Mr. BENSON stated, that in the year 1781, from the very great derangement of public affairs, Congress were induced to place the Treasury Department under the superintendence of an individual. It is true, after the conclusion of the war, in the latter end of 1783, or beginning of 1784, Congress again changed their system, and placed the department in the hands of three commissioners, to be taken as the gentleman has said, one from the Eastern, one from the Middle, and one from the Southern district; which regulation I think induced above twenty applications. Some gentlemen on this floor will doubtless recollect an observation that was made at that time, that if this trust had been to be reposed in one responsible individual, not perhaps more than three of the candidates would have had confidence to come forward as applicants for the office.

For his part, he conceived, that it required the same abilities in every individual of the commissioners, as was necessary if a single person was placed at the head of the Department. If men competent to the undertaking are so difficult to be found, you will increase the embarrassment of the President threefold by making the arrangement the gentleman contends for. The principle upon which the gentleman advocates the appointment of a board of treasury, would apply in favor of a change in the constitution, and we ought to have three Presidents of the United States instead of one, because their business might be done with more regularity and facility; but he did not think the argument to be well founded.

If it was the duty of the House to use economy in their establishments, one officer would certainly require less salary than three; however, he believed the arguments of the gentleman were premature. He should not find fault with the duties of the officer, before they were proposed to the consideration of the committee.

The motion under consideration proposed nothing more than a Secretary should be placed at the head of the Department. It said nothing of the duties which he was to perform. When the bill came forward, no doubt, proper checks would be provided to prevent this officer from abusing his trust.

Mr. BALDWIN thought that there were very few gentlemen, who had much to do with public business, but had turned their attention to

this question. He had employed his reflection upon the subject for some time, and his sentiments were against the establishment of a board of treasury. He was persuaded there was not so much responsibility in boards as there was in individuals, nor is there such good ground for the exercise of the talents of a financier in that way. Boards were generally more destitute of energy than was an individual placed at the head of a Department. The observations of the gentleman from Massachusetts were of great weight, so far as they inferred the necessity of proper checks in the department having care of the public money; if they had system, energy, and responsibility, he should be in favor of them; but his experience had convinced him of the contrary. He was not an advocate for an unlimited authority in this officer. He hoped to see proper checks provided; a Comptroller, Auditors, Register, and Treasurer. He would not suffer the Secretary to touch a farthing of the public money beyond his salary. The settling of the accounts should be in the Auditors and Comptroller; the registering them to be in another officer, and the cash in the hands of one unconnected with either. He was satisfied that in this way the treasury might be safe, and great improvements made in the business of revenue.

Mr. MADISON had intended to have given his sentiments on this subject; but he was anticipated in some things by the gentleman last up. He wished, in all cases of an executive nature, that the committee should consider the powers that were to be exercised, and where that power was too great to be trusted to an individual, proper care should be taken so to regulate and check the exercise, as would give indubitable security for the perfect preservation of the public interest, and to prevent that suspicion which men of integrity were ever desirous of avoiding. This was his intention in the present case. If the committee agreed to his proposition, he intended to introduce principles of caution, which he supposed would give satisfaction on that point. As far as was practicable, he would have the various business of this important branch of the Government divided and modified, so as to lull at least the jealousy expressed by the gentleman from Massachusetts; indeed he supposed, with the assistance of the committee, it might be formed so as to give satisfaction. He had no doubt but that the offices might be so constituted as to restrain and check each other; and unless an unbounded combination took place, which he could by no means suppose was likely to be the case, that the public would be safe and secure under the administration. He would favor the arrangement mentioned by the worthy gentleman from South Carolina (Mr. BALDWIN), and after that was separated from the Secretary's duties, he believed the officer would find sufficient business to employ his time and talents in rendering essential services to his country. This arrangement he considered would answer most of the objections which had been urged.

If a board is established, the independent offi-

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cers of Comptroller and Auditor are unknown; you then give the aggregate of these powers to the board, the members of which are equal; therefore you give more power to each individual than is proposed to be trusted in the Secretary; and if apprehensions are to be entertained of a combination, they apply as forcibly in the case of two or three commissioners combining, as they do in the case of the Secretary, Comptroller, and other officers. If gentlemen permit these sentiments to have their full weight, and consider the advantages arising from energy, system, and responsibility, which were all in favor of his motion, he had no doubt of their according with him on this question.

MR. GERRY.—If an individual has a control over the Treasury Department; if no money can be received or expended but by him, or on his warrant, he did not see any check which could be provided to prevent a misapplication of such powers, nor any means by which a man could demonstrate he had preserved his integrity. He thought these things were better guarded under a board, and therefore preferred one. Gentlemen, to be sure, had asserted there was no responsibility in a board; he denied the fact. A board of three commissioners are surely as responsible for their measures as an individual for his; each person of them is responsible for the act of the board, or, if one of them should deny his acquiescence to the matter in question, the charge may be determined by having recourse to the journal of their transactions, because whenever an order or resolution takes place, they enter their names for or against the measure in their books. These circumstances show they are responsible; and undoubtedly there is more security in having three persons consulted, than confiding all to the uncontrolled caprice of a single individual. He did not see the necessity of an officer to improve the revenue; that he took to be the peculiar business of the Federal Legislature. He could answer to the gentleman (Mr. BENSON) who applied the principles he urged in favor of a board against the constitution. It might with equal justice be said, that gentlemen, who contended for a Secretary of the Treasury, desired to have a single legislator; one man to make all laws, the revenue laws particularly, because among many there is less responsibility, system, and energy; consequently a numerous representation in this House is an odious institution.

MR. BOUNDINOT considered the question to be, whether the department should be under the direction of one or more officers. He was against boards, because he was convinced by experience that they are liable to all the objections which gentlemen had stated. He wished the committee had it in their power to turn to the transactions of this department since the revolution, to examine the expenditures under former boards of treasury, and under the Superintendent of Finance; it would so confound them, that he was sure no gentleman would offer another argument in favor of boards.

He was not acquainted with the management under the present board. He had not been in the habit of doing business with them. But between the administration of the former and the Superintendent of Finance, there was an intolerable comparison. He was far from being astonished at the jealousy and suspicion entertained of that valuable officer; he rather wondered that the clamor was not more loud and tremendous. He could not repeat all the causes there were for accusation against him, but surely they were not inconsiderable. He remembered one hundred and forty-six supernumerary officers were brushed off in one day, who had long been sucking the vital blood and spirit of the nation. Was it to be wondered at, if this swarm should raise a buzz about him? The reform which daily took place made him no inconsiderable number of enemies. The expenditures under the Board of Treasury had been enormous. They were curtailed in the quartermasters, commissaries of provision and military stores, in the hospital, and every great department established by Congress; so that, besides those who were offended by a removal, every one who was affected by this economy, or parsimony, if they will call it so, were incensed against him. It was impossible to gain friends among those people by a practice of this kind. He would state a circumstance which might give the committee some small idea of what the savings under the Superintendent were. The expenditure of hay at a certain post was one hundred and forty tons; such was the estimate laid before him; yet twelve tons carried the post through the year, and the supply was abundant, and the post was as fully and usefully occupied as it had ever been before.

He wished gentlemen to examine whether the other arguments did not preponderate in favor of a single administration. He thought that there was certainly more responsibility and system likely to be acquired in this way than in the other. He saw no weight in the objections stated by the gentleman, respecting the collusion between the Secretary and the Collectors; but if there was any weight in them, he imagined they applied with equal force against boards. The commissioners were men equally fallible and exposed as the Secretary, Comptroller, and Auditors.

The gentleman had asked, where a proper character for a financier was to be found? America has seen one man equal to the task; but he would not undertake to say that that gentleman was the only one fit for the business. If talents of this kind were hard to be found, he was for establishing the department in this way, in order to bring up men to a knowledge of this science. He had no idea of sending to a foreign nation for a person; it would be dishonorable to the United States. But he could not believe any foreigner adequate to the business. The utility of this officer consists in his knowledge of the manners, habits, customs, wealth, and pursuits; the temper, genius, and disposition of the people. This cannot be acquired but by a

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long residence and actual observation. A foreigner has not this advantage, and therefore must be unfit to direct the finances of America.

Mr. BLAND thought the decision of the House would depend upon the propriety of the powers which were annexed to the office, and the checks and restraints to which the whole of the department was subjected. Hence he thought they were taking the business up at the wrong end. He joined gentlemen in thinking the management of the public money was a matter of the most serious consideration, in which every citizen was more or less concerned. If a man were to be placed at the head of this department, without check or control, he would be a dangerous officer; but if his powers could be effectually restrained from doing the public an injury, he thought he might be rendered serviceable. Under these impressions, he had essayed to define the powers proper to be given. If they met the approbation of the committee, he was ready to vote in favor of the clause, adding thereto a Board of Commissioners.

Mr. GERRY joined the gentleman last up: he thought the powers ought first to be determined, because, after the committee had consented to have such an officer, gentlemen might insist upon such powers as would render him improper; in which case, gentlemen will have committed themselves, and cannot decently retract.

Mr. VINING thought there was an unnatural combination intimated by the gentleman from Virginia. (Mr. BLAND.) He could by no means think of uniting a Financier and Board of Treasury. He was sorry to hear the anecdote mentioned by the gentleman from Massachusetts. Is it to be supposed that we have no character in America fit for a place at the head of our Treasury? Are we to send to England for Doctor Price? Much as he valued and respected that character, he should be sorry to see him preside in one of the great departments of Government. He felt the humiliation so sensibly, that he should never again boast of the genius or abilities of his country. But he believed that event took place for want of information; because experience had convinced the world that America possessed a man equal to the arduous undertaking. He did not doubt that, on inquiry, many more might be found adequate to the business.

Mr. GERRY did not look upon it as derogatory to the dignity of the United States to look abroad for men of merit to perform their services. During the late war, they had employed useful officers in the army, who taught tactics to the troops. Finance was a system requiring time and attention in its acquirement. The kingdoms in Europe were not above seeking out and employing men of abilities in this way, although they were unqualified by law to hold any office. Did the King of France refuse the service of Necker because he was a protestant, and his father an alien? He was equally tenacious of the honor of his countrymen with the gentleman from Delaware, but he thought it no dis-

paragement to them to say they were not well acquainted with the most abstruse science in the world, which they never had any necessity to study.

The question on the amendment proposed by Mr. GERRY was taken and lost; after which the resolutions respecting the Treasury and War Department, as proposed by Mr. MADISON, were both agreed to.

Mr. VINING then proposed the establishment of the Domestic Department upon the same principles; but, on motion of Mr. BOUDINOT, the committee rose and reported the resolutions agreed to.—Adjourned.

THURSDAY, May 21.

EXECUTIVE DEPARTMENTS.

The House proceeded to consider the resolution reported yesterday from the Committee of the whole House on the state of the Union, and the same being amended to read as follows:

Resolved, That it is the opinion of this committee that there ought to be established the following executive departments, viz. A Department of Foreign Affairs, at the head of which shall be an officer to be called Secretary to the United States for the Department of Foreign Affairs, removable by the President. A Treasury Department, at the head of which shall be an officer to be called Secretary to the United States for the Treasury Department, removable by the President. A Department of War, at the head of which shall be an officer to be called Secretary to the United States for the Department of War, removable by the President.

Resolved, That this House doth concur with the committee in the said resolution; and that a committee, to consist of eleven members, be appointed to prepare and bring in a bill or bills pursuant thereto.

The members elected were, Mr. BALDWIN, Mr. VINING, Mr. LIVERMORE, Mr. MADISON, Mr. BENSON, Mr. BURKE, Mr. FITZSIMONS, Mr. BOUDINOT, Mr. WADSWORTH, Mr. GERRY, and Mr. CADWALADER.

Mr. CLYMER, from the Committee of Elections, to whom it was referred to report a proper mode of investigation and deciding on the petitions of a number of the citizens of New Jersey, complaining of the illegality of the election of the members holding seats in this House, as elected within that State, made a report, which was read and ordered to lie on the table.

The House proceeded to consider the report from the Committee of Elections, stating the proofs of the facts charged in the petition of David Ramsey, suggesting that WILLIAM SMITH, returned a member of this House for the State of South Carolina, was, at the time of his election, ineligible, by reason that he had not been seven years a citizen of the United States.—Adjourned.

FRIDAY, May 22.

CONTESTED ELECTION.

The House resumed the consideration of the report on Mr. SMITH's case.

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MR. LAWRENCE moved the recommitment of the report, with instructions to the committee, to examine and report facts arising from the proofs, in order to save the time of the House in the inquiry.

MR. LIVERMORE objected to this motion, and said, if he was to decide upon MR. SMITH'S eligibility, he would hear the evidence, and not commit to any man whatsoever to inquire for him.

After some desultory conversation on the re-commitment and mode of proceeding, it was agreed to examine the evidence in favor of MR. SMITH, the facts alleged by Doctor Ramsey, in proof that MR. SMITH was not seven years a citizen of the United States, being admitted. Whereupon, it being moved and seconded, that the House do agree to the following resolution:

Resolved, That it appears to this House, upon full and mature consideration, that the said WILLIAM SMITH had been seven years a citizen of the United States, at the time of his election.

MR. SMITH.—As the House are inclined to hear the observations I have to make, I shall begin with admitting the facts stated in the memorial of Doctor Ramsey, hoping the House will excuse the egotism into which I am unavoidably drawn. I was born in Charleston, South Carolina, of a family whose ancestors were among the first settlers of that colony, and was sent to England for my education when I was but twelve years of age. In 1774, I was sent to Geneva, to pursue my studies, where I resided until 1778. In November, that year, I went to Paris, where I resided upwards of two months in the character of an American gentleman. Immediately on my arrival there, I waited on Doctor Franklin, Mr. Adams, and Mr. A. Lee, the commissioners from Congress to the court of France, as a citizen of America, and was received as such by them. In January, 1779, I left Paris for London, whither I went to procure the means of embarking for America, from the gentleman who had been appointed my guardian by my father when I was first sent to Europe in 1770, and from whom alone I had any hope of obtaining such means. But in this endeavor, I was disappointed, and remained some time in England, with the hope of receiving remittances from Charleston. Here again my expectation was defeated. The rapid depreciation of the continental money rendered the negotiation of money transactions extremely difficult, and thus I remained till the fall of Charleston. I took this opportunity of studying the law, but could not be called to the bar, because I had not taken the oath of allegiance to Great Britain, which is a necessary qualification. After the surrender of Charleston, the whole State of South Carolina, fell into the hands of the enemy, and it was impossible at that time to return. No sooner, however, did I acquire the means, and an opportunity offered, than I prepared myself to go back to America. I quitted London for that

purpose in October or November, 1782, not in a vessel bound to Charleston, then a British garrison, and which I certainly should have done, had I considered myself a British subject, and which would have been most convenient, as there were vessels constantly going from London to Charleston; but I travelled to Ostend, and there embarked in a neutral vessel bound to St. Kitt's, from whence it was my intention to proceed to a Danish island, and thence to some American port in North Carolina or Georgia, from whence I could reach the American camp. In the beginning of January, 1783, I sailed from Ostend, but was detained a considerable time by contrary winds, and in the middle of the month of February, was shipwrecked on the coast of England, and was obliged to return to London in order to procure another passage. These circumstances unavoidably prevented my return to Charleston, until some time in November, 1783.

On my arrival at Charleston, I was received by my countrymen as a citizen of the State of South Carolina, and elected by their free suffrage a member of the Legislature in November, 1784. In the August following I was chosen, by the Governor and Council, a member of the Privy Council, and this election was confirmed by the Legislature the October following. In September, the same year, I was elected one of the Wardens of the City of Charleston. In November, 1786, I was again elected into the Legislature; again in November, 1788; I was elected at the same time that I was elected to the House of Representatives of the United States, the September preceding having been chosen again a Warden of the city.

After having stated these facts, he went on adverting to the laws referred to in the report of the committee, which, he said, he conceived to be applicable to the present case.

In September, 1779, a question was discussed in the Legislature of South Carolina, respecting the young men who were sent abroad for their education, and it was determined that it was most for the interest of the State, that they should be allowed to continue in Europe till they were twenty-two years of age; after which the law provided they should be doubly taxed if they did not return. This law might fairly be supposed to recognise the citizenship of all the young men in a similar predicament with himself. It allowed them all to be absent until they were twenty-two years of age; but even after that period it did not deprive them of the right of citizenship; it only subjected them to the penalty of a double tax. This he contended was a sort of compact with him, that if he chose to be absent after that time, he should suffer a certain penalty, which, in its own nature, implied that his citizenship remained; but before he attained that age, South Carolina was in such a situation that her best friends were compelled to be absent, and take refuge in distant countries. It was not till some time after that the friends of the American

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cause began to assemble in that State; the absentee law, therefore, never operated on him, and he never was doubly taxed.

In February, 1782, the Legislature met at Jacksonburg, and discriminated between friend and foe, between American and British subjects, by disposing of the estates of the latter, and banishing them; from an inspection of the law passed at that time, it would be evident in what light they viewed him. He had landed property in the State, but was himself in England; yet they did not attempt to confiscate his property, or subject him to an amercement. The absentee law was his safeguard, he had the permission of the State to be abroad.

If the Legislature in 1782 recognised as citizens some of those persons whose estates were confiscated for adhering to Great Britain, and for being disaffected to America *a fortiori*, did it not recognise as a citizen one whose estate was not forfeited, who had not been deemed worthy of punishment, and who had been absent under the sanction of the law?

By the constitution of South Carolina it appears, that no person was eligible to a seat in the Legislature until he had resided three years, nor to a seat in the Privy Council until he had resided five years in the State. He had a seat in both those bodies before he had resided two years in the State of South Carolina, and no objection was ever made on that score. He could not have been qualified for either, had not the people of South Carolina deemed his residence in that State, such a residence as gained him a qualification; or had they not supposed the qualification required in the constitution applied only to new comers and new citizens, for whom that residence was necessary to wean them from their local prejudices and national habits, and to attach them to the commonwealth. Had they not, in short, supposed him to have been a citizen during the revolution, and attached to his native State by every tie which could bind an individual to any country. Three years residence was either not required of him, or his former residence was deemed within the meaning of the constitution.

An act to confer the right of citizenship on aliens was passed March 26, 1784. For the purpose of possessing the subordinate rights of citizenship, such as an exemption from the alien duty, a residence of one year, and taking the oath of allegiance, was sufficient. To confer a right of voting at elections, a person must have been admitted a citizen two years prior to his voting; but for the higher privileges of a citizen, being eligible to offices of trust, to a seat in the Legislature and Privy Council, the alien must have been naturalized by law. Now, in November, 1784, he was elected into the Legislature, and took his seat without objection in January, 1785, and was elected into the Privy Council, October, 1785; all without being naturalized by law.

In October, 1785, when he was elected to

the Council, his election was opposed, but the objection now brought forward was not then made; and the memorialist himself, who was a member of the Legislature, voted in favor of the choice; though, unquestionably, unless he was considered by the Legislature as a citizen before he returned to Charleston, nothing had afterwards occurred to make him so, and the alien act of 1784 positively required a naturalization by act of Assembly to give him a qualification.

The constitution of South Carolina is silent as to citizenship, but allowed any person to vote at elections who had resided a year in the State, and paid a certain tax; to be a member of the Assembly he must have resided three, and to be a Privy Counsellor five years previous to his election, but nothing was said about citizenship. The act of 1784, however, expressly defined who should and who should not be deemed citizens; and, consequently, all persons who did not become citizens must have been held to be aliens, and considered so, till they had conformed to the alien act of 1784. Now, as he was admitted to offices of trust, to which aliens were not admissible, and as he was admitted to them without having the rights of citizenship conferred upon him, in pursuance of that act, it followed clearly, that the people of South Carolina and the Legislature acknowledged him to be a citizen by virtue of the revolution.

He went on to observe, that, from the doctrine laid down by the memorialist, it was difficult to ascertain when he did become a citizen of South Carolina. When he was admitted to the bar in 1784, he did no act which made him a citizen, the bare act of taking an oath of qualification to an office could not convert an alien to a citizen. The constitution seemed to imply a mere residence of a year, by giving a right to vote, gave a right of citizenship; if that were the case, and if his residence prior to the revolution was considered such a residence as the constitution required, then he was a citizen, by virtue of the constitution, after having resided a year in Carolina. Now, it was clear, his residence prior to the war was deemed such a residence as the constitution required; because he was admitted to vote and admitted to a seat in the Legislature and Council by right of such residence, not having had the requisite residence since the war, and yet being deemed qualified. If, therefore, that part of the constitution which gave a right of voting, in consequence of a year's residence and paying a certain tax, virtually conferred citizenship, by giving a right to vote, (and it appeared absurd that a right to vote should be given to persons not citizens,) and if, also, his residence, prior to the revolution, was deemed a sufficient residence, then he was a citizen by virtue of the constitution.

The points that seemed most to be relied upon by the memorialist were:

1st. That residence was actually necessary

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to confer citizenship, or, in other words, that a person could not become a citizen of a country, till he has resided in it.

2d. That a person could not become a citizen till he was of age to choose his country.

In answer to the first, he denied that residence in the country was absolutely necessary. Was it to be supposed, he asked, that when a man sent his son into another country for his education and improvement, the son was thereby to lose any political benefits which might, during such temporary absence, accrue to his country? If his father had lived a few years longer, would there have arisen any question on this subject? Would he not, though absent, have acquired, according to the petitioner's own positions, a right of citizenship? And should his death, at such an early period, not be deemed a sufficient misfortune for him, without using that as a pretence for making him an alien? Those who represented him in Carolina as his guardians, who were *in loco parentis*, were residents in Carolina at the declaration of independence.

His property was in Carolina, his money in the treasury, assisting to carry on the war. The declaration of independence affected him as much, though at Geneva, as it did those in Carolina; his happiness, that of his dearest connexions, his property, were deeply interested in it: his fate was so closely connected with that of Carolina, that any revolution in Carolina was a revolution to him. Though a minor, as soon as he heard of the independence of America, he considered himself an American citizen.

If a person could not become a citizen of a country without residing in it, what should be said of those gentlemen who had been in Europe during the war, and were now in high office in America? Several of them went to Europe before the war, were there at the declaration of independence, and did not return to America till after the war, or about the close of it. When did their citizenship commence? According to the petitioner, they could not become citizens of America until they returned to America, and took an oath of allegiance to the States; but Congress employed them in offices of great confidence, before they had returned to America, or taken such oath. Congress, therefore, considered them citizens, by virtue of the revolution.

It had been said, that Carolina had called on her young men to come to her assistance. This was not the true state of the case. Carolina thought that her young men who were abroad for their education, should not be taken from their studies till they were twenty-two years of age, and doubly taxed them after that. His guardian wrote to him that he had permission of the Legislature to be absent till he was twenty-two, and that he should be doubly taxed after that age.

It has been also said, that Carolina tendered an oath, to discover who were friends, and who were enemies. In March, 1778, the Le-

gisature of South Carolina passed an act to oblige every free male inhabitant of that State, above sixteen years of age, to take an oath of allegiance to the State. As there were notoriously many persons then in the State who were inimical to its liberties, such a step was necessary to give a reasonable cause for obliging them to quit the country. With that view, the oath was generally tendered only to those who were suspected or known not to be friendly to the cause. He had been informed by several persons, who were zealous partisans, and then in Carolina, that they had never taken any oath of allegiance, and that it had not been required of them on this occasion.

The act directed, that those who did not take it, should quit the State; and, if they returned, should be dealt with as traitors, and suffer death. Let us examine whether this act can, in any respect, apply to the present question. 1st, It particularly mentioned "inhabitants of the State of South Carolina." It could not, therefore, apply to persons who were abroad. 2dly, It directed that the oath should be taken before a justice of peace in Carolina; this could not, therefore, extend to a person then at Geneva. 3dly, It was directed to be taken in one month after the passing of the act; and it was not possible that I should hear of the existence of such an act in less than three months. 4thly, It was directed, that if the persons refused to take it, they should quit the State; but I was already out of it. 5thly, Those who refused to take it, were prevented from acquiring or conveying property, and rendered incapable of exercising any profession. But on my return to Carolina, I took peaceable possession of my estate, part of which consisted of lands and houses, which had been mine since the year 1770; and I was immediately admitted to the exercise of the profession for which I was educated. 6thly, The act directed, that if any person returned to Carolina, after having refused to take the oath, he should be put to death as a traitor; and, yet, on my return, never having taken the oath, I was elected a member of the Legislature, and a Privy Counsellor; and, instead of being deemed a criminal myself, I acted as Attorney General to punish others; and yet the petitioner, in one of his late publications, lays great stress on the applicability of this act.

2dly, There could be no doubt that a minor might be a citizen, from the very words of the constitution, which admitted a person to be a member of the House of Representatives at twenty-five, and yet required a citizenship of seven years. This was of itself a sufficient refutation of every thing contained in the petition on this head. The constitution acknowledged that a person might be a citizen at eighteen; if so, there was no reason why a person might not be one at sixteen or fourteen.

Mr. LEE said, the committee had now to determine, whether Mr. SMITH was a citizen of South Carolina during his absence from home,

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or not. If the laws of that State recognised him as such, the question was determined, because this House could not dispute a fact of that kind. From the reference that has been made to the constitution and laws of South Carolina, and the circumstances which took place under them, with respect to Mr. SMITH, it was convincing that he was acknowledged there to be a citizen in consequence of the revolution.

Mr. THATCHER thought the examination had been full; the facts stated in the memorial were admitted; but, nevertheless, it appeared from other facts, that Mr. SMITH was received and respected as a citizen of that standing which the constitution required. He had considered the subject maturely, and was now ready for the decision.

The petition of Dr. Ramsey was again read, in which he stated, "That citizenship with the United States is an adventitious character to every person possessing it, who is now thirty years of age; and that it can, in no case, have been acquired but in one of the following modes: 1st, By birth or inheritance. 2dly, By having been a party to the late revolution. 3dly, By taking an oath of fidelity to some of the States. 4thly, By tacit consent. 5thly, By adoption: and that Mr. SMITH cannot have acquired the character of a citizen in either of these modes, seven years ago. He cannot be a citizen by birth or inheritance, for he was born in 1758, in South Carolina, while a British colony; and his parents were both dead many years before the declaration of independence; his birth-right and inheritance can, therefore, be no other than that of a British subject; for no man can be born a citizen of a Government which did not exist at the time of his being born; nor can parents leave to their children any other political character than that which they themselves possessed."

After going on to state his reasons why Mr. SMITH could not have acquired citizenship in any of the other modes, he proceeds to say, that he "conceives that birth and residence in this country, before the revolution, could not confer citizenship on Americans who were absent when independence was declared, while they were absent, and anterior to their returning and joining their country under its new and independent Government: for, on that supposition, many persons hostile to these States must be admitted citizens; those who have been born for thirteen years before the declaration of independence, within the posts of our north-western frontiers, which are unjustly detained from us by the British, would be citizens. Our East India trade would be laid open to the numerous natives of this country, who are now dispersed over Europe and the West Indies: If birth and residence within the limits of the United States before the revolution conferred the rights of citizenship, persons of the aforesaid description, who have neither done nor hazarded any thing for our independence,

might trade to the East Indies as citizens of the United States, from the circumstance of their having been born in this country thirty or forty years ago, and, after having glutted our market with extravagant importations, carry the whole profits of their commerce to their present residence in foreign countries. These, and many other dangerous consequences, would, as your petitioner apprehends, follow from the establishment of a precedent, by which it was acknowledged, that a native of this country might be a citizen of the United States before he lived under their Government."

Mr. MADISON.—I think the merit of the question is now to be decided, whether the gentleman is eligible to a seat in this House or not; but it will depend on the decision of a previous question, whether he has been seven years a citizen of the United States or not.

From an attention to the facts which have been adduced, and from a consideration of the principles established by the revolution, the conclusion I have drawn is, that Mr. SMITH was, on the declaration of independence, a citizen of the United States; and unless it appears that he has forfeited his right, by some neglect or overt act, he had continued a citizen until the day of his election to a seat in this House. I take it to be a clear point, that we are to be guided, in our decision, by the laws and constitution of South Carolina, so far as they can guide us; and where the laws do not expressly guide us, we must be guided by principles of a general nature, so far as they are applicable to the present case.

It were to be wished, that we had some law adduced, more precisely defining the qualities of a citizen or an alien; particular laws of this kind have obtained in some of the States; if such a law existed in South Carolina, it might have prevented this question from ever coming before us; but since this has not been the case, let us settle some general principle before we proceed to the presumptive proof arising from public measures under the law, which tend to give support to the inference drawn from such principles.

It is an established maxim, that birth is a criterion of allegiance. Birth, however, derives its force sometimes from place, and sometimes from parentage; but, in general, place is the most certain criterion; it is what applies in the United States; it will, therefore, be unnecessary to investigate any other. Mr. SMITH founds his claim upon his birthright; his ancestors were among the first settlers of that colony.

It is well known to many gentlemen on this floor, as well as to the public, that the petitioner is a man of talents, one who would not lightly hazard his reputation in support of visionary principles: yet I cannot but think he has erred in one of the principles upon which he grounds his charge. He supposes, when this country separated from Great Britain, the tie of allegiance subsisted between the inhabitants of

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America and the King of that nation, unless, by some adventitious circumstance, the allegiance was transferred to one of the United States. I think there is a distinction which will invalidate his doctrine in this particular, a distinction between that primary allegiance which we owe to that particular society of which we are members, and the secondary allegiance we owe to the sovereign established by that society. This distinction will be illustrated by the doctrine established by the laws of Great Britain, which were the laws of this country before the revolution. The sovereign cannot make a citizen by any act of his own; he can confer denizenship; but this does not make a man either a citizen or subject. In order to make a citizen or subject, it is established, that allegiance shall first be due to the whole nation; it is necessary that a national act should pass to admit an individual member. In order to become a member of the British empire, where birth has not endowed the person with that privilege, he must be naturalized by an act of Parliament.

What was the situation of the people of America, when the dissolution of their allegiance took place by the declaration of independence? I conceive that every person who owed this primary allegiance to the particular community in which he was born, retained his right of birth, as a member of a new community; that he was consequently absolved from the secondary allegiance he had owed to the British sovereign. If he were not a minor, he became bound, by his own act, as a member of the society who separated with him from a submission to a foreign country. If he were a minor, his consent was involved in the decision of that society to which he belonged by the ties of nature. What was the allegiance, as a citizen of South Carolina, he owed to the King of Great Britain? He owed his allegiance to him as a King of that society to which, as a society, he owed his primary allegiance. When that society separated from Great Britain, he was bound by that act, and his allegiance transferred to that society, or the sovereign which that society should set up; because it was through his membership of the society of South Carolina that he owed allegiance to Great Britain.

This reasoning will hold good, unless it is supposed that the separation which took place between these States and Great Britain, not only dissolved the union between those countries, but dissolved the union among the citizens themselves: that the original compact, which made them altogether one society, being dissolved, they could not fall into pieces, each part making an independent society; but must individually revert into a state of nature; but I do not conceive that this was, of necessity, to be the case; I believe such a revolution did not absolutely take place. But in supposing that this was the case, lies the error of the memorialist. I conceive the colonies remained as a political society, detached from their former connexion with another society, without dissolving

into a state of nature; but capable of substituting a new form of Government in the place of the old one, which they had, for special considerations, abolished. Suppose the State of South Carolina should think proper to revise her constitution, abolish that which now exists, and establish another form of Government: surely this would not dissolve the social compact. It would not throw them back into a state of nature. It would not dissolve the union between the individual members of that society. It would leave them in perfect society, changing only the mode of action, which they are always at liberty to arrange. Mr. SMITH being then, at the declaration of independence, a minor, but being a member of that particular society, he became, in my opinion, bound by the decision of the society, with respect to the question of independence and change of Government; and if afterwards he had taken part with the enemies of his country, he would have been guilty of treason against that Government to which he owed allegiance, and would have been liable to be prosecuted as a traitor.

If it be said, that very inconvenient circumstances would result from this principle, that it would constitute all those persons who are natives of America, but who took part against the revolution, citizens of the United States, I would beg leave to observe, that we are deciding a question of right, unmixed with the question of expediency, and must, therefore, pay a proper attention to this principle. But I think it can hardly be expected by gentlemen that the principle will operate dangerously. Those who left their country, to take part with Britain, were of two descriptions—minors, or persons of mature age. With respect to the latter, nothing can be inferred with respect to them from the decision of the present case; because they had the power of making an option between the contending parties; whether this was a matter of right or not is a question which need not be agitated in order to settle the case before us. Then, with respect to those natives who were minors at the revolution, and whose case is analogous to Mr. SMITH's, if we are bound by the precedent of such a decision as we are about to make, and it is declared that they owe a primary allegiance to this country, I still think we are not likely to be inundated with such characters; so far as any of them took part against us, they violated their allegiance, and opposed our laws; so, then, there can be only a few characters, such as were minors at the revolution, and who have never violated their allegiance by a foreign connexion, who can be affected by the decision of the present question. The number, I admit, is large who might be acknowledged citizens on my principles; but there will very few be found daring enough to face the laws of the country they have violated, and against which they have committed high treason.

So far as we can judge by the laws of Caro-

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lina, and the practice and decision of that State, the principles I have adduced are supported; and I must own, that I feel myself at liberty to decide, that Mr. SMITH was a citizen at the declaration of independence, a citizen at the time of his election, and, consequently, entitled to a seat in this Legislature.

Mr. BOUDINOT expressed an apprehension, that the principle supported by the gentleman from Virginia would tend to injure the State of New Jersey very considerably. He was afraid it would be construed to embrace all the natives of America who had deserted their country's cause during the late war; and, on this account, he was against deciding in favor of the proposed resolution, though he believed Mr. SMITH to be fairly and constitutionally entitled to a seat in that House.

Mr. JACKSON.—I differ widely from the gentleman from Virginia (Mr. MADISON) on the subject of allegiance and the social compact, and hold the principles advanced by him exceedingly dangerous to many of the States, and, in particular, to the one I have the honor to represent. The situation of America, at the time of the revolution, was not properly to be compared to a people altering their mode or form of Government. Nor were there two allegiances due, one to the community here, another to that of Great Britain. We were all on a footing; and I contend the principle is right, in some degree, of a total reversion to a state of nature amongst individuals, and to a mere parental or patriarchal authority, where the heads had families dependent on them; the former, or individual, pursued that line which appeared right in his own eyes, and the cause which he thought just; and, in the latter case, the children followed the will of the father, who chose for them, as the person who brought them into life, and whose fortunes they were to inherit. I conceive the whole allegiance or compact to have been dissolved. Many of the States were a considerable period without establishing constitutions or forms of Government, and during that period we were in a little better state than that of nature; and then it was, that every man made his election for an original compact, or tie, which, by his own act, or that of his father for him, he became bound to submit to. And what, sir, would otherwise be the result? And if the gentleman's doctrines of birth were to be supported, those minors who, with British bayonets, have plundered and ravaged, nay, cruelly butchered their more virtuous neighbors—the sons of the most inveterate traitors, whose names deservedly sounded in every bill of confiscation; and the minors, sons of those who sheltered themselves under the shade of the British King, and supported his armies, if not with arms, with the resources of war, until the hour of danger was over—those, I say, after the blood of thousands has been spilt in the establishment of our Government, can now come forward and sneer at the foolish patriots, who endured every hardship of a seven years'

war, to secure to them the freedom and property they had no hand in defending. Sir, did we fight for this? Was it for this the soldier watched his numerous nights, and braved the inclemency of the seasons? Will he submit, after having gained his point at the expense of property and the loss of constitution, to have those sentiments established? If he will, he has fought to little purpose indeed.

Sir, I again contend, that when the revolution came on, we were all alike with respect to allegiances, and all under the same social tie. An Englishman born did not conceive himself more liable to be condemned for treason than an American, had the enemy succeeded; nor would there have been any distinction in the laws on coming to a trial. But, sir, how should this primary allegiance be known to belong to the less, or American community, where the majority did not prevail. In Georgia, the majority were opposed to American measures; agreeably to the gentleman's reasoning, the minors must have been all on the British side; and yet many of them, on arriving to years of discretion, behaved well and valiantly with us. To corroborate this, sir, I will remark, that, for a considerable period, we had no general or federal Government, or form of constitution, and yet were in arms. I would ask what state we were in then? Neighbor was against neighbor, and brother against brother. But, sir, the gentleman says, the hardened minor will not return. Sir, experience has proved the contrary. The Middle and Eastern States, except Pennsylvania, New Jersey, and New York, never had the enemy long with them; there was not the same trial of men, and they knew not the audacity of those villains. After having received their equivalent for, in many cases, feigned losses, from the British crown, they are daily returning and pushing into office. It is necessary we should guard against them. Britain, although humiliated, yet has a longing eye upon this country; she has yet posts in it. Although it is improbable that so many of these people will get into Congress as to form a corrupt majority, yet they have ambition and resentment enough to attempt it. At this moment, sir, in Georgia, are some of the most daring bringing ejectments for estates which their fathers had deservedly forfeited, although themselves had inbrued their hands in the blood of their fellow citizens.

Now, to the present case: Highly as I regard the gentleman (Mr. SMITH) as a valuable member, and esteem his abilities, I can only form my opinion on the leave given him by the State to be absent. If that principle is introduced into the resolution, I will vote in favor of Mr. SMITH's eligibility; but if not, I must decline voting.

Which he accordingly did when the question was put.

Mr. TUCKER hoped that the yeas and nays would be taken on this question, not because he had any doubt in his own mind of Mr. SMITH's

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Duties on Tonnage.

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right to a seat, but because he had been solicited by Dr. Ramsay to have the yeas and nays taken.

The yeas and nays were taken, as follows:

YEAS.—Messrs. Baldwin, Benson, Boudinot, Cadwalader, Carroll, Clymer, Coles, Contee, Fitzsimons, Floyd, Gilman, Goodhue, Heister, Huntington, Lawrence, Lee, Leonard, Livermore, Madison, Moore, Muhlenburg, Page, Van Rensselaer, Sency, Schureman, Scott, Sinnickson, Smith, of Maryland, Sturgis, Sylvester, Thatcher, Trumbull, Tucker, Vining, White, and Wynkoop.

Jonathan Grout voted in the negative.

Adjourned until Monday.

MONDAY, May 25.

THOMAS SUMTER, from South Carolina, appeared and took his seat.

NEW JERSEY ELECTIONS.

The House proceeded to consider the report from the Committee of Elections, to whom it was referred, to report a proper mode of investigation and decision on the petition of a number of the citizens of New Jersey, complaining of the illegality of the election of the members holding seats in this House, as elected within that State; and the said report being amended to read as followeth:

That it will be proper to appoint a committee before whom the petitioners are to appear, and who shall receive such proofs and allegations as the petitioners shall judge proper to offer in support of their said petition, and who shall, in like manner, receive all proofs and allegations from persons who may be desirous to appear and be heard in opposition to the said petition, and to report to the House all such facts as shall arise from the proofs and allegations of the respective parties.

Resolved, That this House doth agree with the committee in the said report, and that it be an instruction to the said Committee of Elections to proceed accordingly.

The members appointed were Messrs. PARTRIDGE, FLOYD, and THATCHER.

On motion,

Ordered, That the Committee of the whole House on the state of the Union be discharged from further proceeding on the motion to them committed, for making a compensation to the President of the United States for his services; and that a committee be appointed to take into consideration the subject of compensation to be made for the services of the President, Vice President, the members of the Senate and of the House of Representatives, and to report thereupon.

The members appointed were, Messrs. BALDWIN, VINING, LIVERMORE, MADISON, BENSON, BURKE, FITZSIMONS, BOUDINOT, WADSWORTH, GERRY, CADWALADER, and SMITH, of Maryland.

Mr. WADSWORTH presented, according to order, a bill imposing duties on tonnage; and the same was received, and read the first time.

A petition of the shipwrights of the city of Philadelphia, whose names are thereunto subscribed, was presented to the House and read, stating such regulations as they conceive will tend to the advancement and increase of American shipping, and praying the attention of Congress thereto.

Ordered, That the said petition do lie on the table.

TUESDAY, May 26.

A bill imposing duties on tonnage was read the second time, and ordered to be committed to a Committee of the whole House to-morrow.

Mr. SYLVESTER, from the committee appointed to confer with a committee of the Senate, to consider and report what newspapers the members of Congress shall be furnished with at the public expense, and to receive proposals from the printers for printing the acts and other proceedings of Congress, made a further report, which was read and ordered to lie on the table.

WEDNESDAY, May 27.

A message from the Senate informed the House that they had appointed a committee to confer with the committee appointed by this House, on the proper method of receiving into either House bills or messages from the President of the United States.

DUTIES ON TONNAGE.

The House resolved itself into a Committee of the whole, Mr. TRUMBULL in the Chair, on the bill imposing duties on tonnage; and, after making several amendments thereto, directed their Chairman to report when the House should think proper to receive the same.

Mr. FITZSIMONS, from the committee appointed, presented, according to order, a bill to regulate the collection of duties imposed on goods, wares, and merchandises imported into the United States; and the same was received and read the first time.

THURSDAY, May 28.

DUTIES ON TONNAGE.

The House proceeded to consider the amendments made yesterday in Committee of the whole, to the bill imposing duties on tonnage, which were agreed to; and the bill, as amended, was ordered to be engrossed and read a third time to-morrow.

On motion,

Resolved, That every such member of the present Congress, as is not yet furnished with a set of the journals of the late Congress, shall, on application to the keeper of the records and papers of the said late Congress, be entitled to receive a complete set of such journals.

Ordered, That the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

The House proceeded to consider the two reports, the one made on the 19th instant, the

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other on the 26th instant, by the committee appointed to confer with a committee of the Senate, to consider and report what newspapers the members of Congress shall be furnished with at the public expense, and to receive proposals for printing the acts, and other proceedings of Congress; and the first report, in the words following, viz.

"That, in their opinion, public economy requires that the expense heretofore incurred by the public, of supplying every member of Congress with all the newspapers printed at the seat of Congress, should be retrenched in future; but as your committee consider the publication of newspapers to be highly beneficial in disseminating useful knowledge throughout the United States, and deserving of public encouragement, they recommend that each member of Congress be supplied, at the public expense, with one paper, leaving the choice of the same to each member; and that it be the duty of the Secretary of the Senate, and Clerk of the House of Representatives, to give the necessary directions to the different printers, to furnish each member with such paper as he shall choose."

Which being read and debated,

Resolved, That this House doth disagree to the said report.

The other report being again read, and amended to read as followeth:

"That it would be proper that it should be left to the Secretary of the Senate, and Clerk of the House of Representatives, to contract with such persons as shall engage to execute the printing and binding business on the most reasonable terms, the paper being furnished by the said Secretary and Clerk to such person at the public expense. That such persons as they shall contract with, shall be obliged to render a state of their accounts quarterly, and that six hundred copies of the acts of Congress, and seven hundred copies of the journals, be printed and distributed to the executive and judiciary, and heads of departments of the Government of the United States, and the executive, legislative, and judiciary of the several States."

Resolved, That this House doth agree to the said report.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

WESTERN LANDS.

The House, on motion of Mr. SCOTT, went into a Committee of the whole on the state of the Union, for the purpose of considering certain resolutions he had prepared respecting the disposal of the land in the Western Territory, Mr. TRUMBULL in the chair.

Mr. SCOTT presumed there was little need of argument to prove to the committee the necessity of taking speedy measures with respect to the unsettled lands in the Western Territory. The dissolution of the Board of Treasury, and the death of the late Geographer of the United States, are adventitious circumstances, which tend to increase the necessity. Gentlemen are acquainted with the number of sales which have been made to some of the citizens of the United States; they consequently know that the Unit-

ed States are under an obligation to complete the surveys of those lands which they have made sale of. They know, also, that until this is done, they cannot receive a farthing of the millions of dollars due on those contracts; they will not only be unable to receive the principal, but will be paying interest for the same. Besides this, there are other considerations for putting the business on a new footing. The mode hitherto pursued of selling lands has been very expensive to the United States. Perhaps, on inquiry, we shall find, that the specie it has cost us in getting the land surveyed, and sales completed, would have purchased as many certificates as we get for the sale of the land. The lands are also proposed to be sold in too great quantities. It is very difficult to form a company for the purchase of a million acres. It ought to be sold in small quantities, to make the sales more certain and numerous; and, consequently, increase the public income. On this principle, it will be well to open a land office, and grant the soil in such quantities as may suit the applications. By this means more may be expected for the purchase, than when it is struck off, at a wholesale price, by the million acres; and in this way the land office will be conducted without expense, which will be fixed on the purchaser, so that the whole money the lands may bring will come into the treasury without deduction.

There are other considerations why a land office should be opened for the sale of that territory in the way just mentioned. There are, at this moment, a great number of people on the ground, who are willing to acquire by purchase a right to the soil they are seated upon. Allured by its fertility, the agreeableness of the climate, and the prospect of future ease to themselves and families, they would not seek a change. Kentucky, already full, at least there are no more valuable lands to be got there with a clear title, can receive no more emigrants: they therefore turn their wishful eyes upon the lands of the Union. They hope to get them of Congress upon as good terms as they can procure them of the speculators. What will these men think, who have placed themselves on a vacant spot, anxiously waiting its disposition by the Government, to find their pre-emption right engrossed by the purchaser of a million of acres? Will they expose themselves to be preyed upon by these men? They might submit to this, but they have other offers.

There are seven thousand souls waiting for lands; they will have them here or elsewhere; but there is some danger, if they cannot be accommodated within the boundaries of the United States, they will do one of two things: either move into the Spanish territory, where they are not altogether uninvited, and become an accession of power to a foreign nation forming to us a dangerous frontier; or they will take this course, move on the United States' territory, and take possession without your leave. What then will be the case? They will not pay

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you money. Will you then raise a force to drive them off? That has been tried: troops were raised, and sent under General Harmer, to effect that purpose. They burnt the cabins, broke down the fences, and tore up the potato patches; but three hours after the troops were gone, these people returned again, repaired the damage, and are now settled upon the lands in open defiance of the authority of the Union. But nevertheless they are willing to pay an equitable price for those lands; and, if they may be indulged with a pre-emption to the purchase, no men will be better friends to the Government. They went on the ground with an intention of purchasing, and are kept there by a hope that the Government will see their interest, and dispose of the land upon reasonable terms. But if you do not listen to their request, if you neglect or despise their offers, and they prove too weak to resist the omnipotent arm of Government, they will have recourse to a neighboring Power for protection. Hopes of that protection are now held out to them; it is my duty to inform you of the fact. They will be led to think their interest is separate from yours on the Atlantic shores. It will take prudent management to prevent the fatal effects of a commotion in that country. One of the most unhappy things we could do, would be to refuse selling those lands in less quantities than by the million of acres; it would certainly be a cause of disgust, if not of separation. If the object was to prevent the settlement of the country, it would be another thing; but that cannot be accomplished, it is not in the power of any force on earth to prevent the increase of the population now begun; it is therefore much better that we should incline them to friendship, than oblige them to become our enemies. The emigrants who reach the Western country, will not stop until they find a place where they can securely seat themselves. Your lands first offer; their fertility and agreeableness will tempt them to pitch there; but, to secure them, they must have a well grounded hope that the lands they cultivate may become their own. To encourage this, you must open that territory to them, and let them have lands for pay. You must go further, you must open the land office in that country, because it will be impossible for the indigent persons to travel far for an office-right. You can then establish a Government among them, and derive advantages from them which are now totally lost. They wish for your Government and laws, and will be gratified with the indulgence; but they wish also to acquire property under them; they wish for your lands, and what good reason can be offered to warrant a denial? If they cannot get your land, they must go further, and obtain it of foreigners, who are desirous of having them at any rate, who will give them lands without pay.

These observations are sufficient, no doubt, to evince the necessity of doing something with respect to the Western territory, and something different from what has hitherto been

done. In order that the committee may have a full view of my ideas, I will read the plan I have in my hand upon which a law may be founded.

He here read a previous resolution, to be followed by the plan, which was to this effect:

Resolved, That it is the opinion of this committee, that an act of Congress ought to pass for establishing and regulating a land-office, for the sale of the vacant and unappropriated land in the Western territory.

[Here, by way of separate resolutions, followed in detail the constituent parts of this office, and the routine in which the business should be conducted, directing the expense of the office to be supported by the fees payable before the warrants and patents were delivered.]

Mr. BOUDINOT was well convinced of the importance of the subject; but did not think the committee ripe for a decision. The other departments were not established, therefore it was best to leave the resolutions on this subject as much at large as possible. He had no objection to an adoption of a general resolution, and the appointment of a sub-committee, to consider of and arrange the business; but he could not consent to limit it in the manner the gentleman proposed. Perhaps the measure might interfere with the former arrangements, and it would be difficult if not unjust to alter them. Besides, the plan of the business was mere matter of experiment. Moreover, the necessity of such an establishment may be superseded by throwing the business into the hands of one of the three great departments, which the House had agreed to organize. For these reasons, he moved to amend the resolution by striking out the words "a land office," which would leave the subject at large.

Mr. LEE seconded this motion.

Mr. VINING took it, that the committee ought to carry this measure into effect as speedily as it was possible. He was convinced, from what the gentleman near him (Mr. SCOTT) had said, that it was indispensably necessary that a land office should be established. He did not conceive this business could be engrafted upon either of the three grand departments; there must be an independent, unconnected office, established in the Western country, where the necessary communications may be made, and the money can be secured to the officer of the treasury. Why then should gentlemen combine objects which are distinct in their nature, and throw the whole weight of this branch of the Government upon another already well burthened with business?

Mr. SCOTT admitted his measure to be mere matter of experiment, but gentlemen ought not to object to it on that account, because it was an experiment that would cost nothing; the officers were to have nothing but fees for their services.

Mr. CLYMER did not believe the committee were prepared for a decision at this time. He considered the subject to be as intricate and difficult as it was interesting; and therefore hoped full time would be given for investigation.

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Many persons had purchased large quantities of lands of the late Congress, with a view to sell them out in small lots, to accommodate the people who are inclined to settle upon them. If Congress now open a land office for the sale of small quantities, it will no doubt overcast the prospect of advantage which induced the former, and may induce future purchasers to apply for large grants. These observations, and others which would readily occur to every gentleman, would satisfy the committee that they ought not to precipitate the business. For this reason, he moved the rising of the committee.

Mr. WHITE opposed the rising of the committee, for the reasons suggested. He was confident every member saw the propriety of doing something speedily in the business, and he hoped they would agree to the resolution, as the best mode of disposing of the land, and giving satisfaction to the people.

Mr. MADISON had no objection to the rising of the committee, as the means of obtaining information; but he thought the business deserving of the earliest attention. The clear and full manner in which the gentleman from Pennsylvania had opened the subject to the view of the committee, left no doubt on his mind of the propriety of taking some early measures to accomplish the business in the manner suggested by that gentleman. The facts and intelligence mentioned were too important to be passed lightly over; he should for the present agree to rise, but hoped the subject would be resumed in the House.

The question was taken on the first resolution moved by Mr. SCOTT, and passed in the affirmative; the others remaining on the table.

The committee then rose and reported progress.

Mr. GERRY then moved, that a committee be appointed to consider the state of the unappropriated lands in the Western territory, and to report thereupon.

Mr. VINING thought this motion contradictory to the one just adopted in committee. If time was necessary for obtaining information, it was useless to set a committee about the business, because every gentleman might have easy access to all the former Congress had done on this subject.

Mr. PAGE disliked the appointment of a sub-committee on business which was before the whole, and doubted if it was in order.

Mr. GERRY said, it was of importance that the House should be made master of this subject, and he knew no way so likely to proceed in it, as by appointing a sub-committee to consider and inquire into the state of those lands. He looked upon this proposition to be detached from what was before the Committee of the whole, yet, it was of that nature as to reflect light upon the subject. He therefore hoped his motion would be agreed to.

Mr. SCOTT did not design to hurry the House or the committee into any measures, especially

if they were of doubtful policy; from his local situation he was possessed of facts, which it was impossible for many members of that House to be acquainted with. These facts he thought led to considerations of great importance to the United States. Under these circumstances, his duty led him to communicate to the House the information he had already given. He was far from wishing that Congress should proceed in the dark in their determinations on this subject; he rather wished for every information to be brought forward which could tend to illustrate it; and for that reason had cheerfully acquiesced in the rising of the committee. As he had some doubts with respect to the propriety of this motion, he hoped it would not be precipitated; he thought it was unnecessary to appoint a committee to consider the state of the unappropriated lands in the Western territory, because their situation was such as to stare every one in the face. No gentleman in that House was ignorant of the great sum of money due to Congress, upon completing the surveys of the grants already made. He supposed, likewise, that it was not in the power of the United States to make any alterations in their contracts with the purchasers of the land; a committee would therefore be useless.

He thought it was very clear, from the facts he had stated, that there was a necessity of adopting some measures like those he had proposed. If the gentleman by his motion intended to embarrass the business, or prevent any but the million acre purchasers from acquiring lands in that country, he was certain it would do an essential injury to the interests of the United States; the people, who are now disposed to settle, would go to the Spanish or English colonies; they would form a place of refuge, for all the outcasts of the Atlantic States, who, in such case, would become very dangerous neighbors. He had done his duty by bringing the subject before the House, and had no doubt but that others would do what was right in determining upon this question.

The motion was hereupon decided in the affirmative, and a committee consisting of Messrs. SCOTT, HUNTINGTON, and SHERMAN, was appointed. Adjourned.

FRIDAY, May 29.

The engrossed bill imposing duties on tonnage was read the third time, passed, and ordered to be sent to the Senate for concurrence.

Mr. PARTRIDGE, from the committee appointed to confer with a committee of the Senate, on the proper method of receiving into either House, bills or messages from the President of the United States, made a report; and the said report being amended to read as followeth:

That until the public offices are established, and the respective officers are appointed, any returns of bills and resolutions, or other communications from the President, may be re-

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ceived by either House, under cover, directed to the President of the Senate, or Speaker of the House of Representatives, as the case may be, and transmitted by such person as the President may think proper.

A bill to regulate the collection of duties imposed on goods, wares, and merchandises imported into the United States, was read the second time, and ordered to be committed to a Committee of the whole House on Monday next.

MONDAY, June 1.

A message from the Senate stated their agreement to the report on the mode of receiving into either House bills or other communications from the President of the United States, as the same had been amended by this House.

COLLECTION OF REVENUE.

The House went into a Committee of the whole, Mr. TRUMBULL in the chair, on the bill to regulate the collection of duties imposed on goods, wares, and merchandises imported into the United States.

And after some time spent therein, the committee rose and reported progress, and obtained leave to sit again.

Mr. BALDWIN, from the Committee appointed to take into consideration the subject of compensations to be made for the services of the President and Vice-President, the members of of the Senate, and House of Representatives, made a report, which was read and ordered to lie on the table.

On motion,

Ordered, That Mr. SMITH, (of South Carolina,) Mr. LAWRENCE, and Mr. AMES, be a committee to prepare and report a bill or bills to establish a uniform system on the subject of bankruptcies throughout the United States.

TUESDAY, June 2.

The Speaker, pursuant to the directions of the act, entitled "An act to regulate the time and manner of administering certain oaths," proceeded to administer the oath to support the constitution of the United States, in the form prescribed by the said act, to the following members of this House, who had not before taken a similar oath, viz: ABRAHAM BALDWIN, EGBERT BENSON, AEDANUS BURKE, ISAAC COLES, BENJAMIN CONTEE, WILLIAM FLOYD, JONATHAN GROUT, JOHN HATHORN, JAMES JACKSON, SAMUEL LIVERMORE, JEREMIAH VAN RANSSELAER, JOSHUA SENEY, THOMAS SINICKSON, PETER SYLVESTER, THOMAS SUMTER, JONATHAN TRUMBULL, JOHN VINING, and JEREMIAH WADSWORTH.

The same oath, and moreover the oath of office, prescribed by the said act, were also administered by the Speaker to the Clerk.

Mr. HUGER and Mr. SMITH, (of South Carolina,) produced certificates under the hand of the Chief Justice of New York, of their having taken the oath to support the constitu-

tion of the United States, before the said Chief Justice, pursuant to a former resolution of this House.

Mr. BALDWIN, from the committee appointed, presented, according to order, a bill to establish an executive department, to be denominated the Department of War, which was received, and read the first time.

Mr. BALDWIN, from the committee appointed, presented, according to order, a bill to establish an executive department, to be denominated the Department of Foreign Affairs, which was received, and read the first time.

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The House then resolved itself into a Committee of the whole; and resumed the bill for the collection of the revenue.

On motion, it was voted, that the consideration of the two *first articles* should be postponed: the *third article*, which is in these words, viz:

"That there shall also be constituted the following ports, which shall be ports both of entry and delivery, to wit:" was taken up—when Mr. LIVERMORE proposed that

Portsmouth, in New Hampshire, should be one of the ports of entry and delivery, to fill up the blank.

Machias and Portland were next mentioned; upon which many observations were made by different members—chiefly with respect to the number of ports for entry and delivery, which it might be necessary to constitute. The committee appeared to be divided in sentiment; and some gentlemen having observed, that they were not sufficiently prepared to decide what ports would be most suitable in the several States, it was moved, that the committee should rise, and make the further consideration of the bill the order of the day for to-morrow.

The vote on this motion being taken, it passed in the negative.

The Committee then proceeded in filling up the blank, when the following ports were agreed upon, viz:

Portsmouth, in *New Hampshire*.

Massachusetts.—Portland, Newburyport, Gloucester, Salem, Marblehead, Boston, Plymouth, Dighton, New Bedford, Sherburne, Nantucket.

Connecticut.—New London, New Haven, Norwalk.

State of New York.—City of New York, Sag Harbor.

New Jersey.—Perth Amboy, Egg Harbor, Salem.

Pennsylvania.—Philadelphia.

Delaware.—Wilmington.

The committee then rose, and the Chairman reported progress.

On motion,

Ordered, That it be an instruction to the committee appointed the 11th of April, to prepare and bring in a bill or bills for regulating the collection of imposts and tonnage in the

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United States, that they do prepare and bring in a bill, directing the mode of registering and clearing vessels, ascertaining their tonnage, and regulating the coasting trade, pilots, and light-houses.—Adjourned.

WEDNESDAY, June 3.

A message from the Senate informed the House that they had agreed to the amended report for the publication of the acts of Congress, with an amendment, to which they desired the concurrence of this House.

The House proceeded to consider the proposed amendment and agreed to it; of which the Clerk was directed to inform the Senate.

The two bills to establish the Department of War and the Department of Foreign Affairs, were read a second time, and ordered to be committed to a Committee of the whole.

A message from the Senate informed the House, that they were about to proceed to take the oath to support the constitution of the United States, pursuant to the "act to regulate the time and manner of administering certain oaths," and request that the act may be sent to them for that purpose.

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The House then again resolved itself into a committee, Mr. TRUMBULL in the chair.

The bill to regulate the collection of the revenue came again under consideration—when further progress was made in filling up the blank, by agreeing to the following, as ports of entry and delivery, viz:

Maryland.—Chestertown, Oxford, Vienna, Baltimore, Snow Hill, Georgetown, Annapolis, St. Mary's Patuxent,

Virginia.—Norfolk and Portsmouth, Hampton, Yorktown, Urbanna, Alexandria, Kinsale, Foley's Landing, Cherrystone, South Quay.

South Carolina.—Charleston, Georgetown, Beaufort.

Georgia.—Savannah, Sunbury, Brunswick, St. Patrick's on St. Mary's river.

Province of Maine in Massachusetts.—Peperelborough, Bath, on Kennebeck river, Wiscasset, on Sheepscut river, Penobscot, Machias, Passamaquoddy, York, Barnstable, in the county of Barnstable.

The Speaker resumed the chair, and the Chairman reported, that the committee had, according to order, had the said bill under consideration, and made further progress therein.

Resolved, That this House will, to-morrow, again resolve itself into a Committee of the whole House on the said bill.

THURSDAY, June 4.

A message from the Senate informed the House that they had passed the following resolution, to which they request the concurrence of the House, to wit:

Resolved, That, in ten days after the passing of

every act of Congress, during the present session, or until some other regulation shall be adopted, twenty-two printed copies thereof, signed by the Secretary of the Senate, and Clerk of the House of Representatives, and certified by them to be true copies of the original acts, be lodged with the President of the United States; and that he be requested to cause to be transmitted two of the said copies, so attested as aforesaid, to each of the Supreme Executives in the several States. To which resolution they desire the concurrence of this House.

COLLECTION OF REVENUE.

The House again resolved itself into a Committee of the whole on the bill to regulate the collection of revenue, Mr. TRUMBULL in the chair; when the following ports of entry and delivery were added to the bill, viz:

Massachusetts.—Kennebunk.

Virginia.—West Point, Newport, Tappahannoc, Fredericksburg, Suffolk, Bermuda Hundred, City Point, Rocket's Landing.

New Jersey.—Burlington, Newark, New Brunswick.

The Committee then rose, reported progress, and obtained leave to sit again.

Mr. LAWRENCE proposed to insert a clause to this effect: that all ships or vessels arriving at New York from any foreign port, and destined to the city of Hudson, Albany, Esopus Creek, Poughkeepsie, or Newburgh, on Hudson River, shall enter at the port of New York; and having there paid the duties, or secured them to be paid, they may then proceed to either of said ports to deliver their cargoes; the collector at New York putting on board a land or tide waiter, and taking effectual means to prevent frauds. This clause was adopted.

Mr. JACKSON introduced another clause, providing for the forming of the sea-coast of the State of Georgia into four districts, to include ports of entry and delivery. This division was agreeable to the laws of that State. This was adopted, as was also a clause, introduced by Mr. GOODHUE, similar to that of Mr. LAWRENCE, which provided that vessels bound up Merrimack river should enter and pay, or secure the duties at Newburyport.

The committee then rose.

Mr. BALDWIN, from the committee appointed to bring in a bill or bills for the arrangement of the three executive departments, reported a bill for the Treasury Department; which was read, and laid on the table.

Mr. BENSON gave notice that to-morrow he should move for a Committee of the whole on the state of the Union, to take up the proposition respecting Rhode Island.

FRIDAY, June 5.

The House took into consideration the resolution yesterday received from the Senate, providing for the transmission of copies of the acts of Congress to the several Executives of the States, and concurred therewith.

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The bill for establishing the Treasury Department was read a second time, and committed to a Committee of the whole.

Mr. AMES presented a petition from the tradesmen and manufacturers of Boston, praying the attention of Congress to the encouragement of manufactures and to the increase of American shipping, by such regulations as the wisdom of the National Legislature shall judge most consistent with the interest, prosperity, and happiness of this extensive empire. Ordered to lie on the table.

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The House again went into a Committee of the whole on the bill to regulate the collection of the revenue, Mr. TRUMBULL in the chair; when the following additions were made to the ports of entry and delivery:

Massachusetts.—Ipswich, Manchester, Beverly, Danvers, Lynn, Charlestown, Medford, Swanzey or Freetown, Westport, Duxbury.

Virginia.—Petersburg, Cumberland, Smithfield.

Mr. VINING gave notice, that on Wednesday next he should submit to the House a resolve, providing for the establishment of a fourth subordinate executive department to be denominated the Department of the Secretary of the United States for Domestic Affairs.

Mr. BENSON presented for consideration, the resolution which he yesterday gave notice of his intention of introducing in relation to the admission of Rhode Island into the Union, and moved that the House immediately go into a Committee of the whole on the state of the Union, for the purpose of discussing his proposition.

The resolution is in the following words:

The Congress of the United States do resolve and declare it to be their most earnest desire, that the Legislature of the State of Rhode Island and Providence Plantations, do recommend to the people of that State to choose delegates to meet in convention, and to whom the constitution of the United States is to be submitted, conformably to the unanimous resolution of the United States in Congress assembled, of the 28th of September, 1787.

Mr. PAGE.—I think of Rhode Island as the worthy gentleman from New York does; but, as a member of Congress, I doubt the propriety of this body interfering in the business. If I put myself, for a moment, into the situation of a citizen of a State that has refused to accede to the constitution of the United States, I must admit that I should watch your actions with a jealous eye; I should be apprehensive of undue influence, if I were to see you throw your weight into the scale. But what occasion is there for adopting such a resolution? Are gentlemen afraid to leave them to their own unbiassed judgment? For my part I am not: it will demonstrate the goodness of the constitution, if it be adopted upon mature consideration, without any aid but its own intrinsic value. As to amendments, when we come to

consider of them, I dare say they will be such as to make the constitution more agreeable; but, for the present, I think it improper to have any thing to do with the gentleman's motion; I hope he may be prevailed upon to withdraw it; he has done his duty by bringing it forward; but if it does not meet the approbation of the House, it will be a useless waste of time to give it any further discussion. The gentleman has shown sufficiently his attachment to the Federal Government, by the earnestness he shows to have it adopted throughout the United States. But, in addition to this, let him consider where such measures may lead us. Because the Legislature of Rhode Island have neglected or refused to submit the consideration of the constitution to a convention, we are to recommend it, and express a most earnest desire that they will comply. But suppose they decline doing what you require, what is next to be done? I hope gentlemen will hesitate before they go any further. I think we should be employed more in the line of our duty, by attending to the interests of our constituents, and completing the organization of a Government they ordered, than to spend our time about business which is not within our powers. Why should we interfere with the concerns of our sister States, who have not yet joined the new Government? I trust the gentleman will see the impropriety of his motion, and agree to withdraw it.

Mr. BENSON.—I hope we shall not go into an examination of the resolution at this stage of the business; my motion goes no further than that the House should resolve itself into a Committee of the whole, for the purpose of considering the resolution; therefore, when the House is in committee, it will be time enough to enter into the merits of the question. I admit, that it is not impossible but we may find, when we are in committee, that we cannot do any thing in the business; yet I think it proper to let that question rest until we go there. But, as the subject is of great importance, I have no doubt but the House will agree to my motion.

Mr. SMITH (of South Carolina).—I think we ought to go into committee, and hear what the gentleman has to say on the subject. Though I must acknowledge I am at present against the adoption of the resolution he has proposed; yet it is possible, when he has stated his reasons, and pointed out the necessity of it, that I may alter my opinion; but I wonder why the gentleman has omitted North Carolina.

Mr. SHERMAN.—I think Rhode Island stands in a different situation from North Carolina. When this constitution was formed in the convention, North Carolina was represented there; she, as well as the adopting States, submitted that instrument to a convention of the people; but not having adopted it, she has again called a convention, and is proceeding to reconsider it as fast as convenient; so that such a request as is now proposed would be unnecessary with

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respect to them. As Rhode Island did not send members to the first convention, there was a delicacy in transmitting the proceedings to them, and Congress could not, perhaps, apply to them with the same propriety as to another. But all we are now to consider, I believe, is, that we invite the State of Rhode Island to join our confederacy; what will be the effect of such a measure we cannot tell till we try it.

Mr. PAGE said, though he had a great deference for the mover, yet he conceived the motion ought not to come before Congress. He feared they would make themselves a party in the business, if they interfered; and he wished to avoid having any thing to do with their bickerings and disputes; it was enough for us to do the business we were sent upon, and not to attempt works of supererogation. From the respect he had for the gentleman, and from the delicate situation in which the House was involved, he hoped that the motion would be withdrawn.

Mr. AMES.—If the situation of the House is delicate, it is also dangerous in some degree; but he did not think it would relieve them by withdrawing the motion. If the gentleman felt serious on the subject, if there were danger in the measure, it ought to be well examined. But this was an argument for going into a Committee of the whole. Surely gentlemen are not afraid of knowing our situation. Then why oppose the means of coming at that knowledge? It is not possible to conceive that this question can be long evaded. Then what advantage is proposed from procrastination? For his part, he could discover none; and, therefore, was in favor of resolving into a Committee of the whole.

Mr. PAGE had heard the word danger, but did not hear distinctly the gentleman's arguments. He thought the House run the risk of involving themselves as parties, and of incurring all the dangers to which such a situation would expose them. He thought the best way to avoid the danger was to stay where we are.

Mr. MADISON.—I believe, Mr. Speaker, there are cases in which it is prudent to avoid coming to a decision at all, and cases where it is desirable to evade debate; if there were not cases of this kind, it would be unnecessary to guard our discussions with the previous question. My idea on the subject now before the House is, that it would be improper in this body to expose themselves to have such a proposition rejected by the Legislature of the State of Rhode Island. It would likewise be improper to express a desire on an occasion where a free agency ought to be employed, which would carry with it all the force of a command. How far this is contemplated on the present occasion, I cannot tell; but I heartily wish that as little may be said about it as possible. I conceive this to be one of the cases to which the previous question is applicable; and, if the gentleman means to call the House to a direct decision on this motion, I shall step between, and interpose the previous question.

Mr. AMES.—I am against the previous question being taken, because I wish the House to consider the motion made by the gentleman from New York; it is admitted to be a question of considerable importance; if it is, it ought to be considered; otherwise, we are shutting the door on information, and putting it out of our power to ascertain the propriety or impropriety of the motion.

I should be glad to know if any gentleman contemplates the State of Rhode Island dissevered from the Union; a maritime State, situated in the most convenient manner for the purpose of smuggling, and defrauding our revenue. Surely, a moment's reflection will induce the House to take measures to secure this object. Do gentlemen imagine that State will join the Union? If they do, what is the injury arising from the adoption of the resolution intended to be submitted to the committee? Is there any impropriety in desiring them to consider a question which they have not yet decided? It has been suggested, by an honorable gentleman, that this desire will operate as a demand. If a wish of Congress can bring them into the Union, why should we decline to express such a wish?

It has been said, that Rhode Island has never called a convention; the other States have. Then why should we decline to request them to do what every other State has been called upon to perform? The gentleman from Virginia seems afraid we should sacrifice our dignity by making this request. Let it be remembered, Great Britain lost her colonies by sacrificing her interest to her dignity. We ought, therefore, to be careful how we act upon ideas of this kind. There seems some disposition in that State to join her sister States in adopting the constitution. Then, why shall we decline encouraging that good spirit by approving the measure?

Mr. WHITE thought it best to put the previous question, because it was improper for this Legislature to interfere in their deliberation. If they were disposed to adopt the constitution, it would be best to let them exercise their judgment, independent of any influence which a recommendation from Congress might have.

The previous question being insisted upon, was put—"Shall the main question be now put?" and it was determined in the negative. Adjourned.

MONDAY, JUNE 8.

MICHAEL JENIFER STONE, from Maryland, appeared, and took his seat.

Mr. GOODHUE presented a petition from Nicholas Pike, of Newburyport, praying an exclusive interest, for a limited time, in the publication of his System of Arithmetic.—Referred to a select committee.

AMENDMENTS TO THE CONSTITUTION.

Mr. MADISON rose, and reminded the House

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that this was the day that he had heretofore named for bringing forward amendments to the constitution, as contemplated in the fifth article of the constitution, addressing the Speaker as follows: This day, Mr. Speaker, is the day assigned for taking into consideration the subject of amendments to the constitution. As I considered myself bound in honor and in duty to do what I have done on this subject, I shall proceed to bring the amendments before you as soon as possible, and advocate them until they shall be finally adopted or rejected by a constitutional majority of this House. With a view of drawing your attention to this important object, I shall move that this House do now resolve itself into a Committee of the whole on the state of the Union; by which an opportunity will be given, to bring forward some propositions, which I have strong hopes will meet with the unanimous approbation of this House, after the fullest discussion and most serious regard. I therefore move you, that the House now go into a committee on this business.

Mr. SMITH was not inclined to interrupt the measures which the public were so anxiously expecting, by going into a Committee of the whole at this time. He observed there were two modes of introducing this business to the House. One by appointing a select committee to take into consideration the several amendments proposed by the State conventions; this he thought the most likely way to shorten the business. The other was, that the gentleman should lay his propositions on the table, for the consideration of the members; that they should be printed, and taken up for discussion at a future day. Either of these modes would enable the House to enter upon business better prepared than could be the case by a sudden transition from other important concerns to which their minds were strongly bent. He therefore hoped that the honorable gentleman would consent to bring the subject forward in one of those ways, in preference to going into a Committee of the whole. For, said he, it must appear extremely impolitic to go into the consideration of amending the Government, before it is organized, before it has begun to operate. Certainly, upon reflection, it must appear to be premature. I wish, therefore, gentlemen would consent to the delay: for the business which lies in an unfinished state—I mean particularly the collection bill—is necessary to be passed; else all we have hitherto done is of no effect. If we go into the discussion of this subject, it will take us three weeks or a month; and during all this time, every other business must be suspended, because we cannot proceed with either accuracy or despatch when the mind is perpetually shifted from one subject to another.

Mr. JACKSON.—I am of opinion we ought not to be in a hurry with respect to altering the constitution. For my part, I have no idea of speculating in this serious manner on theory. If I agree to alterations in the mode of administer-

ing this Government, I shall like to stand on the sure ground of experience, and not be treading air. What experience have we had of the good or bad qualities of this constitution? Can any gentleman affirm to me one proposition that is a certain and absolute amendment? I deny that he can. Our constitution, sir, is like a vessel just launched, and lying at the wharf; she is untried, you can hardly discover any one of her properties. It is not known how she will answer her helm, or lay her course; whether she will bear with safety the precious freight to be deposited in her hold. But, in this state, will the prudent merchant attempt alterations? Will he employ workmen to tear off the planking and take asunder the frame? He certainly will not. Let us, gentlemen, fit out our vessel, set up her masts, and expand her sails, and be guided by the experiment in our alterations. If she sails upon an uneven keel, let us right her by adding weight where it is wanting. In this way, we may remedy her defects to the satisfaction of all concerned; but if we proceed now to make alterations, we may deface a beauty, or deform a well proportioned piece of workmanship. In short, Mr. Speaker, I am not for amendments at this time; but if gentlemen should think it a subject deserving of attention, they will surely not neglect the more important business which is now unfinished before them. Without we pass the collection bill we can get no revenue, and without revenue the wheels of Government cannot move. I am against taking up the subject at present, and shall therefore be totally against the amendments, if the Government is not organized, that I may see whether it is grievous or not.

When the propriety of making amendments shall be obvious from experience, I trust there will be virtue enough in my country to make them. Much has been said by the opponents to this constitution, respecting the insecurity of jury trials, that great bulwark of personal safety. All their objections may be done away, by proper regulations on this point, and I do not fear but such regulations will take place. The bill is now before the Senate, and a proper attention is shown to this business. Indeed, I cannot conceive how it could be opposed; I think an almost omnipotent Emperor would not be hardy enough to set himself against it. Then why should we fear a power which cannot be improperly exercised?

We have proceeded to make some regulations under the constitution; but have met with no inaccuracy, unless it may be said that the clause respecting vessels bound to or from one State be obliged to enter, clear, or pay duties in another, is somewhat obscure; yet that is not sufficient, I trust, in any gentleman's opinion to induce an amendment. But let me ask what will be the consequence of taking up this subject? Are we going to finish it in an hour? I believe not; it will take us more than a day, a week, a month—it will take a year to complete it! And will it be doing our duty to our coun-

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try, to neglect or delay putting the Government in motion, when every thing depends upon its being speedily done?

Let the constitution have a fair trial; let it be examined by experience, discover by that test what its errors are, and then talk of amending; but to attempt it now is doing it at a risk, which is certainly imprudent. I have the honor of coming from a State that ratified the constitution by the unanimous vote of a numerous convention: the people of Georgia have manifested their attachment to it, by adopting a State constitution framed upon the same plan as this. But although they are thus satisfied, I shall not be against such amendments as will gratify the inhabitants of other States, provided they are judged of by experience and not merely on theory. For this reason, I wish the consideration of the subject postponed until the 1st of March, 1790.

Mr. GOODHUE.—I believe it would be perfectly right in the gentleman who spoke last, to move a postponement to the time he has mentioned; because he is opposed to the consideration of amendments altogether. But I believe it will be proper to attend to the subject earlier; because it is the wish of many of our constituents, that something should be added to the constitution, to secure in a stronger manner their liberties from the inroads of power. Yet I think the present time premature; inasmuch as we have other business before us, which is incomplete, but essential to the public interest. When that is finished, I shall concur in taking up the subject of amendments.

Mr. BURKE thought amendments to the constitution necessary, but this was not the proper time to bring them forward. He wished the Government completely organized before they entered upon this ground. The law for collecting the revenue is immediately necessary; the Treasury Department must be established; till this, and other important subjects are determined, he was against taking this up. He said it might interrupt the harmony of the House, which was necessary to be preserved in order to despatch the great objects of legislation. He hoped it would be postponed for the present, and pledged himself to bring it forward hereafter, if nobody else would.

Mr. MADISON.—The gentleman from Georgia (Mr. JACKSON) is certainly right in his opposition to my motion for going into a Committee of the whole, because he is unfriendly to the object I have in contemplation; but I cannot see that the gentlemen who wish for amendments to be proposed at the present session, stand on good ground when they object to the House going into committee on this business.

When I first hinted to the House my intention of calling their deliberations to this object, I mentioned the pressure of other important subjects, and submitted the propriety of postponing this till the more urgent business was despatched; but finding that business not despatched, when the order of the day for consider-

ing amendments arrived, I thought it a good reason for a farther delay; I moved the postponement accordingly. I am sorry the same reason still exists in some degree, but operates with less force, when it is considered that it is not now proposed to enter into a full and minute discussion of every part of the subject, but merely to bring it before the House, that our constituents may see we pay a proper attention to a subject they have much at heart; and if it does not give that full gratification which is to be wished, they will discover that it proceeds from the urgency of business of a very important nature. But if we continue to postpone from time to time, and refuse to let the subject come into view, it may occasion suspicions, which, though not well founded, may tend to inflame or prejudice the public mind against our decisions. They may think we are not sincere in our desire to incorporate such amendments in the constitution as will secure those rights, which they consider as not sufficiently guarded. The applications for amendments come from a very respectable number of our constituents, and it is certainly proper for Congress to consider the subject, in order to quiet that anxiety which prevails in the public mind. Indeed, I think it would have been of advantage to the Government, if it had been practicable to have made some propositions for amendments the first business we entered upon; it would have stifled the voice of complaint, and made friends of many who doubted the merits of the constitution. Our future measures would then have been more generally agreeably supported; but the justifiable anxiety to put the Government into operation prevented that; it therefore remains for us to take it up as soon as possible. I wish then to commence the consideration at the present moment; I hold it to be my duty to unfold my ideas, and explain myself to the House in some form or other without delay. I only wish to introduce the great work, and, as I said before, I do not expect it will be decided immediately; but if some step is taken in the business, it will give reason to believe that we may come to a final result. This will inspire a reasonable hope in the advocates for amendments, that full justice will be done to the important subject; and I have reason to believe their expectation will not be defeated. I hope the House will not decline my motion for going into a committee.

Mr. SHERMAN.—I am willing that this matter should be brought before the House at a proper time. I suppose a number of gentlemen think it their duty to bring it forward; so that there is no apprehension it will be passed over in silence. Other gentlemen may be disposed to let the subject rest until the more important objects of Government are attended to; and I should conclude, from the nature of the case, that the people expect the latter from us in preference to altering the constitution; because they have ratified that instrument, in order that the Government may begin to operate. If this was not their wish, they might as well

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have rejected the constitution, as North Carolina has done, until the amendments took place. The State I have the honor to come from adopted this system by a very great majority, because they wished for the Government; but they desired no amendments. I suppose this was the case in other States; it will therefore be imprudent to neglect much more important concerns for this. The executive part of the Government wants organization; the business of the revenue is incomplete, to say nothing of the judiciary business. Now, will gentlemen give up these points to go into a discussion of amendments, when no advantage can arise from them? For my part, I question if any alteration which can be now proposed would be an amendment, in the true sense of the word; but nevertheless, I am willing to let the subject be introduced. If the gentleman only desires to go into committee for the purpose of receiving his propositions, I shall consent; but I have strong objections to being interrupted in completing the more important business; because I am well satisfied it will alarm the fears of twenty of our constituents where it will please one.

Mr. WHITE.—I hope the House will not spend much time on this subject, till the more pressing business is despatched; but, at the same time, I hope we shall not dismiss it altogether, because I think a majority of the people who have ratified the constitution, did it under the expectation that Congress would, at some convenient time, examine its texture and point out where it was defective, in order that it might be judiciously amended. Whether, while we are without experience, amendments can be digested in such a manner as to give satisfaction to a constitutional majority of this House, I will not pretend to say; but I hope the subject may be considered with all convenient speed. I think it would tend to tranquilize the public mind; therefore, I shall vote in favor of going into a Committee of the whole, and, after receiving the subject, shall be content to refer it to a special committee to arrange and report. I fear, if we refuse to take up the subject, it will irritate many of our constituents, which I do not wish to do. If we cannot, after mature consideration, gratify their wishes, the cause of complaint will be lessened, if not removed. But a doubt on this head will not be a good reason why we should refuse to inquire. I do not say this as it affects my immediate constituents, because I believe a majority of the district which elected me do not require alterations; but I know there are people in other parts who will not be satisfied unless some amendments are proposed.

Mr. SMITH, of South Carolina, thought the gentleman who brought forward the subject had done his duty: he had supported his motion with ability and candor, and if he did not succeed, he was not to blame. On considering what had been urged for going into a committee, he was induced to join the gentleman; but

it would be merely to receive his propositions, after which he would move something to this effect: That, however desirous this House may be to go into the consideration of amendments to the constitution, in order to establish the liberties of the people of America on the securest foundation, yet the important and pressing business of the Government prevents their entering upon that subject at present.

Mr. PAGE.—My colleague tells you he is ready to submit to the Committee of the whole his ideas on this subject. If no objection had been made to his motion, the whole business might have been finished before this. He has done me the honor of showing me certain propositions which he has drawn up; they are very important, and I sincerely wish the House may receive them. After they are published, I think the people will wait with patience till we are at leisure to resume them. But it must be very disagreeable to them to have it postponed from time to time, in the manner it has been for six weeks past; they will be tired out by a fruitless expectation. Putting myself into the place of those who favor amendments, I should suspect Congress did not mean seriously to enter upon the subject; that it was vain to expect redress from them. I should begin to turn my attention to the alternative contained in the fifth article, and think of joining the Legislatures of those States which have applied for calling a new convention. How dangerous such an expedient would be I need not mention; but I venture to affirm, that unless you take early notice of this subject, you will not have power to deliberate. The people will clamor for a new convention; they will not trust the House any longer. Those, therefore, who dread the assembling of a convention, will do well to acquiesce in the present motion, and lay the foundation of a most important work. I do not think we need consume more than half an hour in the Committee of the whole; this is not so much time but we may conveniently spare it, considering the nature of the business. I do not wish to divert the attention of Congress from the organization of the Government, nor do I think it need be done, if we comply with the present motion.

Mr. VINING.—I hope the House will not go into a Committee of the whole. It strikes me that the great amendment which the Government wants is expedition in the despatch of business. The wheels of the national machine cannot turn, until the impost and collection bill are perfected; these are the desiderata which the public mind is anxiously expecting. It is well known, that all we have hitherto done amounts to nothing, if we leave the business in its present state. True; but, say gentlemen, let us go into committee; it will take up but a short time; yet may it not take a considerable proportion of our time? May it not be procrastinated into days, weeks, nay, months? It is not the most facile subject that can come before the Legislature of the Union. Gentlemen's

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opinions do not run in a parallel on this topic; it may take up more time to unite or concentrate them than is now imagined. And what object is to be attained by going into a committee? If information is what we seek after, cannot that be obtained by the gentleman's laying his propositions on the table; they can be read, or they can be printed. But I have two other reasons for opposing this motion; the first is, the uncertainty with which we must decide on questions of amendment, founded merely on speculative theory; the second is a previous question, how far it is proper to take the subject of amendments into consideration, without the consent of two-thirds of both Houses? I will submit it to gentlemen, whether the words of the constitution, "the Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments," do not bear my construction, that it is as requisite for two-thirds to sanction the expediency of going into the measure at present, as it will be to determine the necessity of amending at all. I take it that the fifth article admits of this construction, and think that two-thirds of the Senate and House of Representatives must concur in the expediency, as to the time and manner of amendments, before we can proceed to the consideration of the amendments themselves. For my part, I do not see the expediency of proposing amendments. I think, sir, the most likely way to quiet the perturbation of the public mind, will be to pass salutary laws; to give permanency and stability to constitutional regulations, founded on principles of equity and adjusted by wisdom. Although hitherto we have done nothing to tranquillize that agitation which the adoption of the constitution threw some people into, yet the storm has abated and a calm succeeds. The people are not afraid of leaving the question of amendments to the discussion of their representatives; but is this the juncture for discussing it? What have Congress done towards completing the business of their appointment? They have passed a law regulating certain oaths; they have passed the impost bill; but are not vessels daily arriving, and the revenue slipping through our fingers? Is it not very strange that we neglect the completion of the revenue system? Is the system of jurisprudence unnecessary? And here let me ask gentlemen how they propose to amend that part of the constitution which embraces the judicial branch of Government, when they do not know the regulations proposed by the Senate, who are forming a bill on this subject?

If the honorable mover of the question before the House does not think he discharges his duty without bringing his propositions forward, let him take the mode I have mentioned, by which there will be little loss of time. He knows, as well as any gentleman, the importance of completing the business on your table, and that it is best to finish one subject before the introduction of another. He will not, therefore, persist in a motion which tends to

distract our minds, and incapacitates us from making a proper decision on any subject. Suppose every gentleman who desires alterations to be made in the constitution were to submit his propositions to a Committee of the whole; what would be the consequence? We should have strings of them contradictory to each other, and be necessarily engaged in a discussion that would consume too much of our precious time.

Though the State I represent had the honor of taking the lead in the adoption of this constitution, and did it by a unanimous vote; and although I have the strongest predilection for the present form of Government, yet I am open to information, and willing to be convinced of its imperfections. If this be done, I shall cheerfully assist in correcting them. But I cannot think this a proper time to enter upon the subject, because more important business is suspended; and, for want of experience, we are as likely to do injury by our prescriptions as good. I wish to see every proposition which comes from that worthy gentleman on the science of Government; but I think it can be presented better by staying where we are, than by going into committee, and therefore shall vote against his motion.

MR. MADISON.—I am sorry to be accessory to the loss of a single moment of time by the House. If I had been indulged in my motion, and we had gone into a Committee of the whole, I think we might have rose and resumed the consideration of other business before this time; that is, so far as it depended upon what I proposed to bring forward. As that mode seems not to give satisfaction, I will withdraw the motion, and move you, sir, that a select committee be appointed to consider and report such amendments as are proper for Congress to propose to the Legislatures of the several States, conformably to the fifth article of the constitution.

I will state my reasons why I think it proper to propose amendments, and state the amendments themselves, so far as I think they ought to be proposed. If I thought I could fulfil the duty which I owe to myself and my constituents, to let the subject pass over in silence, I most certainly should not trespass upon the indulgence of this House. But I cannot do this, and am therefore compelled to beg a patient hearing to what I have to lay before you. And I do most sincerely believe, that if Congress will devote but one day to this subject, so far as to satisfy the public that we do not disregard their wishes, it will have a salutary influence on the public councils, and prepare the way for a favorable reception of our future measures. It appears to me that this House is bound by every motive of prudence, not to let the first session pass over without proposing to the State Legislatures some things to be incorporated into the constitution, that will render it as acceptable to the whole people of the United States, as it has been found acceptable

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to a majority of them. I wish, among other reasons why something should be done, that those who have been friendly to the adoption of this constitution may have the opportunity of proving to those who were opposed to it that they were as sincerely devoted to liberty and a Republican Government, as those who charged them with wishing the adoption of this constitution in order to lay the foundation of an aristocracy or despotism. It will be a desirable thing to extinguish from the bosom of every member of the community, any apprehensions that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled. And if there are amendments desired of such a nature as will not injure the constitution, and they can be ingrafted so as to give satisfaction to the doubting part of our fellow-citizens, the friends of the Federal Government will evince that spirit of deference and concession for which they have hitherto been distinguished.

It cannot be a secret to the gentlemen in this House, that, notwithstanding the ratification of this system of Government by eleven of the thirteen United States, in some cases unanimously, in others by large majorities; yet still there is a great number of our constituents who are dissatisfied with it; among whom are many respectable for their talents and patriotism, and respectable for the jealousy they have for their liberty, which, though mistaken in its object, is laudable in its motive. There is a great body of the people falling under this description, who at present feel much inclined to join their support to the cause of Federalism, if they were satisfied on this one point. We ought not to disregard their inclination, but, on principles of amity and moderation, conform to their wishes, and expressly declare the great rights of mankind secured under this constitution. The acquiescence which our fellow-citizens show under the Government, calls upon us for a like return of moderation. But perhaps there is a stronger motive than this for our going into a consideration of the subject. It is to provide those securities for liberty which are required by a part of the community; I allude in a particular manner to those two States that have not thought fit to throw themselves into the bosom of the Confederacy. It is a desirable thing, on our part as well as theirs, that a re-union should take place as soon as possible. I have no doubt, if we proceed to take those steps which would be prudent and requisite at this juncture, that in a short time we should see that disposition prevailing in those States which have not come in, that we have seen prevailing in those States which have embraced the constitution.

But I will candidly acknowledge, that, over and above all these considerations, I do conceive that the constitution may be amended; that is to say, if all power is subject to abuse, that then it is possible the abuse of the powers of the General Government may be guarded

against in a more secure manner than is now done, while no one advantage arising from the exercise of that power shall be damaged or endangered by it. We have in this way something to gain, and, if we proceed with caution, nothing to lose. And in this case it is necessary to proceed with caution; for while we feel all these inducements to go into a revision of the constitution, we must feel for the constitution itself, and make that revision a moderate one. I should be unwilling to see a door opened for a reconsideration of the whole structure of the Government—for a re-consideration of the principles and the substance of the powers given; because I doubt, if such a door were opened, we should be very likely to stop at that point which would be safe to the Government itself. But I do wish to see a door opened to consider, so far as to incorporate those provisions for the security of rights, against which I believe no serious objection has been made by any class of our constituents: such as would be likely to meet with the concurrence of two-thirds of both Houses, and the approbation of three-fourths of the State Legislatures. I will not propose a single alteration which I do not wish to see take place, as intrinsically proper in itself, or proper because it is wished for by a respectable number of my fellow-citizens; and therefore I shall not propose a single alteration but is likely to meet the concurrence required by the constitution. There have been objections of various kinds made against the constitution. Some were levelled against its structure because the President was without a council; because the Senate, which is a legislative body, had judicial powers in trials on impeachments; and because the powers of that body were compounded in other respects, in a manner that did not correspond with a particular theory; because it grants more power than is supposed to be necessary for every good purpose, and controls the ordinary powers of the State Governments. I know some respectable characters who opposed this Government on these grounds; but I believe that the great mass of the people who opposed it, disliked it because it did not contain effectual provisions against encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our fellow-citizens think these securities necessary.

It is a fortunate thing that the objection to the Government has been made on the ground I stated; because it will be practicable, on that ground, to obviate the objection, so far as to satisfy the public mind that their liberties will be perpetual, and this without endangering any part of the constitution, which is considered as essential to the existence of the Government by those who promoted its adoption.

The amendments which have occurred to me, proper to be recommended by Congress to the State Legislatures, are these:

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First, That there be prefixed to the constitution a declaration, that all power is originally vested in, and consequently derived from, the people.

That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.

That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution.

Secondly. That in article 1st, section 2, clause 3, these words be struck out, to wit: "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;" and that in place thereof be inserted these words, to wit: "After the first actual enumeration, there shall be one Representative for every thirty thousand, until the number amounts to ———, after which the proportion shall be so regulated by Congress, that the number shall never be less than ———, nor more than ———, but each State shall, after the first enumeration, have at least two Representatives; and prior thereto."

Thirdly. That in article 1st, section 6, clause 1, there be added to the end of the first sentence, these words, to wit: "But no law varying the compensation last ascertained shall operate before the next ensuing election of Representatives."

Fourthly. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit: "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed."

The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.

The people shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances.

The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.

No soldier shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law.

No person shall be subject, except in cases

of impeachment, to more than one punishment or one trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The rights of the people to be secured in their persons; their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

The exceptions here or elsewhere in the constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the constitution; but either as actual limitations of such powers, or as inserted merely for greater caution.

Fifthly. That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit:

No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.

Sixthly. That, in article 3d, section 2, be annexed to the end of clause 2d, these words, to wit:

But no appeal to such court shall be allowed where the value in controversy shall not amount to ——— dollars: nor shall any fact triable by jury, according to the course of common law, be otherwise re-examinable than may consist with the principles of common law.

Seventhly. That in article 3d, section 2, the third clause be struck out, and in its place be inserted the clauses following, to wit:

The trial of all crimes (except in cases of impeachments, and cases arising in the land or naval forces, or the militia when on actual service, in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment or indictment by a grand jury shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law

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be authorized in some other county of the same State, as near as may be to the seat of the offence.

In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate.

Eighthly. That immediately after article 6th, be inserted, as article 7th, the clauses following, to wit:

The powers delegated by this constitution are appropriated to the departments to which they are respectively distributed: so that the legislative department shall never exercise the powers vested in the executive or judicial nor the executive exercise the powers vested in the legislative or judicial, nor the judicial exercise the powers vested in the legislative or executive departments.

The powers not delegated by this constitution, nor prohibited by it to the States, are reserved to the States respectively.

Ninthly. That article 7th be numbered as article 8th.

The first of these amendments relates to what may be called a bill of rights. I will own that I never considered this provision so essential to the federal constitution, as to make it improper to ratify it, until such an amendment was added; at the same time, I always conceived, that in a certain form, and to a certain extent, such a provision was neither improper nor altogether useless. I am aware, that a great number of the most respectable friends to the Government, and champions for republican liberty, have thought such a provision, not only unnecessary, but even improper; nay, I believe some have gone so far as to think it even dangerous. Some policy has been made use of, perhaps, by gentlemen on both sides of the question: I acknowledge the ingenuity of those arguments which were drawn against the constitution, by a comparison with the policy of Great Britain, in establishing a declaration of rights; but there is too great a difference in the case to warrant the comparison: therefore, the arguments drawn from that source were in a great measure inapplicable. In the declaration of rights which that country has established, the truth is, they have gone no farther than to raise a barrier against the power of the Crown; the power of the Legislature is left altogether indefinite. Although I know whenever the great rights, the trial by jury, freedom of the press, or liberty of conscience, come in question in that body, the invasion of them is resisted by able advocates, yet their Magna Charta does not contain any one provision for the security of those rights, respecting which the people of America are most alarmed. The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British constitution.

But although the case may be widely differ-

ent, and it may not be thought necessary to provide limits for the legislative power in that country, yet a different opinion prevails in the United States. The people of many States have thought it necessary to raise barriers against power in all forms and departments of Government, and I am inclined to believe, if once bills of rights are established in all the States as well as the federal constitution, we shall find that although some of them are rather unimportant, yet, upon the whole, they will have a salutary tendency.

It may be said, in some instances, they do no more than state the perfect equality of mankind. This, to be sure, is an absolute truth, yet it is not absolutely necessary to be inserted at the head of a constitution.

In some instances they assert those rights which are exercised by the people in forming and establishing a plan of Government. In other instances, they specify those rights which are retained when particular powers are given up to be exercised by the Legislature. In other instances, they specify positive rights, which may seem to result from the nature of the compact. Trial by jury cannot be considered as a natural right, but a right resulting from a social compact which regulates the action of the community, but is as essential to secure the liberty of the people as any one of the pre-existent rights of nature. In other instances, they lay down dogmatic maxims with respect to the construction of the Government; declaring that the legislative, executive, and judicial branches shall be kept separate and distinct. Perhaps the best way of securing this in practice is, to provide such checks as will prevent the encroachment of the one upon the other.

But whatever may be the form which the several States have adopted in making declarations in favor of particular rights, the great object in view is to limit and qualify the powers of Government, by excepting out of the grant of power those cases in which the Government ought not to act, or to act only in a particular mode. They point these exceptions sometimes against the abuse of the executive power, sometimes against the legislative, and, in some cases, against the community itself; or, in other words, against the majority in favor of the minority.

In our Government it is, perhaps, less necessary to guard against the abuse in the executive department than any other; because it is not the stronger branch of the system, but the weaker: It therefore must be levelled against the legislative, for it is the most powerful, and most likely to be abused, because it is under the least control. Hence, so far as a declaration of rights can tend to prevent the exercise of undue power, it cannot be doubted but such declaration is proper. But I confess that I do conceive, that in a Government modified like this of the United States, the great danger lies rather in the abuse of the community than in the legislative body. The prescriptions in favor of liberty ought to be levelled against that quarter where

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the greatest danger lies, namely, that which possesses the highest prerogative of power. But this is not found in either the executive or legislative departments of Government, but in the body of the people, operating by the majority against the minority.

It may be thought that all paper barriers against the power of the community are too weak to be worthy of attention. I am sensible they are not so strong as to satisfy gentlemen of every description who have seen and examined thoroughly the texture of such a defence; yet, as they have a tendency to impress some degree of respect for them, to establish the public opinion in their favor, and rouse the attention of the whole community, it may be one means to control the majority from those acts to which they might be otherwise inclined.

It has been said, by way of objection to a bill of rights, by many respectable gentlemen out of doors, and I find opposition on the same principles likely to be made by gentlemen on this floor, that they are unnecessary articles of a Republican Government, upon the presumption that the people have those rights in their own hands, and that is the proper place for them to rest. It would be a sufficient answer to say, that this objection lies against such provisions under the State Governments, as well as under the General Government; and there are, I believe, but few gentlemen who are inclined to push their theory so far as to say that a declaration of rights in those cases is either ineffectual or improper. It has been said, that in the Federal Government they are unnecessary, because the powers are enumerated, and it follows, that all that are not granted by the constitution are retained; that the constitution is a bill of powers, the great residuum being the rights of the people; and, therefore, a bill of rights cannot be so necessary as if the residuum was thrown into the hands of the Government. I admit that these arguments are not entirely without foundation; but they are not conclusive to the extent which has been supposed. It is true, the powers of the General Government are circumscribed, they are directed to particular objects; but even if Government keeps within those limits, it has certain discretionary powers with respect to the means, which may admit of abuse to a certain extent, in the same manner as the powers of the State Governments under their constitutions may to an indefinite extent; because in the constitution of the United States, there is a clause granting to Congress the power to make all laws which shall be necessary and proper for carrying into execution all the powers vested in the Government of the United States, or in any department or officer thereof; this enables them to fulfil every purpose for which the Government was established. Now, may not laws be considered necessary and proper by Congress, for it is for them to judge of the necessity and propriety to accomplish those special purposes which they may have in contemplation, which laws in them-

selves are neither necessary nor proper; as well as improper laws could be enacted by the State Legislatures, for fulfilling the more extended objects of those Governments. I will state an instance, which I think in point, and proves that this might be the case. The General Government has a right to pass all laws which shall be necessary to collect its revenue; the means for enforcing the collection are within the direction of the Legislature: may not general warrants be considered necessary for this purpose, as well as for some purposes which it was supposed at the framing of their constitutions the State Governments had in view? If there was reason for restraining the State Governments from exercising this power, there is like reason for restraining the Federal Government.

It may be said, indeed it has been said, that a bill of rights is not necessary, because the establishment of this Government has not repealed those declarations of rights which are added to the several State constitutions; that those rights of the people, which had been established by the most solemn act, could not be annihilated by a subsequent act of that people, who meant, and declared at the head of the instrument, that they ordained and established a new system, for the express purpose of securing to themselves and posterity the liberties they had gained by an arduous conflict.

I admit the force of this observation, but I do not look upon it to be conclusive. In the first place, it is too uncertain ground to leave this provision upon, if a provision is at all necessary to secure rights so important as many of those I have mentioned are conceived to be, by the public in general, as well as those in particular who opposed the adoption of this constitution. Besides, some States have no bills of rights, there are others provided with very defective ones, and there are others whose bills of rights are not only defective, but absolutely improper; instead of securing some in the full extent which republican principles would require, they limit them too much to agree with the common ideas of liberty.

It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration; and it might follow, by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the fourth resolution.

It has been said, that it is unnecessary to load the constitution with this provision, because it was not found effectual in the constitution of the particular States. It is true, there are a few particular States in which some of the

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most valuable articles have not, at one time or other, been violated; but it does not follow but they may have, to a certain degree, a salutary effect against the abuse of power. If they are incorporated into the constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights. Besides this security, there is a great probability that such a declaration in the federal system would be enforced; because the State Legislatures will jealously and closely watch the operations of this Government, and be able to resist with more effect every assumption of power, than any other power on earth can do; and the greatest opponents to a Federal Government admit the State Legislatures to be sure guardians of the people's liberty. I conclude, from this view of the subject, that it will be proper in itself, and highly politic, for the tranquillity of the public mind, and the stability of the Government, that we should offer something, in the form I have proposed, to be incorporated in the system of Government, as a declaration of the rights of the people.

In the next place, I wish to see that part of the constitution revised which declares that the number of Representatives shall not exceed the proportion of one for every thirty thousand persons, and allows one Representative to every State which rates below that proportion. If we attend to the discussion of this subject, which has taken place in the State conventions, and even in the opinion of the friends to the constitution, an alteration here is proper. It is the sense of the people of America, that the number of Representatives ought to be increased, but particularly that it should not be left in the discretion of the Government to diminish them, below that proportion which certainly is in the power of the Legislature as the constitution now stands; and they may, as the population of the country increases, increase the House of Representatives to a very unweildy degree. I confess I always thought this part of the constitution defective, though not dangerous; and that it ought to be particularly attended to whenever Congress should go into the consideration of amendments.

There are several minor cases enumerated in my proposition, in which I wish also to see some alteration take place. That article which leaves it in the power of the Legislature to ascertain its own emolument, is one to which I allude. I do not believe this is a power which, in the ordinary course of Government, is likely to be abused. Perhaps of all the powers granted, it is least likely to abuse; but there is a seeming impropriety in leaving any set of men without control to put their hand into the public coffers, to take out money to put in their pockets; there is a seeming indecorum in such power, which

leads me to propose a change. We have a guide to this alteration in several of the amendments which the different conventions have proposed. I have gone, therefore, so far as to fix it, that no law, varying the compensation, shall operate until there is a change in the Legislature; in which case it cannot be for the particular benefit of those who are concerned in determining the value of the service.

I wish also, in revising the constitution, we may throw into that section, which interdicts the abuse of certain powers in the State Legislatures, some other provisions of equal, if not greater importance than those already made. The words, "No State shall pass any bill of attainder, *ex post facto* law," &c. were wise and proper restrictions in the constitution. I think there is more danger of those powers being abused by the State Governments than by the Government of the United States. The same may be said of other powers which they possess, if not controlled by the general principle, that laws are unconstitutional which infringe the rights of the community. I should therefore wish to extend this interdiction, and add, as I have stated in the 5th resolution, that no State shall violate the equal right of conscience, freedom of the press, or trial by jury in criminal cases; because it is proper that every Government should be disarmed of powers which trench upon those particular rights. I know, in some of the State constitutions, the power of the Government is controlled by such a declaration; but others are not. I cannot see any reason against obtaining even a double security on those points; and nothing can give a more sincere proof of the attachment of those who opposed this constitution to these great and important rights, than to see them join in obtaining the security I have now proposed; because it must be admitted, on all hands, that the State Governments are as liable to attack these invaluable privileges as the General Government is, and therefore ought to be as cautiously guarded against.

I think it will be proper, with respect to the judiciary powers, to satisfy the public mind on those points which I have mentioned. Great inconvenience has been apprehended to suitors from the distance they would be dragged to obtain justice in the Supreme Court of the United States, upon an appeal on an action for a small debt. To remedy this, declare that no appeal shall be made unless the matter in controversy amounts to a particular sum; this, with the regulations respecting jury trials in criminal cases, and suits at common law, it is to be hoped, will quiet and reconcile the minds of the people to that part of the constitution.

I find, from looking into the amendments proposed by the State conventions, that several are particularly anxious that it should be declared in the constitution, that the powers not therein delegated should be reserved to the several States. Perhaps words which may define this more precisely than the whole of the instru-

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ament now does, may be considered as superfluous. I admit they may be deemed unnecessary; but there can be no harm in making such a declaration, if gentlemen will allow that the fact is as stated. I am sure I understand it so, and do therefore propose it.

These are the points on which I wish to see a revision of the constitution take place. How far they will accord with the sense of this body, I cannot take upon me absolutely to determine; but I believe every gentleman will readily admit that nothing is in contemplation, so far as I have mentioned, that can endanger the beauty of the Government in any one important feature, even in the eyes of its most sanguine admirers. I have proposed nothing that does not appear to me as proper in itself, or eligible as patronized by a respectable number of our fellow-citizens; and if we can make the constitution better in the opinion of those who are opposed to it, without weakening its frame, or abridging its usefulness, in the judgment of those who are attached to it, we act the part of wise and liberal men to make such alterations as shall produce that effect.

Having done what I conceived was my duty, in bringing before this House the subject of amendments, and also stated such as I wish for and approve, and offered the reasons which occurred to me in their support, I shall content myself, for the present, with moving "that a committee be appointed to consider of and report such amendments as ought to be proposed by Congress to the Legislatures of the States, to become, if ratified by three-fourths thereof, part of the constitution of the United States." By agreeing to this motion, the subject may be going on in the committee, while other important business is proceeding to a conclusion in the House. I should advocate greater despatch in the business of amendments, if I were not convinced of the absolute necessity there is of pursuing the organization of the Government; because I think we should obtain the confidence of our fellow-citizens, in proportion as we fortify the rights of the people against the encroachments of the Government.

Mr. JACKSON.—The more I consider the subject of amendments, the more I am convinced it is improper. I revere the rights of my constituents as much as any gentleman in Congress, yet I am against inserting a declaration of rights in the constitution, and that for some of the reasons referred to by the gentleman last up. If such an addition is not dangerous or improper, it is at least unnecessary: that is a sufficient reason for not entering into the subject at a time when there are urgent calls for our attention to important business. Let me ask gentlemen, what reason there is for the suspicions which are to be removed by this measure? Who are Congress, that such apprehensions should be entertained of them? Do we not belong to the mass of the people? Is there a single right that, if infringed, will not affect us and our connexions as much as any other person?

Do we not return at the expiration of two years into private life? and is not this a security against encroachments? Are we not sent here to guard those rights which might be endangered, if the Government was an aristocracy or a despotism? View for a moment the situation of Rhode Island, and say whether the people's rights are more safe under State Legislatures than under a Government of limited powers? Their liberty is changed to licentiousness. But do gentlemen suppose bills of rights necessary to secure liberty? If they do, let them look at New York, New Jersey, Virginia, South Carolina, and Georgia. Those States have no bills of rights, and is the liberty of the citizens less safe in those States, than in the other of the United States? I believe it is not.

There is a maxim in law, and it will apply to bills of rights, that when you enumerate exceptions, the exceptions operate to the exclusion of all circumstances that are omitted; consequently, unless you except every right from the grant of power, those omitted are inferred to be resigned to the discretion of the Government.

The gentleman endeavors to secure the liberty of the press; pray how is this in danger? There is no power given to Congress to regulate this subject as they can commerce, or peace, or war. Has any transaction taken place to make us suppose such an amendment necessary? An honorable gentleman, a member of this House, has been attacked in the public newspapers on account of sentiments delivered on this floor. Have Congress taken any notice of it? Have they ordered the writer before them, even for a breach of privilege, although the constitution provides that a member shall not be questioned in any place for any speech or debate in the House? No, these things are offered to the public view, and held up to the inspection of the world. These are principles which will always prevail. I am not afraid, nor are other members I believe, our conduct should meet the severest scrutiny. Where, then, is the necessity of taking measures to secure what neither is nor can be in danger?

I hold, Mr. Speaker, that the present is not a proper time for considering of amendments. The States of Rhode Island and North Carolina are not in the Union. As to the latter, we have every presumption that she will come in. But in Rhode Island I think the anti-federal interest yet prevails. I am sorry for it, particularly on account of the firm friends of the Union, who are kept without the embrace of the confederacy by their countrymen. These persons are worthy of our patronage; and I wish they would apply to us for protection; they should have my consent to be taken into the Union upon such application. I understand there are some important mercantile and manufacturing towns in that State, who ardently wish to live under the laws of the General Government; if they were to come forward and

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request us to take measures for this purpose, I would give my sanction to any which would be likely to bring about such an event.

But to return to my argument. It being the case that those States are not yet come into the Union, when they join us, we shall have another list of amendments to consider, and another bill of rights to frame. Now, in my judgment, it is better to make but one work of it whenever we set about the business.

But in what a situation shall we be with respect to those foreign Powers with whom we desire to be in treaty? They look upon us as a nation emerging into figure and importance. But what will be their opinion, if they see us unable to retain the national advantages we have just gained? They will smile at our infantine efforts to obtain consequence, and treat us with the contempt we have hitherto borne by reason of the imbecility of our Government. Can we expect to enter into a commercial competition with any of them, while our system is incomplete? And how long it will remain in such a situation, if we enter upon amendments, God only knows. Our instability will make us objects of scorn. We are not content with two revolutions in less than fourteen years; we must enter upon a third, without necessity or propriety. Our faith will be like the *punica fides* of Carthage; and we shall have none that will repose confidence in us. Why will gentlemen press us to propose amendments, while we are without experience? Can they assure themselves that the amendments, as they call them, will not want amendments, as soon as they are adopted? I will not tax gentlemen with a desire of amusing the people; I believe they venerate their country too much for this; but what more can amendments lead to? That part of the constitution which is proposed to be altered, may be the most valuable part of the whole; and perhaps those who now clamor for alterations may, ere long, discover that they have marred a good Government, and rendered their own liberties insecure. I again repeat it, this is not the time for bringing forward amendments; and, notwithstanding the honorable gentleman's ingenious arguments on that point, I am now more strongly persuaded it is wrong.

If we actually find the constitution bad upon experience, or the rights and privileges of the people in danger, I here pledge myself to step forward among the first friends of liberty to prevent the evil; and if nothing else will avail, I will draw my sword in the defence of freedom, and cheerfully immolate at that shrine my property and my life. But how are we now proceeding? Why, on nothing more than theoretical speculation, pursuing a mere *ignis fatuus*, which may lead us into serious embarrassments. The imperfections of the Government are now unknown; let it have a fair trial, and I will be bound they show themselves; then we can tell where to apply the remedy, so as to secure the great object we are aiming at.

There are, Mr. Speaker, a number of impor-

tant bills on the table which require despatch; but I am afraid, if we enter on this business, we shall not be able to attend to them for a long time. Look, sir, over the long list of amendments proposed by some of the adopting States, and say, when the House could get through the discussion; and I believe, sir, every one of those amendments will come before us. Gentlemen may feel themselves called by duty or inclination to oppose them. How are we then to extricate ourselves from this labyrinth of business? Certainly we shall lose much of our valuable time, without any advantage whatsoever. I hope, therefore, the gentleman will press us no further; he has done his duty, and acquitted himself of the obligation under which he lay. He may now accede to what I take to be the sense of the House, and let the business of amendments lie over until next spring; that will be soon enough to take it up to any good purpose.

Mr. GERRY.—I do not rise to go into the merits or demerits of the subject of amendments; nor shall I make any other observations on the motion for going into a Committee of the whole on the state of the Union, which is now withdrawn, than merely to say, that, referring the subject to that committee, is treating it with the dignity its importance requires. But I consider it improper to take up this business, when our attention is occupied by other important objects. We should despatch the subjects now on the table, and let this lie over until a period of more leisure for discussion and attention. The gentleman from Virginia says it is necessary to go into a consideration of this subject, in order to satisfy the people. For my part, I cannot be of his opinion. The people know we are employed in the organization of the Government, and cannot expect that we should forego this business for any other. But I would not have it understood, that I am against entering upon amendments when the proper time arrives. I shall be glad to set about it as soon as possible, but I would not stay the operations of the Government on this account. I think with the gentleman from Delaware, (Mr. VINING,) that the great wheels of the political machine should first be set in motion; and with the gentleman from Georgia, (Mr. JACKSON,) that the vessel ought to be got under way, lest she lie by the wharf till she beat off her rudder, and run herself a wreck on shore.

I say I wish as early a day as possible may be assigned for taking up this business, in order to prevent the necessity which the States may think themselves under of calling a new convention. For I am not, sir, one of those blind admirers of this system, who think it all perfection; nor am I so blind as not to see its beauties. The truth is, it partakes of humanity; in it is blended virtue and vice, errors and excellence. But I think, if it is referred to a new convention, we run the risk of losing some of its best properties; this is a case I never wish to see. Whatever might have been my sentiments of

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the ratification of the constitution without amendments, my sense now is, that the salvation of America depends upon the establishment of this Government, whether amended or not. If the constitution which is now ratified should not be supported, I despair of ever having a Government of these United States.

I wish the subject to be considered early for another reason. There are two States not in the Union; it would be a very desirable circumstance to gain them. I should therefore be in favor of such amendments as might tend to invite them and gain their confidence; good policy will dictate to us to expedite that event. Gentlemen say, that we shall not obtain the consent of two-thirds of both Houses to amendments. Are gentlemen willing then to throw Rhode Island and North Carolina into the situation of foreign nations? They have told you that they cannot accede to the Union, unless certain amendments are made to the constitution; if you deny a compliance with their request in that particular, you refuse an accommodation to bring about that desirable event, and leave them detached from the Union.

I have another reason for going early into this business. It is necessary to establish an energetic Government. My idea of such a Government is, that due deliberation be had in making laws, and efficiency in the execution. I hope, in this country, the latter may obtain without the dread of despotism. I would wish to see the execution of good laws irresistible. But from the view which we have already had of the disposition of the Government, we seem really to be afraid to administer the powers with which we are invested, lest we give offence. We appear afraid to exercise the constitutional powers of the Government, which the welfare of the State requires, lest a jealousy of our powers be the consequence. What is the reason of this timidity? Why, because we see a great body of our constituents opposed to the constitution as it now stands, who are apprehensive of the enormous powers of Government. But if this business is taken up, and it is thought proper to make amendments, it will remove this difficulty. Let us deal fairly and candidly with our constituents, and give the subject a full discussion; after that, I have no doubt but the decision will be such as, upon examination, we shall discover to be right. If it shall then appear proper and wise to reject the amendments, I dare to say the reasons for so doing will bring conviction to the people out of doors, as well as it will to the members of this House; and they will acquiesce in the decision, though they may regret the disappointment of their fondest hopes for the security of the liberties of themselves and their posterity. Thus, and thus only, the Government will have its due energy, and accomplish the end for which it was instituted.

I am against referring the subject to a select committee, because I conceive it would be disrespectful to those States which have proposed

amendments. The conventions of the States consisted of the most wise and virtuous men of the community; they have ratified this constitution, in full confidence that their objections would at least be considered; and shall we, sir, preclude them by the appointment of a special committee, to consider of a few propositions brought forward by an individual gentleman? Is it in contemplation that the committee should have the subject at large before them, or that they should report upon the particular amendments just mentioned, as they think proper? And are we to be precluded from the consideration of any other amendments but those the committee may report? A select committee must be considered improper, because it is putting their judgments against that of the conventions which have proposed amendments; but if the committee are to consider the matter at large, they will be liable to this objection, that their report will only be waste of time. For if they do not bring forward the whole of the amendments recommended, individual members will consider themselves bound to bring them forward for the decision of the House. I would therefore submit, if gentlemen are determined to proceed in the business at this time, whether it is not better that it should go, in the first instance, to a Committee of the whole, as first proposed by the gentleman from Virginia?

Some gentlemen consider it necessary to do this to satisfy our constituents. I think referring the business to a special committee will be attempting to amuse them with trifles. Our fellow-citizens are possessed of too much discernment not to be able to discover the intention of Congress by such procedure. It will be the duty of their representatives to tell them, if they were not able to discover it of themselves, they require the subject to be fairly considered; and if it be found to be improper to comply with their reasonable expectations, to tell them so. I hope there is no analogy between federal and punia faith; but unless Congress shall candidly consider the amendments which have been proposed in confidence by the State conventions, federal faith will not be considered very different from the *punica fides* of Carthage. The ratification of the constitution in several States would never have taken place, had they not been assured that the objections would have been duly attended to by Congress. And I believe many members of these conventions would never have voted for it, if they had not been persuaded that Congress would notice them with that candor and attention which their importance requires. I will say nothing respecting the amendments themselves; they ought to stand or fall on their own merits. If any of them are eligible, they will be adopted; if not, they will be rejected.

Mr. LIVERMORE was against this motion; not that he was against amendments at a proper time. It is enjoined on him to act a rational part in procuring certain amendments, and he

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meant to do so; but he could not say what amendments were requisite, until the Government was organized. He supposed the judiciary law would contain certain regulations that would remove the anxiety of the people respecting such amendments as related thereto; because he thought much of the minutiae respecting suits between citizens of different States, &c. might be provided for by law. He could not agree to make jury trials necessary on every occasion; they were not practised even at this time, and there were some cases in which a cause could be better decided without a jury than with one.

In addition to the judiciary business, there is that which relates to the revenue. Gentlemen had let an opportunity go through their hands of getting a considerable supply from the impost on the spring importations. He reminded them of this; and would tell them now was the time to finish that business; for if they did not sow in seed-time, they would be beggars in harvest. He was well satisfied in his own mind, that the people of America did not look for amendments at present; they never could imagine it to be the first work of Congress.

He wished the concurrence of the Senate upon entering on this business, because if they opposed the measure, all the House did would be mere waste of time; and there was some little difficulty on this point, because it required the consent of two-thirds of both Houses to agree to what was proper on this occasion. He said, moreover, it would be better to refer the subject generally, if referred to them at all, than to take up the propositions of individual members.

Mr. SHERMAN.—I do not suppose the constitution to be perfect, nor do I imagine if Congress and all the Legislatures on the continent were to revise it, that their united labors would make it perfect. I do not expect any perfection on this side the grave in the works of man; but my opinion is, that we are not at present in circumstances to make it better. It is at wonder that there has been such unanimity in adopting it, considering the ordeal it had to undergo; and the unanimity which prevailed at its formation is equally astonishing; amidst all the members from the twelve States present at the federal convention, there were only three who did not sign the instrument to attest their opinion of its goodness. Of the eleven States who have received it, the majority have ratified it without proposing a single amendment. This circumstance leads me to suppose that we shall not be able to propose any alterations that are likely to be adopted by nine States; and gentlemen know, before the alterations take effect, they must be agreed to by the Legislatures of three-fourths of the States in the Union. Those States which have not recommended alterations, will hardly adopt them, unless it is clear that they tend to make the constitution better. Now how this can be made out to their satisfaction I am yet to learn; they know of no defect from

experience. It seems to be the opinion of gentlemen generally, that this is not the time for entering upon the discussion of amendments: our only question therefore is, how to get rid of the subject. Now, for my own part, I would prefer to have it referred to a Committee of the whole, rather than a special committee, and therefore shall not agree to the motion now before the House.

Mr. GERRY moved, that the business lie over until the 1st day of July next, and that it be the order for that day.

Mr. SUMTER.—I consider the subject of amendments of such great importance to the Union, that I shall be glad to see it undertaken in any manner. I am not, Mr. Speaker, disposed to sacrifice substance to form; therefore, whether the business shall originate in a Committee of the whole, or in the House, is a matter of indifference to me, so that it be put in train. Although I am seriously inclined to give this subject a full discussion, yet I do not wish it to be fully entered into at present, but am willing it should be postponed to a future day, when we shall have more leisure. With respect to referring to a select committee, I am rather against it; because I consider it as treating the applications of the State conventions rather slightly; and I presume it is the intention of the House to take those applications into consideration as well as any other. If it is not, I think it will give fresh cause for jealousy; it will rouse the alarm which is now suspended, and the people will become clamorous for amendments. They will decline any further application to Congress, and resort to the other alternative pointed out in the constitution. I hope, therefore, this House, when they do go into the business, will receive those propositions generally. This I apprehend will tend to tranquillize the public mind, and promote that harmony which ought to be kept up between those in the exercise of the powers of Government, and those who have clothed them with the authority, or, in other words, between Congress and the people. Without a harmony and confidence subsist between them, the measures of Government will prove abortive, and we shall have still to lament that imbecility and weakness which have long marked our public councils.

Mr. VINING found himself in a delicate situation respecting the subject of amendments. He came from a small State, and therefore his sentiments would not be considered of so much weight as the sentiments of those gentlemen who spoke the sense of much larger States. Besides, his constituents had prejudged the question, by a unanimous adoption of the constitution, without suggesting any amendments thereto. His sense accorded with the declared sense of the State of Delaware, and he was doubly bound to object to amendments which were either improper or unnecessary. But he had good reasons for opposing the consideration of even proper alterations at this time. He would ask the gentleman who pressed them.

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Collection of Revenue.

[H. OF R.]

whether he would be responsible for the risk the Government would run of being injured by an *interregnum*? Proposing amendments at this time, is suspending the operations of Government, and may be productive of its ruin.

He would not follow the gentleman in his arguments, though he supposed them all answerable, because he would not take up the time of the House; he contented himself with saying, that a bill of rights was unnecessary in a Government deriving all its powers from the people; and the constitution enforced the principle in the strongest manner by the practical declaration prefixed to that instrument; he alluded to the words, "We the people do ordain and establish."

There were many things mentioned by some of the State conventions which he would never agree to, on any conditions whatever; they changed the principles of the Government, and were therefore obnoxious to its friends. The honorable gentleman from Virginia had not touched upon any of them; he was glad of it, because he could by no means bear the idea of an alteration respecting them; he referred to the mode of obtaining direct taxes, judging of elections, &c.

He found he was not speaking to the question; he would therefore return to it, and declare he was against committing the subject to a select committee; if it was to be committed at all, he preferred a Committee of the whole, but hoped the subject would be postponed.

Mr. MADISON found himself unfortunate in not satisfying gentlemen with respect to the mode of introducing the business; he thought, from the dignity and peculiarity of the subject, that it ought to be referred to a Committee of the whole. He accordingly made that motion first, but finding himself not likely to succeed in that way, he had changed his ground. Fearing again to be discomfited, he would change his mode, and move the propositions he had stated before, and the House might do what they thought proper with them. He accordingly moved the propositions by way of resolutions to be adopted by the House.

Mr. LIVERMORE objected to these propositions, because they did not take up the amendments of the several States.

Mr. PAGE was much obliged to his colleague for bringing the subject forward in the manner he had done. He conceived it to be just and fair. What was to be done when the House would not refer it to a committee of any sort, but bring the question at once before them? He hoped it would be the means of bringing about a decision.

Mr. LAWRENCE moved to refer Mr. MADISON's motion to the Committee of the whole on the state of the Union.

Mr. LEE thought it ought to be taken up in that committee; and hoped his colleague would bring the propositions before the committee, when on the state of the Union, as he had originally intended.

Mr. BOUDINOT wished the appointment of a select committee, but afterwards withdrew his motion.

At length Mr. LAWRENCE's motion was agreed to, and Mr. MADISON's propositions were ordered to be referred to a Committee of the whole. Adjourned.

TUESDAY, June 9.

On motion,

Resolved, That so much of the standing rules and orders as direct that, upon a division of the House on any question, the members who vote in the affirmative shall go to the right, and those in the negative shall go to the left of the Chair, be rescinded; and that, in future, when a division is called for, those in the affirmative of the question shall rise from their seats, and those in the negative remain sitting.

COLLECTION OF DUTIES.

The House, according to the order of the day, resolved itself into a Committee of the whole House on the bill to regulate the collection of duties imposed on goods, wares, and merchandises, imported into the United States. Mr. TRUMBULL in the chair. Previous to making any further nomination of ports of entry and delivery, it was moved, that the shores, bays, rivers, creeks, and harbors, be divided into as many districts as there are ports of entry in the United States. This motion, after a discussion, was adopted.

It was moved to insert a clause, whereby masters of ships and other vessels, loaded with goods, wares, and merchandise, and bound into the United States from any foreign port, should be obliged to produce duplicate manifestoes of their respective cargoes, to any officers of the customs that may demand the same, previous to their entering the ports of destination.

This motion gave rise to a lengthy conversation, which terminated in withdrawing the motion.

It was then voted, that a collector, a naval officer, and a surveyor, should be appointed for each of the following ports, viz: Boston, New York, Philadelphia, Baltimore, Norfolk, and Portsmouth; Alexandria, Virginia; Georgetown, Maryland; Charleston, South Carolina; and Savannah. The committee then rose and reported progress, and the House adjourned.

WEDNESDAY, June 10.

COLLECTION OF REVENUE.

The House again went into a committee on the bill to regulate the collection on imported goods; Mr. TRUMBULL in the chair.

On motion of Mr. MADISON, a clause was inserted, which provides "that there shall be a surveyor at each of the ports of delivery only," excepting certain ports to be enumerated.

The motion of Mr. AMES, which was withdrawn yesterday, was again brought forward by that gentleman, and adopted as a clause, to

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be inserted in the bill. It provides, That every master, or other person, having charge or command of a ship or vessel bound to any port of the United States, shall be obliged to produce, on demand, to any officer, or person authorized for the purpose, two manifests, specifying in words, the true contents of the cargo on board such ship or vessel; one of which manifests the officer is to endorse, and return to the captain, noting the time when the same was produced to him. The other he is to transmit to the naval officer of the port to which the said vessel is bound."

Several other propositions were produced, and debated, but not accepted.

The committee then rose, reported progress, and the House adjourned.

THURSDAY, June 11.

COLLECTION OF REVENUE.

The House again resolved itself into a Committee of the whole on the bill to regulate the collection of duties, Mr. TRUMBULL in the chair, when

Mr. PARKER moved to insert the following clause in the bill, viz. "Provided that no ship or vessel, not belonging wholly to a citizen or citizens of the United States, shall be permitted to enter or unlade at any other than the following ports, viz."

This clause, the gentleman observed, was necessary to hold up a preference to our own navigation, to secure to the citizens of the States exclusively the coasting trade; it would conduce more effectually to securing the revenue, and was a provision sanctioned by the practice of other commercial countries.

Several other observations were made, when Mr. FITZSIMONS proposed, that the clause should be amended by adding, "Nor shall any ship or vessel from India, China, or beyond the Cape of Good Hope, and bound to the United States, enter, or unlade, but at the following ports, viz."

This clause, with the amendment, occasioned considerable discussion. In opposition to the first, it was observed, that the restriction could not, with propriety, be confined to foreign vessels, on account of smuggling, as our own citizens, possessing superior advantages for that business, would more probably evade the laws than strangers; that it would operate altogether in favor of those States who employed no foreign shipping; and as sufficient had been done to encourage our own navigation, it was to be expected that the motion would be withdrawn. With respect to the clause restricting vessels from India, it was said, that it would tend to the creating of monopolies, to give undue advantage to particular ports, to their aggrandizement and that of individuals residing in or near such ports, while it would deprive those who resided at a distance from them, and whose capitals were limited, from adventuring in those voyages, as was now the case.

In support of the clause, it was observed, that foreigners could, with propriety, be restricted from entering those ports, which they had not been accustomed to frequent; and, for this reason, no injury would be done to the persons residing at such places; but to circumscribe our own navigation within narrower limits than it had been used to, would be productive of extensive ill consequences; it would cut off a great proportion of the trade of the United States, and, in a manner, depopulate the sea-coast. That the experience of other countries was in favor of restricting foreigners to narrower limits than our own citizens; they could not be supposed to be actuated by any motives of attachment to the Government or country, to induce a compliance with the revenue laws.

With respect to the restriction on India ships, it was said, that goods from that country were more easily smuggled than any other; that this restriction was of the last importance to the revenue, as one boat-load of India goods would pay a greater impost than a whole cargo from the West Indies; that it would be impolitic to suffer this trade to be carried on from ports favorably situated for smuggling; and that it had been found necessary to restrict British India ships to the port of London, to prevent frauds upon the revenue.

Many other observations were made; when the question on the amendment proposed by Mr. FITZSIMONS being taken, it passed in the affirmative.

The vote being then taken on the whole, it passed also in the affirmative.

The ports to be established by this clause are yet to be named.

Further progress was made in the bill, and several amendments agreed to.

The committee then rose, reported progress, and the House adjourned.

FRIDAY, June 12.

A message from the Senate informed the House that the Senate had passed a bill for laying a duty on goods, wares, and merchandises imported into the United States, with several amendments, to which they requested the concurrence of this House.

On motion,

Ordered, That MESSRS. VINING, STONE, and JACKSON, be added to the committee to whom was referred the subject of reporting a bill, directing the mode of registering and clearing vessels, ascertaining their tonnage, and for regulating the coasting trade, pilots, and light-houses.

COLLECTION OF REVENUE.

The House then formed itself into a Committee of the whole on the bill to regulate the collection of impost duties; Mr. TRUMBULL in the chair. Considerable progress was made in the bill; but, after some time spent thereon, they rose, and asked and obtained leave to sit again.

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Duties on Imports.

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SATURDAY, JUNE 13.

COLLECTION OF REVENUE.

The House again resolved itself into a Committee of the whole on the bill to regulate the collection of the duties imposed on goods, wares, and merchandises imported into the United States; Mr. TRUMBULL in the chair. The bill underwent further discussion, and the general sentiment of the committee on the subject was pretty generally ascertained. Many observations were made as to the most eligible mode of realizing the duties into the public treasury. But previous to any ultimate decision, on motion of Mr. FITZSIMONS, the committee rose, for the purpose of affording an opportunity of referring the subject to another committee, in order that a new bill might be reported. A motion to this effect was carried, and Messrs. GOODHUE, FITZSIMONS, LAWRENCE, BURKE, LIVERMORE, SHERMAN, and JACKSON formed the committee.

Mr. GERRY proposed a resolution, making it a standing order of the House, that, in future, the House shall adjourn from Friday to Monday; and

Mr. LEONARD offered a resolution for prefixing the constitution to the first volume of the Laws of Congress, when printed.

Both resolutions were ordered to lie on the table.

MONDAY, JUNE 15.

JOHN BROWN, from Virginia, and THEODORE SEDGWICK, from Massachusetts, appeared and took their seats.

On motion of Mr. GOODHUE, it was

Ordered, That Mr. SMITH, of Maryland, and Mr. PARKER, from Virginia, be added to the committee appointed on Saturday last on the subject of collecting duties on imposts.

WESTERN LANDS.

Mr. SCOTT, from the committee to consider the state of the unappropriated lands in the Western territory, reported. This report contained a very particular geographical account of that country.

Ordered, That this report be referred to a Committee of the whole upon the state of the Union.

DUTIES ON IMPORTS.

The House then proceeded to the consideration of the amendments, which had been proposed by the Senate, for the bill for imposing duties on goods, wares, and merchandises imported into the United States.

The enacting clause of the bill, viz. "The Congress of the United States," was amended by the Senate, by proposing to insert "The Senate and Representatives of the United States." This amendment was not concurred in.

That clause of the bill which made a discrimination between states and kingdoms in alliance with the United States, and those which

are not, with respect to the duty on distilled spirits, the Senate proposed should be struck out. A recapitulation of arguments used in the former progress of the bill on both sides of the question, with little variation, now took place. The result was a non-concurrence with the Senate.

A general concurrence with the Senate in their amendments to the bill was urged by several gentlemen. They observed that much time had already been expended in the discussion of the subject; that further delay would be sacrificing the revenue; that there was danger of our losing the benefit of the fall importations; that the high duties which had been voted by the House were contrary to the opinion of a large minority, having been carried by a very small majority; to the minority was now added the almost unanimous voice of the Senate: therefore, to reject the amendments of the Senate, was hazarding the fate of the present bill. The sentiment in favor of low duties was sanctioned by the invariable experience of the commercial world. They were always productive of greater revenue than high duties, as the latter held out a powerful temptation to evade the laws. The public voice, it was contended, was in opposition to high duties; and accounts received from mercantile characters in various parts of the Union confirmed the truth of this observation. That, as the operation and success of the laws, in the first instance, must depend upon the general opinion of their eligibility, it was rash to risk the popularity of the Government in a case where no risk was necessary. That the duty on spirits, in particular, was beyond all precedent, and would undoubtedly be evaded, as it was a premium to smuggle.

On the other hand, it was said, that the duties were, in general, conformable to the sentiments of the people, particularly on distilled spirits; that on bulky articles high duties could be realized with some degree of certainty; that the probable amount of the proposed duties would fall short of the exigencies of the Union; the proposed deduction in some cases would curtail it fifty per cent.; that it yet remained to be ascertained whether high duties, in many cases, could not be collected with as great facility as low, the prompt collection of both being matter of speculation at present; that it was conceded, on all hands, that a revenue must be obtained, or the country be ruined. Direct taxes could not be thought of; and even the excise would be unpopular. That the opinion of respectable commercial characters was in favor of the proposed duties, particularly the duty on spirits, which, agreeably to their ideas, could be easily collected, even if it had been set at a higher rate.

TUESDAY, JUNE 16.

A motion was made by Mr. WHITE, of Virginia, and adopted, that seats be provided for such members of the Senate as please to attend the debates, within the bar of the House.

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Department of Foreign Affairs.

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The House then proceeded to consider the remainder of the amendments proposed by the Senate to the impost bill. The House did not concur in the time fixed by the Senate for this act to be in force, viz. the 1st of July next; but substituted the 1st of August; when the following being read, were acceded to, viz:

To insert playing cards at a duty of ten cents per pack.

Cotton at three cents per pound.

To allow a drawback on brandy and geneva exported from the United States.

After the words "exported out of the limits of the United States," to add the following, viz: "as settled by the late treaty of peace."

To strike out the sentence which provided for allowing a drawback of five cents per gallon on spirits distilled from molasses in the United States, and exported out of the same.

The discount of ten per cent. on goods, wares, and merchandise, imported in vessels built in the United States, and owned by a citizen or citizens thereof, was extended to goods, &c. imported in vessels not built in the United States, but which were owned by a citizen or citizens thereof, on the 16th May last, and continued so till the time of the importation of such goods.

DEPARTMENT OF FOREIGN AFFAIRS.

The House then resolved itself into a Committee of the whole on the bill for establishing an executive department, to be denominated the Department of Foreign Affairs; Mr. TRUMBULL in the chair.

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 averse 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 departments. The Secretary of Foreign Affairs is the head of a 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 are associated with the President in the appointment, they ought also to be associated in the dismissal from office. Upon the justness of this con-

struction, I take the liberty of reviving the motion made in the Committee of the whole, for striking out these 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 is improper to make an attempt to confer it upon him. If it is 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 officers 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

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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 Judiciary 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, that, 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 officers of the United States shall be removed from office on impeachment for, and on 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 for ignorance. I venture to say there never was an instance of this nature in the United States. There have 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 for 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 be developed by an impartial tribunal. He will have confidence in himself when he knows he can only be removed for improper behavior. 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 behavior. This impression cannot be removed, as a public inquiry cannot be obtained. Besides 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 such behavior? 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 around him men envious of the honors or 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 malpractices. Hence his reputation is blasted, his property sacrificed. I say his property is sacrificed, because I consider his office as his property. He is stripped 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.

These are serious considerations, and such, I trust, as will make impressions on the minds of gentlemen anxious to promote the public welfare, and secure distributive justice to themselves and their posterity.

When this subject was laid before the committee, it was said that it appeared absurd that an inferior officer should be removed only by impeachment. There is a clause in the constitution empowering Congress to vest the appointment of inferior officers in the President

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alone, in courts of law, or heads of departments. These offices may also be established on such terms as the Legislature shall judge proper; but neither the appointment or removal of heads of departments can be otherwise performed than is directed by the constitution.

To return to my argument. 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 authorizing the President to call on the heads of departments for their opinions in writing, contemplates 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 aggrandisement, and the elevation of his connexions, by every means short of the treason defined by the constitution, hurrying your affairs to the precipice of destruction, endangering your domestic tranquillity, 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

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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 upon 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 the 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 disqualification.

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 choose 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 authorized 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 re-

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main 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 will 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 further 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 authorizing 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, there 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 controlling 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 authorized, 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 that we should not be authorized 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 authorized 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 further 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 others; 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. VINING.—I hoped, Mr. Chairman, after the discussion this subject had received on a former occasion, that it would have been unnecessary to re-examine it. The arguments against the clause are reiterated; but, I trust, without a chance of success. They were fully answered before; and I expect the impressions made at that time are not already effaced. The House, as well as the Committee of the whole, have determined that those words shall be inserted in the bill; the special committee could therefore do no less than place them where they are; a deference is due to the decision of the House.

The House has determined to make a declaration of their construction on the constitution. I am perfectly in sentiment with the majority on this occasion; and contend, that if this power is not in the President, it is not vested in any body whatever. It cannot be within the legislative power of the Senate, because it is of an adverse nature; it cannot be within the executive power of the Senate, because they possess none but what is expressly granted by

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the constitution. If gentlemen will point out where the constitution confers this power upon the Senate, I will read my recantation, and subscribe to the justness of their doctrine.

I am not satisfied that removability shall be acquired only by impeachment. Were the advocates of this doctrine aware of its consequences, when they advanced it? The Senate has the sole power of trying impeachments; the President is here out of the question. If no officer can be constitutionally removed but by impeachment, it applies to subordinate officers as well as heads of departments. For the constitution only gives power to Congress to establish officers by law, and vests the appointment in the President. If these officers are not removable but by impeachment, what is to become of our affairs, when any of the accidents occur which were enumerated by the gentleman from Massachusetts (Mr. SEDGWICK)? Are we to take the circuitous route of impeachment? The dilatory and inefficient process by that mode, will not apply the remedy to the evil till it is too late to be of advantage. Experience has fixed an eternal stigma upon the system of impeachment; witness the case I mentioned, the other day, of Warren Hastings before the British Lords; what delays and uncertainty with the forms of trial, details of evidence, arguments of counsel, and deliberate decision! I ask gentlemen, can there be a greater evil than this in any Government? Why, then, will gentlemen advocate a doctrine so obnoxious to the principles of the constitution, when a more favorable construction is at hand?

As to the principle of the gentleman from Virginia, (Mr. WHITE,) that he who appoints must remove; it may be a good one, but it is not a general one. Under this Government, officers appointed by the people are removed by the representatives of the State Legislatures. I take it that the best principle is, that he who is responsible for the conduct of the officer, ought to have the power of removing him; by adhering to this principle, we shall be led to make a right decision on the point in debate. Perhaps it might be equally right that the responsible person should have the appointment of those who are to aid him. But this case is qualified by an express stipulation in the constitution; and, therefore, must be submitted to. Yet, nevertheless, the responsibility is kept up: the President takes the lead in the business; he nominates, wherefore he becomes answerable for the officer. But whose officer is he? Not the Senate's; for they have no executive business to perform. The executive duties are all vested in the President. Then the President executes the duties of foreign affairs. He is answerable for his conduct—to whom? To be sure, to the Senate. But he does not appoint the officer; he first selects, without advice of the Senate; he cannot appoint. This is a check to an improper choice; but does not destroy the responsibility of the President, if he nominates a vicious or improper character.

It may be contended, on the gentleman's principles, that the President shall have the power of removal; because it is he who appoints. The constitution says, he shall nominate, and, under certain qualifications, appoint. The Senate do not appoint; their judgment only is required to acquiesce in the President's nomination. Where, then, is the natural responsibility placed? Because, where that is, ought to be the power of removal. The constitution contemplates no other principle. If we were to insert a contrary one, the Government must go to destruction.

Mr. WHITE.—Mention has been made of impeachments, as the only mode of removing an officer. I will explain my ideas on this point, in order that the committee may be masters of my particular objections to the clause. I consider impeachments necessary to be employed in cases respecting an officer who is appointed during good behavior. Thus the judges can only be removed by impeachment. The President and Vice-President hold their offices for the terms mentioned in the constitution, not liable to be removed from office in any other way. These circumstances are a deviation from my general principle; but have nevertheless a proper ground to be supported on. The electors who appoint the President, cannot assemble to exercise the authority which would naturally be in them. With respect to the judges, it is found necessary for the proper and uncorrupt administration of justice, and the security of freedom, to have them independent in their stations, so that they be not removable at pleasure. To them, therefore, the doctrine of impeachment is peculiarly applicable. It may properly be extended further, in cases where the President is desirous of retaining an officer who ought not to be retained. This House has the power of controlling him, and may impeach the officer before the Senate. In either of these three cases impeachments are necessary.

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 tranquillity and harmony of the Union might be endangered, if his guilt were 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 behavior? 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?

My colleague (Mr. MADISON) has acknowledged the clause to be unnecessary, if the constitution is allowed its free operation. Now it is my wish that it should have such an operation, and not be wrested by a declaration in a law contrary to what I take to be the true con-

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struction. If we are silent on this point, it will probably be allowed a fair interpretation when the power is required to be exercised; but if it could not be adjusted easily in that place, I would rather the Judiciary should decide the point, because it is more properly within their department.

I differ also with my colleague in the principle that he has laid down, that this is in its nature an executive power. The constitution supposes power incident to Government, and arranges it into distinct branches, with or without checks; but it enumerates under each department the powers it may exercise. The Legislature may exert its authority in passing laws relating to any of its particular powers. The executive power is vested in the President; but the executive powers so vested, are those enumerated in the constitution. He may nominate, and, by and with the advice and consent of the Senate, appoint all officers, because the constitution gives this power, and not because the power is in its nature a power incident to his department. My ideas of the legislative and executive powers are precisely the same. The Legislature may do certain acts because the constitution says they shall have power to do them, and the Executive Magistrate is authorized to exercise powers because they are vested in him by the same instrument. It has given him the power of appointment under certain qualifications; the power of removal is incident to the power of appointment, and both equally dependent upon the arrangement made in the constitution; consequently, a dismissal from office must be brought about by the same modification as the appointment.

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 further 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 dismissal. 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 gentleman says, we ought not to blend the executive and legislative powers further 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 shows 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.

Let us, then, leave the constitution to a free operation, and let the President, with or without the Senate, carry it into execution. Then, if any one supposes himself injured by their determination, let him have recourse to the law, and its decision will establish the true construction of the constitution.

Mr. BODINOT.—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 I am firmly persuaded we ought to retain the clause in the bill; and, so far as it 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 a 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 comprehended.) 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 it in future. Then comes the clause declaring absolutely that he shall be removed from office on impeachment for, and on conviction of treason, bribery, or other high crimes or misdemeanors. It is this clause which guards the rights 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 nowhere said that officers shall never be re-

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moved 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 were 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 inquire 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 inquire 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 the Senate are to sit as 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, to 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 criminality of the officer will warrant such procedure. 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 dernier 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 honorable gentleman from Virginia, (Mr. MADISON,) inasmuch as the President is the supreme Executive officer of the United States.

If the doctrine of the gentleman from South Carolina is true, then it follows, that every officer has perpetuity in office, at least during good behavior. If this is to be the case, there was no necessity for declaring in the constitution that the judges shall hold their offices during good behavior. This would be destroying the responsibility of the President, and establishing such a principle in the Government as would be extremely dangerous.

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 dismissal. 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 the 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 have arisen, I think it also necessary. Therefore, I hope it will remain.

Mr. SMITH, of South Carolina.—I have attended to the arguments of the gentlemen who oppose the motion for striking out, and I apprehend that their reasoning is not perfectly consistent. The construction of some gentlemen is, that the power of removal is given to the President by the constitution. Others are of opinion that the constitution is silent; and therefore the House ought to give it. To oppose these adverse arguments, I must return to my strong ground on which my opponents dare not venture. I state again, that if the constitution has given the power, it is unnecessary to give it here; or if it has not given it, we have no right to confer it, because it is not within the enumerated powers delegated to Congress.

Gentlemen have said that it is proper to give a legislative construction of the constitution. I differ with them on this point. I think it an

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infringement of the powers of the Judiciary. It is said, we ought not to blend the legislative, executive, or judiciary powers, further than is done by the constitution; and yet the advocates for preserving each department pure and untouched by the others, call upon this House to exercise the powers of the judges in expounding the constitution. What authority has this House to explain the law? But if it has this privilege, the Senate is also invested with it as part of the Legislature; and, in exercising it on the present question, we shall be likely to differ. If the constitution is silent, and gentlemen admit this, it is possible the Senate may view it with a favorable eye to their own right, and reject the bill on account of this clause. A great deal of mischief has arisen in the several States, by the Legislatures undertaking to decide constitutional questions. Sir, it is the duty of the Legislature to make laws; your judges are to expound them.

It has been said, that cases of impeachment do not extend to officers who are indolent or delirious. I said before, that if a person become indolent, he will neglect his duty, and for that cause I presume he may be impeached. Gentlemen have found out that impeachment is a tedious process; I apprehend the person who is impeached will not think it a dilatory process, but such a one as is wisely inserted in the constitution for the protection of his person and property. The delay of which gentlemen complain is the greatest bulwark of liberty. Our ancestors who were tenacious of their privileges, guarded them in the best manner they could devise to prevent the inroads of despotism. As well may gentlemen complain of the tedious process in other criminal cases, by indictment of a grand jury and trial by a petit jury. I hope it is not contemplated (if it is, I hope never to see adopted in this country a summary process) to hurry on judgment without reflection. Such doctrine may suit the meridian of Turkey, where a Cadi can give the order and the bowstring at the same moment.

If the constitution does not extend to insanity, or disability by reason of sickness, then let the law declare him removed until his recovery. But gentlemen's arguments go to prove that the constitution authorizes the removal for this reason. Why, the same argument would apply to the President and Vice President, if they were to become delirious; yet I think they could not constitutionally be removed for such a cause.

The constitution declares that an officer shall be removed by impeachment for treason, bribery, or other high crimes or misdemeanors; yet the doctrine of gentlemen will enable the President, or the President with the advice of the Senate, to inflict the punishment without trial, when the constitution requires it to be done on impeachment and conviction. This appears to me so inconsistent, that I can by no means be reconciled to it. If this be wrong in the constitution, it may be proper to amend it in that particular; and when the subject of

amendments is taken up, let Congress recommend it with the other improvements to that system. But we cannot now proceed on this idea. For my part, I think, under the constitution as it now stands, we have no other way to remove an officer than by impeachment.

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 that the State Governments did not furnish 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 of 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 officer into a compliance with his designs, by threatening him with a removal by which his reputation and property would be destroyed? If the officer were 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 Machiavelian 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 remo-

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val. 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 Executives 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 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 behooves 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 considerable 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, demand the aid of others. When the objects are widely stretched out, or greatly diversified, meandering through such an extent of territory as that the United States possess, a minister cannot see with his own eyes every transaction, or feel with his hands the minutiae that pass 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

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the Government and its citizens. But the removability of the one class, or immovability of the other, is 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 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 public interest by being continued 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 behavior. If this be 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 Delaware (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 will escape. 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 indispensable?

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 inquiry. But before we suffer this to be considered as 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 authorized 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 the 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 mixing as ought not to be carried into practice on 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 un-

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decided 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 that 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 found 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 their duties, than turned out while their talents and integrity are useful. But advantages may result from keeping the power of removal *in terrorem* 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 with-

held 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 leave 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 honorable 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 as 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 show 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 unnatural 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,

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other public ministers and consuls, judges of 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 behavior; 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 supersede 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 honorable gentlemen from South Carolina, (Mr. SMITH,) that it by any means excludes the usual ways of superseding officers. It is said in the constitution, that the House shall have the power of choosing their own officers. We have chosen a clerk, and, I am satisfied, a very capable one; but will any gentleman contend 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 expediency, 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 on the single will of the President, who may ruin him on bare suspicion. Nay, a new President may 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 he is punished. It is on these considerations, that I wish the general principles laid down by the gentleman from Virginia (Mr. WHITE) may be adhered to.

I will add one word more and 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 it 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.

On motion, the committee rose and reported progress.

WEDNESDAY, June 17.

GEORGE MATTHEWS, from Georgia, appeared and took his seat.

DEPARTMENT OF FOREIGN AFFAIRS.

The House resolved itself into a Committee of the whole on the bill establishing an executive department, to be denominated the Department of Foreign Affairs, Mr. TRUMBULL in the Chair. The clause, "to be removable by the President," being under consideration.

MR. HARTLEY.—I was not present when this question was first brought before the House; but I heard the arguments which were yesterday urged against the President's exercising the power of removal, and am by no means satisfied that they are well founded. If no better are brought forward, I shall be against striking out. It was contended by one gentleman, that the appointment to this office was to be during good behavior; and asserted by others, that the President had not the power of removal without the advice and consent of the Senate. I mean to offer a few remarks on these positions. But first, I would observe, that this is an office of considerable importance, if we are to judge by the duties assigned in the body of the bill. In all commercial countries, it will require men of high talents to fill such an office, and great responsibility. It is necessary to connect the business in such a manner as to give the President of the United States a complete command over it; so, in whatever hands it is placed, or however modulated, it must be subjected to his inspection and control. This certainly is the fair construction of the constitution, and a practical recognition of the principles upon which republican Governments are founded in general, and this in particular.

I apprehend, Mr. Chairman, that this officer cannot be considered as appointed during good behavior, even in point of policy; but with respect to the constitutionality, I am pretty confident he cannot be viewed in that light. The

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constitution declares the tenure of the officers it recognises, and says one class of them shall hold their offices during good behavior—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 further 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 the principles 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 dependents 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 sufficient 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 behavior, 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 behavior, 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 explicit. The constitution has expressly pointed out several matters which we can do, and some which we cannot do; 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 eighth section of the first 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 constitution 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 connexion 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 proper behavior 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 may 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.—I was in hopes, as this question was pretty fully discussed before, the House would not have been troubled again with it. But as much has again been said in opposi-