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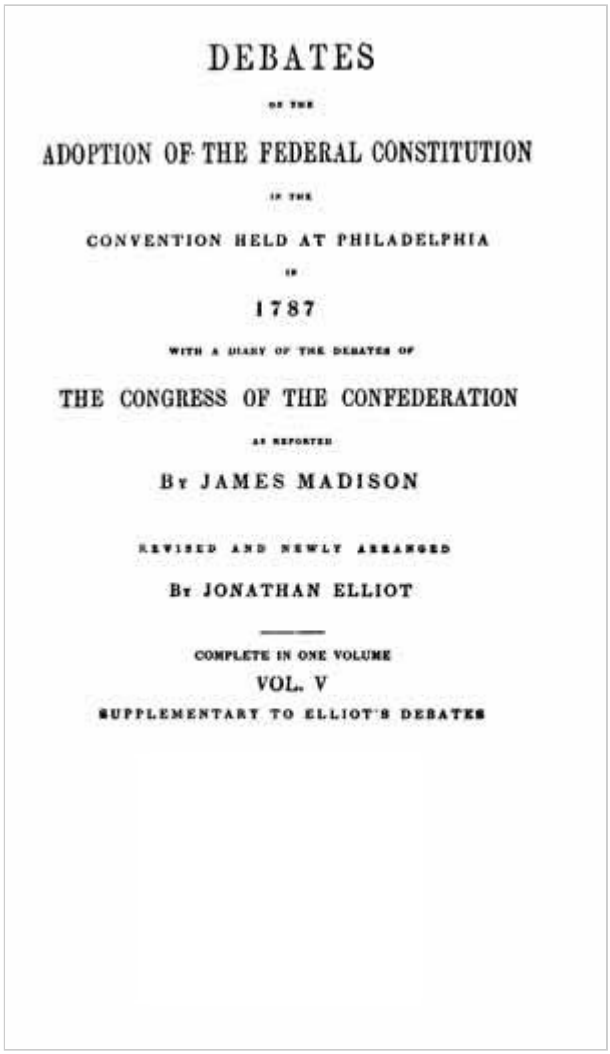
DEBATES

ON THE

ADOPTION OF THE FEDERAL CONSTITUTION

IN THE

CONVENTION HELD AT PHILADELPHIA

IN

1787

WITH A DIARY OF THE DEBATES OF

THE CONGRESS OF THE CONFEDERATION

AS REPORTED

BY JAMES MADISON

REVISED AND NEWLY ARRANGED

BY JONATHAN ELLIOT

COMPLETE IN ONE VOLUME

VOL. V

SUPPLEMENTARY TO ELLIOT'S DEBATES

Edition Used:

The debates in the several state conventions on the adoption of the federal Constitution, as recommended by the general convention at Philadelphia, in 1787. Together with the Journal of the federal convention, Luther Martin's letter, Yates's minutes, Congressional opinions, Virginia and Kentucky resolutions of '98-'99, and other illustrations of the Constitution ... 2d ed., with considerable additions. Collected and rev. from contemporary publications, by Jonathan Elliot. Pub. under the sanction of Congress. (1836), 5 vols.

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Vol. 5 of an influential early 19th century edition of key documents about the ratification of the US Constitution by the states. Debates on the adoption of the Federal Constitution in the convention held at Philadelphia in 1787, with a diary of

the debates of the Congress of the Confederation as reported by James Madison. Rev. and newly arranged by Jonathan Elliot. Supplementary to Elliot's Debates.

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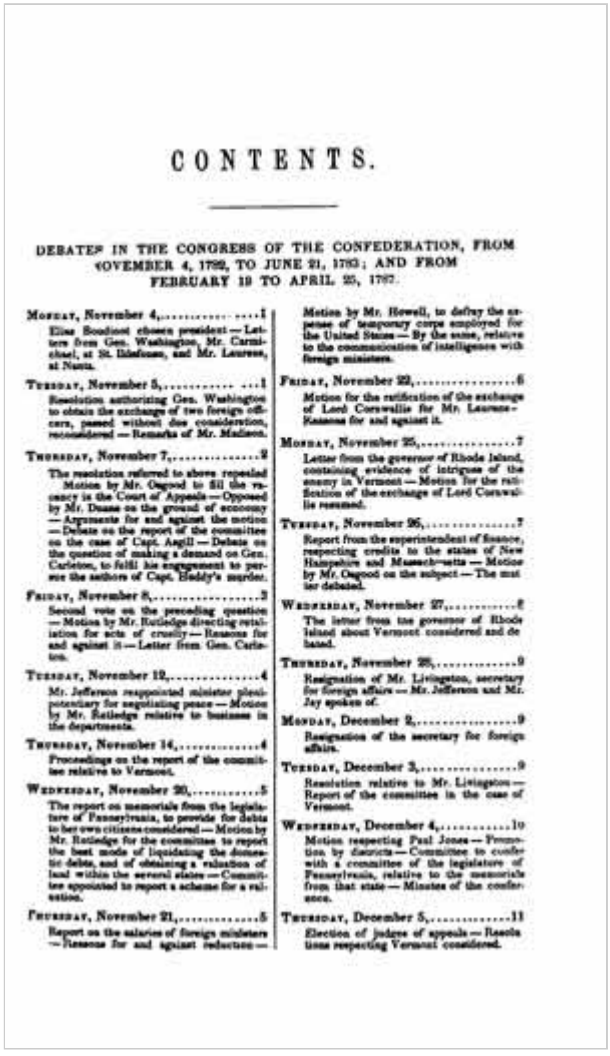

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ADVERTISEMENT.

Under the sanction of Congress, this new edition of Madison's Debates of the Federal Convention, held in 1787, has been prepared, revised, and the matter remodelled agreeably to the consecutive order of the subject. Thus, by a new arrangement of the Debates, greater convenience, more ready reference, with increased utility, have been obtained; and *the whole subject of the Confederation, Debates,* and *Correspondence,* (confined to the Constitution on the latter head,) is thus brought together within the compass of a *single volume,* presented, it will be seen, in a bold and conspicuous type, uniform in the size of the page with the four volumes of the new edition of Elliot's Debates, which, by the compilation of a fifth (the present volume) completes the entire series on our constitutional history.

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DEBATES IN THE CONGRESS OF THE CONFEDERATION, FROM NOVEMBER 14, 1782, TO FEBRUARY 13, 1783.

In Congress,Monday,*November* 4, 1782.

Elias Boudinot was chosen president, by the votes of New Hampshire, represented by John Taylor Gilman and Phillips White; Rhode Island, by Jonathan Arnold and David Howell; Connecticut, by Benjamin Huntington and Eliphalet Dyer; New Jersey, by Elias Boudinot and John Witherspoon; Pennsylvania, by Thomas Smith, George Clymer, and Henry Wynkoop; Delaware, by Thomas M'Kean and Samuel Wharton; Maryland, by John Hanson, Daniel Carroll, and William Hemsley; the votes of Virginia, represented by James Madison and Theodorick Bland, and of South Carolina, represented by John Rutledge, Ralph Izard, David Ramsay, and John Lewis Gervais, were given to Mr. Bland; the vote of New York, represented by James Duane and Ezra L'Hommedieu, to Abner Nash; the vote of North Carolina, by Abner Nash, Hugh Williamson, and William Blount, to John Rutledge. Massachusetts, having no delegate but Samuel Osgood, had no vote. Georgia had no delegate.

A letter, dated October 30, 1782, from General Washington, was read, informing Congress of his putting the army into winter-quarters, and of the sailing of fourteen ships of the line from New York, supposed to be for the West Indies, and without troops.

A letter, dated July 8, from Mr. Carmichael, at St. Ildefonso, informing Congress of the good effect, in Europe, of the rejection of the proposal of Carleton by Congress and the states; that the king of Spain, speaking of the news at table, praised greatly the probity of the Americans, raising his voice in such a manner that all the foreign ministers might hear him. Mr. Carmichael adds, that he had discovered that the Imperial and Russian ministers, by directions from their courts, had renewed their offered mediation to His Most Catholic Majesty, and that he suspected England was at the bottom of it. Quære.

A letter, dated Nantz, September 5, from Mr. Laurens, notifying his intention to return to America; that, being so advised by his friends, he had applied to the court of London for a passport via Falmouth; that Cornwallis had interested himself therein, and that the passport had been promised.

Tuesday,*November* 5.

A resolution passed, authorizing General Washington to obtain the exchange of two foreign officers, notwithstanding the resolution of the 16th of October, declaring that Congress will go into no partial exchanges until a general cartel be settled on *national* principles. This measure passed, without due consideration, by the votes of New Hampshire, Rhode Island, Connecticut, Delaware, Maryland, North Carolina, and

South Carolina. On the motion of Mr. OSGOOD, it was reconsidered, in order to refer the case to the secretary of war and General Washington, to take order. By Mr. MADISON opposition was made against any partial exchange in the face of the solemn declaration passed on the 16th of October, as highly dishonorable to Congress, especially as that declaration was made, in order to compel the enemy to a national convention with the United States. All exchanges had been previously made on the part of the former by the military authority of their generals. After the letter of General Carleton and Admiral Digby, notifying the purpose of the British king to acknowledge our independence, it was thought expedient by Congress to assume a higher tone. It was supposed, also, at the time of changing this mode, that it would be a test of the enemy's sincerity with regard to independence. As the trial had been made, and the British commander, either from a want of power or of will, had declined treating of a cartel on national ground, it would be peculiarly preposterous and pusillanimous in Congress to return to the former mode. An adjournment suspended the vote on the question for referring the case to the secretary and general to take order.

Wednesday,*November* 6.

No Congress.

Thursday,*November* 7.

On the reconsideration of the resolution for exchanging the two foreign officers, its repeal was unanimously agreed to.

A motion was made, by Mr. OSGOOD, to assign an early day for filling up the vacancy in the Court of Appeals. It was opposed on the principle of economy, and the expedient suggested, by Mr. DUANE, of empowering a single judge to make a court *until the public finances would better bear the expense.* In favor of the motion it was argued, first, that the proceedings of the court were too important to be confided to a single judge; secondly, that the decisions of a single judge would be less satisfactory in cases where a local connection of the judge subsisted with either of the parties; thirdly, that a single judge would be more apt, by erroneous decisions, to embroil the United States in disputes with foreign powers; fourthly, that if there were more than one judge, and one formed a court, there might, at the same time, be two interfering jurisdictions, and that, if any remedy could be applied to this difficulty, the course of decisions would inevitably be less uniform, and the provision of the Confederation for a court of universal appellant jurisdiction so far contravened; fifthly, as there was little reason to expect that the public finances would, during the war, be more equal to the public burdens than at present, and as the cases within the cognizance of the court would cease with the war, the qualification annexed to the expedient ought to have no effect. The motion was disagreed to, and a committee which had been appointed to prepare a new ordinance for constituting the Court of Appeals was filled up, and instructed to make report. On the above motion, an opinion was maintained by Mr. RUTLEDGE that, as the court was, according to the ordinance in force, to consist of three judges, any two of whom to make a court, unless three were in actual appointment, the decisions of two were illegal.

Congress went into the consideration of the report of the committee on the case of Captain Asgill, the British officer allotted to suffer retaliation for the murder of Captain Huddy. The report proposed,—

"That, considering the letter of the 29th of July last, from the Count de Vergennes to General Washington, interceding for Captain Asgill, the commander-in-chief be directed to set him at liberty."

Previous to the receipt of this letter from the Count de Vergennes, Congress had been much divided as to the propriety of executing the retaliation, after the professions on the part of the British commanders of a desire to carry on the war on humane principles, and the promises of Sir Guy Carleton to pursue as effectually as possible the real authors of the murder; some supposing that these circumstances had so far changed the ground that Congress ought to recede from their denunciations,—others supposing that, as the condition of the menace had not been complied with, and the promises were manifestly evasive, a perseverance on the part of Congress was essential to their honor; and that, moreover, it would probably compel the enemy to give up the notorious author of the confessed murder. After the receipt of the letter from the Count de Vergennes, Congress were unanimous for a relaxation. Two questions, however, arose on the report of the committee. The first was, on what considerations the discharge of Captain Asgill ought to be grounded. On this question a diversity of opinions existed. Some concurred with the committee in resting the measure entirely on the intercession of the French court; alleging that this was the only plea that could apologize to the world for such a departure from the solemn declaration made both by Congress and the commander-in-chief. Others were of opinion that this plea, if publicly recited, would mark an obsequiousness to the French court, and an impeachment of the humanity of Congress, which greatly outweighed the circumstance urged in its favor; and that the disavowal of the outrage by the British general, and a solemn promise to pursue the guilty authors of it, afforded the most honorable ground on which Congress might make their retreat. Others, again, contended for an enumeration of all the reasons which led to the measure. Lastly, others were against a recital of any reason, and for leaving the justification of the measure to such reasons as would occur of themselves. This last opinion, after considerable discussions, prevailed, and the resolution was left as it stands on the Journals. The second question was, whether this release of Captain Asgill should be followed by a demand on General Carleton to fulfil his engagement to pursue with all possible effect the authors of the murder.

On one side, it was urged that such a demand would be nugatory, after the only sanction which could enforce it had been relinquished; that it would not be consistent with the letter of the Count de Vergennes, which solicited complete oblivion; and that it would manifest to the public a degree of confidence in British faith which was not felt and ought not to be affected.

On the opposite side, it was said that, after the confession and promise of justice by General Carleton, the least that could be done by General Washington would be to claim a fulfilment; that the intercession of the Count de Vergennes extended no farther than to prevent the execution of Captain Asgill and the substitution of any

other innocent victim, and by no means was meant to shelter the guilty; that, whatever blame might fall on Congress for seeming to confide in the promises of the enemy, they would be more blamed if they not only dismissed the purpose of retaliating on the innocent, but at the same time omitted to challenge a promised vengeance on the guilty; that, if the challenge was not followed by a compliance on the part of the enemy, it would at least promulge and perpetuate, in justification of the past measures of Congress, the confessions and promises of the enemy on which the challenge was grounded, and would give weight to the charges both of barbarity and perfidy which had been so often brought against them.

In the vote on this question, six states were in favor of the demand, and the others either divided or against it.

Friday,*November* 8.

The preceding question having been taken again, on a further discussion of the subject, there were, in favor of the demand, New Hampshire, Rhode Island. New York, Pennsylvania, Delaware, Maryland, Virginia, and of the other states some were divided.

A motion was made by Mr. RUTLEDGE, of South Carolina, “That the commander-in-chief, and of the southern department, be respectively directed, whenever the enemy shall commit any act of cruelty or violence, contrary to the laws and usage of war, on the citizens of these states, to demand adequate satisfaction for the same; and in case such satisfaction shall not be immediately given, but refused or evaded under any pretext whatsoever, to cause suitable retaliation to be forthwith made on British officers, without waiting for directions from Congress on the subject.”

When this motion was first made, it was espoused by many with great warmth, in particular by the delegates of North Carolina and South Carolina, as necessary to prevent the delays and uncertainties incident to a resort by the military commanders to Congress, and to convince the enemy that, notwithstanding the dismission of Captain Asgill, the general purpose of retaliation was firmly retained.

Against the motion it was objected, first, that the time and place in which it stood would certainly convey an indirect reprehension of General Washington, for bringing before Congress the case of Captain Asgill and Huddy; secondly, that it manifested a distrust in Congress, which, however well founded it might be with respect to retaliation, ought not to be proclaimed by themselves; thirdly, that political and national considerations might render the interference of the supreme authority expedient, of which the letter from the Count de Vergennes, in the late case, furnished an instance; that the resort of the military commanders to the sovereign for direction in great and difficult cases, such as those of retaliation would often prove, was a right of which they ought not to be deprived, but in the exercise of which they ought rather to be countenanced. These objections reduced the patrons of the motion to the delegates of North Carolina and South Carolina alone, or nearly so. In place of it, the declaratory motion on the journal was substituted. This again was objected to, as implying that, in the cases of retaliation taken up by the military commanders, they

had proceeded on doubtful authority. To remove this objection, the amendment was proposed limiting the preamble to the single act of dis harging Captain Asgill. This, however, was not entirely satisfactory, because that particular act could have no constructive influence on the reputed authority of the generals. It was acceded to by the votes of several who were apprehensive that, in case of rejecting it, the earnestness of some might obtrude a substitute less harmless, or that the resolution might pass without the preamble, and be more offensive to the commander-in-chief. The first apprehension was the prevailing motive with many to agree to the proposition on the final question.

This day a letter was received from General Washington, enclosing one, of the 25th of October, from Sir Guy Carleton, relative to the demand made on him for a liquidation of accounts, and payment of the balance due for the maintenance of prisoners of war, in which the latter used an asperity of language so much the reverse of his preceding correspondence, that many regard it as portending a revival of the war against the United States.1

Saturday and Monday

No Congress.

Tuesday,*November* 12.

The reappointment of Mr. Jefferson, as minister plenipotentiary for negotiating peace, was agreed to unanimously, and without a single adverse remark. The act took place in consequence of its being suggested, that the death of Mrs. Jefferson had probably changed the sentiments of Mr. Jefferson with regard to public life; and that all the reasons which led to his original appointment still existed, and, indeed, had acquired additional force from the improbability that Mr. Laurens would actually assist in the negotiation.

“A motion was made by Mr. RUTLEDGE, declaring that when a matter was referred to any of the departments *to take order,* it was the sense and meaning of Congress that the same should be carried into execution.” On this motion some argued that such reference amounted to an absolute injunction; others insisted that it gave authority, but did not absolutely exclude discretion in the executive departments. The explanation that was finally acquiesced in, as most rational and conformable to practice, was, that it not only gave authority, but expressed the sense of Congress that the measure ought to be executed; leaving it so far, however, in the discretion of the executive department, as that, in case it differed in opinion from Congress, it might suspend execution, and state the objections to Congress, that their final direction might be given. In the course of debate it was observed, by Mr. MADISON, that the practice of referring matters to take order, especially where money was to be issued, was extremely exceptionable, inasmuch as no entry of such proceedings was made on the journals, but only noted in a memorandum book kept by the secretary, and then sent to the department, with the reference to take order endorsed by the secretary, but not signed by him; so that the transaction, even where public in its nature, never came before the public eye, and the department was left with a precarious voucher for its

justification. The motion was, in the end, withdrawn; the mover alleging that, as he only aimed at rendering an uncertain point clear, and this had been brought about by a satisfactory explanation, he did not wish for any resolution on the subject.

Wednesday,*November* 13.

No Congress.

Thursday,*November* 14.

The proceedings were confined to the report of the committee on the case of Vermont, entered on the journal. As it was notorious that Vermont had uniformly disregarded the recommendation of Congress of 1779, the report, which ascribed the evils prevalent in that district to a late act of New York, which violated that recommendation, was generally admitted to be unjust and unfair. Mr. HOWELL was the only member who openly supported it. The delegates from New York denied the fact that any violation had been committed on the part of that state. The temper of Congress, on this occasion, as the yeas and nays show, was less favorable to Vermont than on any preceding one—the effect probably of the territorial cession of New York to the United States. In the course of the debate, Mr. HOWELL cited the case of Kentucky as somewhat parallel to that of Vermont; said that the late creation of a separate court by Virginia, for the former, resembled the issuing of commissions by New York to the latter; that the jurisdiction would probably be equally resisted, and the same violences would follow as in Vermont. He was called to order by Mr. MADISON. The PRESIDENT and the plurality of Congress supported and enforced the call.

No Congress till

Monday, 18th, and Tuesday 19th, *November*

The Journals sufficiently explain the proceedings of those days.

Wednesday,*November* 20.

Congress went into consideration of the report of a committee, consisting of Mr. Carroll, Mr. M'Kean, and Mr. Howell, on two memorials from the legislature of Pennsylvania. The memorials imported a disposition to provide for the creditors of the United States, within the state of Pennsylvania, out of the revenues allotted for Congress, unless such provision could be made by Congress. The report, as an answer to the memorials, acknowledged the merit of the public creditors, professed the wishes of Congress to do them justice; referring, at the same time, to their recommendation of the impost of five per cent, which had not been acceded to by all the states; to the requisition of one million two hundred thousand dollars, for the payment of one year's interest on the public debt; and to their acceptance of the territorial cession made by New York. After some general conversation, in which the necessity of the impost, as the only fund on which loans could be expected, and the necessity of loans to supply the enormous deficiency of taxes, were urged, as also the

fatal tendency of the plan intimated in the memorials, as well to the Union itself as to the system actually adopted by Congress, the report was committed.

A motion was made by Mr. RUTLEDGE, seconded by Mr. WILLIAMSON, to instruct the committee to report the best mode of liquidating the domestic debts, and of obtaining a valuation of the land within the several states, as the Article of Confederation directs. The first part of the instruction was negatived, provision having been previously made on that head. In place of it, the superintendent of finance was instructed to report the causes which impede that provision. The second part was withdrawn by the mover. A committee, however, was afterwards appointed, consisting of Mr. Rutledge, Mr. Nash, Mr. Duane, Mr. Osgood, and Mr. Madison, to report the best scheme for a valuation.

Thursday,*November* 21.

A report was made by a committee, to whom had been referred several previous reports and propositions relative to the salaries of foreign ministers, delivering it as the opinion of the committee, that the salaries allowed to ministers plenipotentiary, to wit, two thousand five hundred pounds sterling, would not admit of reduction; but that the salary allowed to secretaries of legations, to wit, one thousand pounds sterling, ought to be reduced to five hundred pounds. This committee consisted of Mr. Duane, Mr. Izard, and Mr. Madison, the last of whom disagreed to the opinion of his colleagues as to the reduction of the two thousand five hundred pounds allowed to ministers plenipotentiary.

Against a reduction, it was argued that not only justice, but the dignity of the United States, required a liberal allowance to foreign servants; that gentlemen who had experienced the expense of living in Europe did not think that a less sum would be sufficient for a decent style; and that, in the instance of Mr. Arthur Lee, the expenses claimed by him, and allowed by Congress, exceeded the fixed salary in question.

In favor of a reduction were urged the poverty of the United States, the simplicity of republican governments, the inconsistency of splendid allowances to ministers whose chief duty lay in displaying the wants of their constituents, and soliciting a supply of them; and, above all, the policy of reconciling the army to the economical arrangements imposed on them, by extending the reform to every other department.

The result of this discussion was a reference of the report to another committee, consisting of Mr. Williamson, Mr. Osgood, and Mr. Carroll.

A motion was made by Mr. HOWELL, seconded by Mr. ARNOLD, recommending to the several states to settle with and satisfy, at the charge of the United States, all such temporary corps as had been raised by them respectively, with the approbation of Congress. The repugnance which appeared in Congress to go into so extensive and important a measure, at this time, led the mover to withdraw it.

A motion was made by Mr. MADISON, seconded by Mr. JONES,

"That the secretary of foreign affairs be authorized to communicate to foreign ministers, who may reside near Congress, all such articles of intelligence received by Congress as he shall judge fit; and that he have like authority with respect to acts and resolutions passed by Congress; reporting, nevertheless, the communications which, in all such cases, he shall have made."

It was objected, by some, that such a resolution was unnecessary, the secretary being already possessed of the authority; it was contended by others that he ought, previously to such communication, to report his intention to do so; others, again, were of opinion that it was unnecessary to report at all.

The motion was suggested by casual information from the secretary that he had not communicated to the French minister the reappointment of Mr. Jefferson, no act of Congress having empowered or instructed him to do so.

The motion was committed to Mr. Williamson, Mr. Madison, and Mr. Peters.

Friday,*November* 22.

A considerable time previous to this date, a letter had been received by Congress from Mr. Henry Laurens, informing them of his discharge from captivity, and of his having authorized in the British ministry an expectation that Earl Cornwallis should in his turn be absolved from his parole. Shortly after, a letter from Dr. Franklin informed Congress that, at the pressing instance of Mr. Laurens, and in consideration of the offer of General Burgoyne for Mr. Laurens by Congress, as well as the apparent reasonableness of the thing, he had executed an instrument setting Cornwallis at liberty from his parole, until the pleasure of Congress should be known. These papers had been committed to Mr. Rutledge, Mr. Montgomery, and Mr. Madison, who reported in favor of the ratification of the measure, against the opinion, however, of Mr. Rutledge, the first member of the committee. The report, after some discussion, had been recommitted, and had lain in their hands until, being called for, it was thought proper by the committee to obtain the sense of Congress on the main question, whether the act should be ratified or annulled; in order that a report might be made correspondent thereto. With this view, a motion was this day made by Mr. MADISON, seconded by Mr. OSGOOD, that the committee be instructed to report a proper act for the ratification of the measure. In support of this motion, it was alleged that, whenever a public minister entered into engagements without authority from his sovereign, the alternative which presented itself was either to recall the minister, or to support his proceedings, or perhaps both; that Congress had, by their resolution of the 17th day of September, refused to accept the resignation of Mr. Laurens, and had insisted on his executing the office of a minister plenipotentiary; and that, on the 20th day of September, they had rejected a motion for suspending the said resolution; that they had no option, therefore, but to fulfil the engagement entered into on the part of that minister; that it would be in the highest degree preposterous to retain him in so dignified and confidential a service, and at the same time stigmatize him by a disavowal of his conduct, and thereby disqualify him for a proper execution of the service; that it was improper to send him into negotiations with the enemy, under an impression of supposed obligations; that this reasoning was in a great degree

applicable to the part which Dr. Franklin had taken in the measure; that, finally, the Marquis de la Fayette, who, in consequence of the liberation of Cornwallis, had undertaken an exchange of several officers of his family, would also participate in the mortification; that it was overrating far the importance of Cornwallis, to sacrifice all these considerations to the policy or gratification of prolonging his captivity.

On the opposite side, it was said that the British government having treated Mr. Laurens as a traitor, not as a prisoner of war, having refused to exchange him for General Burgoyne, and having declared, by the British general at New York, that he had been freely discharged, neither Mr. Laurens nor Congress would be bound, either in honor or justice, to render an equivalent; and that policy absolutely required that so barbarous an instrument of war, and so odious an object to the people of the United States, should be kept as long as possible in the chains of captivity; that as the latest advices rendered it probable that Mr. Laurens was on his return to America, the commission for peace would not be affected by any mark of disapprobation which might fall on his conduct; that no injury could accrue to Dr. Franklin, because he had guarded his act by an express reservation for the confirmation or disallowance of Congress; that the case was the same with the Marquis de la Fayette; that the declaration against partial exchanges, until a cartel on national principles should be established, would not admit even an exchange antecedent thereto.

These considerations were, no doubt, with some, the sole motives for their respective votes. There were others, however, who at least blended with them, on one side, a personal attachment to Mr. Laurens, and on the other, a dislike to his character, and a jealousy excited by his supposed predilection for Great Britain, by his intimacy with some of the new ministry, by his frequent passing to and from Great Britain, and by his memorial, whilst in the Tower, to the Parliament. The last consideration was the chief ground on which the motion had been made for suspending the resolution which requested his continuance in the commission for peace.

In this stage of the business, a motion was made by Mr. DUANE, seconded by Mr. RUTLEDGE, to postpone the consideration of it; which being lost, a motion was made by Mr. WILLIAMSON to substitute a resolution declaring that, as the British government had treated Mr. Laurens with so unwarrantable a rigor, and even as a traitor, and Cornwallis had rendered himself so execrable by his barbarities, Congress could not ratify his exchange. An adjournment was called for, in order to prevent a vote with so thin and divided a house.[2]

No Congress till

Monday,*November* 25.

A letter from the lieutenant-governor of Rhode Island was read, containing evidence that some of the leaders in Vermont, and particularly Luke Nolton, who had been deputed in the year 1780 to Congress, as agent for that party opposed to its independence, but who had since changed sides, had been intriguing with the enemy in New York. The letter was committed. (See November the 27th.)

The consideration of the motion for ratifying the discharge of Cornwallis was resumed. Mr. WILLIAMSON renewed his motion, which failed. Mr. M'KEAN suggested the expedient of ratifying the discharge, on condition that a general cartel should be acceded to. This was relished at first by several members, but a development of its inefficacy, and inconsistency with national dignity, stifled it.

A motion was made by Mr. RUTLEDGE, seconded by Mr. RAMSAY, that the discharge should be ratified in case Mr. Laurens should undertake the office of commissioner for peace. This proposition was generally considered as of a very extraordinary nature, and, after a brief discussion, withdrawn.

In the course of these several propositions, most of the arguments stated on Friday last were repeated. Colonel HAMILTON, who warmly and urgently espoused the ratification, as an additional argument, mentioned that some intimations had been given by Colonel Laurens, of the army, with the privity of General Washington, to Cornwallis, previous to his capitulation, that he might be exchanged for his father, then in the Tower.

The report of the committee, on Mr. MADISON'S motion, on the 21st instant, relative to the secretary of foreign affairs, passed without opposition.

Tuesday,*November* 26.

No Congress, but a grand committee* composed of a member from each state.

The states of New Hampshire and Massachusetts, having redeemed more than their quota of the emissions prior to the 18th of March, 1780, had called on Congress to be credited for the surplus, on which the superintendent of finance reported, that they ought to be credited at the rate of one dollar specie for forty of the said emission, according to the act of March aforesaid. This report, being judged by Congress unjust, as the money had been called in by those states at a greater depreciation, was disagreed to. Whereupon, a motion was made by Mr. OSGOOD, that the states who had redeemed a surplus, should be credited for the same according to its current value at the time of redemption.

This motion, with a letter afterwards received from the state of Massachusetts on the same subject, was referred to the grand committee in question.

The committee were unanimous that justice required an allowance to the states who should sink a surplus, to be apportioned on the different states. The different expedients were—

That Congress should renew their call on the states to execute the act of the 18th of March, 1780, and leave it to the states to levy the money by negotiations among themselves. This was Mr. HAMILTON'S idea. The objections against it were, that either nothing would be done in the case, or the deficient states would be at the mercy of the hoarding states; although the former were, perhaps, prevented from doing their part by invasions, and the prosperity of the latter enabled them to absorb an undue proportion.

By Mr. MADISON it was proposed that Congress should declare that, whenever it should appear that the whole of the bills emitted prior to the 18th of March, 1780, shall have been collected into the treasuries of the several states, Congress would proceed to give such credit for any surplus above the quotas assigned as equity might require, and debit the deficient states accordingly. In favor of this expedient, it was supposed that it would give a general encouragement to the states to draw the money outstanding among individuals into the public treasuries, and render a future equitable arrangement by Congress easy. The objections were, that it gave no satisfaction immediately to the complaining states, and would prolong the internal embarrassments which have hindered the states from a due compliance with the requisitions of Congress.

It was lastly proposed, by Mr. FITZSIMMONS, that the commissioners appointed to traverse the United States, for the purpose of settling accounts, should be empowered to take up all the outstanding old money, and issue certificates to be apportioned on the states as part of the public debt; the same rule to determine the credit for redemptions by the states. This proposition was, on the whole, generally thought by the committee least objectionable, and was referred to a sub-committee, composed of Mr. Rutledge, Mr. Fitzsimmons, and Mr. Hamilton, to be matured and laid before the grand committee. One consideration suggested by Mr. HAMILTON in its favor was, that it would multiply the advocates for federal funds for discharging the public debts, and tend to cement the Union.3

Wednesday,*November* 27.

The report of the committee on the letter from the lieutenant-governor of Rhode Island (see November 25) was made, and taken into consideration.

It was moved by Mr. M'KEAN, to insert, in the first clause on the journal, after directing the apprehension by General Washington, "in order that the persons may be brought to trial." The reason urged for the motion was, that it might appear that the interposition was not meant to supersede civil process further than the necessity of the case required. Against the motion it was urged, that it would lead to discussions extremely perplexing and dilatory, and that it would be more proper after the apprehension should have taken place. The motion was lost, six states only being for it. (See p. 31.)

With respect to the main question, it was agreed on all sides, that it was indispensable to the safety of the United States that a traitorous intercourse between the inhabitants of Vermont and the enemy should be suppressed. There were, however, two modes proposed for the purpose, viz.: the direct and immediate interposition of the military force, according to the report; and, secondly, a reference in the first instance to the acting authority in Vermont, to be followed, in case of refusal or neglect of justice on the offenders, by an exertion of compulsive measures against the whole body.

In favor of the first mode it was said, that it would be the only effectual one, and the only one consistent with the part Congress had observed with regard to Vermont; since a reference to the authority of Vermont, which had itself been suspected and

accused, would certainly be followed at the best by a mere mock trial; and would, moreover, be a stronger recognition of its independence than Congress had made or meant to make.

In favor of the second mode it was alleged, that the body of the people in Vermont were well attached to the revolution; that a sudden march of military force into the country might alarm them; that if their rulers abetted the traitors, it would disgrace them in the eyes of their own people, and that Congress would be justified, in that event, to "split Vermont up among the other states." This expression, as well as the arguments on this side, in general, came from Mr. HOWELL, of Rhode Island, whose object was to render the proceedings of Congress as favorable as possible to the independence of Vermont.

In order to compromise the matter, Mr. ARNOLD moved that the commander-in-chief should be directed to make a previous communication of his intentions, and the evidence on which they were founded, to the persons exercising authority within the district in question.

It was suggested by Mr. MADISON, as a better expedient, that he should be authorized to make the communication, if he should deem it conducive to the more certain apprehension of the suspected persons.

The delegates from New York said they would agree, that, after the apprehension should have been effected, the commander might give notice thereof to the persons exercising authority in Vermont.

It was finally compromised as it stands on the Journal.

In the course of the debate, Mr. CLARK informed Congress that the delegates of New Jersey could not vote for any act which might oppose force to the authority of Vermont, the legislature of that state having so construed the resolutions of the 7th and 20th of August as to be incompatible therewith, and accordingly instructed their delegates.

The communication directed to the states on this occasion, through the commander-in-chief, was objected to by several members as an improper innovation. The object of it was to prevent the risk of discovery, if sent before the plans which might be taken by General Washington were sufficiently advanced, of which he was the proper judge.4

Thursday,*November* 28.

No Congress.

[Mr. Livingston, secretary of foreign affairs, called upon me, and mentioned his intention to resign in a short time his office; observing, that as he ultimately was decided to prefer his place of chancellor in New York to the other, and the two had become incompatible by the increase of business in the former, he thought it expedient not to return to Philadelphia, after a visit to New York, which was required

by this increase. In the course of conversation, he took notice that the expense of his appointment under Congress had exceeded his salary about three thousand dollars per annum. He asked me whether it was probable Mr. Jefferson would accept the vacancy, or whether he would accept Mr. Jay's place in Spain, and leave the vacancy to the latter. I told him, I thought Mr. Jefferson would not accept it himself, and doubted whether he would concur in the latter arrangement; as well as whether Congress would be willing to part with Mr. Jay's services in the negotiations of peace; but promised to sound Mr. Jefferson on these points by the first opportunity.]

No Congress until

Monday,*December* 2.

The secretary of foreign affairs resigned his office, assigning as a reason the increase of business in his office of chancellor of New York, whereby it was become impossible for him to execute the duties of both; informing Congress, at the same time, as a rule for providing for his successor, that his expenses exceeded his salary upwards of three thousand dollars per annum. The letter of resignation was committed to Mr. M'Kean and Mr. Osgood.

Tuesday,*December* 3.

After a verbal report of the committee above mentioned, who acquainted Congress that, in conference with Mr. Livingston, he professed a willingness to remain in office till the 1st of January, to give time for the choice of a successor, Mr. M'KEAN proposed the resolution which stands on the secret Journals; several alterations having been made, however, in the course of its consideration. With respect to the preamble, particularly, a change took place. As it was first moved, it recited, as the ground of the resignation, the incompatibility of the office of foreign affairs with the chancellorship of New York. To this recital it was objected, by Mr. MADISON, that such a publication of preference of the office of chancellor of a particular state to the office of foreign affairs under the United States, tended to degrade the latter. Whereupon, the preamble on the Journal was substituted. In the course of this business, the expediency of augmenting the salary was suggested, but not much supported. Mr. HOWELL and Mr. CLARK opposed it strenuously.

The report of the committee on the case of Vermont, mentioned on Thursday, the 14th of November, was called for by Mr. M'KEAN, and postponed, on his motion, to make way for a set of resolutions, declaring that, as Vermont, in contempt of the authority of Congress and their recommendations of 1799, exercised jurisdiction over sundry persons professing allegiance to the state of New York, banishing them and stripping them of their possessions, the former be required to make restitution, &c.; and that, in case of refusal or neglect, Congress will enforce the same, &c. A motion was made by Mr. CLARK, seconded by Mr. HOWELL, to strike out the latter clause; in favor of which it was said, that such a menace ought to be suspended until Vermont should refuse to comply with the requisition; especially, said Mr. Howell, as the present proceeding, being at the instance of Phelps and other exiles, was an *ex parte* one.

Against the motion for expunging the clause, it was observed, that a requisition on Vermont without such a menace would have no effect; that if Congress interposed, they ought to do it with a decisive tone; that as it only enforced restitution in cases where spoliations had been committed, and therefore was conditional, the circumstance of its being *ex parte* was of no weight, especially as Congress could not call on Vermont to appear as a party after her repeated protestations against appearing.

On this occasion, Mr. CARROLL informed Congress, that he had entirely changed his opinion with regard to the policy requisite with regard to Vermont, being thoroughly persuaded that its leaders were perfidious men, and that the interest of the United States required their pretensions to be discountenanced; that in this opinion he was not a little confirmed by a late conversation with General Whipple, of New Hampshire, at Trenton, in which this gentleman assured him, that the governing party in Vermont were perfidiously devoted to the British interests, and that he had reason to believe that a British commission for a governor of that district had come over, and was ready to be produced at a convenient season. Some of the members having gone out of Congress, and it being uncertain whether there would be more than six states for the clause, an adjournment was moved for and voted.

The proceedings on this subject evinced still more the conciliating effect of the territorial cession of New York, on several states, and the effect of the scheme of an ultra-montane state, within Pennsylvania, on the latter state. The only states in Congress which stood by Vermont were Rhode Island (which is supposed to be interested in lands in Vermont) and New Jersey, whose delegates were under instructions on the subject.5

Wednesday,*December* 4.

After the passing of the resolution concerning Captain Paul Jones, a motion was made by Mr. MADISON to reconsider the same, that it might be referred to the agent of marine to take order, as a better mode of answering the same purpose; since it did not become the sovereign body to give public sanction to a recommendation of Captain Jones to the commander of the French squadron, especially as there was no written evidence that the latter had signified a disposition to concur in the project of Captain Jones. The motion was lost; a few states only being in favor of it.

The reason assigned by those who voted against the promotion of colonels to brigadiers, according to districts, was, that such a division of the United States tends to foster local ideas, and might lead to a dismemberment.

The delegates from Pennsylvania reminded Congress that no answer had been given to the memorials (see November 20) from that state; that the legislature were proceeding in the measure intimated in the said memorials, and that they meant to finish it and adjourn this evening. The reasons mentioned by the delegates as prevailing with the legislature, were—first, the delay of Congress to give an answer, which was deemed disrespectful; secondly, the little chance of any funds being provided by Congress for their internal debts; thirdly, the assurance (given by one of

their members, Mr. Joseph Montgomery, mentioned privately, not on the floor) that no impediment to the support of the war could arise from it, since Congress had provided means for that purpose in Europe.

A committee, consisting of Mr. Rutledge, Mr. Madison, and Mr. Hamilton, was appointed to confer immediately with a committee from the legislature on the subject of the memorials, and was instructed to make such communications, relative to our affairs abroad, as would correct misinformations. The committee which met them, on the part of the legislature, were Mr. Joseph Montgomery, Mr. Hill, and Mr. Jacob Rush.

The committee of Congress in the conference observed, that the delay of an answer had proceeded in part from the nature of so large an assembly, of which the committee of the legislature could not be insensible; but principally from the difficulty of giving a satisfactory one until Rhode Island should accede to the impost of five per cent., of which they had been in constant expectation; that, with respect to the prospect from Congress for the public creditors, Congress had required of the states interest for the ensuing year, had accepted the territorial cession of New York, and meant still to pursue the scheme of the impost; that as to their affairs in Europe, the loan of six millions of livres only last year had been procured from France by Dr. Franklin, in place of twelve asked by him, the whole of which had been applied; that the loan of five millions of guilders, opened by Mr. Adams, had advanced to about one and a half million only, and there seemed little progress to have been made of late; that the application for four millions, as part of the estimate for the ensuing year, was not founded on any previous information in its favor, but against every intimation on the subject, and was dictated entirely by our necessities; so that, if even no part of the requisitions from the states should be denied or diverted, the support of the war, the primary object, might be but deficiently provided for; that if this example, which violated the right of appropriation delegated to Congress by the Federal Articles, should be set by Pennsylvania, it would be both followed by other states, and extended to other instances; that, in consequence, our system of administration, and even our bond of union, would be dissolved; that the enemy would take courage from such a prospect, and the war be prolonged, if not the object of it be endangered; that our national credit would fail with other powers, and the loans from abroad, which had been our chief resource, fail with it; that an assumption, by individual states, of the prerogative of paying their own citizens the debts of the United States, out of the money required by the latter, was not only a breach of the federal system, but of the faith pledged to the public creditors, since payment was mutually guarantied to each and all of the creditors by each and all of the states; and that, lastly, it was unjust with respect to the states themselves, on whom the burden would fall, not in proportion to their respective abilities, but to the debts due to their respective citizens; and that at least it deserved the consideration of Pennsylvania whether she would not be loser by such an arrangement.

On the side of the other committee it was answered, that the measure could not violate the confederation, because the requisition had not been founded on a valuation of land; that it would not be the first example, New Hampshire and New York having appropriated money raised under requisitions of Congress; that if the other states did

their duty in complying with the demands of Congress, no inconvenience would arise from it; that the discontents of the creditors would prevent the payment of taxes; Mr. Hill finally asking whether it had been considered in Congress, how far delinquent states could be eventually coerced to do justice to those who performed their part? To all which it was replied, that a valuation of land had been manifestly impossible during the war; that the apportionments made had been acquiesced in by Pennsylvania, and therefore the appropriation could not be objected to; that, although other states might have set previous examples, these had never come before Congress; and it would be more honorable for Pennsylvania to counteract than to abet them, especially as the example from her weight in the Union, and the residence of Congress, would be so powerful, that if other states did their duty the measure would be superfluous; that the discontents of the creditors might always be answered by the equal justice and more pressing necessity which pleaded in favor of the army, who had lent their blood and services to their country, and on whom its defence still rested; that Congress, unwilling to presume a refusal in any of the states to do justice, would not anticipate it by a consideration of the steps which such refusal might require, and that ruin must ensue, if the states suffered their policy to be swayed by such distrusts. The committee appeared to be considerably impressed with these remarks, and the legislature suspended their plan.6

Thursday,*December* 5.

Mr. Lowell and Mr. Read were elected judges of the Court of Appeals. Mr. P. Smith, of New Jersey, had the vote of that state, and Mr. Merchant, of Rhode Island, the vote of that state.

The resolutions respecting Vermont, moved by Mr. M'KEAN on the 27th day of November, were taken into consideration. They were seconded by Mr. HAMILTON, as entered on the Journal of this day. Previous to the question on the coercive clause, Mr. MADISON observed, that, as the preceding clause was involved in it, and the Federal Articles did not delegate to Congress the authority about to be enforced, it would be proper, in the first place, to amend the recital in the previous clause by inserting the ground on which the authority of Congress had been interposed. Some, who voted against this motion in this stage, having done so from a doubt as to the point of order, it was revived in a subsequent stage, when that objection did not lie. The objections to the motion itself were urged chiefly by the delegates from Rhode Island, and with a view, in this, as in all other instances, to perplex and protract the business. The objections were—first, that the proposed insertion was not warranted by the act of New Hampshire, which submitted to the judgment of Congress *merely* the question of jurisdiction; secondly, that the resolutions of August, 1781, concerning Vermont, having been acceded to by Vermont, annulled all antecedent acts founded on the doubtfulness of its claim to independence. In answer to the first objection, the act of New Hampshire was read, which, in the utmost latitude, adopted the resolutions of Congress, which extended expressly to the preservation of peace and order, and prevention of acts of confiscation by one party against another. To the second objection it was answered—first, that the said resolutions of August being conditional, not absolute, the cession of Vermont could not render them definitive; but, secondly, that prior to this accession, Vermont having, in due form, rejected the

resolutions, and notified the rejection to Congress, the accession could be of no avail, unless subsequently admitted by Congress; thirdly, that this doctrine had been maintained by Vermont itself, which had *declared* that, inasmuch as the resolutions of August did not correspond with their overtures previously made to Congress, these had ceased to be obligatory; which act, it was to be observed, was merely *declaratory,* not creative, of the annulment.

The original motion of Mr. M'KEAN and Mr. HAMILTON was agreed to, seven states voting for it, Rhode Island and New Jersey in the negative.

Friday,*December* 6.

An ordinance, extending the privilege of franking letters to the heads of all the departments, was reported and taken up. Various ideas were thrown out on the subject at large; some contending for the extension proposed; some for a total abolition of the privilege, as well in members of Congress as in others; some for a limitation of the privilege to a definite number or weight of letters. Those who contended for a total abolition, represented the privilege as productive of abuses, as reducing the profits so low as to prevent the extension of the establishment throughout the United States, and as throwing the whole burden of the establishment on the mercantile intercourse. On the other side it was contended, that, in case of an abolition, the delegates, or their constituents, would be taxed just in proportion to their distance from the seat of Congress; which was neither just nor politic, considering the many other disadvantages which were inseparable from that distance; that as the correspondence of the delegates was the principal channel through which a general knowledge of public affairs was diffused, any abridgment of it would so far confine this advantage to the states within the neighborhood of Congress; and that, as the correspondence at present, however voluminous, did not exclude from the mail any private letters which would be subject to postage, and if postage was extended to letters now franked, the number and size of them would be essentially reduced, the revenue was not affected in the manner represented. The ordinance was disagreed to, and the subject recommitted, with instruction to the committee, giving them ample latitude for such report, as they should think fit.

A Boston newspaper, containing, under the Providence head, an extract of a letter purporting to be written by a gentleman in Philadelphia, and misrepresenting the state of our loans, as well as betraying the secret proposal of the Swedish court to enter into a treaty with the United States, with the view of disproving to the people of Rhode Island the necessity of the impost of five per cent., had been handed about for several days. From the style and other circumstances, it carried strongly the appearance of being written by a member of Congress. The unanimous suspicions were fixed on Mr. Howell. The mischievous tendency of such publications and the necessity of the interposition of Congress, were also general subjects of conversation. It was imagined, too, that a detection of the person suspected would destroy in his state that influence which he exerted in misleading its counsels with respect to the impost. These circumstances led Mr. WILLIAMSON to move the following proposition on this subject:

"Whereas there is reason to suspect, that as well the national character of the United States, and the honor of Congress, as the finances of the said states, may be injured, and the public service greatly retarded, by some publications that have been made concerning the foreign affairs of said states,—*Resolved,* That a committee be appointed to inquire into this subject, and report what steps they conceive are necessary to be taken thereon."

It was opposed by no one.

Mr. CLARK, supposing it to be levelled in part at him, rose and informed Congress, that, not considering the article relative to Sweden as secret in its nature, and considering himself at liberty to make any communications to his constituents, he had disclosed it to the assembly of New Jersey. He was told that the motion was not aimed at him, but the doctrine advanced by him was utterly inadmissible. Mr. RUTLEDGE observed, that, after this frankness on the part of Mr. Clark, as well as from the respect due from every member to Congress, and to himself, it might be concluded, that, if no member present should own the letter in question, no member present was the author of it. Mr. Howell was evidently perturbated, but remained silent.

The conference with the committee of the legislature of Pennsylvania, with subsequent information, had rendered it very evident that, unless some effectual measures were taken against separate appropriations, and in favor of the public creditors, the legislature of that state, at its next meeting, would resume the plan which they had suspended.

Mr. RUTLEDGE, in pursuance of this conviction, moved that the superintendent of finance be instructed to represent to the several states the mischiefs which such appropriations would produce. It was observed, with respect to this motion, that, however proper it might be as one expedient, it was, of itself, inadequate; that nothing but a permanent fund for discharging the debts of the public would divert the states from making provision for their own citizens; that a renewal of the call on Rhode Island for the impost ought to accompany the motion; that such a combination of these plans would mutually give efficacy to them, since Rhode Island would be solicitous to prevent separate appropriations, and the other states would be soothed with the hope of the impost. These observations gave rise to the motion of Mr. HAMILTON,—

"That the superintendent of finance be, and he is hereby, directed to represent to the legislatures of the several states the indispensable necessity for their complying with the requisitions of Congress for raising one million two hundred thousand dollars, for paying one year's interest of the domestic debt of the United States, and two millions of dollars towards defraying the expenses of the estimate for the ensuing year, and the inconveniences, embarrassments, and injuries to the public service, which will arise from the states' individually making appropriations of any part of the said two millions of dollars, or any other moneys required by the United States in Congress assembled; assuring them withal, that Congress are determined to make the fullest justice to the public creditors an invariable object of their counsels and exertions; that a deputation be sent to the state of Rhode Island, for the purpose of making a full and

just representation of the public affairs of the United States, and of urging the absolute necessity of a compliance with the resolution of Congress of the 3d day of February, 1781, respecting the duty on imports and prizes, as a measure essential to the safety and reputation of these states."

Against Mr. Rutledge's part of the motion no objection was made; but the sending a deputation to Rhode Island was a subject of considerable debate, in which the necessity of the impost—in order to prevent separate appropriations by the states, to do equal justice to the public creditors, to maintain our national character and credit abroad, to obtain the loans essential for supplying the deficiencies of revenue, to prevent the encouragement which a failure of the scheme would give the enemy to persevere in the war—was fully set forth. The objections, except those which came against the scheme itself from the delegates of Rhode Island, were drawn from the unreasonableness of the proposition. Congress ought, it was said, to wait for an official answer to their demand of an explicit answer from Rhode Island, before they could, with propriety, repeat their exhortations. To which it was replied, that, although this objection might have some weight, yet the urgency of our situation, and the chance of giving a favorable turn to the negotiations on foot for peace, rendered it of little comparative significance. The objections were finally retracted, and both the propositions agreed to. The deputation elected were Mr. Osgood, Mr. Mifflin, and Mr. Nash, taken from different parts of the United States, and each from states that had fully adopted the impost, and would be represented without them, except Mr. Osgood, whose state, he being alone, was not represented without him.

Saturday,*December* 7.

No Congress.

The grand committee met again on the business of the old paper emissions, and agreed to the plan reported by the sub-committee in pursuance of Mr. FITZSIMMONS'S motion, viz., that the outstanding bills should be taken up, and certificates issued in place thereof at the rate of one real dollar for—nominal ones, and that the surpluses redeemed by particular states should be credited to them at the same rate. Mr. CARROLL alone dissented to the plan, alleging that a law of Maryland was adverse to it, which he considered as equipollent to an instruction. For filling up the blank, several rates were proposed. First, one for forty—on which the votes were, *no,* except Mr. Howell. Second, one for seventy-five—*no;* Mr. White and Mr. Howell, *ay.* Third, one for one hundred—*no;* Mr. Hamilton and Mr. Fitzsimmons, *ay.* Fourth, one for one hundred and fifty—*no;* Mr. Fitzsimmons, *ay.* The reasons urged in favor of one for forty were—first, an adherence to public faith; secondly, that the depreciation of the certificates would reduce the rate sufficiently low, they being now negotiated at the rate of three or four for one. The reason for one for seventy-five was—that the bills passed at that rate when they were called in, in the Eastern States; for one for one hundred—that, as popular ideas were opposed to the stipulated rate, and as adopting the current rate might hurt the credit of other securities, which derived their value from an opinion that they would be strictly redeemed, it was best to take an arbitrary rate, leaning to the side of liberality; for one for one hundred and fifty—that this was the medium depreciation when the circulation ceased. The

opposition to these several rates came from the southern delegates, in some of whose states none, in others but little, had been redeemed, and in all of which the depreciation had been much greater. On this side it was observed, by Mr. MADISON, that the states which had redeemed a surplus, or even their quotas, had not done it within the period fixed by Congress, but in the last stages of depreciation, and in a great degree even after the money had ceased to circulate; that, since the supposed cessation, the money had generally changed hands at a value far below any rate that had been named; that the principle established by the plan of the 18th of March, 1780, with respect to the money in question, was, that the holder of it should receive the value at which it was current, and at which it was presumed he had received it; that a different rule, adopted with regard to the same money in different stages of its downfall, would give general dissatisfaction. The committee adjourned without coming to any decision.

Monday,*December* 9.

No Congress.

Tuesday,*December* 10.

A motion was made by Mr. RAMSAY, directing the secretary of war, who was about to visit his family in Massachusetts, to take Vermont in his way, and deliver the resolutions passed a few days since to Mr. Chittenden. For the motion, it was urged that it would insure the delivery, would have a conciliating effect, and would be the means of obtaining true and certain knowledge of the disposition and views of that people. On the opposite side, it was exclaimed against as a degradation of so high a servant of the United States, as exposing him to the temerity of leaders who were, on good ground, suspected of being hostile to the United States, and as treating their pretensions to sovereignty with greater complaisance than was consistent with the eventual resolutions of Congress. The motion was rejected.

A motion was made by Mr. GILMAN, that a day be assigned for determining finally the affair of Vermont. The opposition made to the motion itself by Rhode Island, and the disagreement as to the day among the friends of the motion, prevented a decision, and it was suffered to lie over.

For the letter of the superintendent of finance to Thomas Barclay, commissioner for settling accounts in Europe, agreed to by Congress, see Secret Journal of this date.

Wednesday,*December* 11.

The secretary of war was authorized to permit the British prisoners to hire themselves out, on condition of a bond from the hirers for their return. The measure was not opposed, but was acquiesced in, by some, only as conformable to antecedent principles established by Congress on this subject. Colonel Hamilton, in particular, made this explanation.

Mr. WILSON made a motion, referring the transmission of the resolutions concerning Vermont to the secretary of war in such words as left him an option of being the

bearer, without the avowed sanction of Congress. The votes of Virginia and New York negatived it. The president informed Congress, that he should send the resolutions to the commander-in-chief to be forwarded.

Thursday,*December* 12.

The report made by Mr. Williamson, Mr. Carroll, and Mr. Madison, touching the publication in the Boston paper, supposed to be written by Mr. Howell, passed with the concurrence of Rhode Island; Mr. Howell hesitating, and finally beckoning to his colleague, Mr. Collins, who answered for the state in the affirmative. As the report stood, the executive of Massachusetts, as well as of Rhode Island, was to be written to, the Gazette being printed at Boston. On the motion of Mr. OSGOOD, who had seen the original publication in the Providence Gazette, and apprehended a constructive imputation on the Massachusetts delegates by such as would be ignorant of the circumstances, the executive of Massachusetts was expunged.

Friday,*December* 13.

Mr. HOWELL verbally acknowledged himself to be the writer of the letter from which the extract was published in the Providence Gazette. At his instance, the subject was postponed until Monday.

Saturday,*December* 14.

No Congress.

Monday,*December* 16.

The answer to the objections of Rhode Island as to the impost, penned by Mr. Howell, passed without opposition, eight states being present, of which Rhode Island was one, a few trivial alterations only being made in the course of discussion.

Mr. Howell, contrary to expectation, was entirely silent as to his affair.

Tuesday,*December* 17.

Mr. CARROLL, in order to bring on the affair of Mr. Howell, moved that the secretary of foreign affairs be instructed not to write to the government of Rhode Island on the subject. The state in which such a vote would leave the business, unless the reason of it was expressed, being not adverted to by some, and others being unwilling to move in the case, this motion was incautiously suffered to pass. The effect of it, however, was soon observed, and a motion in consequence made by Mr. HAMILTON, to subjoin the words, “Mr. Howell having in his place confessed himself to be the author of the publication.” Mr. RAMSAY, thinking such a stigma on Mr. Howell unnecessary, and tending to place him in the light of a persecuted man, whereby his opposition to the impost might have more weight in his state, proposed to substitute, as the reason, “Congress having received the information desired on that subject.” The yeas and nays being called for by Mr. HAMILTON, Mr. Howell grew very uneasy at the prospect of his name being thereby brought on the Journals, and

requested that the subject might be suspended until the day following. This was agreed to, and took place on condition that the *negatived* counter-direction to the secretary of foreign affairs should be reconsidered, and lie over also.

Wednesday,*December* 18.

This day was chiefly spent on the case of Mr. Howell, whose behavior was extremely offensive, and led to a determined opposition to him those who were most inclined to spare his reputation. If the affair could have been closed without an insertion of his name on the Journal, he seemed willing to withdraw his protest; but the impropriety which appeared to some, and particularly to Mr. Hamilton, in suppressing the name of the author of a piece which Congress had so emphatically reprobated, when the author was found to be a member of Congress, prevented a relaxation as to the yeas and nays. Mr. HOWELL, therefore, as his name was necessarily to appear on the Journal, adhered to the motion which inserted his protest thereon. (See the Journal.) The indecency of this paper, and the pertinacity of Mr. Howell in adhering to his assertions with respect to the non-failure of any application for foreign loans, excited great and (excepting his colleagues, or rather Mr. Arnold) universal indignation and astonishment in Congress; and he was repeatedly premonished of the certain ruin in which he would thereby involve his character and consequence, and of the necessity which Congress would be laid under of vindicating themselves by some act which would expose and condemn him to all the world.

Thursday,*December* 19.

See Journals.

Friday,*December* 20.

A motion was made by Mr. HAMILTON for revising the requisitions of the preceding and present years, in order to reduce them more within the faculties of the states. In support of the motion, it was urged that the exorbitancy of the demands produced a despair of fulfilling them, which benumbed the efforts for that purpose. On the other side, it was alleged that a relaxation of the demand would be followed by a relaxation of the efforts; that unless other resources were substituted, either the states would be deluded, by such a measure, into false expectations, or, in case the truth should be disclosed to prevent that effect, that the enemy would be encouraged to persevere in the war against us. The motion meeting with little patronage, it was withdrawn.

The report of the committee on the motion of Mr. Hamilton proposed that the *secretary of Congress* should transmit to the executive of Rhode Island the several acts of Congress, with a state of foreign loans. The object of the committee was, that, in case Rhode Island should abet, or not resent, the misconduct of their representative, as would most likely be the event, Congress should commit themselves as little as possible in the mode of referring it to that state. When the report came under consideration, it was observed that the *president* had always transmitted acts of Congress to the executives of the states, and that such a change, on the present occasion, might afford a pretext, if not excite a disposition, in Rhode Island not to

vindicate the honor of Congress. The matter was compromised by substituting the "*secretary of foreign affairs,* who, *ex officio,* corresponds with the governors, &c., within whose department the facts to be transmitted, as to foreign loans, lay." No motion or vote opposed the report as it passed.7

Saturday,*December* 21.

The committee to confer with Mr. Livingston was appointed the preceding day, in consequence of the unwillingness of several states to elect either General Schuyler, Mr. Clymer, or Mr. Read, the gentlemen previously put into nomination, and of a hint that Mr. Livingston might be prevailed on to serve till the spring. The committee found him in this disposition, and their report was agreed to without opposition. See the Journal.

Monday,*December* 23.

The motion to strike out the words "accruing to the United States" was grounded on a denial of the principle that a capture and possession, by the enemy, of movable property extinguished or affected the title of the owners. On the other side, this principle was asserted as laid down by the best writers, and conformable to the practice of all nations; to which was added, that, if a contrary doctrine were established by Congress, innumerable claims would be brought forward by those whose property had, on recapture, been applied to the public use. See Journal.

Letters were this day received from Dr. Franklin, Mr. Jay, and the Marquis de la Fayette. They were dated the 14th of October. That from the first enclosed a copy of the second commission to Mr. Oswald, with sundry preliminary articles, and distrusted the British court. That from the second expressed great jealousy of the French government, and referred to an intercepted letter from Mr. Marbois, opposing the claim of the United States to the fisheries. This despatch produced much indignation against the author of the intercepted letter, and visible emotions in some against France. It was remarked here that our ministers took no notice of the distinct commissions to Fitzherbert and Oswald; that although, on a supposed intimacy, and joined in the same commission, they, the ministers, wrote *separately,* and breathed opposite sentiments as to the views of France. Mr. Livingston told me that the letter of the Count de Vergennes, as read to him by the Chevalier Luzerne, very delicately mentioned and complained that the American ministers did not, in the negotiations with the British ministers, maintain the due communication with those of France. Mr. Livingston inferred, on the whole, that France was sincerely anxious for peace.

The President acquainted Congress that Count Rochambeau had communicated the intended embarkation of the French troops for the West Indies, with an assurance from the king of France that, in case the war should be renewed, they should immediately be sent back.

Tuesday,*December* 24.

The letter from Mr. Jay, enclosing a copy of the intercepted letter from Marbois, was laid before Congress. The tenor of it, with the comments of Mr. Jay, affected deeply the sentiments of Congress with regard to France. The policy, in particular, manifested by France, of keeping us tractable by leaving the British in possession of posts in this country, awakened strong jealousies, corroborated the charges on that subject, and, with concomitant circumstances, may engender the opposite extreme of the gratitude and cordiality now felt towards France; as the closest friends, in a rupture, are apt to become the bitterest foes. Much will depend, however, on the course pursued by Britain. The liberal one Oswald seems to be pursuing will much promote an alienation of temper in America from France. It is not improbable that the intercepted letter from Marbois came through Oswald's hands. If Great Britain, therefore, yields the fisheries and the back territory, America will feel the obligation to her, not to France, who appears to be illiberal as to the first, and favorable to Spain as to the second object, and, consequently, has forfeited the confidence of the states interested in either of them. Candor will suggest, however, that the situation of France is and has been extremely perplexing. The object of her blood and money was not only the independence, but the commerce and gratitude, of America; the commerce to render independence the more useful, the gratitude to render that commerce the more permanent. It was necessary, therefore, she supposed, that America should be exposed to the cruelties of her enemies, and be made sensible of her own weakness, in order to be grateful to the hand that relieved her. This policy, if discovered, tended, on the other hand, to spoil the whole. Experience shows that her truest policy would have been to relieve America by the most direct and generous means, and to have mingled with them no artifice whatever. With respect to Spain, also, the situation of France has been as peculiarly delicate. The claims and views of Spain and America interfere. The former attempts of Britain to seduce Spain to a separate peace, and the ties of France with the latter, whom she had drawn into the war, required her to favor Spain, at least to a certain degree, at the expense of America. Of this Great Britain is taking advantage. If France adheres to Spain, Great Britain espouses the views of America, and endeavors to draw her off from France. If France adheres to America in her claims, Britain might espouse those of Spain, and produce a breach between her and France; and in either case Britain would divide her enemies. If France acts wisely, she will in this dilemma prefer the friendship of America to that of Spain. If America acts wisely, she will see that she is, with respect to her great interests, more in danger of being seduced by Britain than sacrificed by France.

The deputation to Rhode Island had set out on the 22d, and proceeded half-a-day's journey. Mr. NASH casually mentioned a private letter from Mr. Pendleton to Mr. Madison, informing him that the legislature of Virginia had, in consequence of the final refusal of Rhode Island, repealed her law for the impost. As this circumstance, if true, destroyed, in the opinion of the deputies, the chief argument to be used by them, viz., the unanimity of the other states, they determined to return and wait for the southern post, to know the truth of it. The post failing to arrive on the 23d, the usual day, the deputies on this day came into Congress and stated the case. Mr. MADISON read to Congress the paragraph in the letter from Mr. Pendleton. Congress verbally resolved, that the departure of the deputies for Rhode Island should be suspended until the further order of Congress; Mr. Madison promising to give any information he might receive by the post. The arrival of the post immediately ensued. A letter to Mr.

Madison from Mr. Randolph confirmed the fact, and was communicated to Congress. The most intelligent members were deeply affected and prognosticated a failure of the impost scheme, and the most pernicious effects to the character, the duration, and the interests, of the Confederacy. It was at length, notwithstanding, determined to persist in the attempt for permanent revenue, and a committee was appointed to report the steps proper to be taken.

A motion was made by Mr. RUTLEDGE to strike out the salvage for recaptures on land, on the same principle as he did the words "accruing to the United States." As the latter had been retained by barely seven states, and one of these was not present, the motion of Mr. Rutledge succeeded. Some of those who were on the other side, in consequence, voted against the whole resolution, and it failed. By compromise, it passed as reported by the committee.

The grand committee reported, after another meeting, with respect to the old money, that it should be rated at forty for one. The chair decided, on a question raised, that, according to rule, the blank should not have been filled up by the committee; so the rate was expunged.

From Tuesday, the 24th of December, the Journals suffice until—

Monday,*December* 30.

A motion was made by Mr. CLARK, seconded by Mr. RUTLEDGE, to revise the instructions relative to negotiations for peace, with a view to exempt the American plenipotentiaries from the obligation to conform to the advice of France. This motion was the effect of impressions left by Mr. Jay's letters, and the intercepted one from Marbois. This evidence of separate views in our ally, and the inconsistency of that instruction with our national dignity, were urged in support of the motion. In opposing the motion, many considerations were suggested, and the original expediency of submitting the commission for peace to the counsels of France descanted upon. The reasons assigned for this expediency were, that at the juncture when that measure took place, the American affairs were in the most deplorable situation, the Southern States being overrun and exhausted by the enemy, and the others more inclined to repose after their own fatigues than to exert their resources for the relief of those which were the seat of the war; that the old paper currency had failed, and with it public credit itself, to such a degree that no new currency could be substituted; and that there was then no prospect of introducing specie for the purpose, our trade being in the most ruinous condition, and the intercourse with the Havana in particular unopened. In the midst of these distresses, the mediation of the two imperial courts was announced. The general idea was, that the two most respectable powers of Europe would not interpose without a serious desire of peace, and without the energy requisite to effect it. The hope of peace was, therefore, mingled with an apprehension that considerable concessions might be exacted from America by the mediators, as a compensation for the essential one which Great Britain was to submit to. Congress, on a trial, found it impossible, from the diversity of opinions and interests, to define any other claims than those of independence and the alliance. A discretionary power, therefore, was to be delegated with regard to all other claims. Mr. Adams was the sole minister for

peace; he was personally at variance with the French ministry; his judgment had not the confidence of some, nor his partiality, in case of an interference of claims espoused by different quarters of the United States, the confidence of others. A motion to associate with him two colleagues, to wit, Mr. Franklin and Mr. Jay, had been disagreed to by Congress; the former of these being interested as one of the land companies in territorial claims, which had less chance of being made good in any other way than by a repossession of the vacant country by the British crown; the latter belonging to a state interested in such arrangements as would deprive the United States of the navigation of the Mississippi, and turn the western trade through New York; and neither of them being connected with the Southern States. The idea of having five ministers taken from the whole Union was not suggested until the measure had been adopted, and communicated to the Chevalier de Luzerne to be forwarded to France, when it was too late to revoke it. It was supposed also that Mr. Laurens, then in the Tower, would not be out, and that Mr. Jefferson would not go; and that the greater the number of ministers, the greater the danger of discords and indiscretions. It was added that, as it was expected that nothing would be yielded by Great Britain which was not extorted by the address of France in managing the mediators, and as it was the intention of Congress that their minister should not oppose a peace recommended by them and approved by France, it was thought good policy to make the declaration to France, and by such a mark of confidence to render her friendship the more responsible for the issue. At the worst, it could only be considered as a sacrifice of our pride to our interest.

These considerations still justified the original measure in the view of the members who were present and voted for it. All the new members who had not participated in the impressions which dictated it, and viewed the subject only under circumstances of an opposite nature, disapproved it. In general, however, the latter joined with the former in opposing the motion of Mr. CLARK, arguing with them that, supposing the instruction to be wrong, it was less dishonorable than the instability that would be denoted by rescinding it; that if Great Britain was disposed to give us what we claimed, France could not prevent it; that if Great Britain struggled against those claims, our only chance of getting them was through the aid of France; that to withdraw our confidence would lessen the chance and degree of this aid; that if we were in a prosperous or safe condition, compared with that in which we adopted the expedient in question, this change had been effected by the friendly succors of our ally, and that to take advantage of it to loosen the tie would not only bring on us the reproach of ingratitude, but induce France to believe that she had no hold on our affections, but only in our necessities; that, in all possible situations, we should be more in danger of being seduced by Great Britain than of being sacrificed by France, the interests of the latter, in the main, necessarily coinciding with ours, and those of the former being diametrically opposed to them; that as to the intercepted letter, there were many reasons which indicated that it came through the hands of the enemy to Mr. Jay; that it ought, therefore, to be regarded, even if genuine, as communicated for insidious purposes, but that there was strong reason to suspect that it had been adulterated, if not forged; and that, on the worst supposition, it did not appear that the doctrines maintained, or the measures recommended in it, had been adopted by the French ministry, and consequently that they ought not to be held responsible for them.

Upon these considerations it was proposed by Mr. WOLCOTT, seconded by Mr. HAMILTON, that the motion of Mr. CLARK should be postponed, which took place without a vote.8

Mr. MADISON moved that the letter of Dr. Franklin, of the 14th of October, 1782, should be referred to a committee, with a view of bringing into consideration the preliminary article proposing that British subjects and American citizens should reciprocally have, in matters of commerce, the privilege of natives of the other party, and giving the American ministers the instruction which ensued on that subject. This motion succeeded, and the committee appointed consisted of Mr. Madison, Mr. Rutledge, Mr. Clark, Mr. Hamilton, and Mr. Osgood.

The contract of General Wayne was confirmed with great reluctance, being considered as improper with respect to its being made with individuals, as admitting of infinite abuses, as out of his military line, and as founded on a principle that a present commerce with Great Britain was favorable to the United States—a principle reprobated by Congress and all the states. Congress, however, supposed that these considerations ought to yield to the necessity of supporting the measures which a valuable officer, from good motives, had taken upon himself.

Tuesday,*December* 31.

The report of the committee made in consequence of Mr. Madison's motion yesterday, instructing the ministers plenipotentiary on the article of commerce, passed unanimously, as follows:—

"*Resolved,* That the ministers plenipotentiary for negotiating peace be instructed, in any commercial stipulations with Great Britain which may be comprehended in a treaty of peace, to endeavor to obtain for the citizens and inhabitants of the United States a direct commerce to all parts of the British dominions and possessions, in like manner as all parts of the United States may be opened to a direct commerce of British subjects; or at least that such direct commerce be extended to all parts of the British dominions and possessions in Europe and the West Indies; and the said ministers are informed, that this stipulation will be particularly expected by Congress, in case the citizens and subjects of each party are to be admitted to an equality in matters of commerce with natives of the other party."

Wednesday,*January* 1, 1783.

The decision of the controversy between Connecticut and Pennsylvania was reported.

The communications made from the minister of France concurred, with other circumstances, in effacing the impressions made by Mr. Jay's letter and Marbois's enclosed. The vote of thanks to Count Rochambeau passed with unanimity and cordiality, and afforded a fresh proof that the resentment against France had greatly subsided.

Thursday,*January* 2.

Nothing requiring notice.

Friday,*January* 3.

The vote of thanks to the minister of France, which passed yesterday, was repealed in consequence of his having expressed to the president a desire that no notice might be taken of his conduct as to the point in question, and of the latter's communicating the same to Congress. The temper of Congress here again manifested the transient nature of their irritation against France.

The motion of Mr. HOWELL, put on the Secret Journal, gave Congress a great deal of vexation. The expedient for baffling his scheme of raising a ferment in his state, and exposing the foreign transactions, was adopted only in the last resort; it being questioned by some whether the Articles of Confederation warranted it.

The answer to the note of the French minister passed unanimously, and was a further testimony of the abatement of the effects of Mr. Jay's letter, &c.

The proceedings of the court in the dispute between Connecticut and Pennsylvania were, after debates as to the meaning of the Confederation in directing such proceeding to be lodged among the acts of Congress, entered at large on the Journals. It was remarked, that the delegates from Connecticut, particularly Mr. Dyer, were more captious on the occasion than was consistent with a perfect acquiescence in the decree.

Monday,*January* 6.

The memorial from the army was laid before Congress, and referred to a grand committee. This reference was intended as a mark of the important light in which the memorial was viewed.

Mr. Berkley having represented some inconveniences incident to the plan of a consular convention between France and the United States, particularly the restriction of consuls from trading, and his letter having been committed, a report was made proposing that the convention should for the present be suspended. To this it had been objected that, as the convention might already be concluded, such a step was improper; and as the end might be obtained by authorizing the minister at Versailles to propose particular alterations, that it was unnecessary. By Mr. MADISON it had been moved, that the report should be postponed, to make place for the consideration of an instruction and authority to the said minister for that purpose; and this motion had, in consequence, been brought before Congress. On this day the business revived. The sentiments of the members were various, some wishing to suspend such part of the convention only as excluded consuls from commerce; others thought this exclusion too important to be even suspended; others, again, thought the whole ought to be suspended during the war; and others, lastly, contended that the whole ought to be new modelled, the consuls having too many privileges in some respects, and too little power in others. It was observable that this diversity of opinions prevailed chiefly among the members who had come in since the convention had passed in

Congress; the members originally present adhering to the views which then governed them. The subject was finally postponed; eight states only being represented, and nine being requisite for such a question. Even to have suspended the convention, after it had been proposed to the court of France, and possibly acceded to, would have been indecent and dishonorable, and, at a juncture when Great Britain was courting a commercial intimacy, to the probable uneasiness of France, of very mischievous tendency. But experience constantly teaches that new members of a public body do not feel the necessary respect or responsibility for the acts of their predecessors, and that a change of members and of *circumstances* often proves fatal to consistency and stability of public measures. Some conversation, in private, by the old members with the most judicious of the new, in this instance, has abated the fondness of the latter for innovations, and it is even problematical whether they will be again urged.

In the evening of this day the grand committee met, and agreed to meet again the succeeding evening, for the purpose of a conference with the superintendent of finance.

Tuesday,*January* 7.

See the Journals.

In the evening, the grand committee had the assigned conference with Mr. Morris, who informed them explicitly that it was impossible to make any advance of pay, in the present state of the finances, to the army, and imprudent to give any assurances with respect to future pay, until certain funds should be previously established. He observed, that even if an advance could be made, it would be unhappy that it should appear to be the effect of demands from the army, as this precedent could not fail to inspire a distrust of the spontaneous justice of Congress, and to produce repetitions of the expedient. He said that he had taken some measures with a view to a payment for the army, which depended on events not within our command; that he had communicated these measures to General Washington under an injunction of secrecy; that he could not yet disclose them without endangering their success; that the situation of our affairs within his department was so alarming that he had thoughts of asking Congress to appoint a confidential committee to receive communications on that subject, and to sanctify, by their advice, such steps as ought to be taken. Much loose conversation passed on the critical state of things, the defect of a permanent revenue, and the consequences to be apprehended from a disappointment of the mission from the army; which ended in the appointment of Friday evening next for an audience to General M'Dougall, Colonel Brooks, and Colonel Ogden, the deputies on the subject of the memorial, the superintendent to be present.

Wednesday,*January* 8, Thursday,*January* 9, and Friday,*January* 10.

On the report* for valuing the land conformably to the rule laid down in the Federal Articles, the delegates from Connecticut contended for postponing the subject during the war, alleging the impediments arising from the possession of New York, &c., by the enemy, but apprehending, as was supposed, that the flourishing state of Connecticut, compared with the Southern States, would render a valuation, at this

crisis, unfavorable to the former. Others, particularly Mr. HAMILTON and Mr. MADISON, were of opinion that the rule of the Confederation was a chimerical one, since, if the intervention of the individual states were employed, their interests would give a bias to their judgments, or that at least suspicions of such bias would prevail; and without their intervention, it could not be executed but at an expense, delay, and uncertainty, which were inadmissible; that it would perhaps be, therefore, preferable to represent these difficulties to the states, and recommend an exchange of this rule of dividing the public burdens for one more simple, easy, and equal. The delegates from South Carolina generally, and particularly Mr. RUTLEDGE, advocated the propriety of the constitutional rule, and of an adherence to it, and of the safety of the mode in question arising from the honor of the states. The debates on the subject were interrupted by a letter from the superintendent of finance, informing Congress that the situation of his department required that a committee should be appointed, with power to advise him on the steps proper to be taken; and suggesting an appointment of one, consisting of a member from each state, with authority to give their advice on the subject. This expedient was objected to as improper, since Congress would thereby delegate an incommunicable power, perhaps, and would, at any rate, lend a sanction to a measure without even knowing what it was, not to mention the distrust which it manifested of their own prudence and fidelity. It was, at length, proposed and agreed to, that a special committee, consisting of Mr. Rutledge, Mr. Osgood, and Mr. Madison, should confer with the superintendent of finance on the subject of his letter, and make report to Congress. After the adjournment of Congress, this committee conferred with the superintendent; who, after being apprized of the difficulties which had arisen in Congress, stated to them that the last account of our money affairs in Europe showed that, contrary to his expectations and estimates, there were three and a half millions of livres short of the bills actually drawn; that further drafts were indispensable to prevent a stop to the public service; that, to make good this deficiency, there was only the further success of Mr. Adams's loan, and the friendship of France, to depend on; that it was necessary for him to decide on the expediency of his staking the public credit on those contingent funds by further drafts; and that, in making this decision, he wished for the sanction of a committee of Congress; that this sanction was preferable to that of Congress itself only as it would confide the risk attending bills drawn on such funds to a smaller number, and as secrecy was essential in the operation, as well to guard our affairs in general from injury, as the credit of the bills in question from debasement. It was supposed, both by the superintendent and the committee, that there was, in fact, little danger of bills drawn on France, on the credit of the loan of four millions of dollars applied for, being dishonored; since, if the negotiations on foot were to terminate in peace, France would prefer an advance in our favor to exposing us to the necessity of resorting to Great Britain for it; and that if the war should continue, the necessity of such an aid to its prosecution would prevail. The result was, that the committee should make such report as would bring the matter before Congress under an injunction of secrecy, and produce a resolution authorizing the superintendent to draw bills, as the public service might require, on the credit of applications for loans in Europe. The report of the committee to this effect was, accordingly, the next day made and adopted unanimously. Mr. DYER alone at first opposed it, as an unwarrantable and dishonorable presumption on the ability and disposition of France. Being answered, however, that without such a step, or some other expedient, which neither he nor any other had suggested, our credit would be

stabbed abroad, and the public service wrecked at home, and that, however mortifying it might be to commit our credit, our faith, and our honor, to the mercy of a foreign nation, it was a mortification which could not be avoided without endangering our very existence, he acquiesced, and the resolution was entered unanimously. The circumstance of unanimity was thought of consequence, as it would evince the more the necessity of the succor, and induce France the more readily to yield to it. On this occasion several members were struck with the impropriety of the late attempt to withdraw from France the trust confided to her over the terms of peace, when we were under the necessity of giving so decisive a proof of our dependence on her. It was also adverted to, in private conversation, as a great unhappiness, that, during negotiations for peace, when an appearance of vigor and resource were so desirable, such a proof of our poverty and imbecility could not be avoided.

The conduct of Mr. Howell, &c., had led several, and particularly Mr. PETERS, into an opinion that some further rule and security ought to be provided for concealing matters of a secret nature. On the motion of Mr. PETERS, a committee composed of himself, Mr. Williamson, &c., was appointed to make a report on the subject. On this day the report was made. It proposed that members of Congress should each subscribe an instrument pledging their faith and honor not to disclose certain enumerated matters.

The enumeration being very indistinct and objectionable, and a written engagement being held insufficient with those who without it would violate prudence or honor, as well as marking a general distrust of the prudence and honor of Congress, the report was generally disrelished; and, after some debate, in which it was faintly supported by Mr. WILLIAMSON, the committee asked and obtained leave to withdraw it.

A discussion of the report on the mode of valuing the lands was revived. It consisted chiefly of a repetition of the former debates.

In the evening, according to appointment on Tuesday last, the grand committee met, as did the superintendent of finance. The chairman, Mr. WOLCOTT, informed the committee that Colonels Ogden and Brooks, two of the deputies from the army, had given him notice that General M'Dougall, the first of the deputation, was so indisposed with the rheumatism as to be unable to attend, and expressed a desire that the committee would adjourn to his lodging at the Indian Queen Tavern, the deputies being very anxious to finish their business, among other reasons, on account of the scarcity of money with them. At first the committee seemed disposed to comply; but it being suggested, that such an adjournment by a committee of a member from each state would be derogatory from the respect due to themselves, especially as the mission from the army was not within the ordinary course of duty the idea was dropped. In lieu of it, they adjourned to Monday evening next, on the ostensible reason of the extreme badness of the weather, which had prevented the attendance of several members.

Monday,*January* 13.

The report on the valuation of land was referred to a grand committee.

A motion was made by Mr. PETERS, seconded by Mr. MADISON, "that a committee be appointed to consider the expediency of making further applications for loans in Europe, and to confer with the superintendent of finance on the subject." In support of this motion, Mr. PETERS observed that, notwithstanding the uncertainty of success, the risk of appearing unreasonable in our demands on France, and the general objections against indebting the United States to foreign nations, the crisis of our affairs demanded the experiment; that money must, if possible, be procured for the army, and there was ground to expect that the court of France would be influenced by an apprehension that, in case of her failure, and of a pacification, Great Britain might embrace the opportunity of substituting her favors. Mr. MADISON added, that it was expedient to make the trial, because, if it failed, our situation could not be made worse; that it would be prudent in France, and therefore it might be expected of her, to afford the United States such supplies as would enable them to disband their army in tranquillity, lest some internal convulsions might follow external peace, the issue of which ought not to be hazarded; that as the affections and gratitude of this country, as well as its separation from Great Britain, were her objects in the revolution, it would also be incumbent on her to let the army be disbanded under the impression of deriving their rewards through her friendship to their country; since their temper on their dispersion through the several states, and being mingled in the public councils, would much affect the general temper towards France; and that, if the pay of the army could be converted into a consolidated debt bearing interest, the requisitions on the states for the principal might be reduced to requisitions for the interest, and by that means a favorable revolution so far introduced into our finances.

The motion was opposed by Mr. DYER, because it was improper to augment our foreign debts, and would appear extravagant to France. Several others assented to it with reluctance, and several others expressed serious scruples, as honest men, against levying contributions on the friendship or fears of France or others, whilst the unwillingness of the states to invest Congress with permanent funds rendered a repayment so precarious. The motion was agreed to, and the committee chosen—Mr. Gorham, Mr. Peters, and Mr. Izard.

In the evening, according to appointment, the grand committee gave an audience to the deputies of the army, viz.: General M'Dougall and Colonels Ogden and Brooks. The first introduced the subject by acknowledging the attention manifested to the representations of the army by the appointment of so large a committee; his observations turned chiefly on the three chief topics of the memorial, namely, an immediate advance of pay, adequate provision for the residue, and half-pay. On the first, he insisted on the absolute necessity of the measure, to soothe the discontents both of the officers and soldiers; painted their sufferings and services, their successive hopes and disappointments throughout the whole war, in very high-colored expressions; and signified that, if a disappointment were now repeated, the most serious consequences were to be apprehended; that nothing less than the actual distresses of the army would have induced, at this crisis, so solemn an application to their country; but the seeming approach of peace, and the fear of being still more neglected when the necessity of their services should be over, strongly urged the necessity of it. His two colleagues followed him with a recital of various incidents and circumstances tending to evince the actual distresses of the army, the irritable state in

which the deputies left them, and the necessity of the consoling influence of an immediate advance of pay. Colonel OGDEN said, he wished not, indeed, to return to the army, if he was to be the messenger of disappointment to them. The deputies were asked, first, what particular steps they supposed would be taken by the army in case no pay could be immediately advanced; to which they answered, that it was impossible to say precisely; that although the sergeants, and some of the most intelligent privates, had been often observed in sequestered consultations, yet it was not known that any premeditated plan had been formed; that there was sufficient reason to dread that at least a mutiny would ensue, and the rather as the temper of the officers, at least those of inferior grades, would with less vigor than heretofore struggle against it. They remarked, on this occasion, that the situation of the officers was rendered extremely delicate, and had been sorely felt, when called upon to punish in soldiers a breach of engagements to the public, which had been preceded by uniform and flagrant breaches by the latter of its engagements to the former. General M'DOUGALL said, that the army were verging to that state, which, we are told, will make a wise man mad; and Colonel BROOKS said, that his apprehensions were drawn from the circumstance that the temper of the army was such that they did not reason or deliberate coolly on consequences, and, therefore, a disappointment might throw them blindly into extremities. They observed, that the irritations of the army had resulted, in part, from the distinctions made between the civil and military lists, the former regularly receiving their salaries, and the latter as regularly left unpaid. They mentioned, in particular, that the members of the legislatures would never agree to an adjournment without paying themselves fully for their services. In answer to this remark it was observed, that the civil officers, on the average, did not derive from their appointments more than the means of their subsistence; and that the military, although not furnished with their pay properly so called, were in fact furnished with the same necessaries.

On the second point, to wit, "adequate provision for the general arrears due to them," the deputies animadverted with surprise, and even indignation, on the repugnance of the states—some of them at least—to establish a federal revenue for discharging the federal engagements. They supposed that the ease, not to say affluence, with which the people at large lived, sufficiently indicated resources far beyond the actual exertions; and that if a proper application of these resources was omitted by the country, and the army thereby exposed to unnecessary sufferings, it must naturally be expected that the patience of the latter would have its limits. As the deputies were sensible that the general disposition of Congress strongly favored this object, they were less diffuse on it. General M'DOUGALL made a remark which may deserve the greater attention, as he stepped from the tenor of his discourse to introduce it, and delivered it with peculiar emphasis. He said that the most intelligent and considerate part of the army were deeply affected at the debility and defects in the federal government, and the unwillingness of the states to cement and invigorate it, as, in case of its dissolution, the benefits expected from the revolution would be greatly impaired; and as, in particular, the contests which might ensue among the states would be sure to embroil the officers which respectively belonged to them.

On the third point, to wit, "half-pay for life," they expressed equal dissatisfaction at the states which opposed it, observing that it formed a part of the wages stipulated to

them by Congress, and was but a reasonable provision for the remnant of their lives, which had been freely exposed in the defence of their country, and would be incompatible with a return to occupations and professions for which military habits, of seven years' standing, unfitted them. They complained that this part of their reward had been industriously and artfully stigmatized in many states with the name of *pension,* although it was as reasonable that those who had lent their blood and services to the public should receive an annuity thereon, as those who had lent their money; and that the officers, whom new arrangements had, from time to time, excluded, actually labored under the opporbrium of pensioners, with the additional mortification of not receiving a shilling of the emoluments. They referred, however, to their memorial to show that they were authorized and ready to commute their half-pay for any equivalent and less exceptionable provision.

After the departure of the deputies, the grand committee appointed a sub-committee, consisting of Mr. Hamilton, Mr. Madison, and Mr. Rutledge, to report arrangements, in concert with the superintendent of finance, for their consideration.

Tuesday,*January* 14.

Congress adjourned for the meeting of the grand committee, to whom was referred the report concerning the valuation of the lands, and who accordingly met.

The committee were, in general, strongly impressed with the extreme difficulty and inequality, if not impracticability, of fulfilling the article of the Confederation relative to this point; Mr. Rutledge, however, excepted, who, although he did not think the rule so good a one as a census of inhabitants, thought it less impracticable than the other members. And if the valuation of land had not been prescribed by the Federal Articles, the committee would certainly have preferred some other rule of appointment, particularly that of numbers, under certain qualifications as to slaves. As the Federal Constitution, however, left no option, and a few* only were disposed to recommend to the states an alteration of it, it was necessary to proceed, first, to settle its meaning; secondly, to settle the least objectionable mode of valuation. On the first point it was doubted, by several members, whether the returns which the report under consideration required from the states would not be final, and whether the Articles of Confederation would allow Congress to alter them after they had fixed on this mode; on this point, no vote was taken. A second question, afterwards raised in the course of the discussion, was, how far the articles required a specific valuation, and how far it gave a latitude as to the mode; on this point, also, there was a diversity of opinions, but no vote taken.

Secondly, as to the mode itself, referred to the grand committee, it was strongly objected to by the delegate from Connecticut, Mr. Dyer, by Mr. Hamilton, by Mr. Wilson, by Mr. Carroll, and by Mr. Madison, as leaving the states too much to the bias of interest, as well as too uncertain and tedious in the execution. In favor of the report was Mr. Rutledge, the father of it, who thought the honor of the states, and their mutual confidence, a sufficient security against frauds and the suspicion of them. Mr. Gorham favored the report also, as the least impracticable mode, and as it was necessary to attempt at least some compliance with the federal rule before any attempt

could be properly made to vary it. An opinion entertained by Massachusetts, that she was comparatively in advance to the United States, made her anxious for a speedy settlement of the mode by which a final apportionment of the common burden could be effected. The sentiments of the other members of the committee were not expressed.

Mr. HAMILTON proposed, in lieu of a reference of the valuation to the states, to class the lands throughout the United States under distinctive descriptions, viz., arable, pasture, wood, &c., and to annex a uniform rate to the several classes, according to their different comparative value, calling on the states only for a return of the quantities and descriptions. This mode would have been acceptable to the more compact and populous states, but was totally inadmissible to the Southern States.

Mr. WILSON proposed, that returns of the quantity of land and of the number of inhabitants in the respective states should be obtained, and a rule deduced from the combination of these data. This also would have affected the states in a similar manner with the proposition of Mr. Hamilton. On the part of the Southern States it was observed, that, besides its being at variance with the text of the Confederation, it would work great injustice, as would every mode which admitted the quantity of lands within the states into the measure of their comparative wealth and abilities.

Lastly, it was proposed by Mr. MADISON, that a valuation should be attempted by Congress without the intervention of the states. He observed, that, as the expense attending the operation would come ultimately from the same pockets, it was not very material whether it was borne in the first instance by Congress or the states, and it at least deserved consideration whether this mode was not preferable to the proposed reference to the states.

The conversation ended in the appointment of a sub-committee, consisting of Mr. Madison, Mr. Carroll and Mr. Wilson, who were desired to consider the several modes proposed, to confer with the superintendent of finance, and make such report to the grand committee as they should judge fit.

Wednesday,*January* 15.

A letter dated the 19th of December, from General Greene, was received, notifying the evacuation of Charleston. It was, in the first place, referred to the secretary of Congress for publication; excepting the passage which recited the exchange of prisoners, which, being contrary to the resolution of the 16th of October against partial exchanges, was deemed improper for publication. It was in the next place referred to a committee, in order that some complimentary report might be made in favor of General Greene and the southern army. Dr. RAMSAY, having come in after this reference, and being uninformed of it, moved that a committee might be appointed to devise a proper mode of expressing to General Greene the high sense entertained by Congress of his merits and services. In support of his motion, he went into lavish praises of General Greene, and threw out the idea of making him a lieutenant-general. His motion being opposed as somewhat singular and unnecessary, after the reference to General Greene's letter, he withdrew it.

A letter was received from General Washington, enclosing a certificate from Mr. Chittenden, of Vermont, acknowledging the receipt of the communication which General Washington had sent him of the proceedings of Congress on the 5th of December.

Thursday,*January* 16.

Mr. RUTLEDGE informed Congress, that there was reason to apprehend that the train of negotiation in Europe had been so misrepresented in the state of South Carolina, as to make it probable that an attempt might be made in the legislature to repeal the confiscation laws of that state; and even if such attempt should fail, the misrepresentations could not fail to injure the sale of property confiscated in that state. In order, therefore, to frustrate these misrepresentations, he moved that the delegates of South Carolina might be furnished with an extract from the letter of the 14th of October, from Dr. Franklin, so far as it informed Congress "that something had been mentioned to the American plenipotentiaries relative to the refugees and to English debts, but not insisted on; it being answered, on their part, that this was a matter belonging to the individual states, and on which Congress could enter into no stipulations." The motion was seconded by Mr. GERVAIS, and supported by Mr. RAMSAY. It was opposed by Mr. ELLSWORTH and Mr. WOLCOTT as improper, since a communication of this intelligence might encourage the states to extend confiscations to British debts,—a circumstance which would be dishonorable to the United States, and might embarrass a treaty of peace. Mr. FITZSIMMONS expressed the same apprehensions; so did Mr. GORHAM. His colleague, Mr. OSGOOD, was in favor of the motion. By Mr. MADISON the motion was so enlarged and varied as "to leave *all* the delegates at liberty to communicate the extract to their constituents, in such form and under such cautions as they should judge prudent." The motion, so varied, was adopted by Mr. Rutledge, and substituted in place of the original one. It was, however, still opposed by the opponents of the original motion. Mr. Madison observed that, as all the states had espoused, in some degree, the doctrine of confiscations, and as some of them had given instructions to their delegates on the subject, it was the duty of Congress, without inquiring into the expediency of confiscations, to prevent, as far as they could, any measures which might impede that object in negotiations for peace, by inducing an opinion that the United States were not firm with respect to it; that in this view it was of consequence to prevent the repeal, and even the attempt of a repeal, of the confiscation law of one of the states; and that if a confidential communication of the extract in question would answer such a purpose, it was improper for Congress to oppose it. On a question, the motion was negatived, Congress being much divided thereon. Several of those who were in the negative were willing that the delegates of South Carolina should be licensed to transmit to their state what related to the refugees, omitting what related to British debts, and invited Mr. Rutledge to renew his motion in that qualified form. Others suggested the propriety of his contradicting the misrepresentations in general, without referring to any official information received by Congress. Mr. Rutledge said he would think further on the subject, and desired that it might he over.

Friday,*January* 17.

The committee on the motion of Mr. Peters, of the 13th instant, relative to a further application for foreign loans, reported that they had conferred with the superintendent of finance, and concurred in opinion with him, that the applications already on foot were as great as could be made prudently, until proper funds should be established. The latent view of this report was to strengthen the argument in favor of such funds, and the report, it was agreed, should lie on the table, to be considered along with the report which might be made on the memorial from the army, and which would involve the same subject.9

The report thanking General Greene for his services was agreed to without opposition or observation. Several, however, thought it badly composed, and that some notice ought to have been taken of Major Burnet, aid to General Greene, who was the bearer of the letter announcing the evacuation of Charleston.

Mr. Webster and Mr. Judd, agents for the deranged officers of the Massachusetts and Connecticut lines, were heard by the grand committee in favor of their constituents. The sum of their representations was, that the said officers were equally distressed for, entitled to, and in expectation of, provision for fulfilling the rewards stipulated to them as officers retained in service.

From Friday, 17, to Tuesday, 21.

See Journals.

A letter from Mr. Adams, of the 8th of October, 1782, containing prophetic observations relative to the expedition of Lord Howe for the relief of Gibraltar, and its consequences, &c. &c., excited, &c. &c.

Another letter from the same, relative to the treaty of amity and commerce, and the convention with the States General concerning vessels recaptured, copies of which accompanied the letters. These papers were committed to Mr. Madison, Mr. Hamilton, and Mr. Ellsworth.10

Wednesday,*January* 22.

Congress adjourned to give the committee on the treaty and convention time to prepare a report thereon.

Thursday,*January* 23.

The report of the committee last mentioned—consisting of a state of the variations, in the treaty of amity and commerce with the States General, from the plan proposed by Congress, of a form of ratification of the said treaty and of the convention, and of a proclamation comprehending both—was accepted and passed; the variations excepted, which were not meant to be entered on the Journals. Both the committee and Congress were exceedingly chagrined at the extreme incorrectness of the American copies of these national acts, and it was privately talked of as necessary to admonish Mr. Adams thereof, and direct him to procure, with the concurrence of the other party, a more correct and perspicuous copy. The report of the committee, as

agreed to, having left a blank in the act of ratification for the insertion of the treaty and convention, and these being contained both in the Dutch and American languages,—the former column signed by the Dutch plenipotentiaries only, and the latter by Mr. Adams only,—the secretary asked the direction of Congress whether both columns, or the American only, ought to be inserted. On this point several observations were made, and different opinions expressed. In general, the members seemed to disapprove of the mode used, and would have preferred the use of a neutral language. As to the request of the secretary, Mr. Wilson was of opinion that the American columns only should be inserted. Several others concurred in this opinion; supposing that, as Mr. Adams had only signed those columns, our ratifications ought to be limited to them. Those who were of a different opinion considered the two parts as inseparable, and as forming one whole, and consequently that both ought to be inserted. The case being a new one to Congress, it was proposed and admitted that the insertion might be suspended till the next day, by which time some authorities might be consulted on the subject.

A committee, consisting of Mr. Madison, Mr. Mifflin, and Mr. Williamson, reported, in consequence of a motion of Mr. Bland, a list of books proper for the use of Congress, and proposed that the secretary should be instructed to procure the same. In favor of the report, it was urged, as indispensable, that Congress should have at all times at command such authors on the law of nations, treaties, negotiations, &c., as would render their proceedings in such cases conformable to propriety; and it was observed, that the want of this information was manifest in several important acts of Congress. It was further observed, that no time ought to be lost in collecting every book and tract which related to American antiquities and the affairs of the United States, since many of the most valuable of these were every day becoming extinct; and they were necessary, not only as materials for a History of the United States, but might be rendered still more so by future pretensions against their rights from Spain, or other powers which had shared in the discoveries and possessions of the New World. Against the report were urged, first, the inconvenience of advancing even a few hundred pounds at this crisis; secondly, the difference of expense between procuring the books during the war and after a peace. These objections prevailed by a considerable majority. A motion was then made by Mr. WILSON, seconded by Mr. MADISON, to confine the purchase, for the present, to the most essential part of the books. This also was negatived.

Friday,*January* 24.

Some days prior to this, sundry papers had been laid before Congress by the war-office, showing that a cargo of supplies which had arrived at Wilmington for the British and German prisoners of war, under a passport from the commander-in-chief, and which were thence proceeding by land to their destination, had been seized by sundry persons in Chester county, under a law of Pennsylvania, which required in such cases a license from the executive authority, who exposed to confiscation all articles not *necessary* for the prisoners, and referred the question of necessity to the judgment of its own magistrates. Congress unanimously considered the violation of the passport, issued under their authority, as an encroachment on their constitutional and essential rights; but, being disposed to get over the difficulty as gently as possible,

appointed a committee, consisting of Mr. Rutledge, Mr. Wolcott, and Mr. Madison, to confer with the executive of Pennsylvania on the subject. In the first conference, the executive represented to the committee the concern they felt at the incident, their disposition to respect and support the dignity and rights of the federal sovereignty, and the embarrassments in which they were involved by a recent and express law of the state to which they were bound to conform. The committee observed to them, that the power of granting passports for the purpose in question being inseparable from the general power of war delegated to Congress, and being essential for conducting the war, it could not be expected that Congress would acquiesce in any infractions upon it; that as Pennsylvania had concurred in the alienation of this power to Congress, any law whatever contravening it was necessarily void, and could impose no obligation on the executive. The latter requested further time for a consideration of the case, and laid it before the legislature, then sitting; in consequence of which a committee of their body was appointed, jointly with the executive, to confer with the committee of Congress. In this second conference, the first remarks made by the committee of Congress were repeated. The committee of the legislature expressed an unwillingness to intrench on the jurisdiction of Congress, but some of them seemed not to be fully satisfied that the law of the state did so. Mr. Montgomery, lately a member of Congress, observed that, although the general power of war was given to Congress, yet that the mode of exercising that power might be regulated by the states in any manner which would not frustrate the power, and which their policy might require. To this it was answered, that if Congress had the power at all, it could not, either by the Articles of Confederation or the reason of things, admit of such a controlling power in each of the states; and that to admit such a construction would be a virtual surrender to the states of their whole federal power relative to war, the most essential of all the powers delegated to Congress. The committee of the legislature represented, as the great difficulty with them, that even a repeal of the law would not remedy the case without a retrospective law, which their constitution would not admit of, and expressed an earnest desire that some accommodating plan might be hit upon. They proposed, in order to induce the seizors to waive their appeal to the law of the state, that Congress would allow them to appoint one of two persons who should have authority to examine into the supplies, and decide whether they comprehended any articles that were not warranted by the passport. The committee of Congress answered, that whatever obstacles might lie in the way of redress by the legislature, if no redress proceeded from them, equal difficulties would lie on the other side; since Congress, in case of a confiscation of the supplies under the law, which the omission of some formalities required by it would probably produce, would be obliged, by honor and good faith, to indemnify the enemy for their loss out of the common treasury; that the other states would probably demand a reimbursement to the United States from Pennsylvania, and that it was impossible to say to what extremity the affair might be carried. They observed to the committee of the legislature and executive, that although Congress was disposed to make all allowances, and particularly in the case of a law passed for a purpose recommended by themselves, yet they could not condescend to any expedient which in any manner departed from the respect which they owed to themselves and to the Articles of union. The committee of Congress, however, suggested that, as the only expedient which would get rid of the clashing of the power of Congress and the law of the state would be the dissuading the seizors from their appeal to the latter, it was probable that, if the seizors would apply

to Congress for redress, such steps would be taken as would be satisfactory. The hint was embraced, and both the executive and the committee of the legislature promised to use their influence with the persons of most influence among the seizors for that purpose. In consequence thereof, a memorial from John Hannum, Persifor Frazer, and Joseph Gardner, was sent in to Congress, committed to the same committee of Congress, and their report of this day agreed to, in which the president of Pennsylvania is *requested* to appoint one of the referees. It is proper to observe, that this business was conducted with great temper and harmony; and that President Dickinson, in particular, manifested throughout the course of it, as great a desire to save the rights and dignity of Congress, as those of the state over which he presided. As a few of the seizors only were parties to the memorial to Congress, it is still uncertain whether others may not adhere to their claims under the law, in which case all the embarrassments will be revived.

In a late report which had been drawn up by Mr. Hamilton, and made to Congress, in answer to a memorial from the legislature of Pennsylvania, among other things showing the impossibility Congress had been under of paying their creditors, it was observed, that the aid afforded by the court of France had been appropriated by that court, at the time, to the immediate use of the army. This clause was objected to as unnecessary, and as dishonorable to Congress. The fact also was controverted. Mr. Hamilton and Mr. Fitzsimmons justified the expediency of retaining it, in order to justify Congress the more completely in failing in their engagements to the public creditors. Mr. WILSON and Mr. MADISON proposed to strike out the words "appropriated by France," and substitute the words "applied by Congress to the immediate and necessary support of the army." This proposition would have been readily approved, had it not appeared, on examination, that in one or two small instances, and particularly in the payment of the balance due to Arthur Lee, Esquire, other applications had been made of the aid in question. The report was finally recommitted.

A letter from the superintendent of finance was received and read, acquainting Congress that, as the danger from the enemy, which led him into the department, was disappearing, and he saw little prospect of provision being made, without which injustice would take place, of which he would never be the minister, he proposed not to serve longer than May next, unless proper provision should be made. This letter made a deep and solemn impression on Congress. It was considered as the effect of despondence in Mr. Morris of seeing justice done to the public creditors, or the public finances placed on an honorable establishment; as a source of fresh hopes to the enemy, when known; as ruinous both to domestic and foreign credit; and as producing a vacancy which none knew how to fill, and which no fit man would venture to accept. Mr. GORHAM, after observing that the administration of Mr. Morris had inspired great confidence and expectation in his state, and expressing his extreme regret at the event, moved that the letter should be committed. This was opposed, as unnecessary and nugatory, by Mr. WILSON, since the known firmness of Mr. Morris, after deliberately taking a step, would render all attempts to dissuade him fruitless; and that, as the memorial from the army had brought the subject of funds before Congress, there was no other object for a committee. The motion to commit was disagreed to. Mr. WILSON then moved that a day might be assigned for the

consideration of the letter. Against the propriety of this, it was observed, by Mr. MADISON, that the same reasons which opposed a commitment opposed the assignment of any day. Since Congress could not, however anxious their wishes or alarming their apprehensions might be, condescend to solicit Mr. Morris, even if there were a chance of its being successful, and since it would be equally improper for Congress, however cogent a motive it might add in the mind of every member to struggle for substantial funds, to let such a consideration appear in their public acts on that subject, the motion of Mr. Wilson was not passed. Congress, supposing that a knowledge of Mr. Morris's intentions would anticipate the ills likely to attend his actual resignation, ordered his letter to be kept secret.11

Nothing being said to-day as to the mode of insertion of the treaty and convention with the States General, the secretary proceeded in retaining both columns.

In consequence of the report of the grand committee on the memorial from the army, by the sub-committee, the following report* was made by the former to Congress, and came under consideration to-day.

The grand committee, having considered the contents of the memorial presented by the army, find that they comprehend five different articles.

First. Present pay.

Second. A settlement of accounts of the arrearages of pay, and security for what is due.

Third. A commutation of the half-pay allowed by different resolutions of Congress for an equivalent in gross.

Fourth. A settlement of the accounts of deficiencies of rations and compensation.

Fifth. A settlement of accounts of deficiencies of clothing and compensation.

The committee are of opinion, with respect to the first, that the superintendent of finance be directed, conformably to measures already taken for that purpose, as soon as the state of the public finances will permit, to make such payment, and in such manner as he shall think proper, till the further order of Congress.

With respect to the second article, so far as relates to the settlement of accounts, that the several states be called upon to complete the settlement, without delay, with their respective lines of the army up to the—day of August, 1780; that the superintendent be also directed to take such measures as shall appear to him most proper and effectual for accomplishing the object in the most equitable and satisfactory manner, having regard to former resolutions of Congress, and the settlements made in consequence thereof.—And so far as relates to the providing of security for what shall be found due on such settlement,—*Resolved,* that the troops of the United States, in common with all the creditors of the same, have an undoubted right to expect such security; and that Congress will make every effort in their power to obtain, from the respective states, *general* and substantial funds adequate to the object of funding the

whole debt of the United States; and that Congress ought to enter upon an immediate and full consideration of the nature of such funds, and the most likely mode of obtaining them.

With respect to the third article, the committee are of opinion that it will be expedient for Congress to leave it to the option of all officers entitled to half-pay, either to preserve their claim to that provision as it now stands by the several resolutions of Congress upon that subject, or to accept—years' full pay, to be paid to them in one year after the conclusion of the war, in money, or placed upon good funded security, bearing an annual interest of six per cent.; provided that the allowance to widows and orphans of such officers as have died or been killed, or may die or be killed, in the service during the war, shall remain as established by the resolution of the—day of—.

With respect to the fourth and fifth articles, the committee beg leave to delay their report until they have obtained more precise information than they now possess on the subject.

The first clause of this report, relative to immediate pay, passed without opposition. The superintendent had agreed to make out one month's pay. Indeed, long before the arrival of the deputies, he had made contingent and secret provision for that purpose; and to insure it now, he meant, if necessary, to draw bills on the late application for loans. The words "conformably to measures already taken," referred to the above secret provision, and were meant to show that the payment to the army did not originate in the memorial, but in an antecedent attention to the wants of the army.

In the discussion of the second clause, the epoch of the—of August, 1780, was objected to by the eastern delegates. Their states having settled with their lines down to later periods, they wished now to obtain the sanction of Congress to them. After some debate, a compromise was proposed by Mr. HAMILTON, by substituting the last day of December, 1780. This was agreed to without opposition, although several members disliked it. The latter part of the clause, beginning with the word "Resolved," &c., was considered as a very solemn point, and the basis of the plans by which the public engagements were to be fulfilled, and union cemented. A motion was made by Mr. BLAND to insert, after the words "in their power," the words "consistent with the Articles of Confederation." This amendment, as he explained it, was not intended to contravene the idea of funds extraneous to the Federal Articles, but to leave those funds for a consideration subsequent to providing constitutional ones. Mr. Arnold, however, eagerly seconded it. No question, however, was taken on it, Congress deeming it proper to postpone the matter till the next day, as of the most solemn nature, and to have as full a representation as possible. With this view, and to get rid of Mr. Bland's motion, they adjourned; ordering all the members not present, and in town, to be summoned.

Saturday,*January* 25.

The secretary of Congress having suggested to a member that the contract with the court of France specifying the sums due from the United States, although extremely generous on the part of the former, had been ratified without any such

acknowledgments by the latter; that this was the first instance in which such acknowledgments had been omitted, and that the omission would be singularly improper at a time when we were soliciting further aids; these observations being made to Congress, the ratification was reconsidered, and the words “impressed with,” &c., inserted.

The report on the memorial was resumed. By Mr. Hamilton, Mr. Fitzsimmons, 12 and one or two others who had conversed with Mr. Morris on the change of the last day of December for the—day of August, it was suggested that the change entirely contravened the measures pursued by his department; and moved for a reconsideration of it, in order to inquire into the subject. Without going into details, they urged this as a reason sufficient. The eastern delegates although they wished for unanimity and system in future proceedings relative to our funds and finances, were very stiff in retaining the vote which coincided with the steps taken by their constituents. Of this much complaint was made. Mr. RUTLEDGE, on this occasion, alleging that Congress ought not to be led by general suggestions derived from the office of finance, joined by Mr. Gervais, voted against the reconsideration. The consequence was, that South Carolina was divided, and six votes only in favor of the reconsideration. Mr. HAMILTON having expressed his regret at the negative, and explained more exactly the interference of the change of the epoch with the measures and plans of the office of finance, which had limited all state advances and settlements to August—, 1780, Mr. RUTLEDGE acknowledged the sufficiency of the reasons, and at his instance the latter date was reinstated. On this second question Connecticut also voted for August.

The—day of August being reinstated, before a question on the whole paragraph was taken, Mr. GORHAM objected to the word “general” before funds, as ambiguous, and it was struck out; not, however, as improper, if referring to all the states, and not to all objects of taxation. Without this word the clause passed unanimously, even Rhode Island concurring in it.

Congress proceeded to the third clause relative to the commutation of half-pay. A motion was made, by Mr. HAMILTON, to fill the blank with “six;” this was in conformity to tables of Dr. Price, estimating the officers on the average of good lives. Liberality in the rate was urged by several as necessary to give satisfaction, and prevent a refusal of the offer. For this motion there were six ayes, five noes; the Southern States and New York being in the affirmative, the Eastern and New Jersey in the negative. Colonel BLAND proposed six and a half, erroneously supposing the negative of six to have proceeded from its being too low. It was, on the contrary, rather doubtful whether the Eastern States would concur in any arrangement on this head, so averse were they to what they call pensions. Several having calculated that the annual amount of half-pay was between four and five hundred thousand dollars, and the interest of the gross sum nearly two thirds of that sum, Congress were struck with the necessity of proceeding with more caution, and for that purpose committed the report to a committee of five—Mr. Osgood, Mr. Fitzsiminons, Mr. Gervais, Mr. Hamilton, and Mr. Wilson.

On the motion of Mr. WILSON, Monday next was assigned for the consideration of the resolution on the second clause of the report on the memorial from the army. He observed, that this was necessary to prevent the resolution from being, like many others, *vox et præterea nihil.*

Monday,*January* 27.

A letter from General Washington was received, notifying the death of Lord Stirling, and enclosing a report of the officer sent to apprehend Knowlton and Wells. (See p. 8.)

The following is an extract from the report:—

"He (one Israel Smith) further said, that Knowlton and Wells had received a letter from Jonathan Arnold, Esquire, at Congress, part of which was made public, which informed them that affairs in Congress were unfavorable to them, and would have them to look out for themselves. What other information this letter contained, he could not say. I found, in my march through the state, that the last-mentioned gentleman was much in favor with all the principal men in that state I had any conversation with."

Mr. ARNOLD, being present at the reading, informed Congress that he was surprised how such a notion should have prevailed with respect to him; that he had never held any correspondence with either Knowlton or Wells; and requested that he might be furnished with the extract above. In this he was indulged without opposition. But it was generally considered, notwithstanding his demal of the correspondence, that he had, at least at second-hand, conveyed the intelligence to Vermont.

A long petition was read, signed, as alleged, by nearly two thousand inhabitants (but all in the same hand-writing) of the territory lately in controversy between Pennsylvania and Virginia, complaining of the grievances to which their distance from public authority exposed them, and particularly of a late law of Pennsylvania interdicting even consultations about a new state within its limits, and praying that Congress would give a sanction to their independence, and admit them into the Union. The petition lay on the table, without a single motion or remark relative to it.

The order of the day was called for—to wit, the resolution of Saturday last in favor of adequate and substantial funds.

The subject was introduced by Mr. WILSON, with some judicious remarks on its importance, and the necessity of a thorough and serious discussion of it. He observed, that the United States had, in the course of the revolution, displayed both an unexampled activity in resisting the enemy, and an unexampled patience under the losses and calamities occasioned by the war. In one point only, he said, they had appeared to be deficient, and that was, a cheerful payment of taxes. In other free governments, it had been seen that taxation had been carried farther, and more patiently borne, than in states where the people were excluded from the governments; the people considering themselves the sovereign as well as the subject, and as

receiving with one hand what they paid with the other. The peculiar repugnance of the people of the United States to taxes, he supposed, proceeded, first, from the odious light in which they had been, under the old government, in the habit of regarding them; secondly, from the direct manner in which taxes in this country had been laid, whereas in all other countries taxes were paid in a way that was little felt at the time. That it could not proceed altogether from inability, he said, must be obvious; nay, that the ability of the United States was equal to the public burden, could be demonstrated. According to calculations of the best writers, the inhabitants of Great Britain paid, before the present war, at the annual rate of at least twenty-five shillings sterling per head. According to like calculations, the inhabitants of the United States, before the revolution, paid, indirectly and insensibly, at the rate of at least ten shillings sterling per head. According to the computed depreciation of the paper emissions, the burden insensibly borne by the inhabitants of the United States had amounted, during the first three or four years of the war, to not less than twenty millions of dollars per annum—a burden, too, which was the more oppressive as it fell very unequally on the people. An inability, therefore, could not be urged as a plea for the extreme deficiency of the revenue contributed by the states, which did not amount, during the past year, to half a million of dollars; that is, to one sixth of a dollar per head. Some more effectual mode of drawing forth the resources of the country was necessary. That, in particular, it was necessary that such funds should be established as would enable Congress to fulfil those engagements which they had been enabled to enter into. It was essential, he contended, that those to whom was delegated the power of making war or peace should, in some way or other, have the means of effectuating these objects; that, as Congress had been under the necessity of contracting a large debt, justice required that such funds should be placed in their hands as would discharge it; that such funds were also necessary for carrying on the war, and as Congress found themselves, in their present situation, destitute both of the faculty of paying debts already contracted, and of providing for future exigencies, it was their duty to lay that situation before their constituents, and at least to come to an *éclaircissement* on the subject. He remarked, that the establishment of certain funds for paying would set afloat the public paper; adding, that a public debt, resting on general funds, would operate as a cement to the Confederacy, and might contribute to prolong its existence, after the foreign danger ceased to counteract its tendency to dissolution. He concluded with moving that it be resolved,—

"That it is the opinion of Congress that complete justice cannot be done to the creditors of the United States, nor the restoration of public credit be effected, nor the future exigencies of the war provided for, but by the establishment of *general* funds, to be collected by Congress."

This motion was seconded by Mr. FITZSIMMONS.

Mr. BLAND desired that Congress would, before the discussion proceeded further, receive a communication of sundry papers transmitted to the Virginia delegates by the executive of that state, two of which had relation to the question before Congress. These were—first, a resolution of the General Assembly, declaring its inability to pay more than fifty thousand pounds, Virginia currency, towards complying with the

demands of Congress; secondly, the act repealing the act granting the impost of five per cent. These papers were received and read.

Mr. WOLCOTT expressed some astonishment at the inconsistency of these two acts of Virginia; supposed that they had an unfavorable aspect on the business before Congress, and proposed that the latter should be postponed for the present. He was not seconded.

Mr. GORHAM favored the general idea of the motion, animadverting on the refusal of Virginia to contribute the necessary sums, and at the same moment repealing her concurrence in the only scheme that promised to supply a deficiency of contributions. He thought the motion, however, inaccurately expressed, since the word "general" might be understood to refer to every possible object of taxation, as well as to the operation of a particular tax throughout the states. He observed that the non-payment of the one million two hundred thousand dollars demanded by Congress, for paying the interest of the debts for the year—, demonstrated that the constitutional mode of annual requisitions was defective; he intimated that lands were already sufficiently taxed, and that polls and commerce were the most proper objects. At his instance, the latter part of the motion was so amended as to run "establishment of permanent and adequate funds to operate generally throughout the United States."

Mr. HAMILTON went extensively into the subject; the sum of it was as follows: he observed that funds considered as permanent sources of revenue were of two kinds—first, such as would extend generally and uniformly throughout the United States, and would be collected under the authority of Congress; secondly, such as might be established separately within each state, and might consist of any objects which were chosen by the states, and might be collected either under the authority of the states or of Congress. Funds of the first kind, he contended, were preferable; as being, first, more simple, the difficulties attending the mode of fixing the quotas laid down in the Confederation rendering it extremely complicated, and in a manner insuperable; secondly, as being more certain, since the states, according to the said plan, would probably retain the collection of the revenue, and a vicious system of collection prevailed generally throughout the United States—a system by which the collectors were chosen by the people, and made their offices more subservient to their popularity than to the public revenue; thirdly, as being more economical, since the collection would be effected with fewer officers, under the management of Congress, than under that of the states.

Mr. GORHAM observed, that Mr. Hamilton was mistaken in the representation he had given of the collection of taxes in several of the states, particularly in that of Massachusetts, where the collection was on a footing which rendered it sufficiently certain.

Mr. WILSON, having risen to explain something which had fallen from him, threw out the suggestion that several branches of the revenue, if yielded by all the states, would perhaps be more just and satisfactory than any single one; for example, an impost on trade combined with a land tax.

Mr. DYER expressed a strong dislike to a collection by officers appointed under Congress, and supposed the states would never be brought to consent to it.

Mr. RAMSAY was decidedly in favor of the proposition. Justice, he said, entitled those who had lent their money and services to the United States to look to them for payment; that if general and certain revenues were not provided, the consequence would be that the army and public creditors would have soon to look to their respective states only for satisfaction; that the burden in this case would fall unequally on the states; that rivalships relative to trade would impede a regular impost, and would produce confusion among the states; that some of the states would never make, of themselves, provision for half-pay, and that the army would be so far defrauded of the rewards stipulated to them by Congress; that although it might be uncertain whether the states would accede to plans founded on the proposition before the house, yet, as Congress was convinced of its truth and importance, it was their duty to make the experiment.

Mr. BLAND thought, that the ideas of the states on the subject were so averse to a general revenue in the hands of Congress, that if such a revenue were proper it was unattainable; that as the deficiency of the contributions from the states, proceeded, not from their complaints of their inability,* but of the inequality of the apportionments, it would be a wiser course to pursue the rule of the Confederation, to wit, to ground the requisition on an actual valuation of lands; that Congress would then stand on firm ground, and try a practicable mode.

Tuesday,*January* 28.

The subject yesterday under discussion was resumed. A division of the question was called for by Mr. WOLCOTT, so as to leave a distinct question on the words “to be collected by Congress,” which he did not like.

Mr. WILSON considered this mode of collection as essential to the idea of a general revenue, since, without it, the proceeds of the revenue would depend entirely on the punctuality, energy, and unanimity of the states, the want of which led to the present consideration.

Mr. HAMILTON was strenuously of the same opinion.

Mr. FITZSIMMONS informed Congress that the legislature of Pennsylvania had, at their last meeting, been dissuaded from appropriating their revenue to the payment of their own citizens, creditors of the United States, instead of remitting it to the Continental treasury, merely by the urgent representations of a committee of Congress, and by the hope that some general system in favor of all the public creditors would be adopted; that the legislature were now again assembled, and, although sensible of the tendency of such an example, thought it their duty, and meant, in case the prospect of such a system vanished, to proceed immediately to the separate appropriations formerly in contemplation.

On the motion of Mr. MADISON, the whole proposition was new-modelled, as follows:—

"That it is the opinion of Congress that the establishment of permanent and adequate funds, to operate generally throughout the United States, is indispensably necessary for doing complete justice to the creditors of the United States, for restoring public credit, and for providing for the future exigencies of the war."

The words "to be collected under the authority of Congress" were, as a separate question, left to be added afterwards.

Mr. RUTLEDGE objected to the term "generally," as implying a degree of uniformity in the tax which would render it unequal. He had in view, particularly, a land tax, according to quality, as had been proposed by the office of finance. He thought the prejudices of the people opposed the idea of a general tax; and seemed, on the whole, to be disinclined to it himself, at least if extended beyond an impost on trade; urging the necessity of pursuing a valuation of land, and requisitions grounded thereon.

Mr. LEE seconded the opposition to the term "general." He contended that the states would never consent to a uniform tax, because it would be unequal; that it was, moreover, repugnant to the Articles of Confederation; and, by placing the purse in the same hands with the sword, was subversive of the fundamental principles of liberty. He mentioned the repeal of the impost by Virginia—himself alone opposing it, and that, too, on the inexpediency in point of time—as proof of the aversion to a general revenue. He reasoned upon the subject, finally, as if it was proposed that Congress should assume and exercise a power immediately, and without the sanction of the states, of levying money on them.

Mr. WILSON rose, and explained the import of the motion to be, that Congress should recommend to the states the investing them with power. He observed that the Confederation was so far from precluding, that it expressly provided for, future alterations; that the power given to Congress by that act was too little, not too formidable; that there was more of a centrifugal than centripetal force in the states, and that the funding of a common debt in the manner proposed would produce a salutary invigoration and cement to the Union.

Mr. ELLSWORTH acknowledged himself to be undecided in his opinion; that, on the one side, he felt the necessity of Continental funds for making good the Continental engagements; but, on the other, desponded of a unanimous concurrence of the states in such an establishment. He observed, that it was a question of great importance, how far the federal government can or ought to exert coercion against delinquent members of the Confederacy; and that without such coercion, no certainty could attend the constitutional mode which referred every thing to the unanimous punctuality of thirteen different councils. Considering, therefore, a Continental revenue as unattainable, and periodical requisitions from Congress as inadequate, he was inclined to make trial of the middle mode of permanent state funds, to be provided at the recommendation of Congress, and appropriated to the discharge of the common debt.

Mr. HAMILTON, in reply to Mr. ELLSWORTH, dwelt long on the inefficacy of state funds. He supposed, too, that greater obstacles would arise to the execution of the plan than to that of a general revenue. As an additional reason for the latter to be collected by officers under the appointment of Congress, he signified, that, as the energy of the federal government was evidently short of the degree necessary for pervading and uniting the states, it was expedient to introduce the influence of officers deriving their emoluments from, and consequently interested in supporting the power of, Congress.*

Mr. WILLIAMSON was of opinion, that Continental funds, although desirable, were unattainable, at least to the full amount of the public exigencies. He thought, if they could be obtained for the foreign debt, it would be as much as could be expected, and that they would also be less essential for the domestic debt.

Mr. MADISON observed, that it was needless to go into proofs of the necessity of paying the public debts; that the idea of erecting our national independence on the ruins of public faith and national honor must be horrid to every mind which retained either honesty or pride; that the motion before Congress contained a simple proposition, with respect to the truth of which every member was called upon to give his opinion; that this opinion must necessarily be in the affirmative, unless the several objects of doing justice to the public creditors, &c. &c., could be compassed by some other plan than the one proposed; that the two last objects depended essentially on the first; since the doing justice to the creditors would alone restore public credit, and the restoration of this would alone provide for the future exigencies of the war. Is, then, a Continental revenue indispensably necessary for doing complete justice, &c.? This is the question. To answer it, the other plans proposed must first be reviewed.

In order to do complete justice to the public creditors, either the principal must be paid off, or the interest paid punctually. The first is admitted to be impossible on any plan. The only plans opposed to the Continental one for the latter purpose are, first, periodical requisitions according to the Federal Articles; secondly, permanent funds established by each state within itself, and the proceeds consigned to the discharge of public debts.

Will the first be adequate to the object? The contrary seems to be maintained by no one. If reason did not sufficiently premonish, experience has sufficiently demonstrated, that a punctual and unfailing compliance, by thirteen separate and independent governments, with periodical demands of money from Congress, can never be reckoned upon with the certainty requisite to satisfy our creditors, or to tempt others to become our creditors in future.

Secondly. Will funds separately established within each state, and the amount submitted to the appropriation of Congress, be adequate to the object? The only advantage which is thought to recommend this plan is, that the states will be with less difficulty prevailed upon to adopt it. Its imperfections are, first, that it must be preceded by a final and satisfactory adjustment of all accounts between the United States and individual states, and by an apportionment founded on a valuation of all the lands throughout each of the states, in pursuance of the law of the Confederation; for

although the states do not as yet insist on these prerequisites in the case of annual demands on them, with which they very little comply, and that only in the way of an open account, yet these conditions would certainly be exacted in case of a permanent cession of revenue; and the difficulties and delays, to say the least, incident to these conditions, can escape no one. Secondly, the produce of the funds being always, in the first instance, in the hands and under the control of the states separately, might, at any time, and on various pretences, be diverted to state objects. Thirdly, that jealousy which is as natural to the states as to individuals, and of which so many proofs have appeared, that *others* will not fulfil their respective portions of the common obligations, will be continually and mutually suspending remittances to the common treasury, until it finally stops them altogether. These imperfections are too radical to be admitted into any plan intended for the purposes in question.

It remains to examine the merits of a plan of a general revenue operating throughout the United States, under the superintendence of Congress.

One obvious advantage is suggested by the last objection to separate revenues in the different states; that is, it will exclude all jealousy among them on that head, since each will know, whilst it is submitting to the tax, that all the others are necessarily at the same instant bearing their respective portions of the burden. Again, it will take from the states the opportunity, as well as the temptation, to divert their incomes from the general to internal purposes, since those incomes will pass *directly* into the treasury of the United States.

Another advantage attending a general revenue is, that, in case of the concurrence of the states in establishing it, it would become soonest productive, and would, consequently, soonest obtain the objects in view; nay, so assured a prospect would give instantaneous confidence and content to the public creditors at home and abroad, and place our affairs in a most happy train.

The consequences, with respect to the Union, of omitting such a provision for the debts of the Union, also claimed particular attention. The tenor of the memorial from Pennsylvania, and of the information just given on the floor by one of its delegates, (Mr. FITZSIMMONS,) renders it extremely probable that that state would, as soon as it should be known that Congress had declined such provision, or the states rejected it, appropriate the revenue required by Congress to the payment of its own citizens and troops, creditors of the United States. The irregular conduct of other states on this subject, enforced by such an example, could not fail to spread the evil throughout the whole continent. What, then, would become of the Confederation? What would be the authority of Congress? What the tie by which the states could be held together? What the source by which the army could be subsisted and clothed? What the mode of dividing and discharging our foreign debts? What the rule of settling the internal accounts? What the tribunal by which controversies among the states could be adjudicated?

It ought to be carefully remembered, that this subject was brought before Congress by a very solemn appeal from the army to the justice and gratitude of their country. Besides immediate pay, they ask for permanent security for arrears. Is not this request

a reasonable one? Will it be just or politic to pass over the only adequate security that can be devised, and, instead of fulfilling the stipulations of the United States to them, to leave them to seek their rewards separately from the states to which they respectively belong? The patience of the army has been equal to their bravery; but that patience must have its limits, and the result of despair cannot be foreseen, nor ought to be risked.

It has been objected, against a general revenue, that it contravenes the articles of Confederation. These articles, as has been observed, presupposed the necessity of alterations in the federal system, and have left a door open for them. They, moreover, authorize Congress to borrow money. Now, in order to borrow money, permanent and certain provision is necessary; and if this provision cannot be made in any other way, as has been shown, a general revenue is within the spirit of the Confederation.

It has been objected, that such a revenue is subversive of the sovereignty and liberty of the states. If it were to be assumed, without the free gift of the states, this objection might be of force; but no assumption is proposed. In fact, Congress are already invested by the states with the constitutional authority over the purse as well as the sword. A general revenue would only give this authority a more certain and equal efficacy. They had a right to fix the *quantum* of money necessary for the common purposes. The right of the states is limited to the *mode* of supply. A requisition of Congress on the states for money is as much a law to them as their revenue acts, when passed, are laws to their respective citizens. If, for want of the faculty or means of enforcing a requisition, the law of Congress proves inefficient, does it not follow that, in order to fulfil the views of the Federal Constitution such a change should be made as will render it efficient? Without such efficiency the end of this Constitution, which is to preserve order and justice among the members of the Union, must fail; as without a like efficiency would the end of state constitutions, which is to preserve like order and justice among their respective members.

It has been objected, that the states have manifested such aversion to the impost on trade, as renders any recommendations of a general revenue hopeless and imprudent. It must be admitted that the conduct of the states on that subject is less encouraging than were to be wished. A review of it, however, does not excite despondence. The impost was adopted immediately, and in its utmost latitude, by several of the states. Several, also, which complied partially with it at first, have since complied more liberally. One of them, after long refusal, has complied substantially. Two states only have failed altogether; and, as to one of them, it is not known that its failure has proceeded from a decided opposition to it. On the whole, it appears that the necessity and reasonableness of the scheme have been gaining ground among the states. He was aware that one exception ought to be made to this inference; an exception, too, which it peculiarly concerned him to advert to. The state of Virginia, as appears by an act yesterday laid before Congress, has withdrawn its assent once given to the scheme. This circumstance could not but produce some embarrassment in a representative of that state advocating the scheme—one, too, whose principles were extremely unfavorable to a disregard of the sense of constituents. But it ought not to deter him from listening to considerations which, in the present case, ought to prevail over it. One of these considerations was, that, although the delegates who compose Congress

more immediately represented, and were amenable to, the states from which they respectively come, yet, in another view, they owed a fidelity to the collective interests of the whole: secondly, although not only the express instructions, but even the declared sense of constituents, as in the present case, were to be a law in general to their representatives, still there were occasions on which the latter ought to hazard personal consequences, from a respect to what his clear conviction determines to be the true interest of the former; and the present he conceived to fall under this exception: lastly, the part he took on the present occasion was the more fully justified to his own mind, by his thorough persuasion that, with the same knowledge of public affairs which his station commanded, the legislature of Virginia would not have repealed the law in favor of the impost, and would even now rescind the appeal.

The result of these observations was, that it was the duty of Congress, under whose authority the public debts had been contracted, to aim at a general revenue, as the only means of discharging them; and that the dictate of justice and gratitude was enforced by a regard to the preservation of the Confederacy, to our reputation abroad, and to our internal tranquillity.

Mr. RUTLEDGE complained that those who so strenuously urged the necessity and competency of a general revenue,* operating throughout all the United States at the same time, declined specifying any general objects from which such a revenue could be drawn. He was thought to insinuate that these objects were kept back intentionally, until the general principle could be irrevocably fixed, when Congress would be bound, at all events, to go on with the project; whereupon—

Mr. FITZSIMMONS expressed some concern at the turn which the discussion seemed to be taking. He said, that, unless mutual confidence prevailed, no progress could be made towards the attainment of those ends which all, in some way or other, aimed at. It was a mistake to suppose that any specific plan had been preconcerted among the patrons of a general revenue.

Mr. WILSON, with whom the motion originated, gave his assurances that it was neither the effect of preconcert with others, nor of any determinate plan matured by himself; that he had been led into it by the declaration, on Saturday last, by Congress, that substantial funds ought to be provided; by the memorial of the army from which that declaration had resulted; by the memorial from the state of Pennsylvania, holding out the idea of separate appropriations of her revenue unless provision were made for the public creditors; by the deplorable and dishonorable situation of public affairs, which had compelled Congress to draw bills on the unpromised and contingent bounty of their ally, and which was likely to banish the superintendent of finance, whose place could not be supplied, from his department. He observed, that he had not introduced details into the debate, because he thought them premature, until a general principle should be fixed; and that, as soon as the principle should be fixed, he would, although not furnished with any digested plan, contribute all in his power to the forming such a one.

Mr. RUTLEDGE moved, that the proposition might be committed, in order that some practicable plan might be reported before Congress should declare that it ought to be adopted.

Mr. IZARD seconded the motion, from a conciliatory view.

Mr. MADISON thought the commitment unnecessary, and would have the appearance of delay; that too much delay had already taken place; that the deputation of the army had a right to expect an answer to their memorial as soon as it could be decided by Congress. He differed from Mr. Wilson in thinking that a specification of the objects of a general revenue would be improper, and thought that those who doubted its practicability had a right to expect proof of it from details, before they could be expected to assent to the general principle; but he differed also from Mr. Rutledge, who thought a commitment necessary for the purpose; since his views would be answered by leaving the motion before the House, and giving the debate a greater latitude. He suggested, as practicable objects of a general revenue, first, an impost on trade; secondly, a poll-tax under certain qualifications; thirdly, a land-tax under ditto.*

Mr. HAMILTON suggested a house and window tax. He was in favor of the mode of conducting the business urged by Mr. Madison.

On the motion for the commitment, six states were in favor of it, and five against it; so it was lost. In this vote, the merits of the main proposition very little entered.

Mr. LEE said, that it was a waste of time to be forming resolutions and settling principles on this subject. He asked whether these would ever bring any money into the public treasury. His opinion was, that Congress ought, in order to guard against the inconvenience of meetings of the different legislatures at different and even distant periods, to call upon the executives to convoke them all at one period, and to lay before them a full state of our public affairs. He said, the states would never agree to those plans which tended to aggrandize Congress; that they were jealous of the power of Congress, and that he acknowledged himself to be one of those who thought this jealousy not an unreasonable one; that no one who had ever opened a page, or read a line, on the subject of liberty, could be insensible to the danger of surrendering the purse into the same hands which held the sword.

The debate was suspended by an adjournment.

Wednesday,*January* 29.

Mr. FITZSIMMONS reminded Congress of the numerous inaccuracies and errors in the American column of the treaty with Holland, and proposed that a revision of it, as ratified, should take place, in order that some steps might be taken for redressing the evil. He added, that an accurate comparison of it with the treaty with France ought also to be made, for the purpose of seeing whether it consisted in all its parts with the latter.† He desired the committee who had prepared the ratification to give some explanation on the subject to Congress.

Mr. MADISON, as first on that committee, informed Congress, that the inaccuracies and errors, consisting of misspelling, foreign idioms, and foreign words, obscurity of the sense, &c., were attended to by the committee, and verbally noted to Congress when their report was under consideration; that the committee did not report in writing, as the task was disagreeable, and the faults were not conceived to be of sufficient weight to affect the ratification. He thought it would be improper to reconsider the act, as had been suggested, for the purpose of suspending it on that account or any other; but had no objection, if Congress were disposed, to instruct Mr. Adams to substitute, with the consent of the other party, a more correct counterpart in the American language. The subject was dropped, nobody seeming inclined to urge it.

On the motion of Mr. RUTLEDGE, and for the purpose of extending the discussion to particular objects of general revenue, Congress resolved itself into a committee of the whole, to consider of the most effectual means of restoring public credit; and the proposition relative to general revenue was referred to the committee. Mr. Carroll was elected into the chair, and the proposition taken up.

Mr. BLAND proposed to alter the words of the proposition, so as to make it read establishment of funds "on taxes or duties, to operate generally," &c. This was agreed to as a more correct phraseology. Mr. HAMILTON objected to it at first, supposing, through mistake, that it might exclude the back lands, which was a fund in contemplation of some gentlemen.

Mr. MADISON, having adverted to the jealousy of Mr. RUTLEDGE, of a latent scheme to fix a tax on land according to its quantity, moved that between the words "generally" and "to operate" might be inserted the words "and in just proportion."

Mr. WILSON said he had no objection to this amendment, but that it might be referred to the taxes individually, and unnecessarily fetter Congress; since, if the taxes collectively should operate in just proportion, it would be sufficient. He instanced a land-tax and an impost on trade, the former of which might press hardest on the southern, and the latter on the eastern, but both together might distribute the burden pretty uniformly. From this consideration he moved that the words "on the whole" might be prefixed to the words "in just proportion." This amendment to the amendment of Mr. MADISON was seconded by Mr. BOUDINOT, and agreed to without opposition, as was afterwards the whole amendment.

Mr. WILSON, in order to leave the scheme open for the back lands as a fund for paying the public debts, moved that the proposition might be further altered so as to read, "indispensably necessary *towards* doing complete justice," &c. The motion was seconded by Mr. BOUDINOT, and passed without opposition.

The main proposition by Mr. WILSON, as thus amended, then passed without opposition, in the words following:—

"That it is the opinion of Congress that the establishment of permanent and adequate funds on taxes or duties, which shall operate generally, and, on the whole, in just proportion, throughout the United States, is indispensably necessary towards doing

complete justice to the public creditors, for restoring public credit, and for providing for the future exigencies of the war."

Mr. BLAND proposed, as the only expedient that could produce immediate relief to the public creditors, that Congress should, by a fixed resolution, appropriate to the payment of interest *all* the moneys which should arise from the requisitions on the states. He thought this would not only give relief to the public creditors, but, by throwing into circulation the stagnant securities, enliven the whole business of taxation. This proposition was not seconded.

Mr. WILSON proceeded to detail to Congress his ideas on the subject of a Continental revenue. He stated the internal debt, liquidated and unliquidated, at 21,000,000 dollars; the foreign debt at 8,000,000 dollars; the actual deficiency of 1782, at 4,000,000 dollars; the probable deficiency of 1783 at 4,000,000 dollars; making, in the whole, 37,000,000 dollars; which, in round numbers, and probably without exceeding the reality, may be called 40,000,000 dollars. The interest of this debt, at six per cent., is 2,400,000 dollars; to which it will be prudent to add 600,000 dollars, which, if the war continues, will be needed, and in case of peace may be applied to a navy. An annual revenue of 3,000,000 of dollars, then, is the sum to be aimed at, and which ought to be under the management of Congress. One of the objects already mentioned, from which this revenue was to be sought, was a poll-tax. This, he thought, was a very proper one, but, unfortunately, the Constitution of Maryland, which forbids this tax, is an insuperable obstacle. Salt he thought a fit article to be taxed, as it is consumed in a small degree by all, and in great quantities by none. It had been found so convenient a subject of taxation, that among all nations which have a system of revenue it is made a material branch. In England, a considerable sum is raised from it. In France, it is swelled to the sum of 54,000,000 of livres. He thought it would be improper to levy this tax during the war, whilst the price would continue so high; but the necessary fall of price at the conclusion of it would render the tax less sensible to the people. The suspension of this particular tax during the war would not be inconvenient, as it might be set apart for the debt due to France, on which the interest would not be called for during the war. He computed the quantity of salt imported into the United States, annually, at 3,000,000 of bushels, and proposed a duty of one third of a dollar per bushel, which would yield 1,000,000 of dollars. This duty, he observed, would press hardest on the Eastern States, on account of the extraordinary consumption in the fisheries.

The next tax which he suggested was on land. One dollar on every hundred acres, according to the computation of the superintendent of finance, would produce 500,000 dollars. This computation, he was persuaded, might be doubled; since there could not be less than 100,000,000 of acres comprehended within the titles of individuals, which, at one dollar per hundred acres, yields 1,000,000 of dollars. This tax could not be deemed too high, and would bear heaviest, not on the industrious farmer, but on the great landholder. As the tax on salt would fall with most weight on the Eastern States, the equilibrium would be restored by this, which would be most felt by the Middle and Southern States.

The impost on trade was another source of revenue, which, although it might be proper to vary it somewhat, in order to remove particular objections, ought to be again and again urged upon the states by Congress. The office of finance has rated this at 500,000 dollars. He thought a peace would double it, in which case the sum of 3,000,000 would be made up. If these computations, however, should be found to be too high, there will still be other objects which would bear taxation. An excise, he said, had been mentioned. In general, this species of taxation was tyrannical and justly obnoxious, but in certain forms had been found consistent with the policy of the freest states. In Massachusetts, a state remarkably jealous of its liberty, an excise was not only admitted before, but continued since, the revolution. The same was the case with Pennsylvania, also remarkable for its freedom. An excise, if so modified as not to offend the spirit of liberty, may be considered as an object of easy and equal revenue. Wine and imported spirits had borne a heavy excise in other countries, and might be adopted in ours. Coffee is another object which might be included. The amount of these three objects is uncertain, but materials for a satisfactory computation might be procured. These hints and remarks he acknowledged to be extremely imperfect, and that he had been led to make them solely by a desire to contribute his mite towards such a system as would place the finances of the United States on an honorable and prosperous footing.

Mr. GORHAM observed, that the proposition of Mr. Bland, however salutary its tendency might be in the respect suggested, could never be admitted, because it would leave our army to starve, and all our affairs to stagnate, during its immediate operation. He objected to a duty on salt, as not only bearing too heavily on the Eastern States, but as giving a dangerous advantage to rivals in the fisheries. Salt, he said, exported from England for the fisheries, is exempted particularly from duties. He thought it would be best to confine our attention, for the present, to the impost on trade, which had been carried so far towards an accomplishment, and to remove the objections which had retarded it, by limiting the term of its continuance, leaving to the states the nomination of the collectors, and by making the appropriation of it more specific.

Mr. RUTLEDGE was also for confining our attention to the impost, and to get that before any further attempts were made. In order to succeed in getting it, however, he thought it ought to be asked in a new form. Few of the states had complied with the recommendation of Congress, literally. Georgia had not yet complied. Rhode Island had absolutely refused to comply at all. Virginia, which at first complied but partially, has since rescinded even that partial compliance. After enumerating the several objections urged by the states against the scheme, he proposed, in order to remove them, the following resolution, viz.:-

“That it be earnestly recommended to the several states, to impose and levy a duty of five per cent., *ad valorem,* at the time and place of importation, on all goods, wares, and merchandises, of foreign growth and manufacture, which may be imported into the said states, respectively, except goods of the United States or any of them, and a like duty on all prizes and prize goods condemned in the court of admiralty of said states; that the money arising from such duties be paid into the Continental treasury, to be appropriated and applied to the payment of the interest, and to sink the principal,

of the money which the United States have borrowed in Europe, and of what they may borrow; for discharging the arrears due to the army, and for the future support of the war, and to no other use or purpose whatsoever; that the said duties be continued for twenty-five years, unless the debts above mentioned be discharged in the mean time, in which case, they shall cease and determine; that the money arising from the said duties, and paid by any state, be passed to the credit of such state on account of its quota of the debt of the United States."

The motion was seconded by Mr. LEE.

Mr. WOLCOTT opposed the motion, as unjust towards those states which, having few or no ports, receive their merchandise through the ports of others; repeating the observation that it is the consumer, and not the importer, who pays the duty. He again animadverted on the conduct of Virginia in first giving, and afterwards withdrawing, her assent to the impost recommended by Congress.

Mr. ELLSWORTH thought it wrong to couple any other objects with the impost; that the states would give this, if any thing; and that, if a land tax or excise were combined with it, the whole scheme would fail. He thought, however, that some modification of the plan recommended by Congress would be necessary. He supposed, when the benefits of this Continental revenue should be experienced, it would incline the states to concur in making additions to it. He abetted the opposition of Mr. Wolcott to the motion of Mr. Rutledge, which proposed that each state should be credited for the duties collected within its ports; dwelt on the injustice of it; said that Connecticut, before the revolution, did not import one fiftieth, perhaps not one hundredth, part of the merchandise consumed within it, and pronounced that such a plan would never be agreed to. He concurred in the expediency of new-modelling the scheme of the impost by defining the period of its continuance; by leaving to the state the nomination, and to Congress the appointment, of collectors, or *vice versa,* and by a more determinate appropriation of the revenue. The first object to which it ought to be applied was, he thought, the foreign debt. This object claimed a preference, as well from the hope of facilitating further aids from that quarter as from the disputes in which a failure may embroil the United States. The prejudice against making a provision for foreign debts which should not include the domestic ones was, he thought, unjust, and might be satisfied by immediately requiring a tax, in discharge of which loan-office certificates should be receivable. State funds, for the domestic debts, would be proper for subsequent consideration. He added, as a further objection against crediting the states for the duties on trade respectively collected by them, that a mutual jealousy of injuring their trade by being foremost in imposing such a duty would prevent any from making a beginning.

Mr. WILLIAMSON said, that Mr. Rutledge's motion, at the same time that it removed some objections, introduced such as would be much more fatal to the measure. He was sensible of the necessity of some alterations, particularly in its duration, and the appointment of the collectors. But the crediting the states, severally, for the amount of their collections, was so palpably unjust and injurious, that he thought candor required that it should not be persisted in. He was of opinion that the interest of the states which trade for others also required it, since such an abuse of the

advantage possessed by them would compel the states for which they trade to overcome the obstacles of nature, and provide supplies for themselves. North Carolina, he said, would probably be supplied pretty much through Virginia, if the latter forbore to levy a tax on the former; but in case she did not forbear, the ports of North Carolina, which are nearly as deep as those of Holland, might, and probably would, be substituted. The profits drawn by the more commercial states, from the business they carry on for the others, were of themselves sufficient, and ought to satisfy them.

Mr. RAMSAY differed entirely from his colleague, Mr. Rutledge. He thought that, as the consumer pays the tax, the crediting the states collecting the impost unjust. North Carolina, Maryland, New Jersey, and Connecticut, would suffer by such a regulation, and would never agree to it.

Mr. BLAND was equally against the regulation. He thought it replete with injustice, and repugnant to every idea of finance. He observed, that this point had been fully canvassed, at the time when the impost was originally recommended by Congress, and finally exploded. He was, indeed, he said, opposed to the whole motion of Mr. Rutledge. Nothing would be a secure pledge to creditors that was not placed out of the control of the grantors. As long as it was in the power of the states to repeal their grants, in this respect, suspicions would prevail, and would prevent loans. Money ought to be appropriated by the states as it is by the Parliament of Great Britain. He proposed that the revenue to be solicited from the states should be irrevocable by them without the consent of Congress or of nine of the states. He disapproved of any determinate limitation to the continuance of the revenue, because the continuance of the debt could not be fixed, and that was the only rule that could be proper or satisfactory. He said he should adhere to these ideas in the face of the act of Virginia repealing her assent to the impost; that it was trifling with Congress to enable them to contract debts, and to withhold from them the means of fulfilling their contracts.

Mr. LEE said, he seconded the motion of Mr. Rutledge, because he thought it most likely to succeed; that he was persuaded the states would not concur in the impost on trade without a limitation of time affixed to it. With such a limitation, and the right of collection, he thought Virginia, Rhode Island, and the other states, probably would concur. The objection of his colleague, Mr. Bland, he conceived to be unfounded. No act of the states could be irrevocable, because, if so called, it might, notwithstanding, be repealed. But he thought there would be no danger of a repeal, observing that the national faith was all the security that was given in other countries, or that could be given. He was sensible that something was, of necessity, to be done in the present alarming crisis, and was willing to strike out the clause crediting the states for their respective collections of the revenue on trade, as it was supposed that it would impede the measure.

Mr. HAMILTON disliked every plan that made but partial provision for the public debts, as an inconsistent and dishonorable departure from the declaration made by Congress on that subject. He said, the domestic creditors would take the alarm at any distinctions unfavorable to their claims; that they would withhold their influence from any such measures recommended by Congress; and that it must be principally from

their influence on their respective legislatures, that success could be expected to any application from Congress for a general revenue.

Thursday,*January* 30.

The answer to the memorials from the legislature of Pennsylvania was agreed to as it stands on the Journal, New Jersey alone dissenting.

In the course of its discussion, several expressions were struck out which seemed to reprehend the states for the deficiency of their contributions. In favor of these expressions, it was urged that they were true, and ought to be held forth as the cause of the public difficulties, in justification of Congress. On the other side, it was urged that Congress had, in many respects, been faulty as well as the states—particularly in letting their finances become so disordered before they began to apply any remedy; and that, if this were not the case, it would be more prudent to address to the states a picture of the public distresses and danger than a satire on then faults; since the latter would only irritate them, whereas the former would tend to lead them into the measures supposed by Congress to be essential to the public interest.

The propriety of mentioning to the legislature of Pennsylvania the expedient, into which Congress had been driven, of drawing bills on Spain and Holland without previous warrant, the disappointment attending it, and the deductions ultimately ensuing from the aids destined to the United States by the court of France, was also a subject of discussion. On one side, it was represented as a fact which, being dishonorable to Congress, ought not to be proclaimed by them, and that in the present case it could answer no purpose. On the other side, it was contended that it was already known to all the world; that, as a glaring proof of the public embarrassments, it would impress the legislature with the danger of making those separate appropriations which would increase the embarrassments; and particularly would explain, in some degree, the cause of the discontinuance of the French interest due on the loan-office certificates.

Mr. RUTLEDGE, and some other members, having expressed less solicitude about satisfying or soothing the creditors within Pennsylvania, through the legislature, than others thought ought to be felt by every one, Mr. WILSON, adverting to it with some warmth, declared that, if such indifference should prevail, he was little anxious what became of the answer to the memorials. Pennsylvania, he was persuaded, would take her own measures without regard to those of Congress, and that she ought to do so. She was willing, he said, to sink or swim according to the common fate, but that she would not suffer herself, with a mill-stone of six millions* of the Continental debt about her neck, to go to the bottom alone.

Friday,*January* 31.

The instruction to the Virginia delegates from that state, relative to tobacco exported to New York, under passport from the secretary of Congress, was referred to a committee. Mr. FITZSIMMONS moved that the information received from said state of its inability to contribute more than—towards the requisitions of Congress, should

be also committed. Mr. BLAND saw no reason for such commitment. Mr. GORHAM was in favor of it. He thought such a resolution from Virginia was of the most serious import, especially if compared with her withdrawal of her assent to the impost. He said, with much earnestness, that, if one state should be connived at in such defaults, others would think themselves entitled to a like indulgence. Massachusetts, he was sure, had a better title to it than Virginia. He said the former had expended immense sums in recruiting her line, which composed almost the whole northern army; that one million two hundred thousand pounds (a dollar at six shillings) had been laid out; and that without this sum the army would have been disbanded.

Mr. FITZSIMMONS abetting the animadversions on Virginia, took notice that of—dollars required by Congress from her for the year 1782, she had paid the paltry sum of thirty-five thousand dollars, and was, notwithstanding, endeavoring to play off from further contributions. The commitment took place without opposition.

The sub-committee, consisting of Mr. Madison, Mr. Carroll, and Mr. Wilson, had this morning a conference with the superintendent of finance, on the best mode of estimating the value of land throughout the United States. The superintendent was no less puzzled on the subject than the committee had been. He thought some essay ought to be made for executing the Confederation, if it should be practicable; and if not, to let the impracticability appear to the states. He concurred with the sub-committee, also, in opinion, that it would be improper to refer the valuation to the states, as mutual suspicions of partiality, if not a real partiality, would render the result a source of discontent; and that even if Congress should expressly reserve to themselves a right of revising and rejecting it, such a right could not be exercised without giving extreme offence to the suspected party. To guard against these difficulties it was finally agreed, and the sub-committee accordingly reported to the grand committee,—

That it is expedient to require of the several states a return of all surveyed and granted land within each of them; and that, in such returns, the land be distinguished into occupied and unoccupied.

“That it also was expedient to appoint one commissioner for each state, who should be empowered to proceed, without loss of time, into the several states, and to estimate the value of the lands therein, according to the returns above mentioned, and to such instructions as should, from time to time, be given him for that purpose.”

This report was hurried in to the grand committee for two reasons; first, it was found that Mr. Rutledge, Mr. Bland, and several others, relied so much on a valuation of land, and connected it so essentially with measures for restoring public credit, that an extreme backwardness on their part affected all these measures, whilst the valuation of land was left out. A second reason was, that the sub-committee were afraid that suspicions might arise of intentional delay, in order to confine the attention of Congress to general funds, as affording the only prospect of relief.

The grand committee, for like reasons, were equally impatient to make a report to Congress; and accordingly, after a short consultation, the question was taken, whether

the above report of the sub-committee, or the report referred to them, should be preferred. In favor of the first were Mr. Wilson, Mr. Carroll, Mr. Madison, Mr. Elmore, Mr. Hamilton. In favor of the second were Mr. Arnold, Mr. Dyer, Mr. Hawkins, Mr. Gorham, Mr. Rutledge, and Mr. Gilman. So the latter was immediately handed in to Congress, and referred to a committee of the whole, into which they immediately resolved themselves.

A motion was made by Mr. BLAND, seconded by Mr. MADISON, that this report should be taken up in preference to the subject of general funds. Mr. WILSON opposed it as irregular and inconvenient to break in on an unfinished subject; and supposed that, as some further experiment must be intended than merely a discussion of the subject in Congress, before the subject of general funds would be seriously resumed, he thought it unadvisable to interrupt the latter.

Mr. MADISON answered, that the object was not to retard the latter business, but to remove an obstacle to it; that as the two subjects were, in some degree, connected, as means of restoring public credit, and inseparably connected in the minds of many members, it was but reasonable to admit one as well as the other to a share of attention; that if a valuation of land should be found, on mature deliberation, to be as efficacious a remedy as was by some supposed, it would be proper at least to combine it with the other expedient, or perhaps to substitute it altogether; if the contrary should become apparent, its patrons would join the more cordially in the object of a general revenue.

Mr. HAMILTON concurred in these ideas, and wished the valuation to be taken up, in order that its impracticability and futility might become manifest. The motion passed in the affirmative, and the report was taken up.

The phraseology was made more correct in several instances.

A motion was made by Mr. BOUDINOT, seconded by Mr. ELLSWORTH, to strike out the clause requiring a return of "*the names of the owners,*" as well as the quantity of land. Mr. ELLSWORTH also contended for a less specific return of the parcels of land. The objection against the clause was, that it would be extremely troublesome, and equally useless. Mr. BLAND thought these specific returns would be a check on frauds, and the suspicion of them. Mr. Williamson was of the same opinion, as were also Mr. Lee, Mr. Gorham, and Mr. Ramsay.* The motion was withdrawn by Mr. Boudinot.

Saturday and Monday.

No Congress.

Tuesday,*February* 4.

An indecent and tart remonstrance was received from Vermont against the interposition of Congress in favor of the persons who had been banished, and whose effects had been confiscated. A motion was made by Mr. HAMILTON, seconded by Mr. DYER, to commit it. Mr. WOLCOTT, who had always patronized the case of

Vermont, wished to know the views of a commitment. Mr. HAMILTON said his view was, to fulfil the resolution of Congress which bound them to enforce the measure. Mr. DYER said his was, that so dishonorable a menace might be as quickly as possible renounced. He said General Washington was in favor of Vermont; that the principal people of New England were all supporters of them; and that Congress ought to rectify the error into which they had been led, without longer exposing themselves to reproach on this subject. It was committed without dissent.

Mr. WILSON informed Congress that the legislature of Pennsylvania, having found the ordinance of Congress, erecting a court for piracies, so obscure on some points that they were at a loss to adapt their laws to it, had appointed a committee to confer with a committee of Congress. He accordingly moved, in behalf of the Pennsylvania delegation, that a committee might be appointed for that purpose. After some objections, by Mr. MADISON, against the impropriety of holding a communication with Pennsylvania through committees, when the purpose might be as well answered by a memorial, or an instruction to its delegates, a committee was appointed, consisting of Mr. Rutledge, Mr. Madison, and Mr. Wilson.

The report proposing a commutation for the half-pay due to the army was taken up. On a motion to allow five and a half years' whole pay in gross to be funded and bear interest,—this being the rate taken from Dr. Price's calculation of annuities,—New Hampshire was, no; Rhode Island, no; Connecticut, no; New Jersey, no; Virginia, ay, (Mr. LEE, no;) other states, ay: so the question was lost. Five years was then proposed, on which New Hampshire was, no; Rhode Island, no; Connecticut, no; New Jersey, no: so there were but six ayes, and the proposition was lost. Mr. WILLIAMSON proposed five and a quarter, and called for the yeas and nays. Messrs. WOLCOTT and DYER observed, that they were bound by instructions on this subject. Mr. ARNOLD said the case was the same with him. They also queried the validity of the act of Congress which had stipulated half-pay to the army, as it had passed before the Confederation, and by a vote of less than seven states. Mr. MADISON said that he wished, if the yeas and nays were called, it might be on the true calculation, and not on an arbitrary principle of compromise; as the latter, standing singly on the Journal, would not express the true ideas of the yeas, and might even subject them to contrary interpretations. He said that the act was valid, because it was decided according to the rule then in force; and that, as the officers had served under the faith of it, justice fully corroberated it, and that he was astonished to hear these principles controverted. He was also astonished to hear objections against a commutation come from states, in compliance with whose objections against the half-pay itself this expedient had been substituted. Mr. WILSON expressed his surprise, also, that instructions should be given which militated against the most peremptory and lawful engagements of Congress, and said that, if such a doctrine prevailed, the authority of the Confederacy was at an end. Mr. ARNOLD said that he wished the report might not be decided on at this time; that the Assembly of Rhode Island was in session, and he hoped to receive their further advice. Mr. BLAND enforced the ideas of Mr. Madison and Mr. Wilson. Mr. GILMAN thought it would be best to refer the subject of half-pay to the several states, to be settled between them and their respective lines. By general consent the report lay over.

Mr. LEE communicated to Congress a letter he had received from Mr. Samuel Adams, dated Boston, December 22, 1782, introducing Mr.—, from Canada, as a person capable of giving intelligence relative to affairs in Canada, and the practicability of uniting that province with the confederated states. The letter was committed.

In committee of the whole on the report concerning a valuation of the lands of the United States,—

A motion was made by Mr. RUTLEDGE, which took the sense of Congress on this question—whether the rule of apportionment, to be grounded on the proposed valuation, should continue in force until revoked by Congress, or a period be now fixed beyond which it should not continue in force. The importance of the distinction lay in the necessity of having seven votes on every act of Congress. The Eastern States were, generally, for the latter, supposing that the Southern States, being impoverished by the recent havoc of the enemy, would be underrated in the first valuation. The Southern States were, for the same reason, interested in favor of the former. On the question there were six ayes only, which produced a dispute whether, in a committee of the whole, a majority would decide, or whether seven votes were necessary.

In favor of the first rule, it was contended by Mr. GORHAM and others, that in committees of Congress the rule always is, that a majority decides.

In favor of the latter, it was contended that, if the rule of other committees applies to a committee of the whole, the vote should be individual *per capita,* as well as by a majority; that in other deliberative assemblies the rules of *voting* were not varied in committees of the whole, and that it would be inconvenient in practice to report to Congress, as the sense of the body, a measure approved by four or five states, since there could be no reason to hope that, in the same body, in a different form, seven states would approve it; and, consequently, a waste of time would be the result.

The committee rose, and Congress adjourned.

Wednesday,*February* 5, and Thursday,*February* 6.

In order to decide the rule of voting in a committee of the whole, before Congress should go into the said committee, Mr. BLAND moved that the rule should be to vote by states, and *the majority of states in committee to decide.* Mr. WILSON moved to postpone Mr. Bland's motion, in order to resolve that the rule be to vote by states, and according to the same rules which govern Congress. As this general question was connected, in the minds of members, with the particular question to which it was to be immediately applied, the motion for postponing was negatived chiefly by the Eastern States. A division of the question on Mr. Bland's motion was then called for, and the first part was agreed to, as on the Journal. The latter clause—to wit, a majority to decide—was negatived; so nothing as to the main point was determined. In this uncertainty, Mr. OSGOOD proposed that Congress should resolve itself into a committee of the whole. Mr. CARROLL, as chairman, observed that, as the same

difficulty would occur, he wished Congress would, previously, direct him how to proceed. Mr. HAMILTON proposed that the latter clause of Mr. Bland's motion should be reconsidered, and agreed to, wrong as it was, rather than have no rule at all. In opposition to which it was said, that there was no more reason why one, and that not the minor, side should wholly yield to the inflexibility of the other, than *vice versa;* and that, it they should be willing to yield on the present occasion, it would be better to do it tacitly than to saddle themselves with an express and perpetual rule which they judged improper. This expedient was assented to, and Congress accordingly went into a committee of the whole.

The points arising on the several amendments proposed were, first, the period beyond which the rule of the first valuation should not be in force. On this point Mr. COLLINS proposed five years, Mr. BLAND ten years, Mr. BOUDINOT seven years: New Jersey having instructed her delegates thereon. The Connecticut delegates proposed three years. On the question for three years, New Hampshire, no; Massachusetts, no; Rhode Island, ay; Connecticut, ay; all the other states, no. On the question for five years, all the states ay, except Connecticut.

The second point was whether, and how far, the rule should be retrospective. On this point the same views operated as on the preceding. Some were against any retrospection, others for extending it to the whole debt, and others for extending it so far as was necessary for liquidating and closing the accounts between the United States and each individual state.

The several motions expressive of these different ideas were at length withdrawn, with a view that the point might be better digested, and more accurately brought before Congress; so the report was agreed to in the committee, and made to Congress. When the question was about to be put, Mr. MADISON observed that the report lay in a great degree of confusion; that several points had been decided in a way too vague and indirect to ascertain the real sense of Congress; that other points involved in the subject had not received any decision; and proposed the sense of Congress should be distinctly and successively taken on all of them, and the result referred to a special committee, to be digested, &c. The question was, however, put, and negatived, the votes being as they appear on the Journal. The reasons on which Mr. Hamilton's motion was grounded appear from its preamble.

Friday,*February* 7.

On motion of Mr. LEE, who had been absent when the report was yesterday negatived, the matter was reconsidered. The plan of taking the sense of Congress on the several points, as yesterday proposed by Mr. Madison, was generally admitted as proper.

The first question proposed in committee of the whole by Mr. MADISON, was: Shall a valuation of land within the United States, as directed by the Articles of Confederation, be immediately attempted?—Eight ayes; New York, only, no. The states present were New Hampshire, Massachusetts. Connecticut, New York. New

Jersey, Pennsylvania, Virginia, North Carolina, South Carolina; Rhode Island, one member; Maryland, one.

By Mr. WILSON—

Q. Shall each state be called on to return to the United States, in Congress assembled, the number of acres granted to, or surveyed for, any person, and also the number of buildings within it?—Eight ayes; North Carolina, no—supposing this not to accord with the plan of referring the valuation to the states, which was patronized by that delegation. A supplement to this question was suggested as follows:—

Q. Shall the male inhabitants be also returned, the blacks and whites being therein distinguished?—Ay; North Carolina, no—for the same reason as above Connecticut divided.

By Mr. MADISON—

Q. Shall the states be called on to return to Congress an estimate of the value of their lands, with the buildings and improvements within each, respectively?

After some discussion on this point, in which the inequalities which would result from such estimates were set forth at large, and effects of such an experiment in Virginia had been described by Mr. Mercer, and a comparison of an average valuation in Pennsylvania and Virginia, which amounted in the latter to fifty percent. more than in the former,—although the real value of land in the former was confessedly thrice that of the latter,—had been quoted by Mr. Madison, the apprehensions from a reference of any thing more to the states than a report of simple facts increased; and on the vote the states were as follows: New Hampshire, Massachusetts, New Jersey, Pennsylvania, Virginia, no—Mr. Bland, ay; Mr. Lee, silent; Connecticut, North Carolina, South Carolina, ay; New York, divided: so it passed in the negative.

By Mr. MADISON—

Q. Shall a period be now fixed, beyond which the rule to be eventually established by Congress shall not be in force?—ay, unanimously.

By Mr. MADISON—

Q. What shall that period be? Connecticut was again for three years; which being rejected, five years passed unanimously.

By Mr. MADISON—

Q. Shall the rule so to be established have retrospective operation, so far as may be necessary for liquidating and closing the accounts between the United States and each particular state?—ay; Connecticut, no. Mr. DYER and Mr. MERCER understood this as making the amount of the several requisitions of Congress, and not of the payments by the states, the standard by which the accounts were to be liquidated, and thought

the latter the just quantum for retrospective appointment. Their reasoning, however, was not fully comprehended.

Saturday,*February* 8.

Committee Of The Whole.

Mr. MERCER revived the subject of retrospective operation, and after it had been much discussed, and the difference elucidated which might happen between apportioning, according to the first valuation which should be made, merely the sums paid on the requisitions of Congress, and apportioning the whole requisitions, consisting of the sums paid and the deficiencies, which might not be paid until some distant day, when a different rule, formed under different circumstances of the states, should be in force, the assent to the last question, put yesterday, was reversed, and there was added to the preceding question, after "five years,"—"and shall operate as a rule for apportioning the sums necessary to be raised for supporting the public credit and other contingent expenses, and for adjusting all accounts between the United States and each particular state, for moneys paid or articles furnished by them, and for no other purpose whatsoever." On this question there were six ayes; so it became a vote of the committee of the whole.

Monday,*February* 10.

For the report of the committee on the resolutions of Virginia, concerning the contract under which tobacco was to be exported to New York, and the admission of circumstantial proof of accounts against the United States, where legal vouchers had been destroyed by the enemy, see the Journal of this date.

Mr. MERCER informed Congress that this matter had made much noise in Virginia; that she had assented to the export of the first quantity, merely out of respect to Congress, and under an idea that her rights of sovereignty had been encroached upon; and that, as a *further quantity* had been exported *without the license of the state,* the question was unavoidable, whether the authority of Congress extended to the act. He wished, therefore, that Congress would proceed to decide the question.

Mr. FITZSIMMONS, in behalf of the committee, observed that they went no future than to examine whether the proceedings of the officers of Congress were conformable to the resolution of Congress, and not whether the latter were within the power of Congress.

Mr. LEE said, the report did not touch the point; that the additional quantity had been exported without application to the state, although the first quantity was licensed by the state with great reluctance, in consequence of the request of Congress, and of assurances against a repetition; and that the superintendent and secretary of Congress ought, at any rate, to have made application to the executive before they proceeded to further exportations.

Mr. RUTLEDGE said, the report went to the very point, that Virginia suspected the resolutions of Congress had been abused by the officers of Congress, and the report showed that no such abuse had taken place; that if this information was not satisfactory, and the state should contest the right of Congress in the case, it would then be proper to answer it on that point, but not before. He said, if the gentleman (Mr. Lee) meant the committee, authorized by Congress on the 29th day of May, 1782, to make explanations on the subject to the legislature of Virginia, had given the assurances he mentioned, he must be mistaken; for none such had been given. He had, he said, formed notes of his remarks to the legislature; but, according to his practice, had destroyed them after the occasion was over, and therefore could only assert this from memory; that nevertheless his memory enabled him to do it with certainty.

Mr. LEE, in explanation, said he did not mean the committee; that the abuse complained of was not that the resolutions of Congress had been exceeded, but that the export had been undertaken without the sanction of the state. If the acts were repeated, he said, great offence would be given to Virginia.

The report was agreed to, as far as the tobacco was concerned, without a dissenting voice; Mr. Lee uttering a *no,* but not loud enough to be heard by Congress or the Chair. The part relating to the loss of vouchers was unanimously agreed to.

Committee Of The Whole.

The report for the valuation of land was amended by the insertion of "distinguishing dwelling-houses from others."

The committee adjourned, and the report was made to Congress.

Mr. LEE and Mr. GERVAIS moved that the report might be postponed to adopt another plan, to wit,—

"To call on the states to return a valuation, and to provide that, in case any return should not be satisfactory to all parties, persons should be appointed by Congress, and others by the states, respectively, to adjust the case finally."

On this question New Hampshire was divided; Massachusetts, no; Rhode Island, ay; Connecticut, no; New York, divided; New Jersey, no; Pennsylvania, no; Virginia, no; Mr. Madison and Mr. Jones, no; Mr. Lee and Mr. Bland, ay; North Carolina, ay; South Carolina, ay: so the motion failed.

Tuesday,*February* 11.

The report made by the committee of the whole having decided that the mode to be grounded on the return of facts called for from the states ought now to be ascertained,—

Mr. RUTLEDGE proposed, seconded by Mr. GILMAN, that the states should be required to name commissioners, each of them one, who, or any nine of them, should

be appointed and empowered by Congress, to settle the valuation. Mr. Gorham was against it, as parting with a power which might be turned by the states against Congress. Mr. Wolcott against it; declares his opinion that the Confederation ought to be amended by substituting numbers of inhabitants as the rule; admits the difference between freemen and blacks; and suggests a compromise, by including in the numeration such blacks only as were within sixteen and sixty years of age. Mr. WILSON was against relinquishing such a power to the states; proposes that the commissioners be appointed by Congress, and their proceedings subject to the ratification of Congress. Mr. MERCER was for submitting them to the revision of Congress; and this amendment was received. Mr. PETERS against the whole scheme of valuation, as holding out false lights and hopes to the public. Mr. RUTLEDGE thinks commissioners appointed by the states may be trusted, as well as commissioners appointed by Congress, or as Congress themselves. Mr. WILSON observes that, if appointed by the states, they will bring with them the spirit of agents for their respective states; if appointed by Congress, they will consider themselves as servants of the United States at large, and be more impartial.

Mr. GORHAM, seconded by Mr. Wilson, proposes to postpone, in order to require the states to appoint commissioners to give Congress information for a basis for a valuation. On the question, New Hampshire, no; Massachusetts, ay; Rhode Island, ay; Connecticut, ay; New York, ay; New Jersey, ay; Pennsylvania, ay; Virginia, no; North Carolina, no; South Carolina, no: so it was decided in the negative.

To make the resolution more clear, after the words “or any nine of them,” the words “concurring therein” were added. Mr. RUTLEDGE says, that subjecting the acts of the commissioners to the revision of Congress had so varied his plan that he should be against it. On the main question, New Hampshire, ay; Massachusetts, ay; Rhode Island, ay; Connecticut, ay; New York, no; New Jersey, no; Pennsylvania, ay; Virginia, ay, (Mr. Madison, no;) North Carolina, ay; South Carolina, ay: so it was agreed to; and the resolution, declaring that a mode should now be fixed, struck out, as executed. The whole report was then committed to a special committee, consisting of Mr. Rutledge, Mr. Gorham, and Mr. Gilman, to be formed into a proper act.13

Wednesday,*February* 12.

The declaration of Congress as to general funds, passed on January the 29th, appears on the Journals; and Congress resolved itself into a committee of the whole, in order to consider the funds to be adopted and recommended to the states.

On motion of Mr. MIFFLIN, the impost of five per cent. was taken into consideration. As it seemed to be the general opinion that some variations from the form in which it had been first recommended would be necessary for reconciling the objecting states to it, it was proposed that the sense of the committee should be taken on that head. The following questions were accordingly propounded:—

Question 1. Is it expedient to alter the impost as recommended on the—day of—, 1781?

Mr. LEE said the states, particularly Virginia, would never concur in the measure unless the term of years were limited, the collection left to the states, and the appropriation annually laid before them.

Mr. WOLCOTT thought the revenue ought to be commensurate, in point of time as well as amount, to the debt; that there was no danger in trusting Congress, considering the responsible mode of its appointment; and that to alter the plan would be a mere condescension to the prejudices of the states.

Mr. GORHAM favored the alteration for the same reason as Mr. Lee. He said private letters informed him that the opposition to the impost law was gaining ground in Massachusetts, and the repeal of Virginia would be very likely to give that opposition the ascendence. He said, our measures must be accommodated to the sentiments of the states, whether just or unreasonable.

Mr. HAMILTON dissented from the particular alterations suggested, but did not mean to negative the question.

Mr. BLAND was for conforming to the ideas of the states as far as would, in any manner, consist with the object.

On the question, the affirmative was unanimous, excepting the voice of Mr. WOLCOTT.

Question 2. Shall the term of duration be limited to twenty-five years?

Mr. MERCER professed a decided opposition to the principle of general revenue; observed that the liberties of England had been preserved by a separation of the purse from the sword; that, until the debts should be liquidated and apportioned, he would never assent, in Congress or elsewhere, to the scheme of the impost.

Mr. BLAND proposed an alternative of twenty-five years, or until the requisitions of Congress, according to the Articles of Confederation, shall be found adequate. On this proposition the votes were, of New Hampshire, divided; Rhode Island, no; Connecticut, no; New York, no; New Jersey, no; Pennsylvania, no; Virginia, ay; North Carolina, divided; South Carolina, ay: so the proposition was not agreed to.

On the main question for twenty-five years, it was voted in the affirmative.

Question 3. Shall the appointment of collectors be left to the states, they to be amenable to, and under the control of, Congress?—Ay; several states, as New York and Pennsylvania, dissenting.

Thursday,*February* 13.

The committee report to Congress the alterations yesterday agreed on with respect to the five per cent. impost.

The deputy secretary at war reported to Congress the result of the inquiry directed by them, on the 24th of January, into the seizure of goods destined for the British prisoners of war, under passport from General Washington. From this report, it appeared that some of the seizors had pursued their claim under the law of the state; and that, in consequence, the goods had been condemned and ordered for sale. The papers were referred to a committee, consisting of Mr. Rutledge, Mr. Gorham, and Mr. Lee, who, after having retired for a few moments, reported that the secretary of war should be authorized and directed to cause the goods to be taken from the places where they had been deposited; to employ such force as would be sufficient; and that the Duke de Lauzun, whose legion was in the neighborhood, should be requested to give the secretary such aid as he might apply for.

This report was generally regarded by Congress as intemperate, and the proposed recourse to the French legion as flagrantly imprudent. Mr. HAMILTON said, that if the object had been to embroil the country with their allies, the expedient would have been well conceived.* He added, that the exertion of force would not, under these circumstances, meet the sense of the people at large. Mr. GORHAM said, he denied this with respect to the people of Massachusetts.

Mr. LEE, on the part of the committee, said that the Duke de Lauzun had been recurred to as being in the neighborhood, and having cavalry under his command, which would best answer the occasion; and that the report was founded on wise and proper considerations.

Mr. MERCER, Mr. WILLIAMSON, Mr. RAMSAY, Mr. WILSON, and Mr. MADISON, strenuously opposed the report, as improper altogether, as far as it related to the French legion, and in other respects so until the state of Pennsylvania should, on summons, refuse to restore the articles seized.

Mr. RUTLEDGE, with equal warmth, contended for the expediency of the measures reported.

Mr. MERCER and Mr. MADISON at length proposed that Congress should assert the right on this subject, and summon the state of Pennsylvania to redress the wrong immediately. The report was recommitted, with this proposition, and Mr. Wilson and Mr. Mercer added to the committee.

The speech of the king of Great Britain on the 5th of December, 1782, arrived and produced great joy in general, except among the merchants who had great quantities of merchandise in store, the price of which immediately and materially fell. The most judicious members of Congress, however, suffered a great diminution of their joy from the impossibility of discharging the arrears and claims of the army, and their apprehensions of new difficulties from that quarter.

Friday,*February* 14.

Mr. Jones, Mr. Rutledge, and Mr. Wilson, to whom had been referred, on Tuesday last, a letter from Mr. Jefferson, stating the obstacles to his voyage, reported that they

had conferred with the agent of marine, who said there was a fit vessel ready for sea in this port, but was of opinion the arrival of the British king's speech would put a stop to the sailing of any vessels from the ports of America until something definitive should take place; and that if Congress judged fit that Mr. Jefferson should proceed immediately to Europe, it would be best to apply to the French minister for one of the frigates in the Chesapeake. The general opinion of Congress seemed to be that, under present circumstances, he should suspend his voyage until the further order of Congress; and on motion of Mr. GORHAM, seconded by Mr. WOLCOTT, the secretary of foreign affairs was accordingly, without opposition, directed to make this known to Mr. Jefferson.

The report of the committee for obtaining a valuation of land was made and considered. See the Journal of this date.

Monday,*February* 17.

The report respecting a valuation of land being lost, as appears from the Journal, was revived by the motion of Mr. DYER, seconded by Mr. MERCER, as it stands: the appointment of commissioners by Congress for adjusting the quotas being changed for a grand committee, consisting of a delegate present from each state, for that purpose.

A motion was made to strike out the clause requiring the concurrence of nine voices in the report to Congress; and on the question, Shall the words stand? the states being equally divided, the clause was expunged. It was therefore reconsidered and reinserted.

The whole report was agreed to, with great reluctance, by almost all—by many from a spirit of accommodation only, and the necessity of doing something on the subject. Some of those who were in the negative, particularly Mr. Madison, thought the plan not within the spirit of the Confederation; that it would be ineffectual, and that the states would be dissatisfied with it.

A motion was made by Mr. HAMILTON, seconded by Mr. FITZSIMMONS, to renew the recommendation of the—February, 1782, for vesting Congress with power to make abatements in favor of states, parts of which had been in possession of the enemy. It was referred to a committee.

Tuesday,*February* 18.

Committee Of The Whole On The Subject Of General Funds.

Mr. RUTLEDGE and Mr. MERCER proposed, that the impost of five per cent., as altered and to be recommended to the states, should be appropriated exclusively, first to the interest of the debt to the army, and then, in case of surplus, to the principal. Mr. Rutledge urged, in support of this motion, that it would be best to appropriate this fund to the army as the most likely to be obtained, as their merits were superior to

those of all other creditors, and as it was the only thing that promised, what policy absolutely required, some satisfaction to them.

Mr. WILSON replied, that he was so sensible of the merits of the army, that if any discrimination were to be made among the public creditors, he should not deny them perhaps a preference, but that no such discrimination was necessary; that the ability of the public was equal to the whole debt, and that before it be split into different descriptions, the most vigorous efforts ought to be made to provide for it entire; that we ought first, at least, to see what funds could be provided, to see how far they would be deficient, and then, in the last necessity only, to admit discriminations.

Mr. GORHAM agreed with Mr. Wilson. He said an exclusive appropriation to the army would, in some places, be unpopular, and would prevent a compliance of those states whose citizens were the greatest creditors of the United States; since, without the influence of the public creditors, the measure could never be carried through the states; and these, if excluded from the appropriation, would be even interested in frustrating the measure, and keeping, by that means, their cause a common one with the army.

Mr. MERCER applauded the wisdom of the Confederation in leaving the provision of money to the states; said that when this plan was deviated from by Congress, their objects should be such as were best known and most approved; that the states were jealous of one another, and would not comply unless they were fully acquainted with, and approved, the purpose to which their money was to be applied; that nothing less than such a preference of the army would conciliate them; that no civil creditor would dare to put his claims on a level with those of the army; and insinuated that the speculations which had taken place in loan-office certificates might lead to a revision of that subject on principles of equity; that if too much were asked from the states, they would grant nothing. He said that it had been alleged, that the large public debt, if funded under Congress, would be a cement of the Confederacy. He thought, on the contrary, it would hasten its dissolution; as the people would feel its weight in the most obnoxious of all forms—that of taxation.

On the question, the states were all no, except South Carolina, which was ay.*

A motion was made by Mr. RUTLEDGE, seconded by Mr. BLAND, to change the plan of the impost in such a manner as that a tariff might be formed for all articles that would admit of it; and that a duty, *ad valorem,* should be collected only on such articles as would not admit of it.

In support of such alteration, it was urged that it would lessen the opportunity of collusion between collector and importer, and would be more equal among the states. On the other side, it was alleged that the states had not objected to that part of the plan, and a change might produce objections; that the nature and variety of the imports would require necessarily the collection to be *ad valorem* on the greater part of them; that the forming of a book of rates would be attended with great difficulties and delays; and that it would be in the power of Congress, by raising the rate of the article, to augment the duty beyond the limitation of five per cent., and that this

consideration would excite objections on the part of the states. The motion was negatived.

A motion was made by Mr. HAMILTON, seconded by Mr. WILSON, that, whereas Congress were desirous that the motives and views of their measures should be known to their constituents in all cases where the public safety would admit, when the subject of finances was under debate, the doors of Congress should be open. Congress adjourned, it being the usual hour, and the motion being generally disrelished. The Pennsylvania delegates said, privately, that they had brought themselves into a critical situation by dissuading their constituents from separate provision for creditors of the United States, within Pennsylvania, hoping that Congress would adopt a general provision, and they wished their constituents to see the prospect themselves, and to witness the conduct of their delegates. Perhaps the true reason was, that it was expected the presence of public auditors, numerous and weighty, in Philadelphia, would have an influence, and that it would be well for the public to come more fully to the knowledge of the public finances.

A letter was received from Mr. William Lee, at Ghent, notifying the desire of the emperor of Austria to form a commercial treaty with the United States, and to have a resident from them. Committed to Messrs. Izard, Gorham, and Wilson.

Wednesday,*February* 19.

The motion made yesterday by Mr. HAMILTON, for opening the doors of Congress when the subject of the finances should be under debate, was negatived; Pennsylvania alone being ay.

A motion was made by Mr. HAMILTON, seconded by Mr. BLAND, to postpone the clause of the report, made by the committee of the whole, for altering the impost, viz., the clause limiting its duration to twenty-five years, in order to substitute a proposition declaring it to be inexpedient to limit the period of its duration; first, because it ought to be commensurate to the duration of the debt; secondly, because it was improper in the present stage of the business, and all the limitation of which it would admit had been defined in the resolutions of—, 1782.

Mr. HAMILTON said, in support of his motion, that it was in vain to attempt to gain the concurrence of the states by removing the objections publicly assigned by them against the impost; that these were the ostensible and not the true objections; that the true objection on the part of Rhode Island was the interference of the impost with the opportunity afforded by their situation of levying contributions on Connecticut, &c., which received foreign supplies through the ports of Rhode Island; that the true objection on the part of Virginia was her having little share in the debts due from the United States, to which the impost would be applied; that a removal of the avowed objections would not therefore remove the obstructions, whilst it would admit, on the part of Congress, that their first recommendation went beyond the absolute exigencies of the public; that Congress, having taken a proper ground at first, ought to maintain it till time should convince the states of the propriety of the measure.

Mr. BLAND said, that as the debt had been contracted by Congress with the concurrence of the states, and Congress was looked to for payment by the public creditors, it was justifiable and requisite in them to pursue such means as would be adequate to the discharge of the debt; and that the means would not be adequate, if limited in duration to a period within which no calculations had shown that the debt would be discharged.

On the motion, the states were—New Hampshire, divided; Massachusetts, no; Rhode Island, ay; Connecticut, divided; New York, ay; New Jersey, ay; Pennsylvania, ay; Virginia, no, (Mr. Bland, ay;) North Carolina, ay; South Carolina, ay. Mr. RUTLEDGE said he voted for postponing, not in order to agree to Mr. Hamilton's motion, but to move, and he accordingly renewed the motion made in committee of the whole, viz., that the impost should be appropriated exclusively to the army. This motion was seconded by Mr. LEE.

Mr. HAMILTON opposed the motion strenuously; declared that, as a friend to the army as well as to the other creditors and to the public at large, he would never assent to such a partial distribution of justice; that the different states, being differently attached to different branches of the public debt, would never concur in establishing a fund which was not extended to every branch; that it was impolitic to divide the interests of the civil and military creditors, whose joint efforts in the states would be necessary to prevail on them to adopt a general revenue.

Mr. MERCER favored the measure, as necessary to satisfy the army, and to avert the consequences which would result from their disappointment on this subject. He pronounced, that the army would not disband until satisfactory provision should be made, and that this was the only attainable provision; but he reprobated the doctrine of permanent debt supported by a general and permanent revenue, and said that it would be good policy to separate, instead of cementing, the interests of the army and the other public creditors; insinuating that the claims of the latter were not supported by justice, and that the loan-office certificates ought to be revised.

Mr. FITZSIMMONS observed, that it was unnecessary to make a separate appropriation of the impost to one particular debt; since, if other funds should be superadded, there would be more simplicity and equal propriety in an aggregate fund for the aggregate debt funded, and that, if no other funds should be superadded, it would be unjust and impolitic; that the states whose citizens were the chief creditors of the United States would never concur in such a measure; that the mercantile interest, which comprehended the chief creditors of Pennsylvania, had by their influence obtained the prompt and full concurrence of that state in the impost; and if that influence were excluded, the state would repeal its law. He concurred with those who hoped the army would not disband unless provision should be made for doing them justice.

Mr. LEE contended, that, as every body felt and acknowledged the force of the demands of the army, an appropriation of the impost to them would recommend it to all the states; that distinct and specific appropriation of distinct revenue was the only true system of finance, and was the practice of all other nations who were enlightened

on this subject; that the army had not only more merit than the mercantile creditors, but that the latter would be more able, on a return of peace, to return to the business which would support them.

Mr. MADISON said, that, if other funds were to be superadded, as the gentleman (Mr. Rutledge) who made the motion admitted, it was at least premature to make the appropriation in question; that it would be best to wait till all the funds were agreed upon, and then appropriate them respectively to those debts to which they should be best fitted; that it was probable the impost would be judged best adapted to the foreign debt, as the foreign creditors could not, like the domestic, ever recur to particular states for separate payments; and that, as this would be a revenue little felt, it would be prudent to assign it to those for whom the states would care least, leaving more obnoxious revenues for those creditors who would excite the sympathy of their countrymen, and could stimulate them to do justice.

Mr. WILLIAMSON was against the motion; said he did not wish the army to disband until proper provision should be made for them; that if force should be necessary to excite justice, the sooner force was applied the better.

Mr. WILSON was against the motion of Mr. Rutledge; he observed that no instance occurred in the British history of finance in which distinct appropriations had been made to distinct debts *already* contracted; that a consolidation of funds had been the result of experience; that an aggregate fund was more simple, and would be most convenient; that the interest of the whole funded debt ought to be paid before the principal of any part of it; and, therefore, in case of surplus of the impost beyond the interest of the army debt, it ought, at any rate, to be applied to the interest of the other debts, and not, as the motion proposed, to the principal of the army debt. He was fully of opinion that such a motion would defeat itself; that, by dividing the interest of the civil from that of the military creditors, provision for the latter would be frustrated.

On the question on Mr. Rutledge's motion, the states were—New Hampshire, no; Massachusetts, no; Connecticut, no; New Jersey, no; Virginia, no; (Mr. Lee and Mr. Mercer, ay;) North Carolina, no; South Carolina, ay.

On the clause reported by the committee of the whole, in favor of limiting the impost to twenty-five years, the states were—New Hampshire, ay; Massachusetts, ay; Connecticut, divided; (Mr. Dyer, ay; Mr. Wolcott, no;) New York, no; New Jersey, no; Pennsylvania, ay; (Mr. Wilson and Mr. Fitzsimmons, no;) Virginia, ay; (Mr. Bland, no;) North Carolina, ay; South Carolina, ay: so the question was lost.

On the question whether the appointment of collectors of the impost shall be left to the states, the collectors to be under the control of, and be amendable to, Congress, there were seven ayes; New York and Pennsylvania being no, and New Jersey divided.

Thursday,*February* 20.

The motion for limiting the impost to twenty-five years having been yesterday lost, and some of the gentlemen who were in the negative desponding of an indefinite grant of it from the states, the motion was reconsidered.

Mr. WOLCOTT and Mr. HAMILTON repeat the inadequacy of a definite term. Mr. RAMSAY and Mr. WILLIAMSON repeat the improbability of an indefinite term being acceded to by the states, and the expediency of preferring a limited impost to a failure of it altogether.

Mr. MERCER was against the impost altogether, but would confine his opposition within Congress. He was in favor of the limitation, as an alleviation of the evil.

Mr. FITZSIMMONS animadverted on Mr. Mercer's insinuation yesterday touching the loan-office creditors, and the policy of dividing them from the military creditors; reprobated every measure which contravened the principles of justice and public faith; and asked, whether it were likely that Massachusetts and Pennsylvania, to whose citizens half the loan-office debt was owing, would concur with Virginia, whose citizens had lent but little more than three hundred thousand dollars, in any plan that did not provide for that in common with other debts of the United States. He was against a limitation to twenty-five years.

Mr. LEE wished to know whether by loan-office creditors were meant the original subscribers or the present holders of the certificates, as the force of their demands may be affected by this consideration.

Mr. FITZSIMMOMS saw the scope of the question, and said that, if another scale of depreciation was seriously in view, he wished it to come out, that every one might know the course to be taken.

Mr. GORHAM followed the sentiments of the gentleman who last spoke; expressed his astonishment that a gentleman (Mr. Lee) who had enjoyed such opportunities of observing the nature of public credit should advance such doctrines as were fatal to it. He said it was time that this point should be explained; that if the former scale for the loan-office certificates was to be revised and reduced, as one member from Virginia (Mr. Mercer) contended, or a further scale to be made out for subsequent depreciation of certificates, as seemed to be the idea of the other member, (Mr. Lee,) the restoration of public credit was not only visionary, but the concurrence of the states in any arrangement whatever was not to be expected. He was in favor of the limitation, as necessary to overcome the objections of the states.

Mr. MERCER professed his attachment to the principles of justice, but declared that he thought the scale by which the loans had been valued unjust to the public, and that it ought to be revised and reduced.

On the question for the period of twenty-five years, it was decided in the affirmative, seven states being in favor of it; New Jersey and New York only being no.

Mr. MERCER called the attention of Congress to the case of the goods seized under a law of Pennsylvania, on which the committee had not yet reported, and wished that

Congress would come to some resolution declaratory of their rights, and which would lead to an effectual interposition on the part of the legislature of Pennsylvania. After much conversation on the subject, in which the members were somewhat divided as to the degree of peremptoriness with which the state of Pennsylvania should be called on, the resolution on the Journal, which is inserted below, was finally adopted; having been drawn up by the secretary, and put into the hands of a member, the resolution passed without any dissent.*

Resolved, That it does not appear to Congress that any abuse has been made of the passport granted by the commander-in-chief for the protection of clothing and other necessaries sent from New York, in the ship Amazon, for the use of the British and German prisoners of war.

Resolved, That the goods imported in the said ship Amazon, and contained in the returns late before Congress by the assistant secretary at war, are fully covered and protected by the sale passport, and ought to be sent with all expedition, and without any let or hinderance, to the prisoners for whose use they were designed.

[The evening of this day was spent at Mr. Fitzsimmons's by Mr. Gorham, Mr. Hamilton, Mr. Peters, Mr. Carroll, and Mr. Madison. The conversation turned on the subject of revenue, under the consideration of Congress, and on the situation of the army. The conversation on the first subject ended in a general concurrence (Mr. Hamilton excepted) in the impossibility of adding to the impost on trade any taxes that would operate equally throughout the United States, or be adopted by them. On the second subject, Mr. Hamilton and Mr. Peters, who had the best knowledge of the temper, transactions, and views of the army, informed the company, that it was certain that the army had secretly determined not to lay down their arms until due provision and a satisfactory prospect should be afforded on the subject of their pay; that there was reason to expect that a public declaration to this effect would soon be made; that plans had been agitated, if not formed, for subsisting themselves after such declaration; that, as a proof of their earnestness on this subject, the commander was already become extremely unpopular, among almost all ranks, from his known dislike to every unlawful proceeding; that this unpopularity was daily increasing and industriously promoted by many leading characters: that his choice of unfit and indiscreet persons into his family was the pretext, and with some the real motive; but the substantial one, a desire to displace him from the respect and confidence of the army, in order to substitute General ******* as the conductor of their efforts to obtain justice. Mr. Hamilton said, that he knew General Washington intimately and perfectly; that his extreme reserve, mixed sometimes with a degree of asperity of temper, (both of which were said to have increased of late,) had contributed to the decline of his popularity; but that his virtue, his patriotism and firmness, would, it might be depended upon, never yield to any dishonorable or disloyal plans into which he might be called; that he would sooner suffer himself to be cut to pieces; that he, (Mr. Hamilton,) knowing this to be his true character, wished him to be the conductor of the army in their plans for redress, in order that they might be moderated and directed to proper objects, and exclude some other leader who might foment and misguide their councils; that with this view he had taken the liberty to write to the general on this subject, and to recommend such a policy to him.]

Friday,*February* 21.

Mr. MERCER made some remarks tending to a reconsideration of the act declaring general funds to be necessary, which revived the discussion of that subject.

Mr. MADISON said, that he had observed, throughout the proceedings of Congress relative to the establishment of such funds, that the power delegated to Congress by the Confederation had been very differently construed by different members, and that this difference of construction had materially affected their reasonings and opinions on the several propositions which had been made; that, in particular, it had been represented by sunday members that Congress was merely an executive body; and, therefore, that it was inconsistent with the principles of liberty and the spirit of the constitution, to submit to them a permanent revenue, which would be placing the purse and the sword in the same hands; that he wished the true doctrine of the Confederation to be ascertained, as it might, perhaps, remove some embarrassments; and towards that end would offer his ideas in the subject.

He said, that he did not conceive, in the first place, that the opinion was sound, that the power of Congress, in cases of revenue, was in no respect legislative, but merely executive; and, in the second place, that, admitting the power to be executive, a permanent revenue collected and dispensed by them in the discharge of the debts to which it should be appropriated would be inconsistent with the nature of an executive body, or dangerous to the liberties of the republic.

As to the first opinion, he observed that, by the Articles of Confederation, Congress had clearly and expressly the right to fix the quantum of revenue necessary for the public exigencies, and to require the same from the states respectively, in proportion to the value of the land; that the requisitions thus made were a law to the states, as much as the acts of the latter for complying with them were a law to their individual members; that the Federal Constitution was as sacred and obligatory as the internal constitutions of the several states; and that nothing could justify the states in disobeying acts warranted by it, but some previous abuse and infraction on the part of Congress; that as a proof that the power of fixing the quantum, and making requisitions of money, was considered as a legislative power over the purse, he would appeal to the proposition, made by the British minister, of giving this power to the British Parliament, and leaving to the American assemblies the privilege of complying in their own mode, and to the reasonings of Congress and the several states on that proposition. He observed, further, that by the Articles of Confederation was delegated to Congress a right to borrow money indefinitely, and emit bills of credit, which was a species of borrowing, for repayment and redemption of which the faith of the states was pledged, and their legislatures constitutionally bound. He asked whether these powers were reconcilable with the idea that Congress was a body merely executive. He asked what would be thought in Great Britain, from whose constitution our political reasonings were so much drawn, of an attempt to prove that a power of making requisitions of money on the Parliament, and of borrowing money, for discharge of which the Parliament should be bound, might be annexed to the crown without changing its quality of an executive branch, and that the leaving to the

Parliament the mode only of complying with the requisitions of the crown would be leaving to it its supreme and exclusive power of legislation.

As to the second point, he referred again to the British constitution, and the mode in which provision was made for the public debts; observing that, although the executive had no authority to contract a debt, yet, that when a debt had been authorized or admitted by the Parliament, a permanent and irrevocable revenue was granted by the legislature, to be collected and dispensed by the executive; and that this practice had never been deemed a subversion of the constitution, or a dangerous association of a power over the purse with the power of the sword.

If these observations were just, as he conceived them to be, the establishment of a permanent revenue—not by any assumed authority of Congress, but by the authority of the states at the recommendation of Congress, to be collected and applied by the latter to the discharge of the public debts—could not be deemed inconsistent with the spirit of the Federal Constitution, or subversive of the principles of liberty; and that all objections drawn from such a supposition ought to be withdrawn. Whether other objections of sufficient weight might not lie against such an establishment, was another question. For his part, although for various reasons* he had wished for such a plan as most eligible, he had never been sanguine that it was practicable; and the discussions which had taken place had finally satisfied him, that it would be necessary to limit the call for a general revenue to duties on commerce, and to call for the deficiency in the most permanent way that could be reconciled with a revenue established within each state, separately, and appropriated to the common treasury. He said, the rule which he had laid down to himself, in this business, was to concur in every arrangement that should appear necessary for an honorable and just fulfilment of the public engagements, and in no measure tending to augment the power of Congress, which should appear to be unnecessary; and particularly disclaimed the idea of perpetuating a public debt.

Mr. LEE, in answer to Mr. Madison, said the doctrine maintained by him was pregnant with dangerous consequences to the liberties of the confederated states; that, notwithstanding the specious arguments that had been employed, it was an established truth that the purse ought not to be put into the same hands with the sword; that like arguments had been used in favor of ship-money in the reign of Charles the First, it being then represented as essential to the support of the government; that the executive should be assured of the means of fulfilling its engagements for the public service. He said, it had been urged by several in behalf of such an establishment for public credit, that without it Congress was nothing more than a rope of sand. On this head he would be explicit; he had rather see Congress a rope of sand than a rod of iron. He urged, finally, as a reason why some states would not, and ought not, to concur in granting to Congress a permanent revenue, that some states (as Virginia) would receive back a small part by payment from the United States to its citizens; whilst others (as Pennsylvania) would receive a vast surplus, and, consequently, be draining the former of its wealth.

Mr. MERCER said, if he conceived the federal compact to be such as it had been represented, he would immediately withdraw from Congress, and do every thing in

his power to destroy its existence; that if Congress had a right to borrow money as they pleased, and to make requisitions on the states that would be binding on them, the liberties of the states were ideal; that requisitions ought to be consonant to the spirit of liberty; that they should go frequently, and accompanied with full information: that the states must be left to judge of the nature of them, of their abilities to comply with them, and to regulate their compliance accordingly; he laid great stress on the omission of Congress to transmit half-yearly to the states an account of the moneys borrowed by them, &c., and even insinuated that this omission had absolved the states, in some degree, from the engagements. He repeated his remarks on the injustice of the rule by which loan-office certificates had been settled, and his opinion that some defalcations would be necessary.

Mr. HOLTON was opposed to all permanent funds, and to every arrangement not within the limits of the Confederation.

Mr. HAMILTON enlarged on the general utility of permanent funds to the federal interests of this country, and pointed out the difference between the nature of the constitution of the British executive and that of the United States, in answer to Mr. Lee's reasoning from the case of ship-money.

Mr. GORHAM adverted, with some warmth, to the doctrines advanced by Mr. Lee and Mr. Mercer, concerning the loan-office creditors. He said the union could never be maintained on any other ground than that of justice; that some states had suffered greatly from the deficiencies of others already; that, if justice was not to be obtained through the federal system, and this system was to fail, as would necessarily follow, it was time this should be known, that some of the states might be forming other confederacies adequate to the purposes of their safety.

This debate was succeeded by a discharge of the committee from the business of devising the means requisite for restoring public credit, &c. &c., and the business referred to a committee, consisting of Mr. Gorham, Mr. Hamilton, Mr. Madison, Mr. Fitzsimmons, and Mr. Rutledge.

No Congress till.

Tuesday,*February* 25.

In favor of the motion of Mr. GILMAN, (see the Journal of this date,) to refer the officers of the army for their *half-pay* to their respective states, it was urged that this plan alone would secure to the officers any advantage from that engagement; since Congress had no independent fund out of which it could be fulfilled, and the states of Connecticut and Rhode Island, in particular, would not comply with any recommendation of Congress, nor even requisition, for that purpose. It was also said that it would be satisfactory to the officers; and that it would apportion on the states that part of the public burden with sufficient equality. Mr. DYER said, that the original promise of Congress on that subject was considered, by some of the states, as a fetch upon them, and not within the spirit of the authority delegated to Congress. Mr. WOLCOTT said, the states would give Congress nothing whatever, unless they

were gratified in this particular. Mr. COLLINS said, Rhode Island had expressly instructed her delegates to oppose every measure tending to an execution of the promise out of moneys under the disposition of Congress.

On the other side, it was urged that the half-pay was a debt as solemnly contracted as anyother debt, and was, consequently, as binding, under the 12th article of the Confederation on the states, and that they could not refuse a requisition made for that purpose, that it would be improper to countenance a spirit of that sort by yielding to it; that such concessions on the part of Congress would produce compliances on the part of the states, in other instances, clogged with favorite conditions; that a reference of the officers to the particular states to whose lines they belong would not be satisfactory to the officers of those states who objected to half-pay, and would increase the present irritation of the army; that to do it without their unanimous consent would be a breach of the contract by which the United States, collectively, were bound to them; and, above all, that the proposed plan, which discharged any particular state which should settle with its officers on this subject, although other states might reject the plan, from its proportion of that part of the public burden, was a direct and palpable departure from the law of the Confederation. According to this instrument, the whole public burden of debt must be apportioned according to a valuation of land; nor could any thing but a unanimous concurrence of the states dispense with this law. According to the plan proposed, so much of the public burden as the half-pay should amount to was to be apportioned according to the number of officers belonging to each line; the plan to take effect, as to all those states which should adopt it, without waiting for the unanimous adoption of the states; and that, if Congress had authority to make the number of officers the rule of apportioning one part of the public debt on the states, they might extend the rule to any other arbitrary rule which they should think fit. The motion of Mr. GILMAN was negatived. See the ayes and noes on the Journal.

Wednesday,*February* 26.

Mr. LEE observed to Congress, that it appeared, from the newspapers of the day, that sundry enormities had been committed by the refugees within the state of Delaware, as it was known that like enormities had been committed on the shores of the Chesapeake, notwithstanding the pacific professions of the enemy; that it was probable, however, that if complaint were to be made to the British commander at New York, the practice would be restrained. He accordingly moved that a committee might be appointed to take into consideration the means of restraining such practices. The motion was seconded by Mr. PETERS. By Mr. FITZSIMMONS the motion was viewed as tending to a request of favors from Sir Guy Carleton. It was apprehended by others that, as General Washington and the commanders of separate armies, had been explicitly informed of the sense of Congress on this point, any fresh measures thereon might appear to be a censure on them; and that Congress could not ground any measure on the case in question, having no official information relative to it. The motion of Mr. LEE was negatived; but it appearing, from the vote, to be the desire of many members that some step might be taken by Congress, the motion of Mr. MADISON and Mr. MERCER, as it stands on the Journal, was proposed and agreed to, as free from all objections.

A motion was made by Mr. HAMILTON to give a brevet commission to Major Burnet, aid to General Greene, and messenger of the evacuation of Charleston, of lieutenant-colonel; there being six ayes only, the motion was lost; New Hampshire, no; Mr. Lee and Mr. Mercer, no.

The committee, consisting of Mr. Lee, &c., to whom had been referred the motion of Mr. HAMILTON, recommending to the states to authorize Congress to make abatements in the retrospective apportionment, by a valuation of land in favor of states whose ability, from year to year, had been most impaired by the war, reported that it was inexpedient to agree to such motion, because one state (Virginia) having disagreed to such a measure on a former recommendation to Congress, it was not probable that another recommendation would produce any effect; and because the difficulties of making such abatements were greater than the advantages expected from them.

Mr. LEE argued in favor of the report, and the reasons on which it was grounded. The eastern delegations were for leaving the matter open for future determination, when an apportionment should be in question.

Mr. MADISON said, he thought that the principle of the motion was conformable to justice, and within the spirit of the Confederation; according to which, apportionments ought to have been made from time to time, throughout the war, according to the existing wealth of each state; but that it would be improper to take up this case separately from other claims of equity, which would be put in by other states; that the most likely mode of obtaining the concurrence of the states in any plan. would be to comprehend in it the equitable interests of all of them; a comprehensive plan of that sort would be the only one that would cut off all sources of future controversy among the states; that as soon as the plan of revenue should be prepared for recommendation to the states, it would be proper for Congress to take into consideration, and combine with it, every object* which might facilitate its progress and for a complete provision for the tranquillity of the United States. The question on Mr. Hamilton's motion was postponed.

The letter from Mr. Morris, requesting that the injunction of secrecy might be withdrawn from his preceding letter, signifying to Congress his purpose of resigning, was committed.

Thursday,*February* 27.

On the report of the committee on Mr. Morris's letter, the injunction of secrecy was taken off without dissent or observation.

The attention of Congress was recalled to the subject of half-pay by Messrs. DYER and WOLCOTT, in order to introduce a reconsideration of the mode of referring it separately to the states to provide for their own lines.

Mr. MERCER favored the reconsideration, representing the commutation proposed as tending, in common with the funding of other debts, to establish and perpetuate a

moneyed interest in the United States; that this moneyed interest would gain the ascendence of the landed interest; would resort to places of luxury and splendor, and, by their example and influence, become dangerous to our republican constitutions. He said, however, that the variances of opinion and indecision of Congress were alarming, and required that something should be done; that it would be better to new-model the Confederation, or attempt any thing, rather than to do nothing.

Mr. MADISON reminded Congress that the commutation proposed was introduced as a compromise with those to whom the idea of pensions was obnoxious, and observed, that those whose scruples had been relieved by it had rendered it no less obnoxious than before, by stigmatizing it with the name of a perpetuity. He said, the public situation was truly deplorable. If the payment of the capital of the public debts was suggested, it was said, and truly said, to be impossible; if funding them and paying the interest was proposed, it was exclaimed against as establishing a dangerous moneyed interest, as corrupting the public manners, as administering poison to our republican constitutions. He said, he wished the revenue to be established to be such as would extinguish the capital, as well as pay the interest, within the shortest possible period, and was as much opposed to perpetuating the public burdens as any one; but that the discharge of them in some form or other was essential, and that the consequences predicted therefrom could not be more heterogeneous to our republican character and constitutions than a violation of the maxims of good faith and common honesty. It was agreed that the report for commuting half-pay should lie on the table till to-morrow, in order to give an opportunity to the delegates of Connecticut to make any proposition relative thereto which they should judge proper.

The report of the committee, consisting of Mr. Gorham, Mr. Hamilton, Mr. Madison, Mr. Rutledge, and Mr. Fitzsimmons, was taken up. It was proposed that, in addition to the impost of five per cent., *ad valorem,* the states be requested to enable Congress to collect a duty of one eighth of a dollar per bushel on salt imported; of six ninetieths per gallon on all wines, do; and of three ninetieths per gallon on all rum and brandy, do.

On the first article it was observed, on the part of the Eastern States, that this would press peculiarly hard on them, on account of the salt consumed in the fisheries; and that it would, besides, be injurious to the national interest by adding to the cost of fish; and a drawback was suggested.

On the other side, it was observed that the warmer climate and more dispersed settlements of the Southern States required a greater consumption of salt for their provisions; that salt might and would be conveyed to the fisheries without previous importation; that the effect of the duty was too inconsiderable to be felt in the cost of fish; and that the rum in the North-Eastern States being, in a great degree, manufactured at home, they would have greater advantage, in this respect, than the other states could have in the article of salt; that a drawback could not be executed in our complicated government with ease or certainty.

Mr. MERCER, on this occasion, declared, that, although he thought those who opposed a general revenue right in their principles, yet, as they appeared to have

formed no plan adequate to the public exigencies, and as he was convinced of the necessity of doing something, he should depart from his first resolution, and strike in with those who were pursuing the plan of a general revenue.

Mr. HOLTEN said, he had come lately into Congress with a predetermination against any measures, for discharging the public engagements, other than those pointed out in the Confederation, and that he had hitherto acted accordingly; but that he saw now so clearly the necessity of making provision for that object, and the inadequacy of the Confederation thereto, that he should concur in recommending to the states a plan of a general revenue.

A question being proposed on the duties on salt, there were nine ayes; New Hampshire alone being no; Rhode Island not present.

It was urged, by some, that the duty on wine should be augmented; but it appeared, on discussion, and some calculations, that the temptation to smuggling would be rendered too strong, and the revenue thereby diminished. Mr. BLAND proposed, that instead of a duty on the gallon, an *ad valorem* duty should be laid on wine; and this idea, after some loose discussion, was agreed to, few of the members interesting themselves therein, and some of them having previously retired from Congress.

Friday,*February* 28.

A motion was made by Mr. WOLCOTT and Mr. DYER, to refer the half-pay to the states, little differing from the late motion of Mr. Gilman, except that it specified five years' whole pay as the proper ground of composition with the officers of the respective lines. On this proposition the arguments used for and against Mr. Gilman's motion were recapitulated. It was negatived, Connecticut alone answering in the affirmative, and no division being called for.

On the question to agree to the report for a commutation of five years' whole pay, there being seven ayes only, it was considered whether this was an appropriation, or a new ascertainment of a sum of money necessary for the public service. Some were of opinion, at first, that it did not fall under that description, viz., of an appropriation. Finally, the contrary opinion was deemed, almost unanimously, safest, as well as the most accurate. Another question was, whether seven or nine votes were to decide doubts; whether seven or nine were requisite on any question. Some were of opinion that the secretary ought to make an entry according to his own judgment, and that that entry should stand unless altered by a positive instruction from Congress. To this it was objected, that it would make the secretary the sovereign in many cases, since a reversal of his entry would be impossible, whatever that entry might be; that, particularly, he might enter seven votes to be affirmative on a question where nine were necessary, and if supported in it by a few states it would be irrevocable. It was said, by others, that the safest rule would be to require nine votes to decide, in all cases of doubt, whether nine or seven were necessary. To this it was objected, that one or two states, and in any situation six states, might, by raising doubts, stop seven from acting in any case which they disapproved. Fortunately, on the case in question, there

were nine states of opinion that nine were requisite; so the difficulty was got over for the present.

On a reconsideration of the question whether the duty on wine should be on the quantity or on the value, the mode reported by the committee was reinstated, and the whole report recommitted, to be included with the five per cent., *ad valorem,* in an act of recommendation to the states.

Monday,*March* 3.

The committee on revenues reported, in addition to the former articles recommended by them, a duty of two thirds of a dollar per one hundred and twelve pounds on all brown sugars; one dollar on all powdered, lumped, and clayed sugars, other than loaf sugars; one and one third of a dollar per one hundred and twelve pounds on all loaf sugars; one thirtieth of a dollar per pound on all Bohea teas, and one fifteenth of a dollar on all finer India teas. This report, without debate or opposition, was recommitted, to be incorporated with the general plan.

Tuesday,*March* 4, and Wednesday,*March* 5.

The motion of Mr. HAMILTON, on the Journal, relative to abatement of the quotas of distressed states, was rejected, partly because the principle was disapproved by some, and partly because it was thought improper to be separated from other objects to be recommended to the states. The latter motive produced the motion for postponing, which was lost.

The committee to whom had been referred the letters of resignation of Mr. Morris, reported, as their opinion, that it was not necessary for Congress immediately to take any steps thereon. They considered the resignation as conditional, and that, if it should eventually take place at the time designated, there was no necessity for immediate provision to be made.

Mr. BLAND moved, “that a committee be appointed to devise the most proper means of arranging the department of finance.”

This motion produced, on these two days, lengthy and warm debates; Mr. LEE and Mr. BLAND, on one side, disparaging the administration of Mr. Morris, and throwing oblique censure on his character. They considered his letter as an insult to Congress; and Mr. LEE declared that the man who had published to all the world such a picture of our national character and finances was unfit to be a minister of the latter. On the other side, Mr. WILSON and Mr. HAMILTON went into a copious defence and panegyric of Mr. Morris; the ruin in which his resignation, if it should take place, would involve public credit and all the operations dependent on it; and the decency, though firmness, of his letters. The former observed, that the declaration of Mr. Morris, that he would not be the minister of injustice, could not be meant to reflect on Congress, because they had declared the funds desired by Mr. Morris to be necessary; and that the friends of the latter could not wish for a more honorable occasion for his retreat from public life, if they did not prefer the public interest to considerations of

friendship. Other members were divided as to the propriety of the letters in question. In general, however, they were thought reprehensible; as in general, also, a conviction prevailed of the personal merit and public importance of Mr. Morris. All impartial members foresaw the most alarming consequences from his resignation. The prevailing objection to Mr. Bland's motion was, that its avowed object and tendency was to reëstablish a *board,* in place of a single minister of finance. Those who apprehended that, ultimately, this might be unavoidable, thought it so objectionable that nothing but the last necessity would justify it. The motion of Mr. BLAND was lost, and a committee appointed, generally, on the letters of Mr. Morris.14

Thursday,*March* 6.

The committee on revenue made a report, which was ordered to be printed for each member, and to be taken up on Monday next.

Friday,*March* 7.

Printed copies of the report above-mentioned were delivered to each member, as follows, viz.:

1. "*Resolved,* That it be recommended to the several states, as indispensably necessary to the restoration of public credit, and the punctual and honorable discharge of the public debts, to vest in the United States, in Congress assembled, a power to levy, for the use of the United States, a duty of five per cent., *ad valorem,* at the time and place of importation, upon all goods, wares, and merchandises of foreign growth and manufactures, which may be imported into any of the said states from any foreign port, island, or plantation, except arms, ammunition, clothing, and other articles imported on account of the United States, or any of them; and except wool-cards, cotton-cards, and wire for making them; and also except salt during the war.

2. "Also, a like duty of five per cent., *ad valorem,* on all prizes and prize goods condemned in the Court of Admiralty of these United States as lawful prize.

3. "Also, to levy a duty of one eighth of a dollar per bushel on all salt, imported as aforesaid, after the war; one fifteenth of a dollar per gallon on all wines; one thirtieth of a dollar per gallon on all rum and brandy; two thirds of a dollar per one hundred and twelve pounds on all brown sugars; one dollar per one hundred and twelve pounds on all powdered, lump, and clayed sugars, other than loaf sugars; one and one third of a dollar per one hundred and twelve pounds on all loaf sugars; one thirtieth of a dollar per pound on all Bohea tea; and one fifteenth of a dollar per pound on all finer India teas, imported as aforesaid, after — —, in addition to the five per cent above mentioned.

4. "Provided, that none of the said duties shall be applied to any other purpose than the discharge of the interest, or principal, of the debts which shall have been contracted on the faith of the United States for supporting the present war, nor be continued for a longer term than twenty-five years; and provided, that the collectors of the said duties shall be appointed by the states within which their offices are to be

respectively exercised; but when so appointed shall be amenable to, and removable by, the United States, in Congress assembled, alone; and, in case any state shall not make such appointment within — —, after notice given for that purpose, the appointment may then be made by the United States, in Congress assembled.

5. "That it be further recommended to the several states to establish for a like term, not exceeding twenty-five years, and to appropriate to the discharge of the interest and principal of the debts which shall have been contracted on the faith of the United States, for supporting the present war, substantial and effectual revenues, of such a nature as they may respectively judge most convenient, to the amount of — — —, and in the proportion following, viz.:

* * * * * * * * *

The said revenues to be collected by persons appointed as aforesaid, but to be carried to the separate credit of the states within which they shall be collected, and be liquidated and adjusted among the states according to the quotas which may from time to time be allotted to them.

6. "That an annual account of the proceeds and application of the afore mentioned revenues shall be made out and transmitted to the several states, distinguishing the proceeds of each of the specified articles, and the amount of the whole revenue received from each state.

7. "That none of the preceding resolutions shall take effect until all of them shall be acceded to by every state; after which accession, however, they shall be considered as forming a mutual compact among all the states, and shall be irrevocable by any one or more of them without the concurrence of the whole, or a majority, of the United States in Congress assembled.

8. "That, as a further means, as well of hastening the extinguishment of the debts as of establishing the harmony of the United States, it be recommended to the states which have passed no acts towards complying with the resolutions of Congress of the sixth of September and the tenth of October, 1780, relative to territorial cessions, to make the liberal cessions therein recommended; and to the states which may have passed acts complying with the said resolutions in part only, to revise and complete such compliance.

9. "That, in order to remove all objections against a retrospective application of the constitutional rule of apportioning to the several states the charges and expenses which shall have been supplied for the common defence or general welfare, it be recommended to them to enable Congress to make such equitable exceptions and abatements as the particular circumstances of the states, from time to time, during the war, may be found to require.

10. "That, conformably to the liberal principles on which these recommendations are founded, and with a view to a more amicable and complete adjustment of all accounts between the United States and individual states, all reasonable expenses which shall

have been incurred by the states without the sanction of Congress, in their defence against, or attacks upon British or savage enemies, either by sea or by land, and which shall be supported by satisfactory proofs, shall be considered as part of the common charges incident to the present war, and be allowed as such.

11. "That, as a more convenient and certain rule of ascertaining the proportions to be supplied by the states respectively, to the common treasury, the following alteration, in the Articles of Confederation and Perpetual Union between these states, be, and the same is hereby, agreed to in Congress; and the several states are advised to authorize their respective delegates to subscribe and ratify the same, as part of the said instrument of union, in the words following, to wit:—

" 'So much of the eighth of the Articles of Confederation and Perpetual Union between the thirteen states of America as is contained in the words following, to wit,—"All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state granted to, or surveyed for, any person, as such land, and the buildings and improvements thereon, shall be estimated according to such mode as the United States in Congress assembled shall, from time to time, direct and appoint,"—is hereby revoked and made void, and in place thereof it is declared and concluded, the same having been agreed to in a Congress of the United States, that all chrges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the number of inhabitants, of every age, sex, and condition, except Indians not paying taxes in each state; which number shall be triennially taken and transmitted to the United States, in Congress assembled, in such mode as they shall direct and appoint; provided, always, that in such numeration no persons shall be included who are bound to servitude for life, according to the laws of the state to which they belong, other than such as may be between the ages of* —years.' "

Monday,*March* 10.

The committee, consisting of Mr. Carroll, Mr. Dyer, and Mr. Mifflin, to whom was referred the report of the committee on two paragraphs of a report of the grand committee, brought in a report; and the report of the committee being taken into consideration, and amended, so as to read as follows,—

"That such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the sum of five years' full pay, in money or securities, on interest at six per cent. per annum, at the option of Congress, instead of the half-pay promised for life by the resolution of the twenty-first of October, 1780; the said securities to be such as shall be given to the other creditors of the United States; provided that it be at the option of the lines of the respective states, and not of officers individually in those lines, to accept or refuse the same; that all officers who have retired from service upon the promise of half-pay for life shall be entitled to the

benefits of the above resolution; provided that those of the line of each state collectively shall agree thereto; that the same commutation shall extend to the corps not belonging to the lines of particular states, the acceptance or refusal to be determined by corps; that all officers entitled to half-pay for life, not included in the above resolution, may, collectively, agree to accept or refuse the commutation,"—

much debate passed relative to the proposed commutation of half-pay; some wishing it to take place on condition only that a majority of the whole army should concur; others preferring the plan above expressed, and not agreed to.

Tuesday,*March* 11.

The report entered on Friday, the 7th of March, was taken into consideration. It had been sent, by order of Congress, to the superintendent of finance for his remarks, which were also on the table. These remarks were, in substance, that it would be better to turn the five per cent., *ad valorem,* into a tariff, founded on an enumeration of the several classes of imports, to which ought to be added a few articles of exports; that, instead of an apportionment of the residue on the states, other general revenues—from a land-tax, reduced to one fourth of a dollar per hundred acres, with a house-tax, regulated by the numbers of windows, and an excise on all spirituous liquors, to be collected at the place of distillery—ought to be substituted, and, as well as the duties on trade, made coëxistent with the public debts; the whole to be collected by persons appointed by Congress alone. And that an alternative ought to be held out to the states, either to establish the permanent revenues for the interest, or to comply with a constitutional demand of the principal within a very short period.

In order to ascertain the sense of Congress on these ideas, it was proposed that the following short questions should be taken:—

1. Shall any taxes, to operate generally throughout the states, be recommended by Congress, other than duties on foreign commerce?

2. Shall the five per cent., *ad valorem,* be exchanged for a tariff?

3. Shall the alternative be adopted, as proposed by the superintendent of finance?

On the first question the states were—New Hampshire, no; Connecticut, no New Jersey, no; Maryland, no; Virginia, no; six noes and five ayes—lost.

On the second question there were seven ayes.

The third question was not put, its impropriety being generally proclaimed.

In consequence of the second vote in favor of a tariff, the three first paragraphs of the report were recommitted, together with the letter from the superintendent of finance.

On the fourth paragraph, on motion of Mr. Dyer, after the word "war," in the fifth line, was inserted "agreeably to the resolution of the 16th of December last."

A motion was made by Mr. HAMILTON and Mr. WILSON to strike out the limitation of twenty-five years, and to make the revenue coexistent with the debts. This question was lost, the states being—New Hampshire, no; Massachusetts, no; Connecticut, divided; New York, ay; New Jersey, ay; Pennsylvania, ay; Delaware, ay; Maryland, ay; Virginia, no; North Carolina, ay; South Carolina, no.

A motion was made by Mr. HAMILTON and Mr. WILSON to strike out the clauses relative to the appointment of collectors, and to provide that the collectors should be inhabitants of the states within which they should collect; should be nominated by Congress, and appointed by the states; and in case such nomination should not be accepted or rejected within—days, it should stand good. On this question there were five ayes and six noes.

Wednesday, 12th, Thursday, 13th, Friday, 14th,
and Saturday, 15th, of *March*.

These days were employed in reading the despatches brought on Wednesday morning by Captain Barney, commanding the Washington packet. They were dated from December the 4th to the 24th, from the ministers plenipotentiary for peace, with journals of preceding transactions: and were accompanied by the preliminary articles signed on the 30th of November, between the said ministers and Mr. Oswald, the British minister.

The terms granted to America appeared to Congress, on the whole, extremely liberal. It was observed by several, however, that the stipulation obliging Congress to recommend to the states a restitution of confiscated property, although it could scarcely be understood that the states would comply, had the appearance of sacrificing the dignity of Congress to the pride of the British king.

The separate and secret manner in which our ministers had proceeded with respect to France, and the confidential manner with respect to the British ministers, affected different members of Congress differently. Many of the most judicious members thought they had all been, in some measure, ensnared by the dexterity of the British minister; and particularly disapproved of the conduct of Mr. Jay, in submitting to the enemy his jealousy of the French, without even the knowledge of Dr. Franklin, and of the unguarded manner in which he, Mr. Adams, and Dr. Franklin, had given, in writing, sentiments unfriendly to our ally, and serving as weapons for the insidious policy of the enemy. The separate article was most offensive, being considered as obtained by Great Britain, not for the sake of the territory ceded to her, but as a means of disuniting the United States and France, as inconsistent with the spirit of the alliance, and a dishonorable departure from the candor, rectitude, and plain dealing professed by Congress. The dilemma in which Congress were placed was sorely felt. If they should communicate to the French minister every thing, they exposed their own ministers, destroyed all confidence in them on the part of France, and might engage them in dangerous factions against Congress, which was the more to be apprehended, as the terms obtained by their management were popular in their nature. If Congress should conceal every thing, and the French court should, either from the enemy or otherwise, come to the knowledge of it, all confidence would be at an end

between the allies; the enemy might be encouraged by it to make fresh experiments, and the public safety as well as the national honor be endangered. Upon the whole, it was thought and observed by many that our ministers, particularly Mr. Jay, instead of making allowances for, and affording facilities to France, in her delicate situation between Spain and the United States, had joined with the enemy in taking advantage of it to increase her perplexity; and that they had made the safety of their country depend on the sincerity of Lord Shelburne, which was suspected by all the world besides, and even by most of themselves. Se Mr. Laurens's letter, December the 24th.

The displeasure of the French court at the neglect of our ministers to maintain a confidential intercourse, and particularly to communicate the preliminary articles before they were signed, was not only signified to the secretary of foreign affairs, but to sundry members, by the Chevalier de la Luzerne. To the former he showed a letter from Count de Vergennes, directing him to remonstrate to Congress against the conduct of the American ministers, which a subsequent letter countermanded, alleging that Dr. Franklin had given some explanations that had been admitted; and told Mr. Livingston that the American ministers had deceived him (De Vergennes) by telling him, a few days before the preliminary articles were signed, that the agreement on them was at a distance; that when he carried the articles signed into council, the king expressed great indignation, and asked, if the Americans served him thus before peace was made, and whilst they were begging for aids, what was to be expected after peace, &c. To several members he mentioned that the king had been surprised and displeased, and that he said he did not think he had such allies to deal with. To one of them, who asked whether the court of France meant to complain of them to Congress, M. Marbois answered that great powers never *complained,* but that they *felt* and *remembered.* It did not appear, from any circumstances, that the separate article was known to the court of France, or to the Chevalier de la Luzerne.

The publication of the preliminary articles, excepting the separate article in the newspaper, was not a deliberate act of Congress. A hasty question for enjoining secrecy on certain parts of the despatches, which included those articles, was lost; and copies having been taken by members, and some of them handed to the delegates of Pennsylvania, one of them reached the printer. When the publication appeared, Congress in general regretted it, not only as tending too much to lull the states, but as leading France into suspicions that Congress favored the premature signature of the articles, and were, at least, willing to remove, in the minds of the people, the blame of delaying peace from Great Britain to France.15

Monday,*March* 17.

A letter was received from General Washington, enclosing two anonymous and inflammatory exhortations to the army to assemble, for the purpose of seeking, by other means, that justice which their country showed no disposition to afford them. The steps taken by the general to avert the gathering storm, and his professions of inflexible adherence to his duty to Congress and to his country, excited the most affectionate sentiments towards him. By private letters from the army, and other circumstances, there appeared good ground for suspecting that the civil creditors were intriguing, in order to inflame the army into such desperation as would produce a

general provision for the public debts. These papers were committed to Mr. Gilman, Mr. Dyer, Mr. Clark, Mr. Rutledge, and Mr. Mercer. The appointment of these gentleman was brought about by a few members, who wished to saddle with this embarrassment the men who had opposed the measures necessary for satisfying the army, viz., the half-pay and permanent funds; against one or other of which the individuals in question had voted.

This alarming intelligence from the army, added to the critical situation to which our affairs in Europe were reduced by the variance of our ministers with our ally, and to the difficulty of establishing the means of fulfilling the engagements and securing the harmony of the United States, and to the confusions apprehended from the approaching resignation of the superintendent of finance, gave peculiar awe and solemnity to the present moment, and oppressed the minds of Congress with an anxiety and distress which had been scarcely felt in any period of the revolution.

Tuesday,*March* 18.

On the report of the committee to whom the three paragraphs of the report on revenues (see March the 6th and 7th had been recommitted, the said paragraphs were expunged, so as to admit the following amendments, which took place without opposition, viz.:—

"*Resolved* That it be recommended to the several states, as indispensably necessary to the restoration of public credit and the punctual and honorable discharge of the public debts, to vest in the United States in Congress assembled a power to levy, for the use of the United States a duty

Upon all rum of Jamaica proof, per gallon, of	4	ninetieths of a dollar
Upon all other spirituous liquors,	3	ninetieths of a dollar
Upon Modern wine,	12	ninetieths of a dollar
Upon the wines of Lisbon, Oporto, those called Sherry, and upon all French wines,	6	ninetieths of a dollar
Upon the wines called Malluga or Tenerifle,	5	ninetieths of a dollar
Upon all other wines,	4	ninetieths of a dollar
Upon common Bohea tea, per lb.	6	ninetieths of a dollar
Upon all other teas,	24	ninetieths of a dollar
Upon pepper, per lb.	3	ninetieths of a dollar
Upon brown sugar, per lb.	½	ninetieths of a dollar
Upon loaf sugar,	2	ninetieths of a dollar
Upon all other sugars,	1	ninetieths of a dollar
Upon molasses, per gallon,	1	ninetieths of a dollar
Upon cocoa and coffee, per lb.	1	ninetieths of a dollar
Upon salt, after the war, per bushel,	1	eighth of a dollar

"And upon all goods, except arms, ammunition, and clothing, or other articles* imported for the use of the United States, a duty of five per cent., *ad valorem:*

"*Provided,* that there be allowed a bounty of one eighth of a dollar for every quintal of dried fish exported from the United States, and a like sum for every barrel of pickled fish, beef, or pork, to be paid or allowed to the exporter thereof, at the port from which they shall be so exported."

The arguments urged by Mr. WILSON in behalf of his motion for adding "also a tax of one quarter of a dollar per hundred acres on all located and surveyed lands within each of the states," other than those heretofore generally urged, were, that it was more moderate than had been paid before the revolution, and it could not be supposed the people would grudge to pay, as the price of their liberty, what they formerly paid to their oppressors; that if it was unequal, this inequality would be corrected by the states in other taxes; that, as the tax on trade would fall chiefly on the inhabitants of the

lower country, who consumed the imports, the tax on land would affect those who were remote from the sea, and consumed little.

On the opposite side, it was alleged that such a tax was repugnant to the popular ideas of equality, and particularly, would never be acceded to by the Southern States, at least unless they were to be respectively credited for the amount; and, if such credit were to be given, it would be best to let the states choose such taxes as would best suit them.

A letter came in, and was read, from the secretary of foreign affairs, stating the perplexing alternative to which Congress were reduced, by the secret article relating to West Florida, either of dishonoring themselves by becoming a party to the concealment, or of wounding the feelings and destroying the influence of our ministers by disclosing the article to the French court; and proposing, as advisable, on the whole,—

1. That he be authorized to communicate the article in question to the French minister, in such manner as would best tend to remove the unfavorable impressions which might be made on the court of France as to the sincerity of Congress or their ministers.

2. That the said ministers be informed of this communication, and instructed to agree that the limit for West Florida, proposed in the separate article, be allowed to whatever power the said colony may be confirmed by a treaty of peace.

3. That it be declared to be the sense of Congress, that the preliminary articles between the United States and Great Britain are not to take effect until peace shall be actually signed between the kings of France and Great Britain.†

Ordered that to-morrow be assigned for the consideration of the said letter.

Wednesday,*March* 19.

A letter was read from the superintendent of finance, enclosing letters from Dr. Franklin, accompanied with extracts from the Count de Vergennes relative to money affairs, the superintendent thereupon declaring roundly that our credit was at an end, and that no further pecuniary aids were to be expected from Europe. Mr. RUTLEDGE denied these assertions, and expressed some indignation at them. Mr. BLAND said, that as the superintendent was of this opinion, it would be absurd for him to be minister of finance, and moved that the committee on his motion for arranging the department might be instructed to report without loss of time. This motion was negatived as censuring the committee; but it was understood to be the sense of Congress that they should report.16

The order of the day, viz., the letter from the secretary of foreign affairs, was taken up.

Mr. WOLCOTT conceived it unnecessary to waste time on the subject, as he presumed Congress would never so far censure the ministers who had obtained such terms for this country as to disavow their conduct.

Mr. CLARK was decided against communicating the separate article, which would be sacrificing meritorious ministers, and would rather injure than relieve our national honor. He admitted that the separate article put an advantage into the hands of the enemy, but did not, on the whole, deem it of any great consequence. He thought Congress ought to go no further than to inform the ministers that they were sorry for the necessity which had led them into the part they had taken, and to leave them to get rid of the embarrassment as to the separate article, in such way as they should judge best. This expedient would save Congress, and spare our ministers, who might have been governed by reasons not known to Congress.

Mr. MERCER said, that, not meaning to give offence any where, he should speak his sentiments freely. He gave it as his clear and decided opinion, that the ministers had insulted Congress by sending them assertions, without proof, as reasons for violating their instructions, and throwing themselves into the confidence of Great Britain. He observed, that France, in order to make herself equal to the enemy, had been obliged to call for aid, and had drawn Spain, against her interest, into the war; that it was probable that she had entered into some specific engagements for that purpose; that hence might be deduced the perplexity of her situation, of which advantage had been taken by Great Britain—an advantage in which our ministers had concurred—for sowing jealousies between France and the United States, and of which further advantage would be taken to alienate the minds of the people of this country from their ally, by presenting him as the obstacle to peace. The British court, he said, having gained this point, may easily frustrate the negotiation, and renew the war against divided enemies. He approved of the conduct of the Count de Vergennes in promoting a treaty, under the first commission to Oswald, as preferring the substance to the shadow, and proceeding from a desire of peace. The conduct of our ministers throughout, particularly in giving in writing every thing called for by the British minister expressive of distrust of France, was a mixture of follies which had no example, was a tragedy to America, and a comedy to all the world beside. He felt inexpressible indignation at their meanly stooping, as it were, to lick the dust from the feet of a nation whose hands were still dyed with the blood of their fellow-citizens. He reprobated the chicane and low cunning which marked the journals transmitted to Congress, and contrasted them with the honesty and good faith which became all nations, and particularly an infant republic. They proved that America had at once all the follies of youth and all the vices of old age; thinks it would be necessary to recall our ministers; fears that France may be already acquainted with all the transactions of our ministers, even with the separate article, and may be only waiting the reception given to it by Congress, to see how far the hopes of cutting off the right arm of Great Britain, by supporting our revolution, may have been well founded; and, in case of our basely disappointing her, may league with our enemy for our destruction, and for a division of the spoils. He was aware of the risks to which such a league would expose France of finally losing her share, but supposed that the British Islands might be made hostages for her security. He said America was too prone to depreciate political merit, and to suspect where there was no danger; that the honor of the king of

France was dear to him; that he never would betray or injure us, unless he should be provoked, and justified by treachery on our part. For the present he acquiesced in the proposition of the secretary of foreign affairs; but, when the question should come to be put, he should be for a much more decisive resolution.

Mr. RUTLEDGE said, he hoped the character of our ministers would not be affected, much less their recall produced, by declamations against them; and that facts would be ascertained and stated, before any decision should be passed; that the Count de Vergennes had expressly declared to our ministers his desire that they might treat apart; alluded to, and animadverted upon, the instruction which submitted them to French councils; was of opinion that the separate article did not concern France, and therefore there was no necessity for communicating it to her; and that, as to Spain, she deserved nothing at our hands; she had treated us in a manner that forfeited all claim to our good offices or our confidence. She had not, as had been supposed, entered into the present war as an ally to our ally, for our support; but, as she herself had declared, as a principal, and on her own account. He said, he was for adhering religiously to the spirit and letter of the treaty with France; that our ministers had done so, and, if recalled or censured for the part they had acted, he was sure no man of spirit would take their place. He concluded with moving that the letter from the secretary of foreign affairs might be referred to a special committee, who might inquire into all the facts relative to the subject of it. Mr. HOLTEN seconded the motion.

Mr. WILLIAMSON was opposed to harsh treatment of the ministers, who had shown great ability. He said, they had not infringed the treaty, and, as they had received the concurrence of the Count de Vergennes for treating apart, they had not, in that respect, violated their instructions. He proposed that Congress should express to the ministers their concern at the separate article, and leave them to get over the embarrassment as they should find best.

Mr. MERCER, in answer to Mr. RUTLEDGE, said, that his language with respect to the ministers was justified by their refusal to obey instructions; censured with great warmth the servile confidence of Mr. Jay, in particular, in the British ministers. He said, the separate article was a reproach to our character; and that, if Congress would not themselves disclose it, he would disclose it to his constituents, who would disdain to be united with those who patronize such dishonorable proceedings. He was called to order by the president, who said that the article in question was under an injunction of secrecy, and he could not permit the order of the House to be trampled upon.

Mr. LEE took notice that obligations in national affairs, as well as others, ought to be reciprocal, and he did not know that France had ever bound herself to like engagements, as to concert of negotiation, with those into which America had at different times been drawn. He thought it highly improper to censure ministers who had negotiated well; said that it was agreeable to practice, and necessary to the end proposed for ministers, in particular emergencies, to swerve from strict instructions. France, he said, wanted to sacrifice our interests to her own, or those of Spain; that the French answer to the British memorial contained a passage which deserved attention on this subject. She answered the reproaches of perfidy contained in that memorial by observing that, obligations being reciprocal, a breach on one side absolved the other.

The Count de Vergennes, he was sure, was too much a master of negotiation not to approve the management of our ministers, instead of condemning it. No man lamented more than he did any diminution of the confidence between this country and France; but if the misfortune should ensue, it could not be denied that it had originated with France, who has endeavored to sacrifice our territorial rights—those very rights which by the treaty she had guarantied to us. He wished the preliminary articles had not been signed without the knowledge of France, but was persuaded that, in whatever light she might view it, she was too sensible of the necessity of our independence to her safety ever to abandon it. But let no censure fall on our ministers, who had, upon the whole, done what was best. He introduced the instruction of the fifteenth of June, 1781; proclaimed it to be the greatest opprobrium and stain to this country which it had ever exposed itself to; and that it was, in his judgment, the true cause of that distrust and coldness which prevailed between our ministers and the French court, inasmuch as it could not be viewed by the former without irritation and disgust. He was not surprised that those who considered France as the patron, rather than the ally, of this country, should be disposed to be obsequious to her; but he was not of that number.

Mr. HAMILTON urged the propriety of proceeding with coolness and circumspection. He thought it proper, in order to form a right judgment of the conduct of our ministers, that the views of the French and British courts should be examined. He admitted it as not improbable, that it had been the policy of France to procrastinate the definite acknowledgment of our independence on the part of Great Britain, in order to keep us more knit to herself, and until her own interests could be negotiated. The arguments, however, urged by our ministers on this subject, although strong, were not conclusive; as it was not certain that this policy, and not a desire of excluding obstacles to peace, had produced the opposition of the French court to our demands. Caution and vigilance, he thought, were justified by the appearance, and that alone. But compare this policy with that of Great Britain; survey the past cruelty and present duplicity of her councils; behold her watching every occasion, and trying every project, for dissolving the honorable ties which bind the United States to their ally; and then say on which side our resentments and jealousies ought to lie. With respect to the instructions submitting our ministers to the advice of France, he had disapproved it uniformly since it had come to his knowledge, but he had always judged it improper to repeal it. He disapproved highly of the conduct of our ministers in not showing the preliminary articles to our ally before they signed them, and still more so of their agreeing to the separate article. This conduct gave an advantage to the enemy, which they would not fail to improve for the purpose of inspiring France with indignation and distrust of the United States. He did not apprehend (with Mr. Mercer) any danger of a coalition between France and Great Britain against America, but foresaw the destruction of mutual confidence between France and the United States, which would be likely to ensue, and the danger which would result from it, in case the war should be continued. He observed, that Spain was an unwise nation; her policy narrow and jealous; her king old; her court divided, and the heir-apparent notoriously attached to Great Britain. From these circumstances he inferred an apprehension, that when Spain should come to know the part taken by America with respect to her, a separate treaty of peace might be resorted to. He thought a middle course best with respect to our ministers; that they ought to be commended in general;

but that the communication of the separate article ought to take place. He observed, that our ministers were divided as to the policy of the court of France, but that they all were agreed in the necessity of being on the watch against Great Britain. He apprehended that if the ministers were to be recalled or reprehended, they would be disgusted, and head and foment parties in this country. He observed, particularly with respect to Mr. Jay, that, although he was a man of profound sagacity and pure integrity, yet he was of a suspicious temper, and that this trait might explain the extraordinary jealousies which he professed. He finally proposed that the ministers should be commended, and the separate article communicated. This motion was seconded by Mr. OSGOOD, as compared, however, with the proposition of the secretary for foreign affairs, and so far only as to be referred to a committee.

Mr. PETERS favored a moderate course, as most advisable. He thought it necessary that the separate article should be communicated, but that it would be less painful to the feelings of the ministers if the doing it were left to themselves; and was also in favor of giving the territory, annexed by the separate article to West Florida, to such power as might be vested with that colony in the treaty of peace.

Mr. BLAND said he was glad that every one seemed, at length, to be struck with the impropriety of the instruction submitting our ministers to the advice of the French court. He represented it as the cause of all our difficulties, and moved that it might be referred to the committee, with the several propositions which had been made. Mr. LEE seconded the motion.

Mr. WILSON objected to Mr. BLAND'S motion, as not being in order. When moved in order, perhaps he might not oppose the substance of it. He said, he had never seen nor heard of the instruction it referred to until this morning, and that it had really astonished him; that this country ought to maintain an upright posture between all nations. But, however objectionable this step might have been in Congress, the magnanimity of our ally in declining to obtrude his advice on our ministers ought to have been a fresh motive to their confidence and respect. Although they deserved commendation in general for their services, in this respect they do not. He was of opinion, that the spirit of the treaty with France forbade the signing of the preliminary articles without her consent, and that the separate article ought to be disclosed; but as the merits of our ministers entitled them to the mildest and most delicate mode in which it could be done, he wished the communication to be left to themselves, as they would be the best judges of the explanation which ought to be made for the concealment; and their feelings would be less wounded than if it were made without their intervention. He observed, that the separate article was not important in itself, and became so only by the mysterious silence in which it was wrapped up. A candid and open declaration from our ministers of the circumstances under which they acted, and the necessity produced by them of pursuing the course marked out by the interest of their country, would have been satisfactory to our ally—would have saved their own honor—and would not have endangered the objects for which they were negotiating.

Mr. HIGGINSON contended, that the facts stated by our ministers justified the part they had taken.

Mr. MADISON expressed his surprise at the attempts made to fix the blame of all our embarrassments on the instruction of June the fifteenth, 1781, when it appeared that no use had been made of the power given by it to the court of France that our Ministers had construed it in such a way as to leave them at full liberty and that no one in Congress pretended to blame them on that account. For himself, he was persuaded that their construction was just; the advice of France having been made a guide to them only in cases where the question respected the concessions of the United States to Great Britain necessary and proper for obtaining peace and an acknowledgment of independence; not where it respected concessions to other powers, and for other purposes. He reminded Congress of the change which had taken place in our affairs since that instruction was passed; and remarked the probability that many who were now, perhaps, the loudest in disclaiming, would, under the circumstances of that period, have been the foremost to adopt it.* He admitted, that the change of circumstances had rendered it inapplicable, but thought an express repeal of it might, at this crisis at least, have a bad effect. The instructions, he observed, for disregarding which our ministers had been blamed, and which, if obeyed, would have prevented the dilemma now felt, were those which required them to act in concert and in confidence with our ally; and these instructions, he said, had been repeatedly confirmed, in every stage of the revolution, by unanimous votes of Congress; several of the gentlemen present,† who now justified our ministers, having concurred in them, and one of them‡ having penned two of the acts, in one of which Congress went farther than they had done in any preceding act, by declaring that they would not make peace until the interests of our allies and friends, as well as of the United States, should be provided for.

As to the propriety of communicating to our ally the separate article, he thought it resulted clearly from considerations both of national honor and national security. He said, that Congress, having repeatedly assured their ally that they would take no step in a negotiation but in concert and in confidence with him, and having even published to the world solemn declarations to the same effect, would, if they abetted this concealment of their ministers, be considered by all nations as devoid of all constancy and good faith; unless a breach of these assurances and declarations could be justified by an absolute necessity, or some perfidy on the part of France; that it was manifest no such necessity could be pleaded; and as to perfidy on the part of France, nothing but suspicions and equivocal circumstances had been quoted in evidence of it,—and even in these it appeared that our ministers were divided; that the embarrassment in which France was placed by the interfering claims of Spain with the United States must have been foreseen by our ministers, and that the impartial public would expect that, instead of coöperating with Great Britain in taking advantage of this embarrassment, they ought to have made every allowance and given every facility to it, consistent with a regard to the rights of their constituents; that, admitting every fact alleged by our ministers to be true, it could by no means be inferred that the opposition made by France to our claims was the effect of any hostile or ambitious designs against them, or of any other design than that of reconciling them with those of Spain; that the hostile aspect which the separate article, as well as the concealment of it, bore to Spain, would be regarded by the impartial world as a dishonorable alliance with our enemies against the interests of our friends; but notwithstanding the disappointments and even indignities which the United States had received from

Spain, it could neither be denied nor concealed that the former had derived many substantial advantages from her taking part in the war, and had even obtained some pecuniary aids; that the United States had made professions corresponding with those obligations; that they had testified the important light in which they considered the support resulting to their cause from the arms of Spain by the importunity with which they had courted her alliance, by the concessions with which they had offered to purchase it, and by the anxiety which they expressed at every appearance of her separate negotiations for a peace with the common enemy.

That our national safety would be endangered by Congress making themselves a party to the concealment of the separate article, he thought could be questioned by no one. No definitive treaty of peace, he observed, had as yet taken place; the important articles between some of the belligerent parties had not even been adjusted; our insidious enemy was evidently laboring to sow dissensions among them; the incaution of our ministers had but too much facilitated them between the United States and France; a renewal of the war, therefore, in some form or other, was still to be apprehended; and what would be our situation if France and Spain had no confidence in us,—and what confidence could they have, if we did not disclaim the policy which had been followed by our ministers?

He took notice of the intimation given by the British minister to Mr. Adams, of an intended expedition from New York against West Florida, as a proof of the illicit confidence into which our ministers had been drawn, and urged the indispensable duty of Congress to communicate it to those concerned in it. He hoped if a committee should be appointed—for which, however, he saw no necessity—that this would be included in their report, and that their report would be made with as little delay as possible.

In the event, the letter from the secretary of foreign affairs, with all the despatches, and the several propositions which had been made, were committed to Mr. Wilson, Mr. Gorham, Mr. Rutledge, Mr. Clark, and Mr. Hamilton.

Thursday,*March* 20.

An instruction from the legislature of Virginia to their delegates, against admitting into the treaty of peace any stipulation for restoring confiscated property, was laid before Congress.

Also, resolutions of the executive council of Pennsylvania, requesting the delegates of that state to endeavor to obtain at least a reasonable term for making the payment of British debts stipulated in the preliminary articles lately received.

These papers were committed to Mr. Osgood, Mr. Mercer, and Mr. Fitzsimmons.

Mr. DYER, whose vote on the tenth day of March frustrated the commutation of the half-pay, made a proposition substantially the same, which was committed. This seemed to be extorted from him by the critical state of our affairs, himself personally, and his state, being opposed to it.

The motion of Mr. HAMILTON, on the Journals, was meant as a testimony on his part of the insufficiency of the report of the committee as to the establishment of revenues, and as a final trial of the sense of Congress with respect to the practicability and necessity of a *general* revenue equal to the public wants. The debates on it were chiefly a repetition of those used on former questions relative to that subject.

Mr. FITZSIMMONS, on this occasion, declared that, on mature reflection, he was convinced that a *complete* general revenue was unattainable from the states, was impracticable in the hands of Congress, and that the modified provision reported by the committee, if established by the states, would restore public credit among ourselves. He apprehended, however, that no *limited* funds would procure loans abroad, which would require finds commensurate to their duration.

Mr. HIGGINSON described all attempts of Congress to provide for the public debts out of the mode prescribed by the Confederation as nugatory; that the states would disregard them; that the impost of five per cent. had passed in Massachusetts by two voices only in the lower, and one in the upper, house; and that the governor had never formally assented to the law; that it was probable this law would be repealed, and almost certain that the extensive plans of Congress would be reprobated.

Friday,*March* 21.

The report on revenue was taken into consideration, and the fifth and sixth paragraphs, after discussion, being judged not sufficiently explicit, were recommitted to be made more so.

A motion was made by Mr. CLARK, seconded by Mr. BLAND, to complete so much of the report as related to an impost on trade, and send it to the states immediately, apart from the residue.

In support of this motion, it was urged that the impost was distinct in its nature, was more likely to be adopted, and ought not, therefore, to be delayed or hazarded by a connection with the other parts of the report. On the other side, it was contended that it was the duty of Congress to provide a system adequate to the public exigencies; and that such a system would be more likely to be adopted by the states than any partial or detached provision, as it would comprise objects agreeable, as well as disagreeable, to each of the states, and as all of them would feel a greater readiness to make mutual concessions, and to disregard local considerations, in proportion to the magnitude of the object held out to them.

The motion was disagreed to, New Jersey being in favor of it, and several other states divided.

Saturday,*March* 22.

A letter was received from General Washington, enclosing his address to the convention of officers, with the result of their consultations. The dissipation of the cloud which seemed to have been gathering afforded great pleasure, on the whole, to Congress; but it was observable that the part which the general had found it necessary,

and thought it his duty, to take, would give birth to events much more serious, if they should not be obviated by the establishment of such funds as the general, as well as the army, had declared to be necessary.17

The report of the committee on Mr. Dyer's motion, in favor of a commutation for the half-pay, was agreed to. The preamble was objected to, but admitted at the entreaty of Mr. DYER, who supposed the considerations recited in it would tend to reconcile the state of Connecticut to the measure.

An order passed for granting thirty-five licenses for vessels belonging to Nantucket, to secure the whaling vessels against the penalty for double papers. This order was in consequence of a deputation to Congress representing the exposed situation of that island, the importance of the whale fishery to the United States, the danger of its being usurped by other nations, and the concurrence of the enemy in neutralizing such a number of vessels as would carry on the fisheries to an extent necessary for the support of the inhabitants.

The committee, to whom was referred the letter from the secretary of foreign affairs, with the foreign despatches, &c., reported,—

1. That our ministers be thanked for their zeal and services in negotiating the preliminary articles.

2. That they be instructed to make a communication of the separate article to the court of France, in such way as would best get over the concealment.

3. That the secretary of foreign affairs inform them that it is the wish of Congress that the preliminary articles had been communicated to the court of France before they had been executed.

Mr. DYER said he was opposed to the whole report; that he fully approved of every step taken by our ministers, as well towards Great Britain as towards France; that the separate article did not concern the interests of France, and therefore could not involve the good faith of the United States.

Mr. LEE agreed fully with Mr. Dyer; said that the special report of facts ought to have been made necessary for enabling Congress to form a just opinion of the conduct of the ministers; and moved, that the report might be recommitted. Mr. WOLCOTT seconded the motion, which was evidently made for the sole purpose of delay. It was opposed by Mr. CLARK, Mr. WILSON, and Mr. GORHAM, the first and last of whom had, however, no objection to postponing; by Mr. MERCER, who repeated his abhorrence of the confidence shown by our ministers to those of Great Britain; said, that it was about to realize the case of those who kicked down the ladder by which they had been elevated, and of the viper which was ready to destroy the family of the man in whose bosom it had been restored to life. He observed that it was unwise to prefer Great Britain to Spain as our neighbors in West Florida.

Mr. HIGGINSON supported the sentiments of Mr. Lee; said that the Count de Vergennes had released our ministers; and that he agreed with those who thought the

instruction of June the 15th could relate only to questions directly between Great Britain and the United States.

Mr. HOLTEN thought there was no sufficient evidence for praise or blame; and that both ought to be suspended until the true reasons should be stated by the ministers. He supposed that the separate article had been made an *ultimatum* of the preliminaries of Great Britain; and that there might also be secret articles between Great Britain and France. If the latter were displeased, he conceived that she would officially notify it. Mr. RUTLEDGE was against recommitting, but for postponing. The motion for recommitting was disagreed to; but several states being for postponing, the vote was no index as to the main question.

It had been talked of, among sundry members, as very singular that the British minister should have confided to Mr. Adams an intended expedition from New York against West Florida; as very reprehensible in the latter to become the depositary of secrets hostile to the friends of his country, and that every motive of honor and prudence made it the duty of Congress to impart the matter to the Spaniards. To this effect, a motion was made by Mr. MERCER, seconded by Mr. MADISON. But it being near the usual hour of adjournment, the house being agitated by the debates on the separate article, and a large proportion of members predetermined against every measure which seemed in any manner to blame the ministers, and the eastern delegates, in general, extremely jealous of the honor of Mr. Adams, an adjournment was pressed and carried without any vote on the motion.

Monday,*March* 24.

On the day preceding this, intelligence arrived, which was this day laid before Congress, that the preliminaries for a general peace had been signed on the 20th of January. This intelligence was brought by a French cutter from Cadiz, despatched by Count d'Estaing to notify the event to all vessels at sea, and engaged, by the zeal of the Marquis de la Fayette, to convey it to Congress. This confirmation of peace produced the greater joy, as the preceding delay, the cautions of Mr. Laurens's letter of the 24th of December, and the general suspicions of Lord Shelburne's sincerity, had rendered an immediate and general peace extremely problematical in the minds of many.18

A letter was received from General Carleton through General Washington, enclosing a copy of the preliminary articles between Great Britain and the United States, with the separate article annexed.

Mr. CARROLL, after taking notice of the embarrassment under which Congress was placed by the injunction of secrecy as to the separate article, after it had probably been disclosed in Europe, and, it now appeared, was known at New York, called the attention of Congress again to that subject.

Mr. WOLCOTT still contended that it would be premature to take any step relative to it, until further communications should be received from our ministers.

Mr. GILMAN, being of the same opinion, moved that the business be postponed. Mr. LEE seconded the motion.

Mr. WILSON conceived it indispensably necessary that something should be done; that Congress deceived themselves if they supposed that the separate article was any secret at New York after it had been announced to them from Sir Guy Carleton. He professed a high respect for the character of the ministers, which had received fresh honor from the remarkable steadiness and great abilities displayed in the negotiations; but that their conduct with respect to the separate article could not be justified. He did not consider it as any violation of the instruction of June 15, 1781, the Count de Vergennes having happily released them from the obligation of it. But he considered it, with the signing of the preliminaries secretly, as a violation of the spirit of the treaty of alliance, as well as of the unanimous professions to the court of France, unanimous instructions to our ministers, and unanimous declarations to the world, that nothing should be discussed towards peace but in confidence, and in concert with our ally. He made great allowance for the ministers; saw how they were affected, and the reasons of it; but could not subscribe to the opinion that Congress ought to pass over the separate article in the manner that had been urged; Congress ought, he said, to disapprove of it, in the softest terms that could be devised, and, at all events, not to take part in its concealment.

Mr. BLAND treated the separate article with levity and ridicule, as in no respect concerning France, but Spain, with whom we had nothing to do.

Mr. CARROLL thought that, unless something expressive of our disapprobation of the article, and of its concealment, was done, it would be an indelible stain on our character.

Mr. CLARK contended that it was still improper to take any step, either for communicating officially, or for taking off the injunction of secrecy; that the article concerned Spain, and not France; but that if it should be communicated to the latter, she would hold herself bound to communicate it to the former; that hence an embarrassment might ensue; that it was, probably, this consideration which led the ministers to the concealment, and he thought they had acted right. He described the awkwardness attending a communication of it under present circumstances; remarking, finally, that nothing had been done contrary to the treaty, and that we were in possession of sufficient materials* to justify the suspicions which had been manifested.

Mr. RUTLEDGE was strenuous for postponing the subject; said that Congress had no occasion to meddle with it; that the ministers had done right; that they had maintained the honor of the United States after Congress had given it up; that the manœuvre practised by them was common in all courts, and was justifiable against Spain, who alone was affected by it; that instructions ought to be disregarded whenever the public good required it; and that he himself would never be bound by them when he thought them improper.

Mr. MERCER combated the dangerous tendency of the doctrine maintained by Mr. Rutledge with regard to instructions; and observed that, the delegates of Virginia having been unanimously instructed not to conclude or discuss any treaty of peace but in confidence and in concert with his Most Christian Majesty, he conceived himself as much bound, as he was of himself inclined, to disapprove every other mode of proceeding; and that he should call for the yeas and nays on the question for his justification to his constituents.

Mr. BLAND tartly said that he, of course, was instructed as well as his colleague, and should himself require the yeas and nays to justify an opposite conduct; that the instructions from his constituents went no farther than to prohibit any *treaty* without the concurrence of our ally;† which prohibition had not been violated in the case before Congress.

Mr. LEE was for postponing and burying in oblivion the whole transaction. He said that delicacy to France required this; since, if any thing should be done implying censure on our ministers, it must and ought to be done in such a way as to fall ultimately on France, whose unfaithful conduct had produced and justified that of our ministers. In all national intercourse, he said, a reciprocity was to be understood; and, as France had not communicated her views and proceedings to the American plenipotentiaries, the latter were not bound to communicate theirs. All instructions he conceived to be conditional in favor of the public good; and he cited the case mentioned by Sir William Temple, in which the Dutch ministers concluded, of themselves, an act which required the previous sanction of all the members of the republic.

Mr. HAMILTON said that, whilst he despised the man who would enslave himself to the policy even of our friends, he could not but lament the overweening readiness which appeared in many to suspect every thing on that side, and to throw themselves into the bosom of our enemies. He urged the necessity of vindicating our public honor by renouncing that concealment to which it was the wish of so many to make us parties.

Mr. WILSON, in answer to Mr. Lee, observed that the case mentioned by Sir William Temple was utterly inapplicable to the case in question; adding that the conduct of France had not, on the principle of reciprocity, justified our ministers in signing the provisional preliminaries without her knowledge, no such step having been taken on her part. But whilst he found it to be his duty thus to note the faults of these gentlemen, he, with much greater pleasure, gave them praise for their firmness in refusing to treat with the British negotiator until he had produced a proper commission, in contending for the fisheries, and in adhering to our western claims.

Congress adjourned without any question.

Tuesday,*March* 25.

No Congress.

Wednesday,*March* 26.

Communication was made, through the secretary of foreign affairs, by the minister of France, as to the late negotiation, from letters received by him from the Count de Vergennes, dated in December last, and brought by the packet Washington. This communication showed, though delicately, that France was displeased with our ministers for signing the preliminary articles separately; that she had labored, by recommending mutual concessions, to compromise disputes between Spain and the United States, and that she was apprehensive that Great Britain would hereafter, as they already had endeavored to, sow discords between them. It signified that the "intimacy between our ministers and those of Great Britain" furnished a handle for this purpose.

Besides the public communication to Congress, other parts of letters from the Count de Vergennes were privately communicated to the president of Congress and to sundry members, expressing more particularly the dissatisfaction of the court of France at the conduct of our ministers, and urging the necessity of establishing permanent revenues for paying our debts and supporting a national character. The substance of these private communications, as taken on the 23d instant, by the president, is as follows:—

FINANCE.

"That the Count de Vergennes was alarmed at the extravagant demands of Dr. Franklin in behalf of the United States; that he was surprised, at the same time, that the inhabitants paid so little attention to doing something for themselves. If they could not be brought to give adequate funds for their defence during a dangerous war, it was not likely that so desirable an end could be accomplished when their fears were allayed by a general peace; that this reasoning affected the credit of the United States, and no one could be found who would risk their money under such circumstances; that the king would be glad to know what funds were provided for the security and payment of the ten millions borrowed by him in Holland; that the Count de Vergennes hardly dared to report in favor of the United States to the king and council, as money was so scarce that it would be with the greatest difficulty that even a small part of the requisition could be complied with. The causes of this scarcity were a five years' war, which had increased the expenses of government to an enormous amount—the exportation of large sums of specie to America for the support and pay of both French and English armies—the loans to America—the stoppage of bullion in South America, which prevented its flowing in the usual channels."*

A letter of a later date added,—

"That he had received the chevalier's letter of October, and rejoiced to find that Congress had provided funds for their debts, which gave him great encouragement, and he had prevailed on the comptroller-general to join him in a report to his majesty and council for six millions of livres for the United States to support the war; but assures the Chevalier de Luzerne that he must never again consent to a further application."

NEGOTIATIONS.

"He complains of being treated with great indelicacy by the American commissioners, they having signed the treaty without any confidential communication; that had France treated America with the same indelicacy, she might have signed the treaty first, as every thing between France and England was settled, but the king chose to keep faith with his allies, and, therefore, always refused to do any thing definitively till all his allies were ready; that this conduct had delayed the definitive treaty, England having considered herself as greatly strengthened by America; that Dr. Franklin waited on the Count de Vergennes, and acknowledged the indelicacy of their behavior, and had prevailed on him to bury it in oblivion; that the English were endeavoring all in their power to sow seeds of discord between our commissioners and the court of Spain, representing our claims to the westward as extravagant and inadmissible; that it became Congress to be attentive to this business, and to prevent the ill effects that it might be attended with; that the king had informed the court of Spain, that he heartily wished that the United States might enjoy a cordial coalition with his Catholic Majesty, yet he should leave the whole affair entirely to the two states, and not interfere otherwise than as by his counsel and advice, when asked; that, although the United States had not been so well treated by Spain as might have been expected, yet that his majesty wished that America might reap the advantage of a beneficial treaty with Spain; that as the peace was not yet certain, it became all the powers at war to be ready for a vigorous campaign, and hoped Congress would exert themselves to aid the common cause by some offensive operations against the enemy; but if the British should evacuate the United States, the king earnestly hoped Congress would take the most decided moasures to prevent any intercourse with the British, and particularly in the way of merchandise or supplying them with provisions, which would prove of the most dangerous tendency to the campaign in the West Indies; that the British now had hopes of opening an extensive trade with America, though the war should continue, which, if they should be disappointed it might hasten the definitive treaty, as it would raise a clamor among the people of England."19

The chevalier added,—

"That as he had misinformed his court with regard to Congress having funded their debts, on which presumption the six millions had been granted, he hoped Congress would enable him in his next despatches to give some satisfactory account to his court on this head."

Thursday,*March* 27.*

Revenues taken up as reported March 7.

The fifth paragraph in the report on revenue having been judged not sufficiently explicit, and recommitted to be made more so, the following paragraph was received in its place, viz.: "That it be further recommended to the several states, to establish, for a term limited to twenty-five years, and to appropriate," &c., (to the word 2,000,000 of dollars annually,) which proportions shall be fixed and equalized, from time to time, according to such rule as is, or may be, prescribed by the Articles of

Confederation; and in case the revenues so established and appropriated by any state shall at any time yield a sum exceeding its proportion, the excess shall be refunded to it; and in case the same shall be found to be defective, the immediate deficiency shall be made good as soon as possible, and a future deficiency guarded against by an enlargement of the revenues established; provided that, until the rule of the confederation can be applied, the proportions of the 2,000,000 of dollars aforesaid shall be as follows, viz.:

This amendment was accepted; a motion of Mr. Clark to restrain this apportionment, in the first instance, to the term of two years, being first negatived. He contended that a valuation of land would probably never take place, and that it was uncertain whether the rule of numbers would be substituted, and, therefore, that the first apportionment might be continued throughout the twenty-five years, although it must be founded on the present relative wealth of the states, which would vary every year in favor of those which are the least populous.

This reasoning was not denied; but it was thought that such a limitation might leave an interval in which no apportionment would exist, whence confusion would proceed, and that an apprehension of it would destroy public credit.

A motion was made by Mr. BLAND, seconded by Mr. LEE, to go back to the first part of the report, and instead of the word "levy" an impost of five per cent., to substitute the word "collect" an impost, &c. It was urged, in favor of this motion, that the first word imported a legislative idea, and the latter an executive only, and consequently the latter might be less obnoxious to the states. On the other side, it was said that the states would be governed more by things than by terms; that if the meaning of both was the same, an alteration was unnecessary; that if not, as seemed to be the case, an alteration would be improper. It was particularly apprehended that if the term "collect" were to be used, the states might themselves fix the *mode* of collection; whereas it was indispensable that Congress should have that power, as well that it might be varied from time to time, as circumstances or experience should dictate, as that a uniformity might be observed throughout the states. On the motion of Mr. Clark, the negative was voted by a large majority, there being four ayes only.

On the eighth paragraph, there was no argument or opposition.

The ninth paragraph being considered by several as inaccurate in point of phraseology, a motion was made by Mr. MADISON to postpone it, to take into consideration the following, to wit:—

"That, in order to remove all objections against a retrospective application of the constitutional rule to the final apportionment on the several states of the moneys and supplies actually contributed in pursuance of requisitions of Congress, it be recommended to the states to enable the United States in Congress assembled to make such equitable abatements and alterations as the particular circumstances of the states, from time to time during the war, may require, and as will divide the burden among them in proportion to their respective abilities at the periods at which they were made."

On a question of striking out, the original paragraph was agreed to without opposition. On the question to insert the amendment of Mr. Madison, the votes of the states were, five ayes, six noes, viz.: New Hampshire, Connecticut, New Jersey, Delaware, Maryland, no; the rest, ay.20

On the tenth paragraph, relative to expenses incurred by the states without the sanction of Congress, Mr. CLARK exclaimed against the unreasonableness of burdening the Union with all the extravagant expenditures of particular states, and moved that it might be struck out of the report. Mr. HELMSLEY seconded the motion.

Mr. MADISON said, that the effects of rejecting this paragraph would be so extensive, that a full consideration of it ought at least to precede such a step; that the expenses referred to in the paragraph were, in part, such as would have been previously sanctioned by Congress, if application had been made, since similar ones had been so with respect to states within the vicinity of Congress, and, therefore, complaints of injustice would follow a refusal; that another part of the expenses had been incurred in support of claims to the territory of which cessions were asked by Congress, and, therefore, these could not be expected, if the expenses incident to them should be rejected; that it was probable, if no previous assurance were given on this point, it would be made a condition by the states ceding, as the cessions of territory would be made a condition by the states most anxious to obtain them; that by these means the whole plan would be either defeated, or the part thereof in question be ultimately forced on Congress, whilst they might with a good grace yield it in the first instance; not to mention that these unliquidated and unallowed claims would produce, hereafter, such contests and heats among the states as would probably destroy the plan, even if it should be acceded to by the states without this paragraph.

Mr. DYER was in favor of the paragraph.

Mr. RUTLEDGE opposed it as letting in a flood of claims which were founded on extravagant projects of the states.

Mr. HIGGINSON and Mr. GORHAM were earnest in favor of it, remarking that the distance of Massachusetts from Congress had denied a previous sanction to the militia operations against General Burgoyne, &c. The Penobscot expedition, also, had great weight with them.

Mr. WILLIAMSON was in favor of it.

Mr. WILSON said, he had always considered this country, with respect to the war, as forming one community; and that the states which, by their remoteness from Congress, had been obliged to incur expenses for their defence without previous sanction, ought to be placed on the same footing with those which had obtained this security; but he could not agree to put them on a better, which would be the case if their expenses should be sanctioned in the lump: he proposed, therefore, that these expenses should be limited to such as had been incurred in a *necessary defence,* and of which the object in each case should be approved by Congress.

Mr. MADISON agreed that the expressions in the paragraph were very loose, and that it would be proper to make them as definite as the case would admit: he supposed, however, that all operations against the enemy, within the limits assigned to the United States, might be considered as defensive, and in that view, the expedition against Penobscot might be so called. He observed that the term *necessary* left a discretion in the judge, as well as the term *reasonable;* and that it would be best, perhaps, for Congress to determine and declare that they would constitute a tribunal of impartial persons to decide, on oath, as to the propriety of claims of states not authorized heretofore by Congress. He said, this would be a better security to the states, and would be more satisfactory, than the decisions of Congress, the members of which did not act on oath, and brought with them the spirit of advocates for their respective states, rather than of impartial judges between them. He moved that the clause, with Mr. Wilson's proposition, be recommitted, which was agreed to without opposition.

(Eleventh and twelfth paragraphs.) Mr. BLAND, in opposition, said, that the value of land was the best rule, and that, at any rate, no change should be attempted until its practicability should be tried.

Mr. MADISON thought the value of land could never be justly or satisfactorily obtained; that it would ever be a source of contentions among the states; and that, as a repetition of the valuation would be within the course of the twenty-five years it would, unless exchanged for a more simple rule, mar the whole plan.

Mr. GORHAM was in favor of the paragraphs. He represented, in strong terms, the inequality and clamors produced by valuations of land in the state of Massachusetts, and the probability of the evils being increased among the states themselves, which were less tied together, and more likely to be jealous of each other.

Mr. WILLIAMSON was in favor of the paragraphs.

Mr. WILSON was strenuous in their favor; said he was in Congress when the Articles of Confederation directing a valuation of land were agreed to; that it was the effect of the impossibility of compromising the different ideas of the Eastern and Southern States, as to the value of slaves compared with the whites, the alternative in question.

Mr. CLARK was in favor of them. He said, that he was also in Congress when this article was decided; that the Southern States would have agreed to numbers in preference to the value of land, if half their slaves only should be included; but that the Eastern States would not concur in that proposition.

It was agreed, on all sides, that, instead of fixing the proportion by ages, as the report proposed, it would be best to fix the proportion in absolute numbers. With this view, and that the blank might be filled up, the clause was recommitted.

Friday,*March* 28.

The committee last mentioned reported that two blacks be rated as one freeman.

Mr. WOLCOTT was for rating them as four to three.

Mr. CARROLL as four to one.

Mr. WILLIAMSON said, he was principled against slavery; and that he thought slaves an encumbrance to society, instead of increasing its ability to pay taxes.

Mr. HIGGINSON as four to three.

Mr. RUTLEDGE said, for the sake of the object, he would agree to rate slaves as two to one, but he sincerely thought three to one would be a juster proportion.

Mr. HOLTEN as four to three.

Mr. OSGOOD said, he did not go beyond four to three.

On a question for rating them as three to two, the votes were, New Hampshire, ay; Massachusetts, no; Rhode Island, divided; Connecticut, ay; New Jersey, ay; Pennsylvania, ay; Delaware, ay; Maryland, no; Virginia, no; North Carolina, no; South Carolina, no.

The paragraph was then postponed, by general consent, some wishing for further time to deliberate on it, but it appearing to be the general opinion that no compromise would be agreed to.

After some further discussions on the report, in which the necessity of some simple and practicable rule of apportionment came fully into view, Mr. MADISON said that, in order to give a proof of the sincerity of his professions of liberality, he would propose that slaves should be rated as five to three. Mr. RUTLEDGE seconded the motion. Mr. WILSON said, he would sacrifice his opinion on this compromise.

Mr. LEE was against changing the rule, but gave it as his opinion that two slaves were not equal to one freeman.

On the question for five to three, it passed in the affirmative; New Hampshire, ay; Massachusetts, divided; Rhode Island, no; Connecticut, no; New Jersey, ay; Pennsylvania, ay; Maryland, ay; Virginia, ay; North Carolina, ay; South Carolina, ay.

A motion was then made by Mr. BLAND, seconded by Mr. LEE, to strike out the clause so amended, and, on the question, “Shall it stand?” it passed in the negative; New Hampshire, ay; Massachusetts, no; Rhode Island, no; Connecticut, no; New Jersey, ay; Pennsylvania, ay; Delaware, no; Maryland, ay; Virginia, ay; North Carolina, ay; South Carolina, no: so the clause was struck out.

The arguments used by those who were for rating slaves high were, that the expense of feeding and clothing them was as far below that incident to freemen as their industry and ingenuity were below those of freemen; and that the warm climate within which the states having slaves lay, compared with the rigorous climate and inferior fertility of the others, ought to have great weight in the case; and that the exports of

the former states were greater than of the latter. On the other side, it was said that slaves were not put to labor as young as the children of laboring families; that, having no interest in their labor, they did as little as possible, and omitted every exertion of thought requisite to facilitate and expedite it; that if the exports of the states having slaves exceeded those of the others, their imports were in proportion, slaves being employed wholly in agriculture, not in manufactures, and that, in fact, the balance of trade formerly was much more against the Southern States than the others.

On the main question, New Hampshire, ay; Massachusetts, no; Rhode Island, no; Connecticut, no; New York, (Mr. Floyd, ay;) New Jersey, ay; Delaware, no; Maryland, ay; Virginia, ay; North Carolina, ay; South Carolina, no.

Saturday,*March* 29.

The objections urged against the motion of Mr. LEE, on the Journal, calling for a specific report of the superintendent of finance as to moneys passing through his hands, were, that the information demanded from the office of finance had, during a great part of the period, been laid before Congress, and was then actually on the table; that the term *application* of money was too indefinite, no two friends of the motion agreeing in the meaning of it; and that if it meant no more than immediate payments, under the warrants of the superintendent, to those who were to expend the money, it was unnecessary, the superintendent being already impressed with his duty on that subject; that if it meant the ultimate payment for articles or services for the public, it imposed a task that would be impracticable to the superintendent, and useless to Congress, who could no otherwise examine them than through the department of accounts, and the committees appointed half-yearly for inquiring into the whole proceedings; and that, if the motion were free from those objections, it ought to be so varied as to oblige the office of finance to report the information periodically; since it would otherwise depend on the memory or vigilance of members, and would, moreover, have the aspect of suspicion towards the officer called upon.

N. B. As the motion was made at first, the word “immediately” was used; which was changed for the words “as soon as may be,” at the instance of Mr. HOLTEN.

The object of the motion of Mr. MADISON was to define and comprehend every information practicable and necessary for Congress to know, and to enable them to judge of the fidelity of their minister, and to make it a permanent part of his duty to afford it. The clause respecting copies of receipts was found, on discussion, not to accord with the mode of conducting business, and to be too voluminous a task; but the question was taken without a convenient opportunity of correcting it. The motion was negatived.21

Monday,*March* 31.

A letter was received from the governor of Rhode Island, with resolutions of the legislature of that state, justifying the conduct of Mr. Howell.22

On the arrival of the French cutter with the account of the signing of the general preliminaries, it was thought fit by Congress to hasten the effect of them by calling in the American cruisers. It was also thought by all not amiss to notify simply the intelligence to the British commanders at New York. In addition to this, it was proposed by the secretary of foreign affairs, and urged by the delegates of Pennsylvania, by Mr. LEE, Mr. RUTLEDGE, and others, that Congress should signify their desire and expectation that hostilities should be suspended at sea on the part of the enemy. The arguments urged were, that the effusion of blood might be immediately stopped, and the trade of the country rescued from depredation. It was observed, on the other side, that such a proposition derogated from the dignity of Congress; showed an undue precipitancy; that the intelligence was not authentic enough to justify the British commanders in complying with such an overture; and, therefore, that Congress would be exposed to the mortification of a refusal. The former consideration prevailed, and a verbal sanction was given to Mr. Livingston's expressing to the said commanders the expectation of Congress. This day their answers were received. addressed to Robert R. Livingston, Esq., &c. &c. &c., declining to accede to the stopping of hostilities at sea, and urging the necessity of authentic orders from Great Britain for that purpose. With their letters, Mr. Livingston communicated resolutions proposed from his office, "that, in consequence of these letters, the orders to the American cruisers should be revoked; and that the executives should be requested to embargo all vessels." Congress were generally sensible, after the receipt of these papers, that they had committed themselves in proposing to the British commanders, at New York, a stop to naval hostilities, and were exceedingly at a loss to extricate themselves. On one side, they were unwilling to publish to the world the affront they had received, especially as no written order had been given for the correspondence; and, on the other, it was necessary that the continuance of hostilities at sea should be made known to American citizens. Some were in favor of the revocation of hostilities; others proposed, as Colonel BLAND and General MIFFLIN, that the secretary of foreign affairs should be directed, verbally, to publish the letters from Carleton and Digby. This was negatived. The superscription was animadverted upon, particularly by Mr. MERCER, who said, that the letters ought to have been sent back unopened. Finally, it was agreed that any member might take copies and send them to the press, and that the subject should lie over for further consideration.23

Tuesday,*April* 1.

Mr. GORHAM called for the order of the day—to wit, the report on revenue, &c., and observed, as a cogent reason for hastening that business, that the Eastern States, at the invitation of the legislature of Massachusetts, were, with New York, about to form a convention for regulating matters of common concern, and that if any plan should be sent out by Congress during their session, they would probably cooperate with Congress in giving effect to it.

Mr. MERCER expressed great disquietude at this information; considered it as a dangerous precedent; and that it behoved the gentleman to explain fully the objects of the convention, as it would be necessary for the Southern States to be, otherwise, very

circumspect in agreeing to any plans, on a supposition that the general confederacy was to continue.

Mr. OSGOOD said, that the sole object was to guard against an interference of taxes among states whose local situation required such precautions; and that if nothing was definitively concluded without the previous communication to, and sanction of, Congress, the Confederation could not be said to be in any manner departed from; but that, in fact, nothing was intended that could be drawn within the purview of the Federal Articles.

Mr. BLAND said, he had always considered those conventions as improper, and contravening the spirit of the federal government. He said, they had the appearance of young Congresses.

Mr. GORHAM explains as Mr. Osgood.

Mr. MADISON and Mr. HAMILTON disapproved of these partial conventions, not as absolute violations of the Confederacy, but as ultimately leading to them, and, in the mean time, exciting pernicious jealousies; the latter observing that he wished, instead of them, to see a general convention take place, and that he should soon, in pursuance of instructions from his constituents, propose to Congress a plan for that purpose; the object would be to strengthen the Federal Constitution.

Mr. WHITE informed Congress that New Hampshire had declined to accede to the plan of a convention on foot.

Mr. HIGGINSON said, that no gentleman need be alarmed at any rate, for it was pretty certain that the convention would not take place. He wished, with Mr. Hamilton, to see a general convention for the purpose of revising and amending the federal government.24

These observations having put an end to the subject, Congress resumed the report on revenue, &c. Mr. HAMILTON, who had been absent when the last question was taken for substituting numbers in place of the value of land, moved to reconsider that vote. He was seconded by Mr. OSGOOD. (See the Journal.) Those who voted differently from their former votes were influenced by the conviction of the necessity of the change, and despair on both sides of a more favorable rate of the slaves. The rate of three fifths was agreed to without opposition. On a preliminary question, the apportionment of the sum, and revision of the same, was referred to the grand committee.

The report as to the resignation of foreign ministers was taken up, and in the case of Mr. Jefferson, his mission was dispensed with; Mr. Dana's intimated return to America was approved of, unless engaged in a negotiation with the court of St. Petersburg. (See the Journal.) The eastern delegates were averse to doing any thing as to Mr. Adams until further advices should be received. Mr. Laurens was indulged, not without some opposition. The acceptance of his resignation was particularly enforced by Mr. IZARD.

Wednesday,*April* 2, Thursday,*April* 3, Friday,*April* 4,
Saturday,*April* 5.

See Journals.

26 The grand committee appointed to consider the proportions for the blanks in the report on revenue, &c., reported the following, grounded on the number of inhabitants in each state; observing that New Hampshire, Rhode Island, Connecticut, and Maryland, had produced authentic documents of their numbers; and that, in fixing the numbers of other states, they had been governed by such information as they could obtain. They also reduced the interest of the aggregate debt to two millions and a half.

	Number of Inhabitants.	Proportions of one thousand.	Proportions of one and a half millions.
New Hampshire,	82,200	35	52,500
Massachusetts,	350,000	148	222,000
Rhode Island,	50,400	21	31,500
Connecticut,	206,000	87	130,500
New York,	200,000	85	127,500
New Jersey,	130,000	55	82,500
Pennsylvania,	320,000	136	204,000
Delaware,	35,000	15	22,500
Maryland,	220,700	94	141,000
Virginia,	400,000	169	253,500
North Carolina,	170,000	72	108,000
South Carolina,	170,000	72	108,000
Georgia,	25,000	11	16,500
	2,359,300	1,000	1,500,000 annual

interest of debt, after deducting 1,000,000 of dollars, expected from impost on trade.

A committee, consisting of Mr. Hamilton, Mr. Madison, and Mr. Ellsworth, was appointed to report the proper arrangements to be taken in consequence of peace. The object was to provide a system for foreign affairs, for Indian affairs, for military and naval establishments; and also to carry into execution the regulation of weights and measures, and other articles of the Confederation not attended to during the war. To the same committee was referred a resolution of the executive council of Pennsylvania, requesting the delegates of that state to urge Congress to establish a general peace with the Indians.25

Monday,*April* 7.

The sense of Congress having been taken on the truth of the numbers reported by the grand committee, the number allotted to South Carolina was reduced to 150,000, on the representation of the delegates of that state. The delegates of New Jersey

contended also for a reduction, but were unsuccessful;—those of Virginia also, on the principle that Congress ought not to depart from the relative numbers given in 1775, without being required by actual returns, which had not been obtained, either from that state or others, whose relation would be varied. To this reasoning were opposed the verbal and credible information received from different persons, and particularly Mr. Mercer, which made the number of inhabitants in Virginia, after deducting two fifths of the slaves, exceed the number allotted to that state. Congress were almost unanimous against the reduction. A motion was made by Mr. GERVAIS, seconded by Mr. MADISON, to reduce the number of Georgia to 15,000, on the probability that their real number did not exceed it, and the cruelty of overloading a state which had been so much torn and exhausted by the war. The motion met with little support, and was almost unanimously negatived.

A letter was read from General Washington, expressing the joy of the army at the signing of the general preliminaries notified to him, and their satisfaction at the commutation of half-pay agreed to by Congress.

Tuesday,*April* 8.

Estimate of the debt of the United States, reported by the grand committee.

FOREIGN DEBT.

To the farmers general of France,	Livres 1,000,000		
To Beaumarchois,	3,000,000		
To the king of France, to the end of 1782,	28,000,000		
To the same, for 1783,	6,000,000		
	38,000,000	=$7,037,037	
Received on loan in Holland, 1,678,000 florins,		671,200	
Borrowed in Spain, by Mr. Jay,		150,000	
Interest on Dutch debt, one year, at four per cent.		26,848	
Total foreign debt,		$7,885,085	

DOMESTIC DEBT.

Loan office,	$11,463,802		
Interest unpaid for 1781,	190,000		
Interest unpaid for 1782,	687,828		
Credit to sundry persons on treasury books,	638,042		
Army debt to December 31, 1782,	5,635,618		
Unliquidated debt,	8,000,000		
Deficiencies in 1783,	2,000,000		
Total domestic debt,		$28,615,290	
Aggregate debt,		$36,500,375	

INTEREST.

On foreign debt, 7,885,085, at four per cent.,	$ 315,403
On domestic debt, 28,615,290, at six per cent.,	1,716,917
On commutation of half-pay, estimated at 5,000,000, at six per cent.,	300,000
Bounty to be paid, estimated at 500,000, at six per cent.,	30,000
Aggregate of interest,	$2,362,320

A motion was made by Mr. HAMILTON, who had been absent on the question on the ninth paragraph of the report on revenue assessing quotas, to reconsider the same. Mr. FLOYD, who, being the only delegate from New York then present on that question, could not vote, seconded the motion. For the arguments repeated, see the former remarks, on the 7th of April.

On the question the votes were—Massachusetts, no; Rhode Island, no; Connecticut, no; New York, ay; New Jersey, ay; Pennsylvania, ay; Maryland, no; Virginia, ay; South Carolina, no.27

Wednesday,*April* 9.

A memorial was received from General Hazen in behalf of the Canadians who had engaged in the cause of the United States, praying that a tract of vacant land on Lake Erie might be allotted to them.

Mr. WILSON, thereupon, moved that a committee be appointed to consider and report to Congress the measures proper to be taken with respect to the western country. In support of his motion, he observed on the importance of that country; the danger, from immediate emigrations, of its being lost to the public; and the necessity, on the part of Congress, of taking care of the federal interests in the formation of new states.

Mr. MADISON observed, that the appointment of such a committee could not be necessary at this juncture, and might be injurious; that Congress were about to take, in the report on revenue, &c., the only step that could now be properly taken, viz., to call again on the states claiming the western territory to cede the same; that, until the result should be known, every thing would be premature, and would excite in the states irritations and jealousies that might frustrate the cessions; that it was indispensable to obtain these cessions, in order to compromise the disputes, and to derive advantage from the territory to the United States; that, if the motion meant merely to prevent irregular settlements, the recommendation to that effect ought to be made to the states; that, if ascertaining and disposing of garrisons proper to be kept up in that country was the object, it was already in the hands of the committee on peace arrangements, but might be expressly referred to them.

Mr. MERCER supported the same idea.

Mr. CLARK considered the motion as nowise connected with the peace arrangements; his object was to define the western limits of the states, which Congress alone could do, and which it was necessary they should do, in order to know

what territory properly belonged to the United States, and what steps ought to be taken relative to it. He disapproved of repeatedly courting the states to make *cessions* which Congress stood in no need of.

Mr. WILSON seemed to consider, as the property of the United States, all territory over which particular states had not exercised jurisdiction, particularly north-west of the Ohio; and said, that within the country confirmed to the United States by the provisional articles, there must be a large country over which no particular claims extended.

He was answered, that the exercise of jurisdiction was not the criterion of territorial rights of the states; that Pennsylvania had maintained always a contrary doctrine; that, if it were a criterion, Virginia had exercised jurisdiction over the Illinois and other places conquered north-west of the Ohio; that it was uncertain whether the limits of the United States, as fixed by the provisional articles, did comprehend any territory out of the claims of the individual states; that, should it be the case, a decision or examination of the point had best be put off till it should be seen whether cessions of the states would not render it unnecessary; that it could not be immediately necessary for the purpose of preventing settlements on such extra lands, since they must lie too remote to be in danger of it. Congress refused to refer the motion to the committee on peace arrangements, and by a large majority referred it to a special committee, viz., Messrs. Osgood, Wilson, Madison, Carroll, and Williamson; to whom was also referred the memorial of General Hazen.

On the preceding question, Connecticut was strenuous in favor of Mr. Wilson's motion.

A motion was made by Mr. DYER to strike out the drawback on salt fish, &c. Mr. GORHAM protested in the most solemn manner that Massachusetts would never accede to the plan without the drawback. The motion was very little supported.

Thursday,*April* 10.

Letters were received from General Carleton and Admiral Digby, enclosing the British proclamation of the cessation of arms, and also letters from Dr. Franklin and Mr. Adams, notifying the conclusion of preliminaries between Great Britain, and France, and Spain, with a declaration entered into with Mr. Fitzherbert, applying the epochs of cessation to the case of Great Britain and the United States. These papers were referred to the secretary of foreign affairs, to report a proclamation for Congress at six o'clock; at which time Congress met, and received the report nearly as it stands on the Journal of Friday, April 11. After some consideration of the report, as to the accuracy and propriety of which a diversity of sentiments prevailed, they postponed it till next day. The secretary also reported a resolution directing the secretary at war and agent of marine to discharge all prisoners of war.

Friday,*April* 11.

This day was spent in discussing the proclamation, which passed. Mr. WILSON proposed an abbreviation of it, which was disagreed to. The difficulties attending it were—first, the agreement of our ministers with Fitzherbert, that the epochs with Spain as well as France should be applied to the United States, to be computed from the ratifications, which happened at different times—the former on the 3d, the latter on the 9th of February; second, the circumstance of the epochs having passed at which the cessation of hostilities was to be enjoined. The impatience of Congress did not admit of proper attention to these and some other points of the proclamation, particularly the authoritative style of enjoining an observance on the United States, the governors, &c. It was against these absurdities and improprieties that the solitary *no* of Mr. Mercer was pointed. See the Journal.28

Saturday,*April* 12.

A letter of the 16th of December, O. S., was received from Mr. Dana, in which he intimates that, in consequence of the news of peace taking place, and independence being acknowledged by Great Britain, he expected soon to take his proper station at the court of St. Petersburg, and to be engaged in forming a commercial treaty with her imperial majesty.

Mr. MADISON observed, that, as no powers or instructions had been given to Mr. Dana relative to a treaty of commerce, he apprehended there must be some mistake on the part of Mr. Dana; that it would be proper to inquire into the matter, and let him know the intentions of Congress on this subject. The letter was committed to Mr. Madison, Mr. Gorham, and Mr. Fitzsimmons.

Mr. RUTLEDGE observed, that, as the instructions to foreign ministers now stood, it was conceived they had no powers for commercial stipulations, other than such as might be comprehended in a definitive treaty of peace with Great Britain. He said, he did not pretend to commercial knowledge, but that it would be well for the United States to enter into commercial treaties with all nations, and particularly with Great Britain. He moved, therefore, that the committee should be instructed to prepare a general report for that purpose.

Mr. MADISON and Mr. FITZSIMMONS thought it would be proper to be very circumspect in fettering our trade with stipulations to foreigners; that as our stipulations would extend to all the possessions of the United States necessarily, but those of foreign nations having colonies to part of their possessions only, and as the most favored nations enjoyed greater privileges in the United States than elsewhere, the United States gave an advantage in treaties on this subject; and, finally, that negotiations ought to be carried on here, or our ministers directed to conclude nothing without previously reporting every thing for the sanction of Congress. It was at length agreed, that the committee should report the general state of instructions existing on the subject of commercial treaties.

Congress took into consideration the report of the secretary of foreign affairs for immediately setting at liberty all the prisoners of war, and ratifying the provisional articles. Several members were extremely urgent on this point, from motives of

economy. Others doubted whether Congress were bound thereto, and, if not bound, whether it would be proper. The first question depended on the import of the provisional articles, which were very differently interpreted by different members. After much discussion, from which a general opinion arose of extreme inaccuracy and ambiguity as to the force of these articles, the business was committed to Mr. Madison, Mr. Peters, and Mr. Hamilton, who were also to report on the expediency of ratifying the said articles immediately.29

Monday,*April* 14.

The committee, on the report of the secretary of foreign affairs, reported as follows—Mr. Hamilton dissenting.*

First. That it does not appear that Congress are any wise bound to go into the ratification proposed. "The treaty" of which a ratification is to take place, as mentioned in the sixth of the provisional articles, is described in the title of those articles to be "a treaty of peace, proposed to be concluded between the crown of Great Britain and the said United States, but which is not to be concluded until terms of peace shall be agreed upon between Great Britain and France." The act to be ratified, therefore, is not the provisional articles themselves, but an act *distinct, future,* and *even contingent.* Again, although the declaratory act entered into on the 20th of January last, between the American and British plenipotentiaries, relative to a cessation of hostilities, seems to consider the contingency on which the provisional articles were suspended as having taken place, and that act cannot itself be considered as the "*treaty of peace meant to be concluded;*" nor does it stipulate that either the provisional articles, or the act itself, should be ratified in America; it only engages that the United States shall cause hostilities to cease on their part—an engagement which was duly fulfilled by the proclamation issued on the eleventh instant; lastly, it does not appear, from the correspondence of the American ministers, or from any other information, either that such ratification was expected from the United States, or intended on the part of Great Britain; still less that any exchange of mutual ratifications has been in contemplation.

Second. If Congress are not bound to ratify the articles in question, the committee are of opinion, that it is inexpedient for them to go immediately into such an act; inasmuch as it might be thought to argue that Congress meant to give to those articles the quality and effect of a definitive treaty of peace with Great Britain, though neither their allies nor friends have as yet proceeded further than to sign preliminary articles; and inasmuch as it may oblige Congress to fulfil immediately all the stipulations contained in the provisional articles, though they have no evidence that a correspondent obligation will be assumed by the other party.

Third. If the ratification in question be neither obligatory nor expedient, the committee are of opinion, that an immediate discharge of all prisoners of war, on the part of the United States, is premature and unadvisable; especially as such a step may possibly lessen the force of demands for a reimbursement of the sums expended in the subsistence of the prisoners.

Upon these considerations, the committee recommend that a decision of Congress on the papers referred to them be postponed.

On this subject, a variety of sentiments prevailed.

Mr. DYER, on a principle of frugality, was strenuous for a liberation of the prisoners.

Mr. WILLIAMSON thought Congress not obliged to discharge the prisoners previous to a definitive treaty, but was willing to go into the measure as soon as the public honor would permit. He wished us to move *pari passu* with the British commander at New York. He suspected that that place would be held till the interests of the tories should be provided for.

Mr. HAMILTON contended, that Congress were bound, by the tenor of the provisional treaty, immediately to ratify it, and to execute the several stipulations inserted in it particularly that relating to a discharge of prisoners.

Mr. BLAND thought Congress not bound.

Mr. ELLSWORTH was strenuous for the obligation and policy of going into an immediate execution of the treaty. He supposed, that a ready and generous execution on our part would accelerate the like on the other part.

Mr. WILSON was not surprised that the obscurity of the treaty should produce a variety of ideas. He thought, upon the whole, that the treaty was to be regarded as "contingently definitive."

The report of the committee being not consonant to the prevailing sense of Congress, it was laid aside.

Tuesday,*April* 15.

The ratification of the treaty and discharge of prisoners were again agitated. For the result in a unanimous ratification, see the secret Journal of this day; the urgency of the majority producing an acquiescence of most of the opponents to the measure.30

Wednesday,*April* 16.

Mr. HAMILTON acknowledged that he began to view the *obligation* of the provisional treaty in a different light, and, in consequence, wished to vary the direction of the commander-in-chief from a positive to a preparatory one, as his motion on the Journal states.31

Thursday,*April* 17.

Mr. MADISON, with the *permission* of the committee on revenue, reported the following clause, to be added to the tenth paragraph in the first report, viz.:

"And to the end that convenient provision may be made for determining, in all such cases, how far the expenses may have been reasonable, as well with respect to the object thereof as the means for accomplishing it, thirteen commissioners—namely, one out of each state—shall be appointed by Congress, any seven of whom, (having first taken an oath for the faithful and impartial execution of their trust,) who shall concur in the same opinion, shall be empowered to determine finally on the reasonableness of the claims for expenses incurred by particular states as aforesaid; and, in order that such determinations may be expedited as much as possible, the commissioners now in appointment for adjusting accounts between the United States and individual states shall be instructed to examine all such claims, and report to Congress such of them as shall be supported by satisfactory proofs—distinguishing, in their reports, the objects and measures in which the expenses shall have been incurred; provided, that no balances, which may be found due under this regulation, or the resolutions of the—day of—, shall be deducted out of the preceding revenues, but shall be discharged by separate requisitions to be made on the states for that purpose."

In support of this proposition it was argued, that, in a general provision for public debts and public tranquillity, satisfactory measures ought to be taken or a point which many of the states had so much at heart, and which they would not separate from the other matters proposed by Congress; that the nature of the business was unfit for the decision of Congress, who brought with them the spirit of advocates rather than of judges; and, besides, it required more time than could be spared for it.

On the opposite side, some contended, that the accounts between the United States and particular states should not be made in any manner to encumber those between the former and private persons. Others thought, that Congress could not delegate to commissioners a power of allowing claims for which the Confederation required nine states. Others were unwilling to open so wide a door for claims on the common treasury.

On the question, Massachusetts, divided; Connecticut, ay; Rhode Island, no; New York, no; New Jersey, no; Pennsylvania, no; Maryland, no; Virginia, ay; North Carolina, no; South Carolina, no.

Friday, *April* 18.

Application was made from the council of Pennsylvania for the determination of Congress as to the effect of the acts terminating hostilities on acts to be enforced during the war. Congress declined giving any opinion.

The motion of Mr. BLAND for striking out the recommendation, to the states which had agreed to cede territory, to revise and *complete* their cessions, raised a long debate. In favor of the motion it was urged, by Mr. RUTLEDGE, that the proposed cession of Virginia ought to be previously considered and disallowed; that otherwise a renewal of the recommendation would be offensive; that it was possible the cession might be accepted, in which case the renewal would be improper. Virginia, he observed, alone could be alluded to as having complied in part only.

Mr. WILSON went largely into the subject. He said, *if the investigation of right* was to be considered, the United States ought rather to make cessions to individual states than receive cessions from them, the extent of the territory ceded by the treaty being larger than all the states put together; that when the claims of the states came to be limited on principles of right, the Alleghany Mountains would appear to be the true boundary; this could be established, without difficulty, before any court, or the tribunal of the world. He thought, however, policy required that such a boundary should be established as would give to the Atlantic States access to the western waters. *If accommodation* was the object, the clause ought by no means to be struck out. The cession of Virginia would never be accepted, because it guarantied to her the country as far as the Ohio, which never belonged to Virginia. (Here he was called to order by Mr. JONES.) The question, he said, must be decided. The indecision of Congress had been hurtful to the interests of the United States. If the compliance of Virginia was to be sought, she ought to be urged to comply fully.

For the vote in the affirmative, with the exception of Virginia and South Carolina, see Journal.

The plan of revenue was then passed as it had been amended, all the states present concurring except Rhode Island, which was in the negative, and New York, which was divided—Mr. FLOYD, ay, and Mr. HAMILTON, no.32

Monday,*April* 21.

A motion was made by Mr. HAMILTON, seconded by Mr. MADISON, to annex to the plan of the eighteenth instant the part omitted, relating to expenses incurred by individual states. On the question, New York, Pennsylvania, and Virginia alone were in the affirmative; Connecticut and Georgia not present.

Tuesday,*April* 22.

See Journal.

Wednesday,*April* 23.

The resolution permitting the soldiers to retain their arms was passed at the recommendation of General Washington. (See his letter on the files.)

The resolution for granting furloughs or discharges was a compromise between those who wished to get rid of the expense of keeping the men in the field and those who thought it impolitic to disband the army whilst the British remained in the United States.33

Thursday,*April* 24, and Friday,*April* 25.

See Journal.

Saturday,*April* 26.

Address to the states passed *nem. con.* It was drawn up by Mr. Madison. The address to Rhode Island, referred to as No. 2, had been drawn up by Mr. Hamilton. See Vol. I. p. 96, *Elliot's Debates.*

The writer of these notes absent till

Monday,*May* 5.

Mr. BLAND and Mr. MERCER moved to erase from the Journal the resolution of Friday, the 2d instant, applying for an addition of three millions to the grant of six millions, by his Most Christian Majesty, as in part of the loan of four millions, requested by the resolution of September 14, 1782. As the resolution of the 2d had been passed by fewer than nine states, they contended that it was unconstitutional. The reply was, that as the three millions were to be part of a loan heretofore authorized, the sanction of nine states was not necessary. The motion was negatived, the two movers alone voting in the affirmative.34

Tuesday,*May* 6.

A motion was made by Mr. LEE to recommend to the several states to pass laws indemnifying officers of the army for damages sustained by individuals from acts of such officers rendered necessary in the execution of their military functions. It was referred to Mr. Lee, Mr. Williamson, and Mr. Clark.

He proposed, also, that an equestrian statue should be erected to General Washington.35

A report, from the secretary of foreign affairs, of a treaty of commerce to be entered into with Great Britain, was referred to Mr. Fitzsimmons, Mr. Higginson, Mr. Rutledge, Mr. Helmsley, and Mr. Madison.

Wednesday,*May* 7.

The resolution moved yesterday, by Mr. Lee, for indemnifying military officers, being reported by the committee, was agreed to.

The committee, on a motion of Mr. DYER, reported that the states which had settled with their respective lines of the army for their pay since August 1, 1780, should receive the securities which would otherwise be due to such lines.

The report was opposed, on the ground that the settlements had not been discharged in the value due. The notes issued in payment, by Connecticut, were complained of, as being of little value.

The report was disagreed to.

See Journal.36

Thursday,*May* 8.

Mr. BLAND suggested, that the prisoners of war should be detained until an answer be given as to the delivery of slaves, represented, in a letter to Mr. Thomas Walke, to be refused on the part of Sir Guy Carleton.

On his motion, seconded by Mr. WILLIAMSON, it was ordered that the letter be sent to General Washington for his information, in carrying into effect the resolution of April 15, touching arrangements with the British commander for delivery of the post, negroes, &c.

A portrait of Don Galvez was presented to Congress by Oliver Pollock.37

Friday,*May* 9.

A question on a report relating to the occupying the posts, when evacuated by the British, was postponed by Virginia, in right of a state.

Mr. DYER moved a recommendation to the states to restore confiscated property, conformably to the provisional articles. The motion produced a debate, which went off without any positive result.38

Adjourned to

Monday,*May* 12.

See Journal.

Tuesday,*May* 13.

No Congress.

Wednesday,*May* 14.

Mr. HAMILTON and Mr. ELLSWORTH moved a call on the states to fulfil the recommendation relative to the tories. After some remarks on the subject, the House adjourned.39

Thursday,*May* 15.

See Journal.

The report relating to the department of foreign affairs was taken up, and, after some discussion of the expediency of raising the salary of the secretary, Congress adjourned.

Friday,*May* 16.

See Journal.

Saturday,*May* 17.

No Congress.

Monday,*May* 19.

Spent in debating the report recommending provision for tories, according to the provisional articles of peace.

Tuesday,*May* 20.

On the proposal to discharge the troops who had been enlisted for the war, (amounting to ten thousand men,) from the want of means to support them,—

Mr. CARROLL urged the expediency of caution; the possibility that advantage might be taken by Great Britain of a discharge both of prisoners and of the army; and suggested the middle course, of furloughing the troops.

Mr. DYER was strenuous for getting rid of expense; considered the war at an end; that Great Britain might as well renew the war after the definitive treaty as now; that not a moment ought to be lost in disburdening the public of needless expense.

Mr. RUTLEDGE viewed the conduct of Great Britain in so serious a light, that he almost regretted having voted for a discharge of prisoners. He urged the expediency of caution, and of consulting the commander-in-chief. He accordingly moved that the report be referred to him for his opinion and advice. The motion was seconded by Mr. IZARD.

Mr. CLARK asked whether any military operation was on foot, that the commander-in-chief was to be consulted. This was a national question, which the national council ought to decide. He was against furloughing the men, because they would carry their arms with them. He said we were at peace, and complained that some could not separate the idea of a Briton from that of cutting throats.

Mr. ELLSWORTH enlarged on the impropriety of submitting to the commander-in-chief a point on which he could not possess competent materials for deciding. We ought either to discharge the men engaged for the war, or to furlough them. He preferred the former.

Mr. MERCER descanted on the insidiousness of Great Britain, and warmly opposed the idea of laying ourselves at her mercy that we might save fifty thousand dollars, although Congress knew they were violating the treaty as to negroes.

Mr. WILLIAMSON proposed that the soldiers be furloughed. Mr. CARROLL seconded him, that the two modes of furlough and discharge might both lie on the table.

By general consent this took place.

The report as to confiscated property, on the instructions from Virginia and Pennsylvania, was taken up, and agreed to be recommitted, together with a motion of

Mr. MADISON, to provide for the case of Canadian refugees, and for settlement of accounts with the British; and a motion of Mr. HAMILTON to insert, in a definitive treaty, a mutual stipulation not to keep a naval force on the lakes.40

Wednesday,*May* 21, and Thursday,*May* 22.

See the Secret Journal for these two days.

The passage relating to the armed neutrality was generally concurred in for the reasons which it expresses.

The disagreements on the questions relating to a treaty of commerce with Russia were occasioned chiefly by sympathies, particularly in the Massachusetts delegation, with Mr. Dana; and by an eye, in the navigating and ship-building states, to the Russian articles of iron and hemp. They were supported by South Carolina, who calculated on a Russian market for her rice.41

Friday,*May* 23.

The report from Messrs. Hamilton, Gorham, and Peters, in favor of discharging the soldiers enlisted for the war, was supported on the ground that it was called for by economy, and justified by the degree of certainty that the war would not be renewed. Those who voted for furloughing the soldiers, wished to avoid expense, and at the same time to be not wholly unprepared for the contingent failure of a definitive treaty of peace. The views of the subject, taken by those who were opposed both to discharging and furloughing, were explained in a motion by Mr. MERCER, seconded by Mr. IZARD, to assign as reasons, first, that Sir Guy Carleton had not given satisfactory reasons for continuing at New York; second, that he had broken the articles of the provisional treaty relative to the negroes, by sending them off.

This motion appeared exceptionable to several, particularly to Mr. Hamilton; and rather than it should be entered on the Journal by yeas and nays, it was agreed that the whole subject should lie over.

The report relative to the department of foreign affairs being taken up, Mr. CARROLL, seconded by Mr. WILLIAMSON, moved that no public minister should be employed by the United States, except on extraordinary occasions.

In support of the proposition, it was observed, that it would not only be economical, but would withhold our distinguished citizens from the corrupting scenes at foreign courts, and, what was of more consequence, would prevent the residence of foreign ministers in the United States, whose intrigues and examples might be injurious both to the government and the people.

The considerations suggested on the other side were, that diplomatic relations made part of the established policy of modern civilized nations; that they tended to prevent hostile collisions by mutual and friendly explanations; and that a young republic ought not to incur the odium of so singular, and it might be thought disrespectful, an innovation. The discussion was closed by an adjournment till Monday.

Monday,*May* 26.

The resolutions on the Journal instructing the ministers in Europe to remonstrate against the carrying off the negroes—also those for furloughing the troops—passed *unanimously.*42

Tuesday,*May* 27, and Wednesday,*May* 28.

No Congress.

Thursday,*May* 29.

The report of the committee concerning interest on British debts was committed, after some discussion.

Friday,*May* 30.

The debates on the report recommending to the states a compliance with the fourth, fifth, and sixth of the provisional articles were renewed; the report being finally committed, *nem. con.* See Secret Journal.

The report, including the objections to interest on British debts, was also agreed to, *nem. con.;* not very cordially by some who were indifferent to the object, and by others who doubted the mode of seeking it by a new stipulation.43

Monday,*June* 2, and Tuesday,*June* 3.

See Journal.

Wednesday,*June* 4.

The report of the committee for giving to the army certificates for land was taken up. After some discussion of the subject,—some members being for, some against, making the certificates transferable,—it was agreed that the report should lie on the table.

For what passed in relation to the cession of vacant territory by Virginia, see the Journal.

Whilst Mr. Hamilton's motion relating to Mr. Livingston, secretary of foreign affairs, was before the House, Mr. PETERS moved, in order to detain Mr. Livingston in office, that it be declared, by the seven states present, that the salary ought to be augmented. To this it was objected—first, that it would be an assumption of power in seven states to say what nine states ought to do; second, that it might insnare Mr. Livingston; third, that it would commit the present, who ought to be open to discussion when nine states should be on the floor. The motion of Mr. Peters being withdrawn, that of Mr. Hamilton was agreed to.44

Thursday,*June* 5.

See Journal.

Friday,*June* 6.

The report as to the territorial cession of Virginia, after some uninteresting debate, was adjourned.

Monday,*June* 9.

Not states enough assembled to form a Congress. Mr. CLARK signified to those present, that the delegates of New Jersey being instructed on the subject of the back lands, he should communicate the report thereon to his constituents.45

Tuesday,*June* 10.

The report on the cession of Virginia was taken up. Mr. ELLSWORTH urged the expediency of deciding immediately on the cession. Mr. HAMILTON joined him, asserting at the same time the right of the United States. He moved an amendment in favor of private claims. Mr. CLARK was strenuous for the right of the United States, and against waiting longer; (this had reference to the absence of Maryland, which had always taken a deep interest in the question.) Mr. GORHAM supported the policy of acceding to the report. Mr. FITZSIMMONS recommended a postponement of the question, observing, that he had sent a copy of the report to the Maryland delegates. The president was for a postponement till the sense of New Jersey be known. The Delaware delegates, expecting instructions, were for postponing till Monday next. It was agreed, at length, that a final vote should not be taken till that day—Mr. MADISON yielding to the sense of the House, but warning that the opportunity might be lost by the rising of the legislature of Virginia.

Mr. HAMILTON and Mr. PETERS, with permission, moved for a recommitment of the report, in order to provide for crown titles within the territory reserved to the state. Mr. MADISON objected to the motion, since an amendment might be prepared during the week, and proposed on Monday next. This was acquiesced in. It was agreed that the president might informally notify private companies and others, as well as the Maryland delegates, of the time at which the report would be taken into consideration.

The order of the day for appointing a secretary of foreign affairs was called for, and none having been put in nomination, the order was postponed. Mr. BLAND then nominated Mr. Arthur Lee. Mr. GORHAM nominated Mr. Jefferson, but being told he would not accept, then named Mr. Tilghman. Mr. HIGGINSON nominated Mr. Jonathan Trumbull. Mr. MONTGOMERY nominated Mr. George Clymer. It was understood that General Schuyler remained in nomination.

Wednesday,*June* 11.

See Journals, secret and public.

Thursday,*June* 12.

The instruction in the Secret Journal, touching the principles, &c., of the neutral confederacy, passed unanimously.

The resolution, as reported by the committee, being in a *positive* style, and *eight* states only being present, the question occurred whether nine states were not necessary. To avoid the difficulty, a negative form was given to the resolution, by which the preamble became somewhat unsuitable. It was suffered to pass, however, rather than risk the experiment of further alteration.46

Friday,*June* 13.

The mutinous memorial from the sergeants was received and read. It excited much indignation, and was sent to the secretary at war.47

Monday,*June* 16.

No Congress.

Tuesday,*June* 17.

The day was employed chiefly in considering the report on the Journal relative to the department of finance. Some thought it ought to lie on the files; some, that it ought to receive a vote of approbation, and that the superintendent should, for the period examined, be acquitted of further responsibility. Mr. GORHAM, particularly, was of that opinion. Finally, the report was entered on the Journal, without any act of Congress thereon, by a unanimous concurrence.48

Wednesday,*June* 18.

Nothing done.

Thursday,*June* 19.

A motion was made by Mr. WILLIAMSON, seconded by Mr. BLAND, to recommend to the states to make it a part of the Confederation, that, whenever a *fourteenth* state should be added to the Union, *ten* votes be required in cases now requiring nine. It was committed to Mr. Williamson, Mr. Hamilton, and Mr. Madison. The motion had reference to the foreseen creation of the western part of North Carolina into a separate state.

Information was received by Congress, from the executive council of Pennsylvania, that eighty soldiers, who would probably be followed by the discharged soldiers of Armand's Legion, were on the way from Lancaster to Philadelphia, in spite of the expostulations of their officers, declaring that they would proceed to the seat of Congress and demand justice, and intimating designs against the bank. This information was committed to Mr. Hamilton, Mr. Peters, and Mr. Ellsworth, for the purpose of conferring with the executive of Pennsylvania, and taking such measures as they should find necessary. The committee, after so conferring, informed Congress that it was the opinion of the executive that the militia of Philadelphia would probably

not be willing to take arms before their resentments should be provoked by some actual outrage; that it would hazard the authority of government to make the attempt; and that it would be necessary to let the soldiers come into the city, if the officers who had gone out to meet them could not stop them.

At this information Mr. IZARD, Mr. MERCER, and others, being much displeased, signified that, if the city would not support Congress, it was high time to remove to some other place. Mr. WILSON remarked, that no part of the United States was better disposed towards Congress than Pennsylvania, where the prevailing sentiment was, that Congress had done every thing that depended on them. After some conversation, and directing General St. Clair (who had gone out of town) to be sent for, and, it appearing that nothing further could be done at present, Congress adjourned. The secretary at war had set out for Virginia yesterday. It was proposed to send for him, but declined, as he had probably gone too great a distance, and General St. Clair, it was supposed, would answer.

Friday,*June* 20.

The soldiers from Lancaster came into the city under the guidance of sergeants. They professed to have no other object than to obtain a settlement of accounts, which they supposed they had a better chance for at Philadelphia than at Lancaster. See the report of the committee on that subject.

The report of the committee (see the Journal) on the territorial cession of Virginia being taken up, and the amendment on the Journal, proposed by Mr. M'HENRY and Mr. CLARK, being lost, Mr. BEDFORD proposed, that the second condition of the cession be so altered as to read, "that, in order to comply with the said condition, so far as the same is comprised within the resolution of October 10, 1780, on that subject, commissioners, as proposed by the committee, be appointed, &c.," and that instead of "for the purposes mentioned in the said condition," be substituted "agreeably to that resolution." In support of this alteration, it was urged by Mr. M'HENRY, Mr. BEDFORD, and Mr. CLARK, that the terms used by Virginia were too comprehensive and indefinite. In favor of the report of the committee, it was contended, by Mr. ELLSWORTH, that the alteration was unreasonable, inasmuch as *civil* expenses were on the same footing of equity as military, and that a compromise was the object of the committee. Sundry members were of opinion, that civil expenses were comprised in the resolution of October 10, 1780. Mr. BLAND and Mr. MERCER acceded to the alteration proposed; Mr. MADISON alone dissented, and therefore did not insist on a call for the votes of the states. Mr. M'HENRY moved, but without being seconded, "that the commissioners, instead of deciding finally, should be authorized to report to Congress only."

In the course of the debate, Mr. CLARK laid before Congress the remonstrance of New Jersey, as entered on the Journal.

As the report had been postponed at the instance of the president and other delegates of New Jersey, in order to obtain this answer from their constituents, and as the remonstrance was dated on the 14th of June, and was confessed privately by Mr.—to

have been in possession of the delegates on Monday last, an unfairness was complained of. They supposed that, if it had been laid before Congress sooner, the copy which would have been sent by the Virginia delegates might hasten the opening of the land-office of that state. Mr. CLARK said, there were still good prospects, and he did not doubt that the time would yet come when Congress would draw a line, limiting the states to the westward, and say, "Thus far shall ye go, and no farther."

Mr. BEDFORD moved, that, with respect to the fourth and fifth conditions of the cessions, "it be declared, that Clark and his men, and the Virginia line, be allowed the same bounty beyond the Ohio as was allowed by the United States to the same ranks." This motion was seconded by Mr.—. Congress adjourned without debating it; there being seven states only present, and the spirit of compromise decreasing.

From several circumstances, there was reason to believe that Rhode Island, New Jersey, Pennsylvania, and Delaware, if not Maryland also, retained latent views of confining Virginia to the Alleghany Mountains.

Notice was taken by Mr. MADISON of the error in the remonstrance, which recites "that Congress had declared the cession of Virginia to be a partial one."[49]

Saturday,*June* 21.

The mutinous soldiers presented themselves, drawn up in the street before the state-house, where Congress had assembled. The executive council of the state, sitting under the same roof, was called on for the proper interposition. President DICKINSON came in, and explained the difficulty, under actual circumstances, of bringing out the militia of the place for the suppression of the mutiny. He thought that, without some outrages on persons or property, the militia could not be relied on. General St. Clair, then in Philadelphia, was sent for, and desired to use his interposition, in order to prevail on the troops to return to the barracks. His report gave no encouragement.

In this posture of things, it was proposed by Mr. IZARD, that Congress should adjourn. It was proposed by Mr. HAMILTON, that General St. Clair. in concert with the executive council of the state, should take order for terminating the mutiny. Mr. REED moved, that the general should endeavor to withdraw the troops by assuring them of the disposition of Congress to do them justice. It was finally agreed, that Congress should remain till the usual hour of adjournment, but without taking any step in relation to the alleged grievances of the soldiers, or any other business whatever. In the mean time, the soldiers remained in their position, without offering any violence, individuals only, occasionally, uttering offensive words, and wantonly pointing their muskets to the windows of the hall of Congress. No danger from premeditated violence was apprehended, but it was observed that spirituous drink, from the tippling-houses adjoining, began to be liberally served out to the soldiers, and might lead to hasty excesses. None were committed, however, and, about three o'clock, the usual hour, Congress adjourned; the soldiers, though in some instances offering a mock obstruction, permitting the members to pass through their ranks. They soon afterwards retired themselves to the barracks.

In the evening Congress re-assembled, and passed the resolutions on the Journal, authorizing a committee to confer anew with the executive of the state, and, in case no satisfactory grounds should appear for expecting prompt and adequate exertions for suppressing the mutiny, and supporting the public authority, authorizing the president, with the advice of the committee, to summon the members to meet at Trenton or Princeton, in New Jersey.

The conference with the executive produced nothing but a repetition of doubts concerning the disposition of the militia to act unless some actual outrage were offered to persons or property. It was even doubted whether a repetition of the insult to Congress would be a sufficient provocation.

During the deliberations of the executive, and the suspense of the committee, reports from the barracks were in constant vibration. At one moment, the mutineers were penitent and preparing submissions; the next, they were meditating more violent measures. Sometimes, the bank was their object; then the seizure of the members of Congress, with whom they imagined an indemnity for their offence might be stipulated. On Tuesday, about two o'clock, the efforts of the state authority being despaired of, and the reports from the barracks being unfavorable, the committee advised the president to summon Congress to meet at Trenton, which he did verbally as to the members present, leaving behind him a general proclamation for the press.

After the departure of Congress, the mutineers submitted, and most of them accepted furloughs under the resolution of Congress on that subject. At the time of submission, they betrayed their leaders, the chief of whom proved to be a Mr. Carbery, a deranged officer, and a Mr. Sullivan, a lieutenant of horse; both of whom made their escape. Some of the most active of the sergeants also ran off.50

Monday,*February* 19, 1787.*

Mr. PINCKNEY, in support of his motion entered on the Journal for stopping the enlistment of troops, argued that he had reason to suppose the insurrection in Massachusetts, the real though not ostensible object of this measure, to be already crushed; that the requisition of five hundred thousand dollars for supporting the troops had been complied with by one state only, viz. Virginia, and that but in part; that it would be absurd to proceed in the raising of men who could neither be paid, clothed, nor fed, and that such a folly was the more to be shunned, as the consequences could not be foreseen, of imbodying and arming men under circumstances which would be more likely to render them the terror than the support of the government. We had, he observed, been so lucky in one instance—meaning the disbanding of the army on the peace—as to get rid of an armed force without satisfying their just claims; but that it would not be prudent to hazard the repetition of the experiment.

Mr. KING made a moving appeal to the feelings of Congress, reminding them that the real object in voting the troops was, to countenance the exertions of the government of Massachusetts; that the silent coöperation of these military preparations under the orders of Congress had had a great and double effect in animating the government and awing the insurgents; that he hoped the late success of the former had given a deadly

blow to the disturbances, yet that it would be premature, whilst a doubt could exist as to the critical fact, to withdraw the coöperating influence of the federal measures. He particularly and pathetically entreated Congress to consider that it was in agitation, and probably would be determined, by the legislature of Massachusetts, not only to bring to due punishment the more active and leading offenders, but to *disarm* and *disfranchise,* for a limited time, the great body of them; that for the policy of this measure he would not undertake to vouch, being sensible that there were great and illustrious examples against it; that his confidence, however, in the prudence of that government, would not permit him to call their determinations into question; that what the effect of these rigors might be it was impossible to foresee. He dwelt much on the sympathy which they probably would excite in behalf of the stigmatized party; scarce a man was without a father, a brother, a friend, in the mass of the people; adding that, as a precaution against contingencies, it was the purpose of the state to raise and station a small military force in the most suspected districts, and that forty thousand pounds, to be drawn from their impost on trade, had been appropriated accordingly; that under these circumstances a new crisis more solemn than the late one might be brought on, and therefore to stop the federal enlistments, and thereby withdraw the aid which had been held out, would give the greatest alarm imaginable to the government and its friends, as it would look like a disapprobation and desertion of them; and, if viewed in that light by the disaffected, might rekindle the insurrection. He took notice of the possibility to which every state in the Union was exposed of being visited with similar calamities; in which event they would all be suing for support in the same strain now used by the delegates from Massachusetts; that the indulgence now requested in behalf of that state might be granted without the least inconvenience to the United States, as their enlistments, without any countermanding orders, would not go on whilst those of the state were in competition; it being natural for men to prefer the latter service, in which they would stay at home, and be sure of their pay, to the former, in which they might, with little prospect of it, be sent to the Ohio to fight the Indians. He concluded with the most earnest entreaties, and the fullest confidence, that Congress would not, at so critical a moment, and without any necessity whatever, agree to the motion, assuring them that, in three or four weeks, possibly in less time, he might himself be a friend to it, and would promote it.

Mr. PINCKNEY, in reply, contended, that if the measures pursuing by Massachusetts were such as had been stated, he did not think the United States bound to give them countenance. He thought them impolitic, and not to be reconciled with the genius of free governments; and if fresh commotions should spring from them that the state of Massachusetts alone should be at the charge, and abide by the consequences of their own misconduct.

Mr. MADISON would not examine whether the original views of Congress, in the enlargement of their military force, were proper or not; nor whether it were so, to mask their views with an ostensible preparation against the Indians. He admitted, indeed, that it appeared rather difficult to reconcile an interference of Congress in the internal controversies of a state with the tenor of the Confederation, which does not authorize it expressly, and leaves to the states all powers not expressly delegated, or with the principles of republican governments, which, as they rest on the sense of the

majority, necessarily suppose power and right always to be on the same side. He observed, however, that, in one point of view, military precautions on the part of Congress might have a different aspect. Whenever danger was apprehended from any foreign quarter, which of necessity extended itself to the federal concerns, Congress were bound to guard against it; and although there might be no particular evidence in this case of such a meditated interference, yet there was sufficient ground for a general suspicion of readiness in Great Britain to take advantage of events in this country, to warrant precautions against her. But, waiving the question as to the original propriety of the measure adopted, and attending merely to the question whether at this moment the measure ought, from a change of circumstances, to be rescinded, he was inclined to think it would be more advisable to suspend than to go instantly into the rescision. The considerations which led to this opinion were—

First. That, though it appeared pretty certain that the main body of the insurgents had been dispersed, it was by no means certain that the spirit of insurrection was subdued. The leaders, too, of the insurgents had not been apprehended, and parties of them were still in arms in disaffected places.

Secondly. That great respect is due on such occasions to the wishes and representations of the suffering member of the federal body, both of which must be judged of by what comes from her representatives on the floor. These tell us that the measures taken by Congress have given great satisfaction and spirits to their constituents, and have coöperated much in baffing the views of their internal enemies; that they are pursuing very critical precautions at this moment for their future safety and tranquillity; and that the construction which will be put on the proposed resolution, if agreed to by Congress, cannot fail to make very unhappy impressions, and may have very serious consequences. The propriety of these precautions depends on so many circumstances better known to the government of Massachusetts than to Congress, that it would be premature in Congress to be governed by a disapprobation.

Thirdly. That every state ought to bear in mind the consequences of popular commotions, if not thoroughly subdued, on the tranquillity of the Union, and the possibility of being itself the scene of them. Every state ought, therefore, to submit with cheerfulness to such indulgences to others as itself may, in a little time, be in need of. He had been a witness of the temper of his own state (Virginia) on this occasion. It was understood by the legislature that the real object of the military preparations on foot was the disturbances in Massachusetts, and that very consideration inspired the ardor which voted, towards their quota, a tax on tobacco, which would not have been granted for scarce any other purpose whatever, being a tax operating very partially, in the opinion of the people of that state who cultivate that article; yet this class of the legislature were almost unanimous in making the sacrifice, because the fund was considered as the most certain that could be provided.

Fourthly. That it was probable the enlistments, for the reasons given, would be suspended without an order from Congress; in which case, the inconvenience suggested would be saved to the United States, and the wishes of Massachusetts satisfied, at the same time.

Fifthly. That as no bounty was given for the troops, and they could be dismissed at any time, the objections drawn from the consideration of expense would have but little force.

Sixthly. That it was contended for a continuance of the apparent aid of Congress for only three or four weeks, the members from Massachusetts themselves considering that as a sufficient time.

After the rejection of the motion, as stated on the Journal, a dispute arose whether the vote should be entered among the secret or public proceedings. Mr. PINCKNEY insisted that, in the former case, his view, which was to justify himself to his constituents, would be frustrated. Most of those who voted with him were opposed to an immediate publication. The expedient of a temporary concealment was proposed as answering all purposes.51

Tuesday,*February* 20.

Nothing of consequence was done.

Wednesday,*February* 21.

The report of the convention at Annapolis, in September, 1786, had been long under the consideration of a committee of Congress for the last year, and was referred over to a grand committee of the present year. The latter committee, after considerable difficulty and discussion, agreed on a report, by a majority of *one* only, (see the Journal,)52 which was made a few days ago to Congress, and set down as the order for this day. The report coincided with the opinion, held at Annapolis, that the Confederation needed amendments, and that the proposed convention was the most eligible means of effecting them. The objections which seemed to prevail against the recommendation of the convention by Congress were, with some, that it tended to weaken the federal authority by lending its sanction to an extra-constitutional mode of proceeding; with others, that the interposition of Congress would be considered by the jealous as betraying an ambitious wish to get power into their hands by any plan whatever that might present itself. Subsequent to the report, the delegates from New York received instructions from its legislature to move in Congress for a recommendation of a convention; and those from Massachusetts had, it appeared, received information which led them to suppose it was becoming the disposition of the legislature of that state to send deputies to the proposed convention, in case Congress should give their sanction to it. There was reason to believe, however, from the language of the instruction from New York, that her object was to obtain a new convention, under the sanction of Congress, rather than to accede to the one on foot; or, perhaps, by dividing the plans of the states in their appointments, to frustrate all of them. The latter suspicion is in some degree countenanced by their refusal of the impost a few days before the instruction passed, and by their other marks of an unfederal disposition. The delegates from New York, in consequence of their instructions, made the motion on the Journal to postpone the report of the committee, in order to substitute their own proposition. Those who voted against it considered it as liable to the objection above mentioned. Some who voted for it, particularly Mr.

MADISON, considered it susceptible of amendment when brought before Congress; and that if Congress interposed in the matter at all, it would be well for them to do it at the instance of a state, rather than spontaneously. This motion being lost, Mr. DANE, from Massachusetts, who was at bottom unfriendly to the plan of a convention, and had dissuaded his state from coming into it, brought forward a proposition, in a different form, but liable to the same objection with that from New York. After some little discussion, it was agreed on all sides, except by Connecticut, who opposed the measure in every form, that the resolution should pass as it stands on the Journal, sanctioning the proceedings and appointments already made by the states, as well as recommending further appointments from other states, but in such terms as do not point directly to the former appointments.

It appeared from the debates, and still more from the conversation among the members, that many of them considered this resolution as a deadly blow to the existing Confederation. Dr. JOHNSON, who voted against it, particularly declared himself to that effect. Others viewed it in the same light, but were pleased with it as the harbinger of a better Confederation.

The reserve of many of the members made it difficult to decide their real wishes and expectations from the present crisis of our affairs. All agreed and owned that the federal government, in its existing shape, was inefficient, and could not last long. The members from the Southern and Middle States seemed generally anxious for some republican organization of the system which would preserve the Union, and give due energy to the government of it. Mr. BINGHAM alone avowed his wishes that the Confederacy might be divided into several distinct confederacies, its great extent and various interests being incompatible with a single government. The eastern members were suspected by some of leaning towards some anti-republican establishment, (the effect of their late confusions,) or of being less desirous or hopeful of preserving the unity of the empire. For the first time, the idea of separate confederacies had got into the newspapers. It appeared to-day under the Boston head. Whatever the views of the leading men in the Eastern States may be, it would seem that the great body of the people, particularly in Connecticut, are equally indisposed either to dissolve or divide the Confederacy, or to submit to any anti-republican innovations.53

Nothing noted till

Tuesday,*March* 13.

Colonel GRAYSON and Mr. CLARK having lately moved to have the military stores at Springfield, in Massachusetts, removed to some place of greater security, the motion was referred to the secretary at war, who this day reported against the same, as his report will show. No opposition was made to the report, and it seemed to be the general sense of Congress that his reasons were satisfactory. The movers of the proposition, however, might suppose the thinness of Congress (eight states only being present) to bar any hope of successful opposition.

Memorandum.—Called with Mr. Bingham to-day on Mr. Guardoqui, and had a long conversation touching the western country, the navigation of the Mississippi, and

commerce, as these objects relate to Spain and the United States. Mr. Bingham opened the conversation with intimating, that there was reason to believe the western people were exceedingly alarmed at the idea of the projected treaty which was to shut up the Mississippi, and were forming committees of correspondence, &c., for uniting their councils and interests. Mr. Guardoqui, with some perturbation, replied, that, as a friend to the United States, he was sorry for it, for they mistook their interest; but that, as the minister of Spain, he had no reason to be so. The result of what fell in the course of the conversation from Mr. Madison and Mr. Bingham was, that it was the interest of the two nations to live in harmony; that if Congress were disposed to treat with Spain on the ground of a cession of the Mississippi, it would be out of their power to enforce the treaty; that an attempt would be the means of populating the western country with additional rapidity; that the British had their eye upon that field, would countenance the separation of the western from the eastern part of North America, promote the settlement of it, and hereafter be able to turn the force springing up in that quarter against Spanish America, in coöperation with their naval armaments; that Spain offered nothing in fact to the United States in the commercial scale which she did not grant to all the other nations from motives of interest.

Mr. Guardoqui would not listen to the idea of a right to the navigation of the Mississippi by the United States, contending, that the possession of the two banks at the mouth shut the door against any such pretension. Spain never would give up this point. He lamented that he had been here so long without effecting any thing, and foresaw that the consequences would be very disagreeable.

What would those consequences be? He evaded an answer by repeating general expressions. Spain could make her own terms, he said, with Great Britain. He considered the commercial connection proposed as entirely in favor of the United States, and that in a little time the ports of Spain would be shut against fish. He was asked, whether against all fish, or only against fish from the United States. From all places not in treaty, he said, with Spain. Spain would act according to her own ideas. She would not be governed by other people’s ideas of her interest.

He was very sorry for the instructions passed by Virginia; he foresaw bad consequences from them. He had written to soften the matter as well as he could, but that troops and stores would certainly reinforce New Orleans in consequence of the resolutions.

He had not conferred at all with the minister of foreign affairs since October, and did not expect to confer again. He did not expect to remain much longer in America. He wished he might not be a true prophet; but it would be found that we mistook our interest, and that Spain would make us feel the vulnerable side of our commerce by abridging it in her ports.

With an air of ostensible jocoseness, he hinted that the people of Kentucky would make good Spanish subjects, and that they would become such for the sake of the privilege annexed to that character.

He seemed to be disposed to make us believe that Spain and Britain understood one another; that he knew the views of Great Britain in holding the western posts; and that Spain had it in her power to make Great Britain bend to her views. He affected a mysterious air on this point, which only proved that he was at a loss what to say to the probability and tendency of a connection between Great Britain and the western settlements, in case the Mississippi should be given up by Congress.

He intimated that Spain could not grant any inlet of the American trade by *treaty;* but that in case of a treaty, trade through the Mississippi, as well as other channels, would be winked at.

In speaking of the Mississippi and the right of Spain, he alluded to the case of the Tagus, which Spain had never pretended to a right of navigating through Portugal. It was observed to him, that, in estimating the rights of nations in such cases, regard must be had to their respective proportions of territory on the river. Suppose Spain held only five acres on each side at the mouth of the Mississippi; would she pretend to an exclusive right in such case? He said, that was not the case: Spain had a great proportion. *How much?* After some confusion and hesitation, he said, she claimed at least—as far as the Ohio. We smiled, and asked how far eastwardly from the Mississippi? He became still more at a loss for an answer, and turned it off by insinuating that he had conversed on that matter with the secretary of foreign affairs.

He was reminded of the doctrine maintained by Spain, in 1608, as to the Scheldt. He seemed not to have known the fact, and resolved it into some political consideration of the times.

He was asked, whether the partition of the British empire could deprive this part of it of the rights appertaining to the king of Great Britain as king of this country; and even whether the rupture of Great Britain and Spain could deprive, in justice, the United States of rights which they held under the treaty of 1763, whilst they remained a part of the British empire; whether, in case no such rupture had happened, the treaty between Spain and that part of the empire would have been dissolved by the revolution; &c. &c. He did not seem well to understand the principles into which such questions resolved themselves, and gave them the go-by, referring the claim of Spain principally to her conquests of the British possessions in North America.

He betrayed strongly the anxiety of Spain to retard the population of the western country; observing, that whenever sufficient force should arise therein, it would be impossible for it to be controlled; that any conciliating measures that might be taken now would have little effect on their temper and views fifty or a hundred years hence, when they should be in force.

When we rose to take leave, he begged us to remember what he had said as to the inflexibility of Spain on the point of the Mississippi, and the consequences to America of her adherence to her present pretensions.54

Nothing noted till

Tuesday,*March* 20.

Mr. Jay's report on the treaty of peace taken up.

Mr. YATES objected to the first resolution, which declares the treaty to be a law of the land. He said the states, or at least his state, did not admit it to be such until clothed with legal sanction. At his request he was furnished with a copy of the resolution, for the purpose of consulting such as he might choose.

Wednesday,*March* 21.

The subject of yesterday resumed.

Mr. YATES was now satisfied with the resolutions as they stood. The words "constitutionally made," as applied to the treaty, seemed to him, on consideration, to qualify sufficiently the doctrine on which the resolution was founded.

The second and third resolutions, urging on the states a repeal of all laws contravening the treaty, (first, that they might not continue to *operate* as violations of it, secondly, that questions might be avoided touching their validity,) underwent some criticisms and discussions.

Mr. VARNUM and Mr. MITCHELL thought they did not consist with the first, which declared such laws to be void, in which case they could not *operate* as violations.

Mr. MADISON observed, that a repeal of those contravening laws was expedient, and even necessary, to free the courts from the bias of their oaths, which bound the judges more strongly to the state than to the federal authority. A distinction too, he said, might be started possibly between laws prior and laws subsequent to the treaty; a repealing effect of the treaty on the former not necessarily implying the nullity of the latter. Supposing the treaty to have the validity of a law *only,* it would repeal all antecedent laws. To render succeeding laws void, it must have more than the *mere* authority of a *law.* In case these succeeding laws, contrary to the treaty, should come into discussion before the courts, it would be necessary to examine the foundation of the federal authority, and to determine whether it had the validity of a constitution paramount to the legislative authority in each state. This was a delicate question, and studiously to be avoided, as it was notorious that, although in some of the states the Confederation was incorporated with, and had the sanction of, their respective constitutions, yet in others it received a legislative ratification only, and rested on no other basis. He admitted, however, that the word "operate" might be changed for the better, and proposed, in its place, the words "be regarded," as violations of the treaty,—which was agreed to without opposition.

Mr. KING, in the course of the business, observed, that a question had been raised in New York whether stipulations, as they might affect citizens only, and not foreigners, could restrain the states from legislating with respect to the former; and supposed that such stipulations could not.

The resolutions passed unanimously.55

Nothing till

Friday,*March* 23.

The report for reducing salaries agreed to, as amended, unanimously. The proposition for reducing the salary of the secretary of foreign affairs to $3000 was opposed by Mr. KING and Mr. MADISON, who entered into the peculiar duties and qualifications required in that office, and its peculiar importance. Mr. MITCHELL and Mr. VARNUM contended, that it stood on a level with the secretaryship to Congress. The yeas and nays were called on the question, and it was lost. A motion was then made to reduce the salary of $4000 to $3500. Mr. CLARK, who had been an opponent to any reduction, acceded to this compromise. Mr. King suffered his colleague to vote in the affirmative. There being six states for reducing to $3500, and Mr. CARRINGTON being on the same side, in opposition to Mr. GRAYSON, Mr. MADISON gave up his opinion to so great a majority, and the resolution for $3500 passed. The preceding yeas and nays on the motions for reducing to $3000 were then withdrawn, and no entry made of them. It seemed to be the general opinion that the salary of the secretary at war was disproportionately low, and ought to be raised. The committee would have reported an augmentation, but conceived themselves restrained by their commission, which was to *reduce,* not to revise, the civil list.

Nothing of consequence till

Wednesday,*March* 28.

Mr. KING reminded Congress of the motion on the 19th of February for discontinuing the enlistments, and intimated that the state of things in Massachusetts was at present such that no opposition would now be made by the delegation of that state. A committee was appointed, in general, to consider the military establishment, and particularly to report a proper resolution for stopping the enlistments.

The Virginia delegates laid before Congress sundry papers from the executive of that state relating to the seizure of Spanish property by General Clark, and the incendiary efforts on foot in the western country against the Spaniards, &c. No comment was made on them, nor any vote taken.

Thursday,*March* 29.

The committee appointed to confer with the treasury board on the great business of a fiscal settlement of the accounts of the United States reported that they be discharged, and the board instructed to report an ordinance. Mr. KING, in explanation said, that it was the sense of the committee and of the treasury board both, that commissioners should be appointed with full and final powers to decide on the claims of the states against the Union, &c. The report was agreed to *nem. con.*

Sundry papers from the Illinois, complaining of the grievances of that country, which had arrived by a special express, were laid before Congress by the president, and committed.

Mr. MITCHELL, from Connecticut, observed, that the papers from Virginia communicated yesterday were of a very serious nature, and showed that we were in danger of being precipitated into disputes with Spain, which ought to be avoided if possible; and moved that these papers might be referred to the committee on the Illinois papers, which was done without opposition; Mr. KING only observing, that they contained mere information, and did not in his view need any step to be taken on them.

The Virginia delegates communicated to Mr. Guardoqui the proceedings of the executive relative to Clark's seizure of Spanish property, at which he expressed much regret as a friend to the United States, though, as a Spanish minister, he had little reason to dread the tendency of such outrages. The communication was followed by a free conversation on the western territory and the Mississippi. The observations of the delegates tended to impress him—first, with the unfriendly temper which would be produced in the western people, both against Spain and the United States, by a concerted occlusion of that river; secondly, with the probability of throwing them into the arms of Great Britain; thirdly, of accelerating the population of that country, after the example of Vermont; fourthly, the danger of such numbers under British influence, as well to Spanish America as to the Atlantic States; fifthly, the universal opinion of right in the United States to the free use of the river; sixthly, the disappointment of the people of America at an attempt in Spain to make their condition worse, as citizens of an independent state, in amity and lately engaged in a common cause, than as subjects of a formidable and unfriendly power; seventhly, the inefficiency of an attempt in Congress to fulfil a treaty for shutting the Mississippi, and the folly of their entering into such a stipulation; eighthly, that it would be wise in Spain to foresee and provide for events that could not be controlled, rather than to make fruitless efforts to prevent or procrastinate them.

Mr. Guardoqui reiterated his assertion that Spain would never accede to the claim of the United States to navigate the river; secondly, urged that the result of what was said was, that Congress could enter into no treaty at all; thirdly, that the trade of Spain was of great importance, and would certainly be shut against the United States,—affecting to disregard the remark that, if Spain continued to use fish, flour, &c., her interest would restrain her from shutting her ports against the American competition; fourthly, he signified that he had observed the weakness of the Union, and foreseen its probable breach; that he lamented the danger of it, as he wished to see it preserved and strengthened, which was more than *France*[*] or any other nation in Europe did. No reply was made to this remark. The sincerity of his declaration as to his own wishes was not free from suspicion. Fifthly, he laid much stress on the service Spain had rendered the United States during the struggle for their independence, considering it as laying them under great obligations. The reality of the service was not denied; but he was reminded of the interest Spain had in dividing a power which had given the law to the house of Bourbon, and *compelled* Spain to relinquish, as he said, the exclusive use of the Mississippi. Sixthly, in answer to the remark that Spain was for putting the United States on a worse footing than they stood on as British subjects, he not only mentioned the necessity which had dictated the treaty of 1763, but contended that the recovery of West Florida made a distinction in the case. It was observed to him that, as the navigable channel of the Mississippi ran between the island and the

western shore, Spain had the same pretext for holding both shores when Florida was a British colony as since. He would neither accede to the inference nor deny the fact. Seventhly, he intimated, with a jocular air, the possibility of the western people becoming Spanish subjects; and, with a serious one, that such an idea had been brought forward to the king of Spain by some person connected with the western country, but that his majesty's dignity and character could never countenance it. It was replied, that that consideration was no doubt a sufficient obstacle, but it was presumed, that *such subjects* would not be very convenient to Spain. It would be much more for the interest of Spain that they should be friendly neighbors than refractory subjects. It did not appear that he viewed the matter in a different light. Eighthly, he disclaimed his having ever assented to, or approved of, any *limited* occlusion of the Mississippi, though in a manner that did not speak a real inflexibility on that point. Ninthly, it appeared clearly that the check to the western settlements was a favorite object, and that the occlusion of the Mississippi was considered as having that tendency. Tenthly, the futility of many of his arguments and answers satisfied the delegates that they could not appear convincing to himself, and that he was of course pursuing rather the ideas of his court than his own.56

Friday,*March* 30.

Mr. Jay's report in favor of the admission of Phineas Bond as British consul for the Middle States, was called for by Mr. CADWALADER. Mr. MADISON said, he was far from being satisfied of the propriety of the measure; he was a friend in general to a liberal policy, and admitted that the United States were more in the wrong, in the violation of the treaty of peace, than Great Britain; but still the latter was not blameless. He thought, however, the question turned on different considerations: first, the facility of the United States in granting privileges to Great Britain without a treaty of commerce, instead of begetting a disposition to conclude such a treaty, had been found, on trial, to be made a reason against it; secondly, the indignity of Great Britain in neglecting to send a public minister to the United States, notwithstanding the lapse of time since Mr. Adams's arrival there, gave them no title to favors in that line; and self-respect seemed to require that the United States should at least proceed with distrust and reserve.

Mr. GRAYSON thought, as the secretary had done, that it would be good policy to admit Mr. Bond, and that it could not be decently, and without offence, refused after the admission of Mr. Temple.

Mr. CLARK said, he was at first puzzled how to vote, as he did not like the admission proposed, on one hand, and, on the other, thought it not decent to refuse it after the admission of Mr. Temple. On reflecting, however, that Mr. Temple was admitted at a time when hopes were entertained of a commercial treaty, which had since vanished, and that the question might be postponed generally without being negatived, he should accede to the idea of doing nothing on the subject.

Mr. VARNUM animadverted on the obnoxious character of Mr. Bond, and conceived that alone a sufficient reason for not admitting him. The postponement was agreed to without any overt dissent except that of Mr. Grayson.

The delegates from North Carolina communicated to Congress sundry papers conspiring with the other proofs of discontent in the western country at the supposed surrender of the Mississippi, and of hostile machinations against the Spaniards.

It was ordered that they should be referred to the secretary of foreign affairs for his information. It was then moved that the papers relative to the same subjects from Virginia, yesterday referred to a committee, should, after discharging the committee, be referred to the office of foreign affairs. Mr. CLARK proposed to add "to report." This was objected to by Mr. KING, and brought on some general observations on the proceedings of Congress in the affair of the Mississippi. It was at length agreed that the reference be made without an instruction to report. Mr. PIERCE then observed, that it had been hinted by Mr. Madison, as proper, to instruct the secretary of foreign affairs to lay before Congress the state of his negotiation with Mr. Guardoqui, and made a motion to that effect, which was seconded by several at once.

Mr. KING hoped Congress would not be hurried into a decision on that point, observing that it was a very delicate one. But he did not altogether like it; and yet it was of such a nature that it might appear strange to negative it. He desired that it might at least lie over till Monday.

Mr. MADISON concurred in wishing the same, being persuaded that the propriety of the motion was so clear, that nothing could produce dissent, unless it were forcing members into an unwilling decision.

The motion was withdrawn, with notice that it would be renewed on Monday next.57

Monday,*April* 2.

Mr. PIERCE renewed his motion instructing the secretary of foreign affairs to lay before Congress the state of his negotiation with Mr. Guardoqui, which was agreed to without observation or dissent.

See Journals till

Tuesday,*April* 10.

Mr. KEARNEY moved that Congress adjourn, on the last Friday in April, to meet on the—day of May, in Philadelphia. Georgia, North Carolina, Virginia, Delaware, Pennsylvania, New Jersey, and Rhode Island, were for it. The merits of the proposition were not discussed. The friends to it seemed sensible that objections lay against the particular moment at which it was proposed; but, considering the greater centrality of Philadelphia, as rendering a removal proper in itself, and the uncertainty of finding seven states present and in the humor again, they waived the objections. The opinion of Mr. MADISON was, that the meeting of the ensuing Congress in Philadelphia ought to be fixed, leaving the existing Congress to remain throughout the federal year in New York. This arrangement would have been less irritating, and would have had less the aspect of precipitancy or passion, and would have repelled insinuations of personal considerations with the members. The question was agreed to lie over till to-morrow.

Wednesday,*April* 11.

Mr. VARNUM moved that the motion for removing to Philadelphia should be postponed generally. As the assent of Rhode Island was necessary to make seven states, no one chose to press a decision; the postponement was therefore agreed to *nem. con.,* and the proceedings of yesterday involved the yeas and nays on some immaterial points struck from the Journal.

See the Journal till

Wednesday,*April* 18.

It having appeared, by the report of Mr. Jay on the instruction agreed to on Monday, the 2d instant, and on information referred to him concerning the discontents of the western people, that he had considered the act of *seven* states as authorizing him to suspend the use of the Mississippi, and that he had accordingly adjusted with Mr. Guardoqui an article to that effect; that he was also much embarrassed by the ferment excited in the western country by the rumored intention to cede the Mississippi, by which such cession was rendered inexpedient on one side, and, on the other side, by the disinclination in another part of the Union to support the use of the river by arms, if necessary; it was proposed by Mr. MADISON, as an expedient which, if it should answer no other purpose, would at least gain time, that it should be resolved,

"That the present state of the negotiations with Spain, [meaning the step taken under the spurious authority of seven states,] and of the affairs of the United States, [meaning the temper and proceedings in the western country:] renders it expedient that the minister plenipotentiary at the court of France should proceed under a special commission to the court of Madrid, there to make such representations, and to urge such negotiations, as will be most likely to satisfy the said court of the friendly disposition of the United States, and to induce it to make such concessions relative to the southern limit of the said states and their right to navigate the River Mississippi, and to enter into such commercial stipulations with them, as may most effectually guard against a rupture of the subsisting harmony, and promote the mutual interest of the two nations; and that the secretary of foreign affairs prepare and report the instructions proper to be given to the said minister, with a proper commission and letters of credence; and that he also report the communications and explanations which it may be advisable to make to Mr. Guardoqui relative to this change in the mode of conducting the negotiation with his court."

Mr. KING said, that he did not know that he should be opposed to the proposition, as it seemed to be a plausible expedient, and as something seemed necessary to be done; but that he thought it proper that Congress should, before they agreed to it, give the secretary for foreign affairs an opportunity of stating his opinions on it, and accordingly moved that it should be referred to him.

Mr. CLARK and Mr. VARNUM opposed the reference, it being improper for Congress to submit a principle, for deciding which no further *information* was wanted, to the opinion of their minister. The reference being, however, at length

acceded to by the other friends of the proposition, on the principle of accommodation, it had a vote of seven states.58

Thursday,*April* 19.

The instructions of Virginia against relinquishing the Mississippi were laid before Congress by the delegates of that state, with a motion that they should be referred to the department of foreign affairs, by way of information.

The reference was opposed by Mr. KING and Mr. BENSON, as unnecessary for that purpose, the instructions having been printed in the newspapers.

In answer to this, it was observed, that the memorial accompanying the instructions had never been printed; that if it had, no just objection could be thence drawn against an official communication; that if Congress would submit a measure, as they had done yesterday, to the opinion of their minister, they ought at least to supply him with every fact, in the most authentic manner, which could assist his judgment; and that they had actually referred to the same minister communications, relative to the western views, less interesting and authentic, and which he had made the basis of a report to Congress.

The motion was lost, Massachusetts and New York being against it, and Connecticut divided. Mr. MITCHELL, from the latter state, was displeased at the negatives, as indicating a want of candor and moderation on the subject.[59]

Monday,*April* 23.

Mr. Jay's report, stating objections against the motion of Mr. Madison for sending Mr. Jefferson to Madrid, was taken into consideration.

Mr. MADISON observed, that Mr. Jay had not taken up the proposition in the point of view in which it had been penned; and explained what that was, to wit, that it was expedient to retract the step taken for ceding the Mississippi, and to do it in a manner as respectful and conciliating as possible to Spain, and which, at the same time, would procrastinate the dilemma stated by Mr. Jay. He said he was not attached to the expedient he had brought forward, and was open to any other that might be less exceptionable.

Mr. GORHAM avowed his opinion that the shutting the Mississippi would be advantageous to the Atlantic States, and wished to see it shut.

Mr. MADISON animadverted on the illiberality of his doctrine, and contrasted it with the principles of the revolution, and the language of American patriots.

Nothing was done in the case.

Wednesday,*April* 25.

Mr. MADISON, observing to Congress that he found a settled disinclination in some of the delegations to concur in any conciliatory expedient for defending the Mississippi against the operation of the vote of *seven states,* and that it was hence become necessary to attack directly the validity of that measure, to the end that the adversaries to it, and particularly the instructed delegations, might at least discharge their duty in the case, made the following motion:—

Whereas it appears by the report of the secretary for the department of foreign affairs, made on the 11th instant, that, in consequence of a vote entered into by seven states on the 29th day of August last, he has proceeded to adjust with Mr. Guardoqui an article for suspending the right of the United States to the common use of the river Mississippi below their southern boundary: And whereas it is considered that the said vote of seven states, having passed in a case in which the assent of nine states is required by the Articles of Confederation, is not valid for the purpose intended by it; and that any further negotiations in pursuance of the same may eventually expose the United States to great embarrassments with Spain, as well as excite great discontents and difficulties among themselves: *resolved,* therefore, that the secretary for the said department be informed that it is the opinion of Congress that the said vote of seven states ought not to be regarded as authorizing any suspension of the use of the River Mississippi by the United States, and that any expectations thereof, which may have been conceived on the part of Spain, ought to be repressed.

Mr. KING reminded Congress that this motion was barred by the rule, that no question should be revived which had been set aside by the previous question, unless the same or an equal number, be present, as were present at the time of such previous question. This rule had been entered into in consequence of a similar motion made shortly after the vote of seven states had passed. Mr. KING contended, that this rule was a prudent one, and recommended by the practice of all deliberative assemblies, who never suffered questions once agitated and decided, to be repeated at the pleasure of the unsuccessful party.

Mr. MADISON admitted that the rule, if insisted on, was a bar to his motion; but that he had not expected that it would be called up, being so evidently improper in itself, and the offspring of the intemperance which characterized the epoch of its birth. As it was called up, however, it was become necessary that a preliminary motion for its repeal should be made, and which be accordingly made. His objections against the rule were—

First, that it was an attempt in one Congress to bind their successors, which was not only impracticable in itself, but highly unreasonable in the very instance which gave birth to the rule. Twelve states were on the floor at the time; seven were for the previous question, five against it. The casting number, therefore, was but two. Was it not unreasonable that eleven states, unanimously of a contrary opinion, should be controlled by this small majority when twelve were present; and yet such would be the operation of the rule, if eleven states only should at any time happen to be present, although they should be unanimous in the case.

Secondly, the operation of the vote in another respect was still more reprehensible. In the former case the eleven states, or even seven, could extricate themselves by a repeal of the rule. In case a number less than seven should wish to justify themselves by any particular motion, they might be precluded by such a rule. Six states, instructed by their constituents to make a particular proposition, or to enter a particular protest, might be thus fettered by a stratagem of seven states. In the case actually depending, three states were instructed, and two, if not three, more ready to vote with them.

Thirdly, the practice of other assemblies did not reach this case, and if it did the reason of it would be inapplicable. The restriction in other assemblies related to the same assembly, and even to the same session. Here the restriction is perpetual. In legislative assemblies, no great inconvenience would happen from a suspension of a law for a limited time. In executive councils, which are involved in the constitution of Congress, and particularly in military operations and negotiations, the vicissitude of events would often govern, and a measure improper on one day might become necessary the next.

Mr. CLARK and Mr. VARNUM contended that the rules of the Congress for the last year were not in force during the present, and supposed that a repeal was unnecessary.

In the course of this discussion, the question as to the validity of the vote of seven states, and the merits of the proposition of Mr. MADISON, barred by the rule, incidentally came into view. The advocates of the latter did not maintain the validity, or rather studiously avoided giving an opinion on it. They urged only the impropriety of any exposition by Congress of their own powers, and of the validity of their own acts. They were answered, that the exposition must be somewhere, and more properly with Congress than with one of their *ministerial* officers; that it was absurd to say that Congress, with information on their table that a treaty with a foreign nation was going on without a constitutional sanction, should forbear, out of such scruple, to assert it, and prevent the dilemma which would ensue, of either recognizing an unconstitutional proceeding, or of quarrelling with the King of Spain; that Congress had frequently asserted and expounded their own powers, and must frequently be obliged to do so. What was the late address to the states, on the subject of the treaty of peace, but an exposition and vindication of their constitutional powers? That, in the vote itself, the entry, “so it was resolved in the affirmative,” asserted it to be valid and constitutional; the vote of seven states. when nine were required, being otherwise to be entered, like a vote of six states, in the negative.

It appearing to be the inflexible predetermination of the advocates for the Spanish treaty to hold fast every advantage they had got, the debate was shortened, and an adjournment took place without any question.

Note.—Mr. King, in conversation repeatedly, though not in public debate, maintained that the entry, “so it was resolved in the affirmative,” decided nothing as to the validity of the vote of seven states for yielding the Mississippi: and that it amounted to no more than a simple affirmation, or summary repetition, of the fact that the said seven states voted in the manner stated!!!

Thursday,*April* 26.

The question on the motion to repeal the rule was called for after some little conversation. Mr. CLARK moved that it might be postponed, which was agreed to.

Nothing further was done in this business till Wednesday, May 2d, when Mr. Madison left New York for the convention to be held in Philadelphia.

It was considered, on the whole, that the project for shutting the Mississippi was at an end—a point deemed of great importance in reference to the approaching convention for introducing a change in the federal government, and to the objection to an increase of its powers, foreseen from the jealousy which had been excited by that project.60

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LETTERS

PRIOR TO THE CONVENTION OF 1787

TO EDMUND RANDOLPH.

New York,*February* 25, 1787.

Dear Sir,—

The secretary's despatch will have communicated to you the resolution of Congress giving their sanction to the proposed meeting in May next. At the date of my last, a great division of opinion prevailed on the subject, it being supposed by some of the states that the interposition of Congress was necessary to give regularity to the proceeding, and by others that a neutrality on their part was a necessary antidote for the jealousy entertained of their wishes to enlarge the powers within their own administration. The circumstance which conduced much to decide the point, was an instruction from New York to its delegates, to move in Congress for some recommendation of a convention. The style of the instruction makes it probable that it was the wish of this state to have a new convention instituted, rather than the one on foot recognized. Massachusetts seemed also skittish on this point. Connecticut opposed the interposition of Congress altogether. The act of Congress is so expressed as to cover the proceedings of the states, which have already provided for the convention, without any pointed recognition of them.

Our situation is becoming every day more and more critical. No money comes into the federal treasury; no respect is paid to the federal authority; and people of reflection unanimously agree that the existing Confederacy is tottering to its foundation. Many individuals of weight, particularly in the eastern district, are suspected of leaning toward monarchy. Other individuals predict a partition of the states into two or more confederacies. It is pretty certain that, if some radical amendment of the single one cannot be devised and introduced, one or other of these revolutions—the latter no doubt—will take place. I hope you are bending your thoughts seriously to the great work of guarding against both.61

TO EDMUND RANDOLPH.

[EXTRACT.]

New York,*March* 11, 1787.

Dear Sir,—

The appointments for the convention are still going on. Georgia has appointed her delegates to Congress, her representatives in that body also. The gentlemen from that state here at present are Colonel Few, and Major Pierce, formerly aid to General Greene. I am told just now, that South Carolina has appointed the two Rutledges and Major Butler. Colonel Hamilton, with a Mr. Yates and a Mr. Lansing, are appointed by New York. The two latter are supposed to lean too much towards state considerations to be good members of an assembly which will only be useful in proportion to its superiority to partial views and interests. Massachusetts has also appointed. Messrs. Gorham, Dana, King, Gerry, and Strong, compose her deputation. The resolution under which they are appointed restrains them from acceding to any departure from the principle of the fifth Article of Confederation. It is conjectured that this fetter, which originated with their senate, will be knocked off. Its being introduced at all denotes a very different spirit, in that quarter, from what some had been led to expect. Connecticut, it is now generally believed, will come into the measure.

TO THOMAS JEFFERSON.

[EXTRACT.]

New York,*March* 19, 1787.

Dear Sir,—

I have already made known to you the light in which the subject [the sacrifice of the Mississippi] was taken up by Virginia. Mr. Henry's disgust exceeds all measure, and I am not singular in ascribing his refusal to attend the convention to the policy of keeping himself free to combat or espouse the result of it according to the result of the Mississippi business, among other circumstances. North Carolina also has given pointed instructions to her delegates; so has New Jersey. A proposition for the like purpose was a few days ago made in the legislature of Pennsylvania, but went off without a decision on its merits. Her delegates in Congress are equally divided on the subject. The tendency of this project to foment distrust among the Atlantic States, at a crisis when harmony and confidence ought to have been studiously cherished, has not been more verified than its predicted effect on the ultramontane settlements.

TO EDMUND RANDOLPH.

[EXTRACT.]

New York,*April* 8, 1787.

Dear Sir,—

I am glad to find that you are turning your thoughts towards the business of May next. My despair of your finding the necessary leisure, as signified in one of your letters, with the probability that some leading propositions at least would be expected from Virginia, had engaged me in a closer attention to the subject than I should otherwise have given. I will just hint the ideas that have occurred, leaving explanations for our interview.

I think, with you, that it will be well to retain as much as possible of the old Confederation, though I doubt whether it may not be best to work the valuable articles into the new system, instead of engrafting the latter on the former. I am also perfectly of your opinion, that, in framing a system, no material sacrifices ought to be made to local or temporary prejudices. An explanatory address must of necessity accompany the result of the convention on the main object. I am not sure that it will be practicable to present the several parts of the reform in so detached a manner to the states, as that a partial adoption will be binding. Particular states may view different articles as conditions of each other, and would only ratify them as such. Others might ratify them as independent propositions. The consequence would be that the ratifications of both would go for nothing. I have not, however, examined this point thoroughly. In truth, my ideas of a reform strike so deeply at the old Confederation, and lead to such a systematic change, that they scarcely admit of the expedient.

I hold it for a fundamental point, that an individual independence of the states is utterly irreconcilable with the idea of an aggregate sovereignty. I think, at the same time, that a consolidation of the states into one simple republic is not less unattainable than it would be inexpedient. Let it be tried, then, whether any middle ground can be taken, which will at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful.

The first step to be taken is, I think, a change in the principle of representation. According to the present form of the Union, an equality of suffrage, if not just towards the larger members of it, is at least safe to them, as the liberty they exercise of rejecting or executing the acts of Congress is uncontrollable by the nominal sovereignty of Congress. Under a system which would operate without the intervention of the states, the case would be materially altered. A vote from Delaware would have the same effect as one from Massachusetts or Virginia.

Let the national government be armed with a positive and complete authority in all cases where uniform measures are necessary, as in trade, &c. &c. Let it also retain the powers which it now possesses.

Let it have a negative, in all cases whatsoever, on the legislative acts of the states, as the king of Great Britain heretofore had. This I conceive to be essential, and the least possible abridgment of the state sovereignties. Without such a defensive power, every positive power that can be given on paper will be unavailing. It will also give internal stability to the states. There has been no moment, since the peace, at which the federal assent would have been given to paper money, &c. &c.

Let this national supremacy be extended also to the judiciary department. If the judges in the last resort depend on the states, and are bound by their oaths to them and not to the Union, the intention of the law and the interests of the nation may be defeated by the obsequiousness of the tribunals to the policy or prejudices of the states. It seems at least essential that an appeal should lie to some national tribunals in all cases which concern foreigners, or inhabitants of other states. The admiralty jurisdiction may be fully submitted to the national government.

A government formed of such extensive powers ought to be well organized. The legislative department may be divided into two branches—one of them to be chosen every—years by the legislatures, or the people at large; the other to consist of a more select number, holding their appointments for a longer term, and going out in rotation. Perhaps the negative on the state laws may be most conveniently lodged in this branch. A council of revision may be superadded, including the great ministerial officers.

A national executive will also be necessary. I have scarcely ventured to form my own opinion yet, either of the manner in which it ought to be constituted, or of the authorities with which it ought to be clothed.

An article ought to be inserted expressly guaranteeing the tranquillity of the states against internal as well as external dangers.

To give the new system its proper energy, it will be desirable to have it ratified by the authority of the people, and not merely by that of the legislatures.

I am afraid you will think this project, if not extravagant, absolutely unattainable, and unworthy of being attempted. Conceiving it myself to go no farther than is essential, the objections drawn from this source are to be laid aside. I flatter myself, however, that they may be less formidable on trial than in contemplation. The change in the principle of representation will be relished by a majority of the states, and those too of most influence. The Northern States will be reconciled to it by the *actual* superiority of their populousness; the southern by their *expected* superiority on this point. This principle established, the repugnance of the large states to part with power will in a great degree subside, and the smaller states must ultimately yield to the predominant will. It is also already seen by many, and must by degrees be seen by all, that, unless the Union be organized efficiently on republican principles, innovations of a much more objectionable form may be obtruded, or, in the most favorable event, the partition of the empire into rival and hostile confederacies will ensue.

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DEBATES IN THE FEDERAL CONVENTION OF 1787.

INTRODUCTION.

Note.—The following paper is copied from a rough draught in the handwriting of Mr. Madison. As it traces the causes and steps which led to the meeting of the Convention of 1787, it seems properly to preface the acts of that body. The paper bears evidence, in the paragraph preceding its conclusion, that it was written at a late period of the life of its author, when the pressure of ill health combined with his great age in preventing a final revision of it.

As the weakness and wants of man naturally lead to an association of individuals under a common authority, whereby each may have the protection of the whole against danger from without, and enjoy in safety within the advantages of social intercourse, and an exchange of the necessaries and comforts of life; in like manner feeble communities, independent of each other, have resorted to a union, less intimate, but with common councils, for the common safety against powerful neighbors, and for the preservation of justice and peace among themselves. Ancient history furnishes examples of these confederate associations, though with a very imperfect account of their structure, and of the attributes and functions of the presiding authority. There are examples of modern date also, some of them still existing, the modifications and transactions of which are sufficiently known.

It remained for the British Colonies, now United States of North America, to add to those examples one of a more interesting character than any of them; which led to a system without an example ancient or modern—a system founded on popular rights, and so combining a federal form with the forms of individual republics, as may enable each to supply the defects of the other and obtain the advantage of both.

Whilst the colonies enjoyed the protection of the parent country, as it was called, against foreign danger, and were secured by its superintending control against conflicts among themselves, they continued independent of each other, under a common, though limited, dependence on the parental authority. When, however, the growth of the offspring in strength and in wealth awakened the jealousy, and tempted the avidity, of the parent into schemes of usurpation and exaction, the obligation was felt by the former of uniting their counsels and efforts, to avert the impending calamity.

As early as the year 1754, indications having been given of a design in the British government to levy contributions on the colonies without their consent, a meeting of colonial deputies took place at Albany, which attempted to introduce a compromising substitute, that might at once satisfy the British requisitions, and save their own rights from violation. The attempt had no other effect than, by bringing these rights into a more conspicuous view, to invigorate the attachment to them, on the one side, and to nourish the haughty and encroaching spirit on the other.62

In 1774, the progress made by Great Britain in the open assertion of her pretensions, and the apprehended purpose of otherwise maintaining them by legislative enactments and declarations, had been such, that the colonies did not hesitate to assemble, by their deputies, in a formal Congress, authorized to oppose to the British innovations whatever measures might be found best adapted to the occasion; without, however, losing sight of an eventual reconciliation.63

The dissuasive measures of that Congress being without effect, another Congress was held in 1775, whose pacific efforts to bring about a change in the views of the other party being equally unavailing, and the commencement of actual hostilities having at length put an end to all hope of reconciliation, the Congress, finding, moreover, that the popular voice began to call for an entire and perpetual dissolution of the political ties which had connected them with Great Britain, proceeded, on the memorable Fourth of July, 1776, to declare the thirteen colonies *Independent States*.

During the discussions of this solemn act, a committee, consisting of a member from each colony, had been appointed, to prepare and digest a form of Confederation for the future management of the common interests, which had hitherto been left to the discretion of Congress, guided by the exigencies of the contest, and by the known intentions or occasional instructions of the colonial legislatures.

It appears that, as early as the 21st of July, 1775, a plan, entitled "Articles of Confederation and *perpetual* union of the Colonies," had been sketched by Dr. Franklin—the plan being on that day submitted by him to Congress, and, though not copied into their Journals, remaining on their files in his handwriting. But notwithstanding the term "perpetual" observed in the title, the articles provided expressly for the event of a return of the colonies to a connection with Great Britain.64

This sketch became a basis for the plan reported by the committee on the 12th of July, now also remaining on the files of Congress in the handwriting of Mr. Dickinson. The plan, though dated after the declaration of independence, was probably drawn up before that event, since the name of colonies, not states, is used throughout the draught.65 The plan reported was debated and amended from time to time, till the 17th of November, 1777, when it was agreed to by Congress, and proposed to the legislatures of the states, with an explanatory and recommendatory letter.66 The ratifications of these, by their delegates in Congress, duly authorized, took place at successive dates, but were not completed till the 1st of March, 1781, when Maryland, who had made it a prerequisite that the vacant lands acquired from the British crown should be a common fund, yielded to the persuasion that a final and formal establishment of the federal union and government would make a favorable impression, not only on other foreign nations, but on Great Britain herself.67

The great difficulty experienced in so framing the federal system as to obtain the unanimity required for its due sanction, may be inferred from the long interval and recurring discussions between the commencement and completion of the work; from the changes made during its progress; from the language of Congress when proposing it to the states, which dwelt on the impracticability of devising a system acceptable to

all of them; from the reluctant assent given by some, and the various alterations proposed by others; and by a tardiness in others, again, which produced a special address to them from Congress, enforcing the duty of sacrificing local considerations and favorite opinions to the public safety and the necessary harmony: nor was the assent of some of the states finally yielded without strong protests against particular articles, and a reliance on future amendments removing their objections. It is to be recollected, no doubt, that these delays might be occasioned, in some degree, by an occupation of the public councils, both general and local, with the deliberations and measures essential to a revolutionary struggle; but there must have been a balance for these causes in the obvious motives to hasten the establishment of a regular and efficient government; and in the tendency of the crisis to repress opinions and pretensions which might be inflexible in another state of things.

The principal difficulties which embarrassed the progress, and retarded the completion, of the plan of Confederation, may be traced to—first, the natural repugnance of the parties to a relinquishment of power; secondly, a natural jealousy of its abuse in other hands than their own; thirdly, the rule of suffrage among parties whose inequality in size did not correspond with that of their wealth, or of their military or free population; fourthly, the selection and definition of the powers, at once necessary to the federal head, and safe to the several members.

To these sources of difficulty, incident to the formation of all such confederacies, were added two others—one of a temporary, the other of a permanent nature. The first was the case of the crown lands, so called because they had been held by the British crown, and, being ungranted to individuals when its authority ceased, were considered by the states within whose charters or asserted limits they lay, as devolving on them: whilst it was contended by the others that, being wrested from the dethroned authority by the equal exertions of all, they resulted of right and in equity to the benefit of all. The lands being of vast extent, and of growing value, were the occasion of much discussion and heart-burning, and proved the most obstinate of the impediments to an earlier consummation of the plan of federal government. The state of Maryland, the last that acceded to it, held out, as already noticed, till the 1st of March, 1781, and then yielded only to the hope that, by giving a stable and authoritative character to the Confederation, a successful termination of the contest might be accelerated. The dispute was happily compromised by successive surrenders of portions of the territory by the states having exclusive claims to it, and acceptances of them by Congress.

The other source of dissatisfaction was the peculiar situation of some of the states, which, having no convenient ports for foreign commerce, were subject to be taxed by their neighbors, through whose ports their commerce was carried on. New Jersey, placed between Philadelphia and New York, was likened to a cask tapped at both ends; and North Carolina, between Virginia and South Carolina, to a patient bleeding at both arms. The articles of Confederation provided no remedy for the complaint, which produced a strong protest on the part of New Jersey, and never ceased to be a source of dissatisfaction and discord, until the new constitution superseded the old.

But the radical infirmity of the “Articles of Confederation” was the dependence of Congress on the voluntary and simultaneous compliance with its requisitions by so

many independent communities, each consulting more or less its particular interests and convenience, and distrusting the compliance of the others. Whilst the paper emissions of Congress continued to circulate, they were employed as a sinew of war, like gold and silver. When that ceased to be the case, and the fatal defect of the political system was felt in its alarming force, the war was merely kept alive, and brought to a successful conclusion, by such foreign aids and temporary expedients as could be applied—a hope prevailing with many, and a wish with all, that a state of peace, and the sources of prosperity opened by it, would give to the Confederacy, in practice, the efficiency which had been inferred from its theory.

The close of the war, however, brought no cure for the public embarrassments. The states, relieved from the pressure of foreign danger, and flushed with the enjoyment of independent and sovereign power, instead of a diminished disposition to part with it, persevered in omissions and in measures incompatible with their relations to the federal government, and with those among themselves.

Having served as a member of Congress through the period between March, 1780, and the arrival of peace, in 1783, I had become intimately acquainted with the public distresses and the causes of them. I had observed the successful opposition to every attempt to procure a remedy by new grants of power to Congress. I had found, moreover, that despair of success hung over the compromising principle of April, 1783, for the public necessities, which had been so elaborately planned, and so impressively recommended to the states. Sympathizing, under this aspect of affairs, in the alarm of the friends of free government at the threatened danger of an abortive result to the great, and perhaps last, experiment in its favor, I could not be insensible to the obligation to aid, as far as I could, in averting the calamity. With this view I acceded to the desire of my fellow-citizens of the county, that I should be one of its representatives in the legislature, hoping that I might there best contribute to inculcate the critical posture to which the revolutionary cause was reduced, and the merit of a leading agency of the state in bringing about a rescue of the Union, and the blessings of liberty staked on it, from an impending catastrophe.

It required but little time, after taking my seat in the House of Delegates in May, 1784, to discover that, however favorable the general disposition of the state might be towards the Confederacy, the legislature retained the aversion of its predecessors to transfers of power from the state to the government of the Union, notwithstanding the urgent demands of the federal treasury, the glaring inadequacy of the authorized mode of supplying it, the rapid growth of anarchy in the federal system, and the animosity kindled among the states by their conflicting regulations.

The temper of the legislature, and the wayward course of its proceedings, may be gathered from the Journals of its sessions in the years 1784 and 1785.[68]

The failure, however, of the varied propositions in the legislature for enlarging the powers of Congress, the continued failure of the efforts of Congress to obtain from them the means of providing for the debts of the revolution, and of countervailing the commercial laws of Great Britain, a source of much irritation, and against which the separate efforts of the states were found worse than abortive;—these considerations,

with the lights thrown on the whole subject by the free and full discussion it had undergone, led to a general acquiescence in the resolution passed on the 21st of January, 1786, which proposed and invited a meeting of deputies from all the states, as follows:

"*Resolved,* That Edmund Randolph, James Madison, Jr., Walter Jones, St. George Tucker, and Merriwether Smith, Esquires, be appointed commissioners, who, or any three of whom, shall meet such commissioners as may be appointed in the other states of the Union, at a time and place to be agreed on, to take into consideration the trade of the United States; to examine the relative situations and trade of said states; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several states such an act, relative to this great object, as, when unanimously ratified by them, will enable the United States, in Congress, effectually to provide for the same."

The resolution had been brought forward some weeks before, on the failure of a proposed grant of power to Congress to collect a revenue from commerce, which had been abandoned by its friends in consequence of material alterations made in the grant by a committee of the whole. The resolution, though introduced by Mr. Tyler, an influential member,—who, having never served in Congress, had more the ear of the house than those whose services there exposed them to an imputable bias,—was so little acceptable, that it was not then persisted in. Being now revived by him, on the last day of the session, and being the alternative of adjourning without any effort for the crisis in the affairs of the Union, it obtained a general vote; less, however, with some of its friends, from a confidence in the success of the experiment, than from a hope that it might prove a step to a more comprehensive and adequate provision for the wants of the Confederacy.69

It happened, also, that commissioners, appointed by Virginia and Maryland to settle the jurisdiction on waters dividing the two states, had, apart from their official reports, recommended a uniformity in the regulations of the two states on several subjects, and particularly on those having relation to foreign trade. It appeared, at the same time, that Maryland had deemed a concurrence of her neighbors, Delaware and Pennsylvania, indispensable in such a case, who, for like reasons, would require that of their neighbors. So apt and forcible an illustration of the necessity of a uniformity throughout all the states could not but favor the passage of a resolution which proposed a convention having that for its object.

The commissioners appointed by the legislature, and who attended the convention, were Edmund Randolph, the attorney of the state, St. George Tucker, and James Madison. The designation of the time and place, to be proposed for its meeting and communicated to the states, having been left to the commissioners, they named, for the time the first Monday in September, and for the place the city of Annapolis, avoiding the residence of Congress, and large commercial cities, as liable to suspicions of an extraneous influence.

Although the invited meeting appeared to be generally favored, five states only assembled; some failing to make appointments, and some of the individuals appointed

not hastening their attendance: the result in both cases being ascribed mainly to a belief that the time had not arrived for such a political reform as might be expected from a further experience of its necessity.

But, in the interval between the proposal of the convention and the time of its meeting, such had been the advance of public opinion in the desired direction, stimulated as it had been by the effect of the contemplated object of the meeting, in turning the general attention to the critical state of things, and in calling forth the sentiments and exertions of the most enlightened and influential patriots, that the convention, thin as it was, did not scruple to decline the limited task assigned to it, and to recommend to the states a convention with powers adequate to the occasion. Nor had it been unnoticed that the commission of the New Jersey deputation had extended its object to a general provision for the exigencies of the Union. A recommendation for this enlarged purpose was accordingly reported by a committee to whom the subject had been referred. [See Vol. I. p. 119, Elliot's Debates.] It was drafted by Col. Hamilton, and finally agreed to in the following form:—

"To the honorable the legislatures of Virginia, Delaware, Pennsylvania, New Jersey, and New York, the commissioners from the said states, respectively, assembled at Annapolis, humbly beg leave to report:—

"That, pursuant to their several appointments, they met at Annapolis, in the state of Maryland, on the 11th of September instant; and having proceeded to a communication of their powers, they found that the states of New York, Pennsylvania, and Virginia, had, in substance, and nearly in the same terms, authorized their respective commissioners 'to meet such commissioners as were, or might be, appointed by the other states of the Union, at such time and place as should be agreed upon by the said commissioners, to take into consideration the trade and commerce of the United States; to consider how far a uniform system in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony; and to report to the several states such an act, relative to this great object, as, when unanimously ratified by them, would enable the United States, in Congress assembled, effectually to provide for the same.'

"That the state of Delaware had given similar powers to their commissioners, with this difference only, that the act to be framed in virtue of these powers is required to be reported 'to the United States in Congress assembled, to be agreed to by them, and confirmed by the legislature of every state.'

"That the state of New Jersey had enlarged the object of their appointment, empowering their commissioners 'to consider how far a uniform system in their commercial regulations, and *other important matters,* might be necessary to the common interest and permanent harmony of the several states;' and to report such an act on the subject as, when ratified by them, 'would enable the United States, in Congress assembled, effectually to provide for the exigencies of the Union.'

"That appointments of commissioners have also been made by the states of New Hampshire, Massachusetts, Rhode Island, and North Carolina, none of whom,

however, have attended; but that no information has been received by your commissioners of any appointment having been made by the states of Maryland, Connecticut, South Carolina, or Georgia.

"That, the express terms of the powers to your commissioners supposing a deputation from all the states, and having for object the trade and commerce of the United States, your commissioners did not conceive it advisable to proceed on the business of their mission under the circumstances of so partial and defective a representation.

"Deeply impressed, however, with the magnitude and importance of the object confided to them on this occasion, your commissioners cannot forbear to indulge an expression of their earnest and unanimous wish, that speedy measures may be taken to effect a general meeting of the states in a future convention, for the same and such other purposes as the situation of public affairs may be found to require.

"If, in expressing this wish, or in intimating any other sentiment, your commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence, that a conduct dictated by an anxiety for the welfare of the United States will not fail to receive an indulgent construction.

"In this persuasion, your commissioners submit an opinion, that the idea of extending the powers of their deputies to other objects than those of commerce, which has been adopted by the state of New Jersey, was an improvement on the original plan, and will deserve to be incorporated into that of a future convention. They are the more naturally led to this conclusion, as, in the course of their reflections on the subject, they have been induced to think that the power of regulating trade is of such comprehensive extent, and will enter so far into the general system of the federal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the federal system.

"That there are important defects in the system of the federal government is acknowledged by the acts of all those states which have concurred in the present meeting. That the defects, upon a closer examination, may be found greater and more numerous than even these acts imply, is at least so far probable, from the embarrassments which characterise the present state of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode which will unite the sentiments and councils of all the states. In the choice of the mode, your commissioners are of opinion, that a convention of deputies from the different states, for the special and sole purpose of entering into this investigation, and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference, from considerations which will occur without being particularised.

"Your commissioners decline an enumeration of those national circumstances on which their opinion, respecting the propriety of a future convention with more enlarged powers, is founded; as it would be a useless intrusion of facts and observations, most of which have been frequently the subject of public discussion,

and none of which can have escaped the penetration of those to whom they would in this instance be addressed. They are, however, of a nature so serious, as, in the view of your commissioners, to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the Confederacy.

"Under this impression, your commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction, that it may essentially tend to advance the interests of the Union, if the states by whom they have been respectively delegated would themselves concur, and use their endeavors to procure the concurrence of the other states, in the appointment of commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States; to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose, to the United States in Congress assembled, as, when agreed to by them, and afterwards confirmed by the legislature of every state, will effectually provide for the same.

"Though your commissioners could not with propriety address these observations and sentiments to any but the states they have the honor to represent, they have nevertheless concluded, from motives of respect, to transmit copies of this report to the United States in Congress assembled, and to the executives of the other states."[70]

The recommendation was well received by the legislature of Virginia, which happened to be the *first* that *acted* on it; and the example of her compliance was made as conciliatory and impressive as possible. The legislature were unanimous, or very nearly so, on the occasion. As a proof of the magnitude and solemnity attached to it, they placed General Washington at the head of the deputation from the state; and, as a proof of the deep interest he felt in the case, he overstepped the obstacles to his acceptance of the appointment.

The law complying with the recommendation from Annapolis was in the terms following:—

"Whereas, the commissioners who assembled at Annapolis on the 11th of September last, for the purpose of devising and reporting the means of enabling Congress to provide effectually for the commercial interests of the United States, have represented the necessity of extending the revision of the federal system to all its defects; and have recommended that deputies for that purpose be appointed, by the several legislatures, to meet in convention in the city of Philadelphia, on the second Monday of May next—a provision which seems preferable to a discussion of the subject in Congress, where it might be too much interrupted by the ordinary business before them, and where it would, besides, be deprived of the valuable counsels of sundry individuals who are disqualified by the constitutions or laws of particular states, or restrained by peculiar circumstances, from a seat in that assembly:

"And whereas, the general assembly of this commonwealth, taking into view the actual situation of the Confederacy, as well as reflecting on the alarming

representations made from time to time by the United States in Congress, particularly in their act of the 15th of February last, can no longer doubt that the crisis is arrived at which the good people of America are to decide the solemn question, whether they will, by wise and magnanimous efforts, reap the just fruits of that independence which they have so gloriously acquired, and of that union which they have cemented with so much of their common blood; or whether, by giving way to unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the revolution, and furnish to its enemies an eventual triumph over those by whose virtue and valor it has been accomplished:

"And whereas, the same noble and extended policy, and the same fraternal and affectionate sentiments, which originally determined the citizens of this commonwealth to unite with their brethren of the other states, in establishing a federal government, cannot but be felt with equal force, now, as motives to lay aside every inferior consideration, and to concur in such further concessions and provisions as may be necessary to secure the great objects for which that government was instituted, and to render the United States as happy in peace as they have been glorious in war:

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

"And be it further enacted, That, in case of the death of any of the said deputies, or of their declining their appointments, the executive are hereby authorized to supply such vacancies; and the governor is requested to transmit forthwith a copy of this act to the United States in Congress, and to the executives of each of the states in the Union."*71

A resort to a general convention, to re-model the Confederacy, was not a new idea. It had entered at an early date into the conversations and speculations of the most reflecting and foreseeing observers of the inadequacy of the powers allowed to Congress. In a pamphlet published in May, 1781, at the seat of Congress, Pelatiah Webster, an able though not conspicuous citizen, after discussing the fiscal system of the United States, and suggesting, among other remedial provisions, one including a national bank, remarks, that "the authority of Congress at present is very inadequate to the performance of their duties; and this indicates the necessity of their calling a *continental convention,* for the express purpose of ascertaining, defining, enlarging, and limiting, the duties and powers of their Constitution."72

On the 1st of April, 1783, Col. Hamilton, in a debate in Congress, observed, "that he wished, instead of them, (partial conventions,) to see a general convention take place;

and that he should soon, in pursuance of instructions from his constituents, propose to Congress a plan for that purpose, the object of which would be to strengthen the Federal Constitution." He alluded, probably, to the resolutions introduced by General Schuyler in the Senate, and passed unanimously by the legislature, of New York, in the summer of 1782, declaring "that the Confederation was defective, in not giving Congress power to provide a revenue for itself, or in not investing them with funds from established and productive sources; and that it would be advisable for Congress to recommend to the states to call a general convention, to revise and amend the Confederation." It does not appear, however, that his expectation had been fulfilled.73

In a letter to James Madison from R. H. Lee, then president of Congress, dated the 26th of November, 1784, he says: "It is by many here suggested, as a very necessary step for Congress to take, the calling on the states to form a convention, for the sole purpose of revising the Confederation, so far as to enable Congress to execute, with more energy, effect, and vigor, the powers assigned to it, than it appears by experience that they can do under the present state of things." The answer of Mr. Madison remarks: "I hold it for a maxim, that the union of the states is essential to their safety against foreign danger and internal contention; and that the perpetuity and efficacy of the present system cannot be confided in. The question, therefore, is, in what mode, and at what moment, the experiment for supplying the defects ought to be made."

In the winter of 1784-5, Noah Webster, whose political and other valuable writings had made him known to the public, proposed, in one of his publications, "a new system of government, which should act, not on the states, but directly on individuals, and vest in Congress full power to carry its laws into effect."74

The proposed and expected convention at Annapolis, the first of a general character that appears to have been realized, and the state of the public mind awakened by it, had attracted the particular attention of Congress, and favored the idea there of a convention with fuller powers for amending the Confederacy.*

It does not appear that in any of these cases the reformed system was to be otherwise sanctioned than by the legislative authority of the states; nor whether, nor how far, a change was to be made in the structure of the depository of federal powers.

The act of Virginia providing for the Convention at Philadelphia was succeeded by appointments from the other states as their legislatures were assembled, the appointments being selections from the most experienced and highest-standing citizens. Rhode Island was the only exception to a compliance with the recommendation from Annapolis, well known to have been swayed by an obdurate adherence to an advantage, which her position gave her, of taxing her neighbors through their consumption of imported supplies—an advantage which it was foreseen would be taken from her by a revisal of the Articles of Confederation.

As the public mind had been ripened for a salutary reform of the political system, in the interval between the proposal and the meeting of the commissioners at Annapolis, the interval between the last event and the meeting of deputies at Philadelphia had

continued to develop more and more the necessity and the extent of a systematic provision for the preservation and government of the Union. Among the ripening incidents was the insurrection of Shays, in Massachusetts, against her government, which was with difficulty suppressed, notwithstanding the influence on the insurgents of an apprehended interposition of the federal troops.

At the date of the Convention, the aspect and retrospect of the political condition of the United States could not but fill the public mind with a gloom which was relieved only by a hope that so select a body would devise an adequate remedy for the existing and prospective evils so impressively demanding it.

It was seen that the public debt, rendered so sacred by the cause in which it had been incurred, remained without any provision for its payment. The reiterated and elaborate efforts of Congress, to procure from the states a more adequate power to raise the means of payment, had failed. The effect of the ordinary requisitions of Congress had only displayed the inefficiency of the authority making them, none of the states having duly complied with them, some having failed altogether, or nearly so, while in one instance, that of New Jersey,* a compliance was *expressly* refused; nor was more yielded to the expostulations of members of Congress, deputed to her legislature, than a mere repeal of the law, without a compliance. The want of authority in Congress to regulate commerce had produced in foreign nations, particularly Great Britain, a monopolizing policy, injurious to the trade of the United States, and destructive to their navigation; the imbecility and anticipated dissolution of the Confederacy extinguishing all apprehensions of a countervailing policy on the part of the United States. The same want of a general power over commerce led to an exercise of the power, separately, by the states, which not only proved abortive, but engendered rival, conflicting, and angry regulations. Besides the vain attempts to supply their respective treasuries by imposts, which turned their commerce into the neighboring ports, and to coerce a relaxation of the British monopoly of the West India navigation, which was attempted by Virginia,† the states having ports for foreign commerce taxed and irritated the adjoining states trading through them—as New York, Pennsylvania, Virginia, and South Carolina. Some of the states, as Connecticut, taxed imports from others, as from Massachusetts, which complained in a letter to the executive of Virginia, and doubtless to those of other states. In sundry instances, as of New York, New Jersey, Pennsylvania, and Maryland, the navigation laws treated the citizens of other states as aliens. In certain cases, the authority of the Confederacy was disregarded—as in violation, not only of the treaty of peace, but of treaties with France and Holland; which were complained of to Congress. In other cases, the federal authority was violated by treaties and wars with Indians, as by Georgia; by troops raised and kept up without the consent of Congress, as by Massachusetts; by compacts without the consent of Congress, as between Pennsylvania and New Jersey, and between Virginia and Maryland. From the legislative Journals of Virginia, it appears, that a vote refusing to apply for a sanction of Congress was followed by a vote against the communication of the compact to Congress. In the internal administration of the states, a violation of contracts had become familiar, in the form of depreciated paper made a legal tender, of property substituted for money, of instalment laws, and of the occlusions of the courts of justice, although evident that all such interferences affected the rights of other states, relatively creditors, as well as

citizens creditors within the state. Among the defects which had been severely felt, was want of a uniformity in cases requiring it, as laws of naturalization and bankruptcy; a coercive authority operating on individuals; and a guaranty of the internal tranquillity of the states.

As a natural consequence of this distracted and disheartening condition of the Union, the federal authority had ceased to be respected abroad, and dispositions were shown there, particularly in Great Britain, to take advantage of its imbecility, and to speculate on its approaching downfall. At home, it had lost all confidence and credit; the unstable and unjust career of the states had also forfeited the respect and confidence essential to order and good government, involving a general decay of confidence and credit between man and man. It was found, moreover, that those least partial to popular government, or most distrustful of its efficacy, were yielding to anticipations, that, from an increase of the confusion, a government might result more congenial with their taste or their opinions; whilst those most devoted to the principles and forms of republics were alarmed for the cause of liberty itself, at stake in the American experiment, and anxious for a system that would avoid the inefficacy of a mere Confederacy, without passing into the opposite extreme of a consolidated government. It was known that there were individuals who had betrayed a bias towards monarchy, and there had always been some not unfavorable to a partition of the Union into several confederacies, either from a better chance of figuring on a sectional theatre, or that the sections would require stronger governments, or, by their hostile conflicts, lead to a monarchical consolidation. The idea of dismemberment had recently made its appearance in the newspapers.

Such were the defects, the deformities, the diseases, and the ominous prospects, for which the Convention were to provide a remedy, and which ought never to be overlooked in expounding and appreciating the constitutional charter, the remedy that was provided.75

As a sketch on paper, the earliest, perhaps, of a constitutional government for the Union, (organized into regular departments, with physical means operating on individuals,) to be sanctioned by *the people of the states,* acting in their original and sovereign character, was contained in the letters of James Madison to Thomas Jefferson, of the 19th of March; to Governor Randolph, of the 8th of April, and to General Washington, of the 16th of April, 1787,—for which see their respective dates.76

The feature in these letters, which vested in the general authority a negative on the laws of the states, was suggested by the negative in the head of the British empire, which prevented collisions between the parts and the whole, and between the parts themselves. It was supposed that the substitution of an elective and responsible authority for an hereditary and irresponsible one would avoid the appearance even of a departure from republicanism. But, although the subject was so viewed in the Convention, and the votes on it were more than once equally divided, it was finally and justly abandoned, as, apart from other objections, it was not practicable among so many states, increasing in number, and enacting, each of them, so many laws. Instead

of the proposed negative, the objects of it were left as finally provided for in the Constitution.77

On the arrival of the Virginia deputies at Philadelphia, it occurred to them that, from the early and prominent part taken by that state in bringing about the Convention, some initiative step might be expected from them. The resolutions introduced by Governor Randolph were the result of a consultation on the subject, with an understanding that they left all the deputies entirely open to the lights of discussion, and free to concur in any alterations or modifications which their reflections and judgments might approve. The resolutions, as the Journals show, became the basis on which the proceedings of the Convention commenced, and to the developments, variations, and modifications of which, the plan of government proposed by the Convention may be traced.78

The curiosity I had felt during my researches into the history of the most distinguished confederacies, particularly those of antiquity, and the deficiency I found in the means of satisfying it, more especially in what related to the process, the principles, the reasons, and the anticipations, which prevailed in the formation of them, determined me to preserve, as far as I could, an exact account of what might pass in the Convention whilst executing its trust; with the magnitude of which I was duly impressed, as I was by the gratification promised to future curiosity by an authentic exhibition of the objects, the opinions, and the reasonings, from which the new system of government was to receive its peculiar structure and organization. Nor was I unaware of the value of such a contribution to the fund of materials for the history of a Constitution on which would be staked the happiness of a people great even in its infancy, and possibly the cause of liberty throughout the world.

In pursuance of the task I had assumed, I chose a seat in front of the presiding member, with the other members on my right and left hands. In this favorable position for hearing all that passed, I noted, in terms legible, and in abbreviations and marks intelligible, to myself, what was read from the chair or spoken by the members; and losing not a moment unnecessarily between the adjournment and reassembling of the Convention, I was enabled to write out my daily notes during the session, or within a few finishing days after its close, in the extent and form preserved, in my own hand, on my files.

In the labor and correctness of this, I was not a little aided by practice, and by a familiarity with the style and the train of observation and reasoning which characterized the principal speakers. It happened, also, that I was not absent a single day, nor more than a casual fraction of an hour in any day, so that I could not have lost a single speech, unless a very short one.

It may be proper to remark that, with a very few exceptions, the speeches were neither furnished, nor revised, nor sanctioned, by the speakers, but written out from my notes, aided by the freshness of my recollections. A further remark may be proper, that views of the subject might occasionally be presented, in the speeches and proceedings, with a latent reference to a compromise on some middle ground, by mutual concessions. The exceptions alluded to were,—first, the sketch furnished by

Mr. Randolph of his speech on the introduction of his propositions, on the 29th of May; secondly, the speech of Mr. Hamilton, who happened to call on me when putting the last hand to it, and who acknowledged its fidelity, without suggesting more than a very few verbal alterations, which were made; thirdly, the speech of Gouverneur Morris on the 2d of May, which was communicated to him on a like occasion, and who acquiesced in it without even a verbal change. The correctness of his language and the distinctness of his enunciation were particularly favorable to a reporter. The speeches of Dr. Franklin, excepting a few brief ones, were copied from the written ones read to the Convention by his colleague, Mr. Wilson, it being inconvenient to the doctor to remain long on his feet.

Of the ability and intelligence of those who composed the Convention, the debates and proceedings may be a test; as the character of the work, which was the offspring of their deliberations, must be tested by the experience of the future, added to that of nearly half a century which has passed.

But, whatever may be the judgment pronounced on the competency of the architects of the Constitution, or whatever may be the destiny of the edifice prepared by them, I feel it a duty to express my profound and solemn conviction, derived from my intimate opportunity of observing and appreciating the views of the Convention, collectively and individually, that there never was an assembly of men, charged with a great and arduous trust, who were more pure in their motives, or more exclusively or anxiously devoted to the object committed to them, than were the members of the Federal Convention of 1787 to the object of devising and proposing a constitutional system which should best supply the defects of that which it was to replace, and best secure the permanent liberty and happiness of their country.

DEBATES IN THE FEDERAL CONVENTION OF 1787,

HELD AT PHILADELPHIA.

Monday,*May* 14, 1787,

Was the day fixed for the meeting of the deputies, in Convention, for revising the federal system of government. On that day a small number only had assembled. Seven states were not convened till

Friday,*May* 25,

When the following members appeared: from

Massachusetts—Rufus King;

New York—Robert Yates and Alexander Hamilton;

New Jersey—David Brearly, William Churchill Houston, and William Patterson;

Pennsylvania—Robert Morris, Thomas Fitzsimons, James Wilson, and Gouverneur Morris;

Delaware—George Reed, Richard Basset, and Jacob Broom;

Virginia—George Washington, Edmund Randolph, John Blair, James Madison, George Mason, George Wythe, and James M'Clurg;

North Carolina—Alexander Martin, William Richardson Davie, Richard Dobbs Spaight, and Hugh Williamson;

South Carolina—John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, and Pierce Butler;

Georgia—William Few.

Mr. ROBERT MORRIS informed the members assembled that, by the instruction and in behalf of the deputation of Pennsylvania, he proposed George Washington, Esq., late commander-in-chief, for president of the Convention.* Mr. JOHN RUTLEDGE seconded the motion, expressing his confidence that the choice would be unanimous; and observing, that the presence of General Washington forbade any observations on the occasion, which might otherwise be proper.

Gen. WASHINGTON was accordingly unanimously elected by ballot, and conducted to the chair by Mr. R. Morris and Mr. Rutledge, from which, in a very emphatic manner, he thanked the Convention for the honor they had conferred on him, reminded them of the novelty of the scene of business in which he was to act, lamented his want of better qualifications, and claimed the indulgence of the house towards the involuntary errors which his inexperience might occasion.

Mr. WILSON moved that a secretary be appointed, and nominated Mr. Temple Franklin.

Col. HAMILTON nominated Major Jackson. On the ballot, Major Jackson had five votes, and Mr. Franklin two votes.

On reading the credentials of the deputies, it was noticed that those from Delaware were prohibited from changing the article in the Confederation establishing an equality of votes among the states.79

The appointment of a committee, on the motion of Mr. C. PINCKNEY, consisting of Messrs. Wythe, Hamilton, and C. Pinckney, to prepare standing rules and orders, was the only remaining step taken on this day.

Monday,*May* 28.

In Convention.—From Massachusetts, Nathaniel Gorham and Caleb Strong; *from Connecticut,* Oliver Ellsworth; *from Delaware,* Gunning Bedford; *from Maryland,*

James M'Henry; *from Pennsylvania,* Benjamin Franklin, George Clymer, Thomas Mifflin, and Jared Ingersoll,—took their seats.

Mr. WYTHE, from the committee for preparing rules, made a report, which employed the deliberations of this day.

Mr. KING objected to one of the rules in the report authorizing any member to call for the yeas and nays, and have them entered on the minutes. He urged that, as the acts of the Convention were not to bind the constituents, it was unnecessary to exhibit this evidence of the votes; and improper, as changes of opinion would be frequent in the course of the business, and would fill the minutes with contradictions.

Col. MASON seconded the objection, adding, that such a record of the opinions of members would be an obstacle to a change of them on conviction; and in case of its being hereafter promulged, must furnish handles to the adversaries of the result of the meeting.

The proposed rule was rejected, *nem. con.* The standing rules agreed to were as follows:

RULES.

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

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

"Every member, rising to speak, shall address the president; and, whilst he shall be speaking, none shall pass between them, or hold discourse with another, or read a book, pamphlet, or paper, printed or manuscript. And of two members rising to speak at the same time, the president shall name him who shall be first heard.

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

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

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

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

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

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

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

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

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

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

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

A letter from sundry persons of the state of Rhode Island, addressed to the chairman of the General Convention, was presented to the chair by Mr. GOUVERNEUR MORRIS, and, being read, was ordered to lie on the table for further consideration.†

Mr. BUTLER moved, that the House provide against interruption of business by absence of members, and against licentious publications of their proceedings. To which was added, by Mr. SPAIGHT, a motion to provide that, on the one hand, the House might not be precluded by a vote upon any question from revising the subject-matter of it, when they see cause, nor, on the other hand, be led too hastily to rescind a decision which was the result of mature discussion. Whereupon it was ordered, that these motions be referred for the consideration of the committee appointed to draw up the standing rules, and that the committee make report thereon.

Adjourned till to-morrow, at ten o'clock.

Tuesday,*May* 29.

In Convention.—John Dickinson and Elbridge Gerry, the former from Delaware, the latter from Massachusetts, took their seats. The following rules were added, on the report of Mr. Wythe, from the committee:—

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

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

"That no copy be taken of any entry on the Journal, during the sitting of the House, without leave of the House.

"That members only be permitted to inspect the Journal.

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

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

Mr. C. PINCKNEY moved, that a committee be appointed to superintend the minutes.

Mr. G. MORRIS objected to it. The entry of the proceedings of the Convention belonged to the secretary as their impartial officer. A committee might have an interest and bias in moudling the entry according to their opinions and wishes.

The motion was negatived—five noes, four ayes.

Mr. RANDOLPH then opened the main business:—

He expressed his regret that it should fall to him, rather than those who were of longer standing in life and political experience, to open the great subject of their mission. But as the Convention had originated from Virginia, and his colleagues supposed that some proposition was expected from them, they had imposed this task on him.

He then commented on the difficulty of the crisis, and the necessity of preventing the fulfilment of the prophecies of the American downfall.

He observed, that, in revising the federal system, we ought to inquire, first, into the properties which such a government ought to possess; secondly, the defects of the Confederation; thirdly, the danger of our situation; and, fourthly, the remedy.

1. The character of such a government ought to secure, first, against foreign invasion; secondly, against dissensions between members of the Union, or seditions in particular states; thirdly, to procure to the several states various blessings, of which an isolated situation was incapable; fourthly, it should be able to defend itself against encroachment; and, fifthly, to be paramount to the state constitutions.

2. In speaking of the defects of the Confederation, he professed a high respect for its authors, and considered them as having done all that patriots could do, in the then infancy of the science of constitutions and of confederacies; when the inefficiency of

requisitions was unknown—no commercial discord had arisen among any states—no rebellion had appeared, as in Massachusetts—foreign debts had not become urgent—the havoc of paper money had not been foreseen—treaties had not been violated; and perhaps nothing better could be obtained, from the jealousy of the states with regard to their sovereignty.

He then proceeded to enumerate the defects:—

First, that the Confederation produced no security against foreign invasion; Congress not being permitted to prevent a war, nor to support it by their own authority. Of this he cited many examples; most of which tended to show that they could not cause infractions of treaties, or of the law of nations, to be punished; that particular states might, by their conduct, provoke war without control; and that, neither militia nor drafts being fit for defence on such occasions, enlistments only could be successful, and these could not be executed without money.

Secondly, that the federal government could not check the quarrel between states, nor a rebellion in any, not having constitutional power, nor means, to interpose according to the exigency.

Thirdly, that there were many advantages which the United States might acquire, which were not attainable under the Confederation; such as a productive impost, counteraction of the commercial regulations of other nations, pushing of commerce *ad libitum,* &c., &c.

Fourthly, that the federal government could not defend itself against encroachments from the states.

Fifthly, that it was not even paramount to the state constitutions, ratified as it was in many of the states.

3. He next reviewed the danger of our situation; and appealed to the sense of the best friends of the United States—to the prospect of anarchy from the laxity of government every where—and to other considerations.

4. He then proceeded to the remedy; the basis of which, he said, must be the republican principle.

He proposed, as conformable to his ideas, the following resolutions, which he explained one by one.

“1. Resolved, that the Articles of Confederation ought to be so corrected and enlarged as to accomplish the objects proposed by their institution; namely, ‘common defence, security of liberty, and general welfare.’

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

"3. Resolved, that the national legislature ought to consist of two branches.

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

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

"6. Resolved, that each branch ought to possess the right of originating acts; that the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation, and moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states contravening, in the opinion of the national legislature, the Articles of Union, or any treaty subsisting under the authority of the Union; and to call forth the force of the Union against any member of the Union failing to fulfil its duty under the articles thereof.

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

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

"9. Resolved, that a national judiciary be established; to consist of one or more supreme tribunals, and of inferior tribunals; to be chosen by the national legislature; to hold their offices during good behavior, and to receive punctually, at stated times,

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

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

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

"12. Resolved, that provision ought to be made for the continuance of Congress, and their authorities and privileges, until a given day after the reform of the Articles of Union shall be adopted, and for the completion of all their engagements.

"13. Resolved, that provision ought to be made for the amendment of the Articles of Union whensoever it shall seem necessary; and that the assent of the national legislature ought not to be required thereto.

"14. Resolved, that the legislative, executive, and judiciary powers, within the several states, ought to be bound by oath to support the Articles of Union.

"15. Resolved, that the amendments which shall be offered to the Confederation by the Convention, ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies of representatives, recommended by the several legislatures, to be expressly chosen by the people, to consider and decide thereon."

He concluded with an exhortation, not to suffer the present opportunity of establishing general peace, harmony, happiness, and liberty, in the United States, to pass away unimproved.*

It was then resolved, that the House will to-morrow resolve itself into a committee of the whole House, to consider of the state of the American Union; and that the propositions moved by Mr. RANDOLPH be referred to the said committee.

Mr. CHARLES PINCKNEY laid before the House the draft of a federal government which he had prepared, to be agreed upon between the free and independent States of America:—

PLAN OF A FEDERAL CONSTITUTION.*

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

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

"Art. II.—The legislative power shall be vested in a Congress, to consist of two separate Houses; one to be called the House of Delegates; and the other the Senate, who shall meet on the—day of——in every year.

"Art. III.—The members of the House of Delegates shall be chosen every——year by the people of the several states; and the qualification of the electors shall be the same as those of the electors in the several states for their legislatures. Each member shall have been a citizen of the United States for———years; and shall be of—years of age, and a resident in the state he is chosen for. Until a census of the people shall be taken, in the manner hereinafter mentioned, the House of Delegates shall consist of———, to be chosen from the different states in the following proportions: for New Hampshire,——; for Massachusetts,—; for Rhode Island,—; for Connecticut,—; for New York,—; for New Jersey,—; for Pennsylvania,—; for Delaware,—; for Maryland,—; for Virginia,—; for North Carolina,—; for South Carolina,—; for Georgia,——; and the legislature shall hereinafter regulate the number of delegates by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every—thousand. All money bills of every kind shall originate in the House of Delegates, and shall not be altered by the Senate. The House of Delegates shall exclusively possess the power of impeachment, and shall choose its own officers; and vacancies therein shall be supplied by the executive authority of the state in the representation from which they shall happen.

"Art. IV.—The Senate shall be elected and chosen by the House of Delegates; which House, immediately after their meeting, shall choose by ballot——senators from among the citizens and residents of New Hampshire;——from among those of Massachusetts;—from among those of Rhode Island;——from among those of Connecticut;——from among those of New York;——from among those of New Jersey;——from among those of Pennsylvania;—from among those of Delaware;——from among those of Maryland;—from among those of Virginia;——from among those of North Carolina;—from among those of South Carolina; and——from among those of Georgia. The senators chosen from New Hampshire, Massachusetts, Rhode Island, and Connecticut, shall form one class; those from New York, New Jersey, Pennsylvania, and Delaware, one class; and those from Maryland, Virginia, North Carolina, South Carolina, and Georgia, one class. The House of Delegates shall number these classes, one, two, and three; and fix the times of their service by lot. The first class shall serve for—years; the second for—years; and the third for—years. As their times of service expire, the House of Delegates shall

fill them up by elections for——years; and they shall fill all vacancies that arise from death or resignation, for the time of service remaining of the members so dying or resigning. Each senator shall be—years of age at least; and shall have been a citizen of the United States for four years before his election; and shall be a resident of the state he is chosen from. The Senate shall choose its own officers.

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

"In each House, a majority shall constitute a quorum to do business. Freedom of speech and debate in the legislature shall not be impeached, or questioned, in any place out of it; and the members of both Houses shall, in all cases, except for treason, felony, or breach of the peace, be free from arrest during their attendance on Congress, and in going to and returning from it. Both Houses shall keep Journals of their proceedings, and publish them, except on secret occasions; and the yeas and nays may be entered thereon at the desire of one—of the members present. Neither House, without the consent of the other, shall adjourn for more than—days, nor to any place but where they are sitting.

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

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

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

"To borrow money, and emit bills of credit;

"To establish post-offices;

"To raise armies;

"To build and equip fleets;

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

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

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

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

"To appoint a treasurer, by ballot;

"To constitute tribunals inferior to the supreme court;

"To establish post and military roads;

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

"To establish uniform rules of naturalization;

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

"To make rules concerning captures from an enemy;

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

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

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

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

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

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

"All laws regulating commerce shall require the assent of two thirds of the members present in each house. The United States shall not grant any title of nobility. The legislature of the United States shall pass no law on the subject of religion: nor

touching or abridging the liberty of the press: or shall the privilege of the writ of habeas corpus ever be suspended, except in case of rebellion or invasion.

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

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

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

"Art. VIII.—The executive power of the United States shall be vested in a President of the United States of America, which shall be his style; and his title shall be His Excellency. He shall be elected for—years; and shall be reeligible.

"He shall from time to time give information to the legislature of the state of the Union, and recommend to their consideration the measures he may think necessary. He shall take care that the laws of the United States be duly executed. He shall commission all the officers of the United States; and, except as to ambassadors, other ministers, and judges of the supreme court, he shall nominate, and, with the consent of the Senate, appoint, all other officers of the United States. He shall receive public ministers from foreign nations; and may correspond with the executives of the different states. He shall have power to grant pardons and reprieves, except in impeachments. He shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states; and shall receive a compensation which shall not be increased or diminished during his continuance in office. At entering on the duties of his office, he shall take an oath faithfully to execute the duties of a President of the United States. He shall be removed from his office on impeachment by the House of Delegates, and conviction, in the supreme court, of treason, bribery, or corruption. In case of his removal, death, resignation, or disability, the president of the Senate shall exercise the duties of his office until another President be chosen. And in case of the death of the president of the Senate, the speaker of the House of Delegates shall do so.

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

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

cases of impeachment affecting ambassadors, and other public ministers, this jurisdiction shall be original; and in all other cases appellate.

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

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

"Art. XI.—No state shall grant letters of marque and reprisal, or enter into treaty, or alliance, or confederation; nor grant any title of nobility; nor, without the consent of the legislature of the United States, lay any impost on imports; nor keep troops or ships of war in time of peace; nor enter into compacts with other states or foreign powers; nor emit bills of credit; nor make any thing but gold, silver, or copper, a tender in payment of debts; nor engage in war, except for self-defence when actually invaded, on the danger of invasion be so great as not to admit of a delay until the government of the United States can be informed thereof. And, to render these prohibitions effectual, the legislature of the United States shall have the power to revise the laws of the several states that may be supposed to infringe the powers exclusively delegated by this Constitution to Congress, and to negative and annul such as do.

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

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

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

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

"Art. XVI.—If two thirds of the legislatures of the states apply for the same, the legislature of the United States shall call a convention for the purpose of amending the Constitution; or, should Congress, with the consent of two thirds of each House, propose to the states amendments to the same, the agreement of two thirds of the legislatures of the states shall be sufficient to make the said amendments parts of the Constitution.

"The ratification of the—conventions of—states shall be sufficient for organizing this Constitution."

Ordered, that the said draft be referred to the committee of the whole appointed to consider the state of the American Union.

Adjourned.

Wednesday,*May* 30.

Roger Sherman, from Connecticut, took his seat.

The house went into *Committee of the Whole* on the state of the Union. Mr. Gorham was elected to the chair by ballot.

The propositions of Mr. RANDOLPH which had been referred to the committee being taken up, he moved, on the suggestion of Mr. G. MORRIS, that the first of his propositions,—to wit: "*Resolved, that the Articles of Confederation ought to be so corrected and enlarged, as to accomplish the objects proposed by their institution; namely, common defence, security of liberty, and general welfare,*"—should mutually be postponed, in order to consider the three following:—

"1. That a union of the states merely federal will not accomplish the objects proposed by the Articles of Confederation—namely, common defence, security of liberty, and general welfare.

"2. That no treaty or treaties among the whole or part of the states, as individual sovereignties, would be sufficient.

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

The motion for postponing was seconded by Mr. G. MORRIS, and unanimously agreed to.

Some verbal criticisms were raised against the first proposition, and it was agreed, on motion of Mr. BUTLER, seconded by Mr. RANDOLPH, to pass on to the third, which underwent a discussion, less, however, on its general merits than on the force and extent of the particular terms *national* and *supreme.*

Mr. CHARLES PINCKNEY wished to know of Mr. Randolph, whether he meant to abolish the state governments altogether. Mr. RANDOLPH replied, that he meant by these general propositions merely to introduce the particular ones which explained the outlines of the system he had in view.

Mr. BUTLER said, he had not made up his mind on the subject, and was open to the light which discussion might throw on it. After some general observations, he concluded with saying, that he had opposed the grant of powers to Congress heretofore, because the whole power was vested in one body. The proposed

distribution of the powers with different bodies changed the case, and would induce him to go great lengths.

Gen. PINCKNEY expressed a doubt whether the act of Congress recommending the Convention, or the commissions of the deputies to it, would authorize a discussion of a system founded on different principles from the Federal Constitution.

Mr. GERRY seemed to entertain the same doubt.

Mr. GOUVERNEUR MORRIS explained the distinction between a *federal* and a *national supreme* government; the former being a mere compact resting on the good faith of the parties, the latter having a complete and *compulsive* operation. He contended, that in all communities there must be one supreme power, and one only.

Mr. MASON observed, not only that the present Confederation was deficient in not providing for coercion and punishment against delinquent states, but argued very cogently, that punishment could not, in the nature of things, be executed on the states collectively, and therefore that such a government was necessary as could directly operate on individuals, and would punish those only whose guilt required it.

Mr. SHERMAN admitted that the Confederation had not given sufficient power to Congress, and that additional powers were necessary; particularly that of raising money, which, he said, would involve many other powers. He admitted, also, that the general and particular jurisdictions ought in no case to be concurrent. He seemed, however, not to be disposed to make too great inroads on the existing system; intimating, as one reason, that it would be wrong to lose every amendment by inserting such as would not be agreed to by the states.

It was moved by Mr. READ, and seconded by Mr. CHARLES COTESWORTH PINCKNEY, to postpone the third proposition last offered by Mr. Randolph, viz., "that a national government ought to be established, consisting of a supreme legislative, executive, and judiciary," in order to take up the following, viz.: "Resolved, that, in order to carry into execution the design of the states in forming this Convention, and to accomplish the objects proposed by the Confederation, a more effective government, consisting of a legislative, executive, and judiciary, ought to be established." The motion to postpone for this purpose was lost.

Massachusetts, Connecticut, Delaware, South Carolina, ay, 4; New York, Pennsylvania, Virginia, North Carolina, no, 4.

On the question, as moved by Mr. BUTLER, on the third proposition, it was resolved, in committee of the whole, "that a national government ought to be established, consisting of a supreme legislative, executive, and judiciary."

Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, ay, 6; Connecticut, no, 1; New York, divided,80 (Colonel Hamilton, ay, Mr. Yates, no.)

The following resolution, being the second of those proposed by Mr. RANDOLPH, was taken up, viz.:

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

Mr. MADISON, observing that the words "*or to the number of free inhabitants*" might occasion debates which would divert the committee from the general question whether the principle of representation should be changed, moved that they might be struck out.

Mr. KING observed, that the quotas of contribution, which would alone remain as the measure of representation, would not answer; because, waiving every other view of the matter, the revenue might hereafter be so collected by the general government that the sums respectively drawn from the states would not appear, and would besides be continually varying.

Mr. MADISON admitted the propriety of the observation, and that some better rule ought to be found.

Col. HAMILTON moved to alter the resolution so as to read, "that the rights of suffrage in the national legislature ought to be proportioned to the number of free inhabitants." Mr. SPAIGHT seconded the motion.

It was then moved that the resolution be postponed; which was agreed to.

Mr. RANDOLPH and Mr. MADISON then moved the following resolution: "That the rights of suffrage in the national legislature ought to be proportioned."

It was moved, and seconded, to amend it by adding, "and not according to the present system;" which was agreed to.

It was then moved and seconded to alter the resolution so as to read, "That the rights of suffrage in the national legislature ought not to be according to the present system."

It was then moved and seconded to postpone the resolution moved by Mr. Randolph and Mr. Madison; which being agreed to,—

Mr. Madison moved, in order to get over the difficulties, the following resolution: "That the equality of suffrage established by the Articles of Confederation ought not to prevail in the national legislature; and that an equitable ratio of representation ought to be substituted." This was seconded by Mr. GOUVERNEUR MORRIS, and, being generally relished, would have been agreed to; when

Mr. READ moved, that the whole clause relating to the point of representation be postponed; reminding the committee that the deputies from Delaware were restrained by their commission from assenting to any change of the rule of suffrage, and in case such a change should be fixed on, it might become their duty to retire from the Convention.

Mr. GOUVERNEUR MORRIS observed, that the valuable assistance of those members could not be lost without real concern; and that so early a proof of discord in the Convention as the secession of a state would add much to the regret; that the change proposed was, however, so fundamental an article in a national government, that it could not be dispensed with.

Mr. MADISON observed, that, whatever reason might have existed for the equality of suffrage when the union was a federal one among sovereign states, it must cease when a national government should be put into the place. In the former case, the acts of Congress depended so much for their efficacy on the coöperation of the states, that these had a weight, both within and without Congress, nearly in proportion to their extent and importance. In the latter case, as the acts of the general government would take effect without the intervention of the state legislatures, a vote from a small state would have the same efficacy and importance as a vote from a large one, and there was the same reason for different numbers of representatives from different states, as from counties of different extents within particular states. He suggested, as an expedient for at once taking the sense of the members on this point, and saving the Delaware deputies from embarrassment, that the question should be taken in committee, and the clause, on report to the House, be postponed without a question there. This, however, did not appear to satisfy Mr. Read.

By several it was observed, that no just construction of the act of Delaware could require or justify a secession of her deputies, even if the resolution were to be carried through the House as well as the committee. It was finally agreed, however, that the clause should be postponed; it being understood that, in the event, the proposed change of representation would certainly be agreed to, no objection or difficulty being started from any other quarter than from Delaware.

The motion of Mr. Read to postpone being agreed to, the committee then rose; the chairman reported progress; and the House, having resolved to resume the subject in committee to-morrow, adjourned to ten o'clock.

Thursday,*May* 31.

William Pierce, from Georgia, took his seat.81

In the committee of the whole on Mr. RANDOLPH'S resolutions,—the third resolution, "*that the national legislature ought to consist of two branches,*" was agreed to without debate, or dissent, except that of Pennsylvania,—given probably from complaisance to Dr. Franklin, who was understood to be partial to a single house of legislation.

The fourth resolution, first clause, "*that the members of the first branch of the national legislature ought to be elected by the people of the several states,*" being taken up,—

Mr. SHERMAN opposed the election by the people, insisting that it ought to be by the state legislatures. The people, he said, immediately, should have as little to do as

may be about the government. They want information, and are constantly liable to be misled.

Mr. GERRY. The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Massachusetts, it had been fully confirmed by experience, that they are daily misled into the most baneful measures and opinions, by the false reports circulated by designing men, and which no one on the spot can refute. One principal evil arises from the want of due provision for those employed in the administration of government. It would seem to be a maxim of democracy to starve the public servants. He mentioned the popular clamor in Massachusetts for the reduction of salaries, and the attack made on that of the governor, though secured by the spirit of the constitution itself. He had, he said, been too republican heretofore: he was still, however, republican, but had been taught by experience the danger of the levelling spirit.

Mr. MASON argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the government. It was, so to speak, to be our House of Commons. It ought to know and sympathize with every part of the community, and ought therefore to be taken, not only from different parts of the whole republic, but also from different districts of the larger members of it; which had in several instances, particularly in Virginia, different interests and views arising from difference of produce, of habits, &c. &c. He admitted that we had been too democratic, but was afraid we should incautiously run into the opposite extreme. We ought to attend to the rights of every class of the people. He had often wondered at the indifference of the superior classes of society to this dictate of humanity and policy; considering that, however affluent their circumstances, or elevated their situations, might be, the course of a few years not only might, but certainly would, distribute their posterity throughout the lowest classes of society. Every selfish motive, therefore, every family attachment, ought to recommend such a system of policy as would provide no less carefully for the rights and happiness of the lowest, than of the highest, order of citizens.

Mr. WILSON contended strenuously for drawing the most numerous branch of the legislature immediately from the people. He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government, this confidence was peculiarly essential. He also thought it wrong to increase the weight of the state legislatures by making them the electors of the national legislature. All interference between the general and local governments should be obviated as much as possible. On examination, it would be found that he opposition 82 of states to federal measures had proceeded much more from the officers of the states than from the people at large.

Mr. MADISON considered the popular election of one branch of the national legislature as essential to every plan of free government. He observed, that, in some of the states, one branch of the legislature was composed of men already removed from the people by an intervening body of electors; that, if the first branch of the general legislature should be elected by the state legislatures, the second branch elected by the

first, the executive by the second together with the first, and other appointments again made for subordinate purposes by the executive, the people would be lost sight of altogether, and the necessary sympathy between them and their rulers and officers too little felt. He was an advocate for the policy of refining the popular appointments by successive filtrations, but thought it might be pushed too far. He wished the expedient to be resorted to only in the appointment of the second branch of the legislature, and in the executive and judiciary branches of the government. He thought, too, that the great fabric to be raised would be more stable and durable, if it should rest on the solid foundation of the people themselves, than if it should stand merely on the pillars of the legislatures.

Mr. GERRY did not like the election by the people. The maxims taken from the British constitution were often fallacious when applied to our situation, which was extremely different. Experience, he said, had shown that the state legislatures, drawn immediately from the people, did not always possess their confidence. He had no objection, however, to an election by the people, if it were so qualified that men of honor and character might not be unwilling to be joined in the appointments. He seemed to think the people might nominate a certain number, out of which the state legislatures should be bound to choose.

Mr. BUTLER thought an election by the people an impracticable mode.

On the question for an election of the first branch of the national legislature by the people,—

Massachusetts, New York, Pennsylvania, Virginia, North Carolina, Georgia, ay, 6, New Jersey, South Carolina, no, 2; Connecticut, Delaware, divided.

The remaining clauses of the fourth resolution, relating to *the qualifications of members of the national legislature,* being postponed, *nem. con.,* as entering too much into detail for general propositions,—

The committee proceeded to the fifth resolution, *that the second* [*or senatorial*] *branch of the national legislature ought to be chosen, by the first branch, out of persons nominated by the state legislatures.*

Mr. SPAIGHT contended, that the second branch ought to be chosen by the state legislatures, and moved an amendment to that effect.

Mr. BUTLER apprehended, that the taking so many powers out of the hands of the states as was proposed tended to destroy all that balance and security of interests among the states which it was necessary to preserved and called on Mr. Randolph, the mover of the propositions, to explain the extent of his ideas, and particularly the number of members he meant to assign to this second branch.

Mr. RANDOLPH observed, that he had, at the time of offering his propositions, stated his ideas, as far as the nature of general propositions required; that details made no part of the plan, and could not perhaps with propriety have been introduced. If he was to give an opinion as to the number of the second branch, he should say that it

ought to be much smaller than that of the first; so small as to be exempt from the passionate proceedings to which numerous assemblies are liable. He observed, that the general object was to provide a cure for the evils under which the United States labored; that, in tracing these evils to their origin, every man had found it in the turbulence and follies of democracy; that some check therefore was to be sought for against this tendency of our governments; and that a good Senate seemed most likely to answer the purpose.

Mr. KING reminded the committee that the choice of the second branch, as proposed, (by Mr. Spaight,) viz., by the state legislatures, would be impracticable unless it was to be very numerous, or *the idea of proportion* among the states was to be disregarded. According to this *idea,* there must be eighty or a hundred members to entitle Delaware to the choice of one of them.

Mr. SPAIGHT withdrew his motion.

Mr. WILSON opposed both a nomination by the state legislatures, and an election by the first branch of the national legislature, because the second branch of the latter ought to be independent of both. He thought both branches of the national legislature ought to be chosen by the people, but was not prepared with a specific proposition. He suggested the mode of choosing the Senate of New York—to wit, of uniting several election districts for one branch, in choosing members for the other branch, as a good model.

Mr. MADISON observed, that such a mode would destroy the influence of the smaller states associated with larger ones in the same district; as the latter would choose from within themselves, although better men might be found in the former. The election of senators in Virginia, where large and small counties were often formed into one district for the purpose, had illustrated this consequence. Local partiality would often prefer a resident within the county or state to a candidate of superior merit residing out of it. Less merit also in a resident would be more known throughout his own state.

Mr. SHERMAN favored an election of one member by each of the state legislatures.

Mr. PINCKNEY moved to strike out the "nomination by the state legislatures:" on this question—

* Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 9; Delaware, divided.

On the whole question for electing by the first branch out of nominations by the state legislatures—Massachusetts, Virginia, South Carolina, ay, 3; Connecticut New York, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, no, 7.

So the clause was disagreed to, and a chasm left in this part of the plan.83

The sixth resolution, stating *the cases in which the national legislature ought to legislate,* was next taken into discussion. On the question *whether each branch should*

originate laws, there was a unanimous affirmative, without debate. On the question *for transferring all the legislative powers of the existing Congress to this assembly,* there was also a unanimous affirmative, without debate.

On the proposition *for giving legislative power in all cases to which the state legislatures were individually incompetent,*—Mr. PINCKNEY and Mr. RUTLEDGE objected to the vagueness of the term "*incompetent,*" and said they could not well decide how to vote until they should see an exact enumeration of the powers comprehended by this definition.

Mr. BUTLER repeated his fears that we were running into an extreme, in taking away the powers of the states, and called on Mr. Randolph for the extent of his meaning.

Mr. RANDOLPH disclaimed any intention to give indefinite powers to the national legislature, declaring that he was entirely opposed to such an inroad on the state jurisdictions, and that he did not think any considerations whatever could ever change his determination. His opinion was fixed on this point.

Mr. MADISON said, that he had brought with him into the Convention a strong bias in favor of an enumeration and definition of the powers necessary to be exercised by the national legislature, but had also brought doubts concerning its practicability. His wishes remained unaltered; but his doubts had become stronger. What his opinion might ultimately be, he could not yet tell. But he should shrink from nothing which should be found essential to such a form of government as would provide for the safety, liberty, and happiness of the community. This being the end of all our deliberations, all the necessary means for attaining it must, however reluctantly, be submitted to.

On the question for giving powers, in cases to which the states are not competent—

Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Connecticut, divided, (Sherman, no, Ellsworth, ay.)

The other clauses, *giving powers necessary to preserve harmony among the states, to negative all state laws contravening, in the opinion of the national legislature, the Articles of Union,* down to the last clause, (the words "or any treaties subsisting under the authority of the Union," being added after the words "contravening, &c. the articles of the Union," on motion of Dr. Franklin,) were agreed to without debate or dissent.

The last clause of the sixth resolution, *authorizing an exertion ofthe force of the whole against a delinquent state,* came next into consideration.

Mr. MADISON observed, that the more he reflected on the use of force, the more he doubted the practicability, the justice, and the efficacy of it, when applied to people collectively, and not individually. A union of the states containing such an ingredient seemed to provide for its own destruction. The use of force against a state would look more like a declaration of war than an infliction of punishment, and would probably

be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this resource unnecessary, and moved that the clause be postponed. This motion was agreed to, *nem. con.*

The committee then rose, and the house adjourned.

Friday,*June* 1.

William Houstoun, from Georgia, took his seat.

The *committee of the whole* proceeded to the seventh resolution *that a national executive be instituted, to be chosen by the national legislature for the term of—years, &c., to be ineligible thereafter, to possess the executive powers of Congress, &c.*

Mr. PINCKNEY was for a vigorous executive, but was afraid the executive powers of the existing Congress might extend to peace and war, &c.; which would render the executive a monarchy of the worst kind, to wit, an elective one.

Mr. WILSON moved that the executive consist of a single person. Mr. C. PINCKNEY seconded the motion, so as to read "that a national executive, to consist of a single person, be instituted."

A considerable pause ensuing, and the chairman asking if he should put the question, Dr. FRANKLIN observed, that it was a point of great importance, and wished that the gentlemen would deliver their sentiments on it before the question was put.

Mr. RUTLEDGE animadverted on the shyness of gentlemen on this and other subjects. He said it looked as if they supposed themselves precluded, by having frankly disclosed their opinions, from afterwards changing them, which he did not take to be at all the case. He said he was for vesting the executive power in a single person, though he was not for giving him the power of war and peace. A single man would feel the greatest responsibility, and administer the public affairs best.

Mr. SHERMAN said, he considered the executive magistracy as nothing more than an institution for carrying the will of the legislature into effect; that the person or persons ought to be appointed by, and accountable to, the legislature only, which was the depository of the supreme will of the society. As they were the best judges of the business which ought to be done by the executive department, and consequently of the number necessary from time to time for doing it, he wished the number might not be fixed, but that the legislature should be at liberty to appoint one or more, as experience might dictate.

Mr. WILSON preferred a single magistrate, as giving most energy, despatch, and responsibility, to the office. He did not consider the prerogatives of the British monarch as a proper guide in defining the executive powers. Some of these prerogatives were of a legislative nature; among others, that of war and peace, &c. The only powers he considered strictly executive were those of executing the laws, and appointing officers, not appertaining to, and appointed by, the legislature.

Mr. GERRY favored the policy of annexing a council to the executive, in order to give weight and inspire confidence.

Mr. RANDOLPH strenuously opposed a unity in the executive magistracy. He regarded it as the fœtus of monarchy. We had, he said, no motive to be governed by the British government as our prototype. He did not mean, however, to throw censure on that excellent fabric. If we were in a situation to copy it, he did not know that he should be opposed to it; but the fixed genius of the people of America required a different form of government. He could not see why the great requisites for the executive department,—vigor, despatch, and responsibility,—could not be found in three men, as well as in one man. The executive ought to be independent. It ought, therefore, in order to support its independence, to consist of more than one.

Mr. WILSON said, that unity in the executive, instead of being the fœtus of monarchy, would be the best safeguard against tyranny. He repeated, that he was not governed by the British model, which was inapplicable to the situation of this country, the extent of which was so great, and the manners so republican, that nothing but a great confederated republic would do for it.

Mr. Wilson's motion for a single magistrate was postponed by common consent, the committee seeming unprepared for any decision on it, and the first part of the clause agreed to, viz., "that a national executive be instituted."84

Mr. MADISON thought it would be proper, before a choice should be made between a unity and a plurality in the executive, to fix the extent of the executive authority; that as certain powers were in their nature executive, and must be given to that department, whether administered by one or more persons, a definition of their extent would assist the judgment in determining how far they might be safely intrusted to a single officer. He accordingly moved that so much of the clause before the committee as related to the powers of the executive should be struck out, and that after the words "that a national executive ought to be instituted," there be inserted the words following, viz., "with power to carry into effect the national laws, to appoint to offices in cases not otherwise provided for, and to execute such other powers, 'not legislative nor judiciary in their nature,' as may from time to time be delegated by the national legislature." The words "not legislative nor judiciary in their nature," were added to the proposed amendment, in consequence of a suggestion, by Gen. PINCKNEY, that improper powers might otherwise be delegated.

Mr. WILSON seconded this motion.

Mr. PINCKNEY moved to amend the amendment by striking out the last member of it, viz., "and to execute such other powers, not legislative nor judiciary in their nature, as may from time to time be delegated." He said they were unnecessary, the object of them being included in the "power to carry into effect the national laws."

Mr. RANDOLPH seconded the motion.

Mr. MADISON did not know that the words were absolutely necessary, or even the preceding words, “to appoint to offices, &c.,” the whole being, perhaps, included in the first member of the proposition. He did not, however, see any inconvenience in retaining them; and cases might happen in which they might serve to prevent doubts and misconstructions.

In consequence of the motion of Mr. Pinckney, the question on Mr. Madison’s motion was divided; and the words objected to by Mr. Pinckney struck out, by the votes of

Connecticut, New York, New Jersey, Pennsylvania, Delaware, North Carolina, and Georgia, 7, against Massachusetts, Virginia, and South Carolina, 3; the preceding part of the motion being first agreed to,—Connecticut, divided; all the other states in the affirmative.

The next clause in the seventh resolution, relating to the mode of appointing, and the duration of, the executive, being under consideration,

Mr. WILSON said, he was almost unwilling to declare the mode which he wished to take place, being apprehensive that it might appear chimerical. He would say, however, at least, that, in theory, he was for an election by the people. Experience, particularly in New York and Massachusetts, showed that an election of the first magistrate by the people at large was both a convenient and successful mode. The objects of choice in such cases must be persons whose merits have general notoriety.

Mr. SHERMAN was for the appointment by the legislature, and for making him absolutely dependent on that body, as it was the will of that which was to be executed. An independence of the executive on the supreme legislature was, in his opinion, the very essence of tyranny, if there was any such thing.

Mr. WILSON moved, that the blank for the term of duration should be filled with three years, observing, at the same time, that he preferred this short period on the supposition that a reëligibility would be provided for.

Mr. PINCKNEY moved for seven years.

Mr. SHERMAN was for three years, and against the doctrine of rotation, as throwing out of office the men best qualified to execute its duties.

Mr. MASON was for seven years at least, and for prohibiting a reëligibility, as the best expedient, both for preventing the effect of a false complaisance on the side of the legislature towards unfit characters, and a temptation on the side of the executive to intrigue with the legislature for a reappointment.

Mr. BEDFORD was strongly opposed to so long a term as seven years. He begged the committee to consider what the situation of the country would be, in case the first magistrate should be saddled on it for such a period, and it should be found on trial that he did not possess the qualifications ascribed to him, or should lose them after his appointment. An impeachment, he said, would be no cure for this evil, as an

impeachment would reach misfeasance only, not incapacity. He was for a triennial election, and for an ineligibility after a period of nine years.

On the question for *seven years,*—

New York, New Jersey, Pennsylvania, Delaware, Virginia, ay, 5; Connecticut, North Carolina, South Carolina, Georgia, no, 4; Massachusetts, divided.

There being five ayes, four noes, and one divided, a question was asked, whether a majority had voted in the affirmative. The president decided that it was an affirmative vote.85

The *mode of appointing* the executive was the next question.

Mr. WILSON renewed his declarations in favor of an appointment by the people. He wished to derive not only both branches of the legislature from the people, without the intervention of the state legislatures, but the executive also, in order to make them as independent as possible of each other, as well as of the states.

Col. MASON favors the idea, but thinks it impracticable. He wishes, however, that Mr. Wilson might have time to digest it into his own form. The clause "to be chosen by the national legislature," was accordingly postponed.

Mr. RUTLEDGE suggests an election of the executive by the second branch only of the national legislature.

The committee then rose, and the house adjourned.

Saturday,*June* 2.

William Samuel Johnson, from Connecticut, Daniel of St. Thomas Jenifer, from Maryland, and John Lansing, Jun., from New York, took their seats.

In Committee of the Whole, it was moved and seconded to postpone the resolutions of Mr. Randolph respecting the executive, in order to take up the second branch of the legislature;

Which being negatived, by Massachusetts, Connecticut, Delaware, Virginia, North Carolina, South Carolina, Georgia, 7, against New York, Pennsylvania, Maryland, 3, the mode of appointing the executive was resumed.

Mr. WILSON made the following motion, to be substituted for the mode proposed by Mr. Randolph's resolution, "that the executive magistracy shall be elected in the following manner:—

That the states be divided into—districts, and that the persons qualified to vote in each district for members of the first branch of the national legislature elect—members for their respective districts to be electors of the executive magistracy: that the said electors of the executive magistracy meet at—, and they, or any—of them, so met,

shall proceed to elect by ballot, but not out of their 86 own body,—person—in whom the executive authority of the national government shall be vested."

Mr. WILSON repeated his arguments in favor of an election without the intervention of the states. He supposed, too, that this mode would produce more confidence among the people in the first magistrate, than an election by the national legislature.

Mr. GERRY opposed the election by the national legislature. There would be a constant intrigue kept up for the appointment. The legislature and the candidates would bargain and play into one another's hands. Votes would be given by the former under promises or expectations, from the latter, of recompensing them by services to members of the legislature or their friends. He liked the principle of Mr. Wilson's motion, but feared it would alarm and give a handle to the state partisans, as tending to supersede altogether the state authorities. He thought the community not yet ripe for stripping the states of their powers, even such as might not be requisite for local purposes. He was for waiting till the people should feel more the necessity of it. He seemed to prefer the taking the suffrages of the states, instead of electors; or letting the legislatures nominate, and the electors appoint. He was not clear that the people ought to act directly even in the choice of electors, being too little informed of personal characters in large districts, and liable to deceptions.

Mr. WILLIAMSON could see no advantage in the introduction of electors chosen by the people, who would stand in the same relation to them as the state legislatures; whilst the expedient would be attended with great trouble and expense.

On the question for agreeing to Mr. Wilson's substitute, it was negatived.

Pennsylvania, Maryland, ay, 2; Massachusetts, Connecticut, New York, Delaware, Virginia, North Carolina, South Carolina, Georgia, no, 8. (New York, in the printed Journal, divided.)

On the question for electing the executive, by the national legislature, for the term of seven years, it was agreed to.

Massachusetts, Connecticut, New York, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Pennsylvania, Maryland, no, 2.

Dr. FRANKLIN moved, that what related to the compensation for the services of the executive be postponed, in order to substitute, "whose necessary expenses shall be defrayed, but who shall receive no salary, stipend, fee, or reward whatsoever for their services." He said that, being very sensible of the effect of age on his memory, he had been unwilling to trust to that for the observations which seemed to support his motion, and had reduced them to writing, that he might, with the permission of the committee, read, instead of speaking, them. Mr. Wilson made an offer to read the paper, which was accepted. The following is a literal copy of the paper:—

"Sir: It is with reluctance that I rise to express a disapprobation of any one article of the plan for which we are so much obliged to the honorable gentleman who laid it before us. From its first reading I have borne a good will to it, and in general wished it

success. In this particular of salaries to the executive branch, I happen to differ; and as my opinion may appear new and chimerical, it is only from a persuasion that it is right, and from a sense of duty, that I hazard it. The committee will judge of my reasons when they have heard them, and their judgment may possibly change mine. I think I see inconveniences in the appointment of salaries; I see none in refusing them, but, on the contrary, great advantages.

"Sir, there are two passions which have a powerful influence on the affairs of men. These are ambition and avarice; the love of power, and the love of money. Separately, each of these has great force in prompting men to action; but when united in view of the same object, they have in many minds the most violent effects. Place before the eyes of such men a post of *honor,* that shall be at the same time a place of *profit,* and they will move heaven and earth to obtain it. The vast number of such places it is that renders the British government so tempestuous. The struggles for them are the true sources of all those factions which are perpetually dividing the nation, distracting its councils, hurrying sometimes into fruitless and mischievous wars, and often compelling a submission to dishonorable terms of peace.

"And of what kind are the men that will strive for this profitable preëminence, through all the bustle of cabal, the heat of contention, the infinite mutual abuse of parties, tearing to pieces the best of characters? It will not be the wise and moderate, the lovers of peace and good order, the men fittest for the trust. It will be the bold and the violent, the men of strong passions and indefatigable activity in their selfish pursuits. These will thrust themselves into your government, and be your rulers. And these, too, will be mistaken in the expected happiness of their situation; for their vanquished competitors, of the same spirit, and from the same motives, will perpetually be endeavoring to distress their administration, thwart their measures, and render them odious to the people.

"Besides these evils, sir, though we may set out in the beginning with moderate salaries, we shall find that such will not be of long continuance. Reasons will never be wanting for proposed augmentations. And there will always be a party for giving more to the rulers, that the rulers may be able in return to give more to them. Hence, as all history informs us, there has been in every state and kingdom a constant kind of warfare between the governing and governed, the one striving to obtain more for its support, and the other to pay less. And this has alone occasioned great convulsions, actual civil wars, ending either in dethroning of the princes or enslaving of the people. Generally, indeed, the ruling power carries its point, the revenues of princes constantly increasing; and we see that they are never satisfied, but always in want of more. The more the people are discontented with the oppression of taxes, the greater need the prince has of money to distribute among his partisans, and pay the troops that are to suppress all resistance, and enable him to plunder at pleasure. There is scarce a king in a hundred, who would not, if he could, follow the example of Pharaoh—get first all the people's money, then all their lands, and then make them and their children servants forever. It will be said, that we don't propose to establish kings. I know it: but there is a natural inclination in mankind to kingly government. It sometimes relieves them from aristocratic domination. They had rather have one tyrant than five hundred. It gives more of the appearance of equality among citizens,

and that they like. I am apprehensive, therefore, perhaps too apprehensive, that the government of these states may in future times end in a monarchy. But this catastrophe I think may be long delayed, if in our proposed system we do not sow the seeds of contention, faction, and tumult, by making our posts of honor places of profit. If we do, I fear that, though we do employ at first a number, and not a single person, the number will in time be set aside; it will only nourish the fœtus of a king, as the honorable gentleman from Virginia very aptly expressed it, and a king will the sooner be set over us.

"It may be imagined by some that this is a Utopian idea, and that we can never find men to serve us in the executive department without paying them well for their services. I conceive this to be a mistake. Some existing facts present themselves to me, which incline me to a contrary opinion. The high sheriff of a county, in England, is an honorable office, but it is not a profitable one. It is rather expensive, and therefore not sought for. But yet it is executed, and well executed, and usually by some of the principal gentlemen of the county. In France, the office of counsellor, or member of their judiciary parliament, is more honorable. It is therefore purchased at a high price: there are, indeed, fees on the law proceedings, which are divided among them; but these fees do not amount to more than three per cent. on the sum paid for the place. Therefore, as legal interest is there at five per cent., they in fact pay two per cent. for being allowed to do the judiciary business of the nation, which is, at the same time, entirely exempt from the burden of paying them any salaries for their services. I do not, however, mean to recommend this as an eligible mode for our judiciary department. I only bring the instance to show, that the pleasure of doing good and serving their country, and the respect such conduct entitles them to, are sufficient motives with some minds to give up a great portion of their time to the public, without the mean inducement of pecuniary satisfaction.

"Another instance is that of a respectable society who have made the experiment, and practised it with success more than one hundred years. I mean the Quakers. It is an established rule with them, that they are not to go to law; but in their controversies they must apply to their monthly, quarterly, and yearly meetings. Committees of these sit with patience to hear the parties, and spend much time in composing their differences. In doing this, they are supported by a sense of duty, and the respect paid to usefulness. It is honorable to be so employed, but it is never made profitable by salaries, fees, or perquisites. And, indeed, in all cases of public service, the less the profit the greater the honor.

"To bring the matter nearer home: Have we not seen the greatest and most important of our offices, that of general of our armies, executed, for eight years together, without the smallest salary, by a patriot whom I will not now offend by any other praise; and this through fatigues and distresses, in common with the other brave men, his military friends and companions, and the constant anxieties peculiar to his station? And shall we doubt finding three or four men, in all the United States, with public spirit enough to bear sitting in peaceful council for perhaps an equal term, merely to preside over our civil concerns, and see that our laws are duly executed? Sir, I have a better opinion of our country. I think we shall never be without a sufficient number of wise and good men to undertake and execute well and faithfully the office in question.

"Sir, the saving of the salaries that may at first be proposed is not an object with me. The subsequent mischiefs of proposing them are what I apprehend. And therefore it is, that I move the amendment. If it is not seconded or accepted, I must be contented with the satisfaction of having delivered my opinion frankly, and done my duty."

The motion was seconded by Col. HAMILTON, with the view, he said, merely of bringing so respectable a proposition before the committee, and which was besides enforced by arguments that had a certain degree of weight. No debate ensued, and the proposition was postponed for the consideration of the members. It was treated with great respect, but rather for the author of it than from any apparent conviction of its expediency or practicability.87

Mr. DICKINSON moved, "that the executive be made removable by the national legislature, on the request of a majority of the legislatures of individual states." It was necessary, he said, to place the power of removing somewhere. He did not like the plan of impeaching the great officers of state. He did not know how provision could be made for the removal of them in a better mode than that which he had proposed. He had no idea of abolishing the state governments, as some gentlemen seemed inclined to do. The happiness of this country, in his opinion, required considerable powers to be left in the hands of the states.

Mr. BEDFORD seconded the motion.

Mr. SHERMAN contended, that the national legislature should have power to remove the executive at pleasure.

Mr. MASON. Some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corruptibility of the man chosen. He opposed decidedly the making the executive the mere creature of the legislature, as a violation of the fundamental principle of good government.

Mr. MADISON and Mr. WILSON observed, that it would leave an equality of agency in the small with the great states; that it would enable a minority of the people to prevent the removal of an officer who had rendered himself justly criminal in the eyes of a majority; that it would open a door for intrigues against him in states where his administration, though just, might be unpopular; and might tempt him to pay court to particular states whose leading partisans he might fear, or wish to engage as his partisans. They both thought it bad policy to introduce such a mixture of the state authorities, where their agency could be otherwise supplied.

Mr. DICKINSON considered the business as so important that no man ought to be silent or reserved. He went into a discourse of some length, the sum of which was, that the legislative, executive, and judiciary departments ought to be made as independent as possible; but that such an executive as some seemed to have in contemplation was not consistent with a republic; that a firm executive could only exist in a limited monarchy. In the British government itself, the weight of the executive arises from the attachments which the crown draws to itself, and not merely from the force of its prerogatives. In place of these attachments, we must look out for

something else. One source of stability is the double branch of the legislature. The division of the country into distinct states formed the other principal source of stability. This division ought therefore to be maintained, and considerable powers to be left with the states. This was the ground of his consolation for the future fate of his country. Without this, and in case of a consolidation of the states into one great republic, we might read its fate in the history of smaller ones. A limited monarchy he considered as *one* of the best governments in the world. It was not *certain* that the same blessings were derivable from any other form. It was certain that equal blessings had never yet been derived from any of the republican forms. A limited monarchy, however, was out of the question. The spirit of the times, the state of our affairs, forbade the experiment, if it were desirable. Was it possible, moreover, in the nature of things, to introduce it, even if these obstacles were less insuperable? A house of nobles was essential to such a government. Could these be created by a breath, or by a stroke of the pen? No. They were the growth of ages, and could only arise under a complication of circumstances none of which existed in this country. But, though a form the most perfect, *perhaps,* in itself, be unattainable, we must not despair. If ancient republics have been found to flourish for a moment only, and then vanish forever, it only proves that they were badly constituted, and that we ought to seek for every remedy for their diseases. One of these remedies he conceived to be the accidental lucky division of this country into distinct states—a division which some seemed desirous to abolish altogether.

As to the point of representation in the national legislature, as it might affect states of different sizes, he said it must probably end in mutual concession. He hoped that each state would retain an equal voice, at least in one branch of the national legislature, and supposed the sums paid within each state would form a better ratio for the other branch than either the number of inhabitants or the quantum of property.

A motion being made to strike out "on request by a majority of the legislatures of the individual states," and rejected, (Connecticut, South Carolina, and Georgia, being ay, the rest no,) the question was taken on Mr. Dickinson's motion, "for making the executive removable by the national legislature at the request of a majority of state legislatures," which was also rejected,—all the states being in the negative, except Delaware, which gave an affirmative vote.88

The question for making the executive *ineligible after seven years,* was next taken and agreed to.

Massachusetts, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina, ay, 7; Connecticut, Georgia, no, 2; Pennsylvania, divided. (In the printed Journal, Georgia, ay.)

Mr. WILLIAMSON, seconded by Mr. DAVIE, moved to add to the last clause the words, "and to be removable on impeachment and conviction of mal-practice or neglect of duty;" which was agreed to.

Mr. RUTLEDGE and Mr. C. PINCKNEY moved, that the blank for the number of persons in the executive be filled with the words, "one person." They supposed the

reasons to be so obvious and conclusive in favor of one, that no member would oppose the motion.

Mr. RANDOLPH opposed it with great earnestness, declaring that he should not do justice to the country which sent him, if he were silently to suffer the establishment of a unity in the executive department. He felt an opposition to it which he believed he should continue to feel as long as he lived. He urged, first, that the permanent temper of the people was adverse to the very semblance of monarchy; secondly, that a unity was unnecessary, a plurality being equally competent to all the objects of the department; thirdly, that the necessary confidence would never be reposed in a single magistrate; fourthly, that the appointments would generally be in favor of some inhabitant near the centre of the community, and consequently the remote parts would not be on an equal footing. He was in favor of three members of the executive, to be drawn from different portions of the country.

Mr. BUTLER contended strongly for a single magistrate, as most likely to answer the purpose of the remote parts. If one man should be appointed, he would be responsible to the whole, and would be impartial to its interests. If three or more should be taken from as many districts, there would be a constant struggle for local advantages. In military matters, this would be particularly mischievous. He said, his opinion on this point had been formed under the opportunity he had had of seeing the manner in which a *plurality of military heads* distracted Holland, when threatened with invasion by the imperial troops. One man was for directing the force to the defence of this part, another to that part of the country, just as he happened to be swayed by prejudice or interest.

The motion was then postponed; the committee rose; and the House adjourned.

Monday,*June* 4.

In Committee of the Whole.—The question was resumed, on motion of Mr. PINCKNEY, seconded by Mr. WILSON, "Shall the blank for the number of the executive be filled with a single person?"

Mr. WILSON was in favor of the motion. It had been opposed by the gentleman from Virginia, (Mr. Randolph;) but the arguments used had not convinced him. He observed, that the objections of Mr. Randolph were levelled not so much against the measure itself as against its unpopularity. If he could suppose that it would occasion a rejection of the plan of which it should form a part, though the part were an important one, yet he would give it up rather than lose the whole. On examination, he could see no evidence of the alleged antipathy of the people. On the contrary, he was persuaded that it does not exist. All know that a single magistrate is not a king. One fact has great weight with him. All the thirteen states, though agreeing in scarce any other instance, agree in placing a single magistrate at the head of the government. The idea of three heads has taken place in none. The degree of power is, indeed, different; but there are no coördinate heads. In addition to his former reasons for preferring a unity, he would mention another. The *tranquillity,* not less than the vigor, of the government, he thought, would be favored by it. Among three equal members, he

foresaw nothing but uncontrolled, continued, and violent animosities; which would not only interrupt the public administration, but diffuse their poison through the other branches of government, through the states, and at length through the people at large. If the members were to be unequal in power, the principle of opposition to the unity was given up; if equal, the making them an odd number would not be a remedy. In courts of justice, there are two sides only to a question. In the legislative and executive departments, questions have commonly many sides. Each member, therefore, might espouse a separate one, and no two agree.

Mr. SHERMAN. This matter is of great importance, and ought to be well considered before it is determined. Mr. Wilson, he said, had observed that in each state a single magistrate was placed at the head of the government. It was so, he admitted, and properly so; and he wished the same policy to prevail in the federal government. But then it should be also remarked, that in all the states there was a council of advice, without which the first magistrate could not act. A council he thought necessary to make the establishment acceptable to the people. Even in Great Britain, the king has a council; and though he appoints it himself, its advice has its weight with him, and attracts the confidence of the people.

Mr. WILLIAMSON asks Mr. Wilson whether he means to annex a council.

Mr. WILSON means to have no council, which oftener serves to cover than prevent mal-practices.

Mr. GERRY was at a loss to discover the policy of three members for the executive. It would be extremely inconvenient in many instances, particularly in military matters, whether relating to the militia, an army, or a navy. It would be a general with three heads.

On the question for a single executive, it was agreed to.

Massachusetts, Connecticut, Pennsylvania, Virginia, (Mr. Randolph and Mr. Blair no; Dr. M'Clurg, Mr. Madison, and General Washington, ay; Colonel Mason being no, but not in the House; Mr. Wythe, ay, but gone home,) North Carolina, South Carolina, Georgia, ay, 7; New York, Delaware, Maryland, no, 3.89

The first clause of the eighth resolution, relating *to a council of revision,* was next taken into consideration.

Mr. GERRY doubts whether the judiciary ought to form a part of it, as they will have a sufficient check against encroachments on their own department by their exposition of the laws, which involved a power of deciding on their constitutionality. In some states the judges had actually set aside laws, as being against the constitution. This was done, too, with general approbation. It was quite foreign from the nature of their office to make them judges of the policy of public measures. He moves to postpone the clause, in order to propose, "that the national executive shall have a right to negative any legislative act which shall not be afterwards passed by—parts of each branch of the national legislature."

Mr. KING seconded the motion, observing that the judges ought to be able to expound the law, as it should come before them, free from the bias of having participated in its formation.

Mr. WILSON thinks neither the original proposition nor the amendment goes far enough. If the legislature, executive, and judiciary, ought to be distinct and independent, the executive ought to have an absolute negative. Without such a self-defence, the legislature can at any moment sink it into non-existence. He was for varying the proposition in such a manner as to give the executive and judiciary jointly an absolute negative.

On the question to postpone, in order to take Mr. GERRY'S proposition into consideration, it was agreed to.

Massachusetts, New York, Pennsylvania, North Carolina, South Carolina, Georgia, ay, 6; Connecticut, Delaware, Maryland, Virginia, no, 4.

Mr. GERRY'S proposition being now before the committee, Mr. WILSON and Mr. HAMILTON move, that the last part of it (viz., "which shall not be afterwards passed by—parts of each branch of the national legislature") be struck out, so as to give the executive an absolute negative on the laws. There was no danger, they thought, of such a power being too much exercised. It was mentioned by Col. HAMILTON that the king of Great Britain had not exerted his negative since the revolution.

Mr. GERRY sees no necessity for so great a control over the legislature, as the best men in the community would be comprised in the two branches of it.

Dr. FRANKLIN said, he was sorry to differ from his colleague, for whom he had a very great respect, on any occasion, but he could not help it on this. He had had some experience of this check in the executive on the legislature, under the proprietary government of Pennsylvania. The negative of the governor was constantly made use of to extort money. No good law whatever could be passed without a private bargain with him. An increase of his salary, or some donation, was always made a condition; till at last it became the regular practice to have orders in his favor, on the treasury, presented along with the bills to be signed, so that he might actually receive the former before he should sign the latter. When the Indians were scalping the western people, and notice of it arrived, the concurrence of the governor in the means of self-defence could not be got till it was agreed that his estate should be exempted from taxation; so that the people were to fight for the security of his property, whilst he was to bear no share of the burden. This was a mischievous sort of check. If the executive was to have a council, such a power would be less objectionable. It was true, the king of Great Britain had not, as was said, exerted his negative since the revolution; but that matter was easily explained. The bribes and emoluments now given to the members of Parliament rendered it unnecessary, every thing being done according to the will of the ministers. He was afraid, if a negative should be given as proposed, that more power and money would be demanded, till at last enough would be got to influence and bribe the legislature into a complete subjection to the will of the executive.

Mr. SHERMAN was against enabling any one man to stop the will of the whole. No one man could be found so far above all the rest in wisdom. He thought we ought to avail ourselves of his wisdom in revising the laws, but not permit him to overrule the decided and cool opinions of the legislature.

Mr. MADISON supposed, that, if a proper proportion of each branch should be required to overrule the objections of the executive, it would answer the same purpose as an absolute negative. It would rarely, if ever, happen that the executive, constituted as ours is proposed to be, would have firmness enough to resist the legislature, unless backed by a certain part of the body itself. The king of Great Britain, with all his splendid attributes, would not be able to withstand the unanimous and eager wishes of both Houses of Parliament. To give such a prerogative would certainly be obnoxious to the temper of this country—its present temper at least.

Mr. WILSON believed, as others did, that this power would seldom be used. The legislature would know that such a power existed, and would refrain from such laws as it would be sure to defeat. Its silent operation would therefore preserve harmony and prevent mischief. The case of Pennsylvania formerly was very different from its present case. The executive was not then, as now, to be appointed by the people. It will not in this case, as in the one cited, be supported by the head of a great empire, actuated by a different and sometimes opposite interest. The salary, too, is now proposed to be fixed by the Constitution, or, if Dr. Franklin's idea should be adopted, all salary whatever interdicted. The requiring a large proportion of each House to overrule the executive check might do in peaceable times; but there might be tempestuous moments in which animosities may run high between the executive and legislative branches, and in which the former ought to be able to defend itself.

Mr. BUTLER had been in favor of a single executive magistrate; but could he have entertained an idea that a complete negative on the laws was to be given him, he certainly should have acted very differently. It had been observed, that in all countries the executive power is in a constant course of increase. This was certainly the case in Great Britain. Gentlemen seemed to think that we had nothing to apprehend from an abuse of the executive power. But why might not a Catiline or a Cromwell arise in this country as well as in others?

Mr. BEDFORD was opposed to every check on the legislature, even the council of revision first proposed. He thought it would be sufficient to mark out in the Constitution the boundaries to the legislative authority, which would give all the requisite security to the rights of the other departments. The representatives of the people were the best judges of what was for their interest, and ought to be under no external control whatever. The two branches would produce a sufficient control within the legislature itself.

Col. MASON observed, that a vote had already passed, he found—he was out at the time—for vesting the executive powers in a single person. Among these powers was that of appointing to offices in certain cases. The probable abuses of a negative had been well explained by Dr. Franklin, as proved by experience, the best of all tests. Will not the same door be opened here? The executive may refuse its assent to

necessary measures, till new appointments shall be referred to him; and, having by degrees engrossed all these into his own hands, the American executive, like the British, will, by bribery and influence, save himself the trouble and odium of exerting his negative afterwards. We are, Mr. Chairman, going very far in this business. We are not indeed constituting a British government, but a more dangerous monarchy—an elective one. We are introducing a new principle into our system, and not necessary, as in the British government, where the executive has greater rights to defend. Do gentlemen mean to pave the way to hereditary monarchy? Do they flatter themselves that the people will ever consent to such an innovation? If they do, I venture to tell them, they are mistaken. The people never will consent. And do gentlemen consider the danger of delay, and the still greater danger of a rejection, not for a moment, but forever, of the plan which shall be proposed to them? Notwithstanding the oppression and injustice experienced among us from democracy, the genius of the people is in favor of it, and the genius of the people must be consulted. He could not but consider the federal system as in effect dissolved by the appointment of this Convention to devise a better one. And do gentlemen look forward to the dangerous interval between the extinction of an old, and the establishment of a new government, and to the scenes of confusion which may ensue? He hoped that nothing like a monarchy would ever be attempted in this country. A hatred to its oppressions had carried the people through the late revolution. Will it not be enough to enable the executive to suspend offensive laws, till they shall be coolly revised, and the objections to them overruled by a greater majority than was required in the first instance? He never could agree to give up all the rights of the people to a single magistrate. If more than one had been fixed on, greater powers might have been intrusted to the executive. He hoped this attempt to give such powers would have its weight hereafter, as an argument for increasing the number of the executive.

Dr. FRANKLIN. A gentleman from South Carolina, (Mr. Butler,) a day or two ago, called our attention to the case of the United Netherlands. He wished the gentleman had been a little fuller, and had gone back to the original of that government. The people, being under great obligations to the Prince of Orange, whose wisdom and bravery had saved them, chose him for the stadtholder. He did very well. Inconveniences, however, were felt from his powers, which growing more and more oppressive, they were at length set aside. Still, however, there was a party for the Prince of Orange, which descended to his son; who excited insurrections, spilled a great deal of blood, murdered the De Witts, and got the powers revested in the stadtholder. Afterwards, another prince had power to excite insurrections, and make the stadtholdership hereditary. And the present stadtholder is ready to wade through a bloody civil war to the establishment of a monarchy. Col. Mason had mentioned the circumstance of appointing officers. He knew how that point would be managed. No new appointment would be suffered, as heretofore in Pennsylvania, unless it be referred to the executive, so that all profitable offices will be at his disposal. The first man put at the helm will be a good one. Nobody knows what sort may come afterwards. The executive will be always increasing here, as elsewhere, till it ends in a monarchy.

On the question for striking out, so as to give the executive an absolute negative,—

Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 10.90

Mr. BUTLER moved that the resolution be altered so as to read,

"Resolved, that the national executive have a power to suspend any legislative act for the term of—."

Dr. FRANKLIN seconded the motion.

Mr. GERRY observed, that the power of suspending night do all the mischief dreaded from the negative of useful laws, without answering the salutary purpose of checking unjust or unwise ones.

On the question for giving this suspending power, all the states, to wit,

Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, were—no.

On a question for enabling *two thirds* of each branch of the legislature to overrule the provisionary check, it passed in the affirmative, *sub silentio,* and was inserted in the blank of Mr. Gerry's motion.

On the question on Mr. Gerry's motion, which gave the executive alone, without the judiciary, the revisionary control on the laws, unless overruled by two thirds of each branch,—

Massachusetts, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Connecticut, Maryland, no, 2.

It was moved by Mr. WILSON, seconded by Mr. MADISON, that the following amendment be made to the last resolution: after the words "national executive," to add "and a convenient number of the national judiciary."

An objection of order being taken by Mr. HAMILTON to the introduction of the last amendment at this time, notice was given by Mr. WILSON and Mr. MADISON, that the same would be moved to-morrow; whereupon Wednesday was assigned to reconsider the amendment of Mr. Gerry.

It was then moved and seconded to proceed to the consideration of the ninth resolution submitted by Mr. Randolph; when, on motion to agree to the first clause, namely, "*Resolved, that a national judiciary be established,*" it passed in the affirmative, *nem. con.*

It was then moved and seconded to add these words to the first clause of the ninth resolution, namely, "to consist of one supreme tribunal, and of one or more inferior tribunals;" which passed in the affirmative.91

The committee then rose, and the house adjourned.

Tuesday,*June* 5.

Gov. Livingston, of New Jersey, took his seat.

In Committee of the Whole.—The words "one or more" were struck out before "inferior tribunals," as an amendment to the last clause of the ninth resolution. The clause, "that the national judiciary be chosen by the national legislature," being under consideration,—

Mr. WILSON opposed the appointment of judges by the national legislature. Experience showed the impropriety of such appointments by numerous bodies. Intrigue, partiality, and concealment, were the necessary consequences. A principal reason for unity in the executive was, that officers might be appointed by a single responsible person.

Mr. RUTLEDGE was by no means disposed to grant so great a power to any single person. The people will think we are leaning too much towards monarchy. He was against establishing any national tribunal, except a single supreme one. The state tribunals are most proper to decide in all cases in the first instance.

Dr. FRANKLIN observed, that two modes of choosing the judges had been mentioned—to wit, by the legislature and by the executive. He wished such other modes to be suggested as might occur to other gentlemen; it being a point of great moment. He would mention one which he had understood was practised in Scotland. He then, in a brief and entertaining manner, related a Scotch mode, in which the nomination proceeded from the lawyers, who always selected the ablest of the profession, in order to get rid of him, and share his practice among themselves. It was here, he said, the interest of the electors to make the best choice, which should always be made the case if possible.

Mr. MADISON disliked the election of the judges by the legislature, or any numerous body. Besides the danger of intrigue and partiality, many of the members were not judges of the requisite qualifications. The legislative talents, which were very different from those of a judge, commonly recommended men to the favor of legislative assemblies. It was known, too, that the accidental circumstances of presence and absence, of being a member or not a member, had a very undue influence on the appointment. On the other hand, he was not satisfied with referring the appointment to the executive. He rather inclined to give it to the senatorial branch, as numerous enough to be confided in; as not so numerous as to be governed by the motives of the other branch; and as being sufficiently stable and independent to follow their deliberate judgments. He hinted this only, and moved that the *appointment by the legislature* might be struck out, and a blank left, to be hereafter filled on maturer reflection. Mr. WILSON seconds it. On the question for striking out,—

Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 9; Connecticut, South Carolina, no, 2.92

Mr. WILSON gave notice that he should at a future day move for a reconsideration of that clause which respects "inferior tribunals."

Mr. PINCKNEY gave notice, that when the clause respecting the appointment of the judiciary should again come before the committee, he should move to restore the "appointment by the national legislature."

The following clauses of the ninth resolution were agreed to, viz., "*to hold their offices during good behavior, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution.*"

The remaining clause of the ninth resolution was postponed.

The tenth resolution was agreed to, viz., "*that provision ought tobe made for the admission of states, lawfully arising within the limits of the United States, whether from a voluntary junction of government and territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.*"

The eleventh resolution *for guarantying to states republican government and territory,* &c., being read,—

Mr. PATTERSON wished the point of representation could be decided before this clause should be considered, and moved to postpone it; which was not opposed, and agreed to, Connecticut and South Carolina only voting against it.

The twelfth resolution, *for continuing Congress till a given day, and for fulfilling their engagements,* produced no debate.

On the question,

Massachusetts, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Connecticut, Delaware, no, 2. (New Jersey omitted in the printed Journal.)

The thirteenth resolution, to the effect *that provision ought to be made for hereafter amending the system now to be established, without requiring the assent of the national legislature,* being taken up,—

Mr. PINCKNEY doubted the propriety or necessity of it.

Mr. GERRY favored it. The novelty and difficulty of the experiment requires periodical revision. The prospect of such a revision would also give intermediate stability to the government. Nothing had yet happened in the states where this provision existed to prove its impropriety. The proposition was postponed for further consideration, the votes being,—

Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, North Carolina, ay, 7; Virginia, South Carolina, Georgia, no, 3.

The fourteenth resolution, *requiring oath from the state officers to support the national government,* was postponed, after a short, uninteresting conversation; the votes,—

Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia, ay, 6; New York, Pennsylvania, Delaware, North Carolina, no, 4; Massachusetts, divided.

The fifteenth resolution, for *recommending conventions under appointment of the people, to ratify the new Constitution,* &c., being taken up,—

Mr. SHERMAN thought such a popular ratification unnecessary; the Articles of Confederation providing for changes and alterations, with the assent of Congress, and ratification of state legislatures.

Mr. MADISON thought this provision essential. The Articles of Confederation themselves were defective in this respect, resting, in many of the states, on the legislative sanction only. Hence, in conflicts between acts of the states and of Congress, especially where the former are of posterior date, and the decision is to be made by state tribunals, an uncertainty must necessarily prevail; or rather, perhaps, a certain decision in favor of the state authority. He suggested also that, as far as the Articles of Union were to be considered as a treaty only, of a particular sort, among the governments of independent states, the doctrine might be set up that a breach of any one article, by any of the parties, absolved the other parties from the whole obligation. For these reasons, as well as others, he thought it indispensable that the new Constitution should be ratified in the most unexceptionable form, and by the supreme authority of the people themselves.

Mr. GERRY observed, that in the Eastern States the Confederation had been sanctioned by the people themselves. He seemed afraid of referring the new system to them. The people in that quarter have at this time the wildest ideas of government in the world. They were for abolishing the Senate in Massachusetts, and giving all the other powers of government to the other branch of the legislature.

Mr. KING supposed, that the last article of the Confederation rendered the legislature competent to the ratification. The people of the Southern States, where the Federal Articles had been ratified by the legislatures, only, had since, *impliedly,* given their sanction to it. He thought, notwithstanding, that there might be policy in varying the mode. A convention being a single House, the adoption may more easily be carried through it, than through the legislatures, where there are several branches. The legislatures, also, being to lose power, will be most likely to raise objections. The people having already parted with the necessary powers, it is immaterial to them by which government they are possessed, provided they be well employed.

Mr. WILSON took this occasion to lead the committee, by a train of observations, to the idea of not suffering a disposition, in the plurality of states, to confederate anew on better principles, to be defeated by the inconsiderate or selfish opposition of a few states. He hoped the provision for ratifying would be put on such a footing as to admit of such a partial union, with a door open for the accession of the rest.*

Mr. PINCKNEY hoped that, in case the experiment should not unanimously take place, nine states might be authorized to unite under the same government.

The fifteenth resolution was postponed, *nem. con.*93

Mr. PINCKNEY and Mr. RUTLEDGE moved, that to-morrow be assigned to reconsider that clause of the fourth resolution which respects the election of the first branch of the national legislature; which passed in the affirmative.

Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, ay, 6; Massachusetts, New Jersey, North Carolina, South Carolina, Georgia, no, 5.

Mr. RUTLEDGE, having obtained a rule for reconsideration of the clause for establishing *inferior* tribunals under the national authority, now moved that that part of the clause in the ninth resolution should be expunged; arguing, that the state tribunals might and ought to be left, in all cases, to decide in the first instance, the right of appeal to the supreme national tribunal being sufficient to secure the national rights and uniformity of judgments; that it was making an unnecessary encroachment on the jurisdiction of the states, and creating unnecessary obstacles to their adoption of the new system.

Mr. SHERMAN seconded the motion.

Mr. MADISON observed, that, unless inferior tribunals were dispersed throughout the republic with *final* jurisdiction in *many* cases, appeals would be multiplied to a most oppressive degree; that, besides, an appeal would not in many cases be a remedy. What was to be done after improper verdicts, in state tribunals, obtained under the biased directions of a dependent judge, or the local prejudices of an undirected jury? To remand the cause for a new trial would answer no purpose. To order a new trial at the supreme bar would oblige the parties to bring up their witnesses, though ever so distant from the seat of the court. An effective judiciary establishment, commensurate to the legislative authority, was essential. A government without a proper executive and judiciary would be the mere trunk of a body, without arms or legs to act or move.

Mr. WILSON opposed the motion on like grounds. He said, the admiralty jurisdiction ought to be given wholly to the national government, as it related to cases not within the jurisdiction of particular states, and to a scene in which controversies with foreigners would be most likely to happen.

Mr. SHERMAN was in favor of the motion. He dwelt chiefly on the supposed expensiveness of having a new set of courts, when the existing state courts would answer the same purpose.

Mr. DICKINSON contended strongly, that if there was to be a national legislature, there ought to be a national judiciary, and that the former ought to have authority to institute the latter.

On the question for Mr. RUTLEDGE'S motion to strike out "inferior tribunals," it passed in the affirmative.

Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, ay, 6; Pennsylvania, Delaware, Maryland, Virginia, no, 4; Massachusetts, divided.

Mr. WILSON and Mr. MADISON then moved, in pursuance of the idea expressed above by Mr. Dickinson, to add to the ninth resolution the words following: "that the national legislature be empowered to institute inferior tribunals." They observed, that there was a distinction between establishing such tribunals absolutely, and giving a discretion to the legislature to establish or not to establish them. They repeated the necessity of some such provision.

Mr. BUTLER. The people will not bear such innovations. The states will revolt at such encroachments. Supposing such an establishment to be useful, we must not venture on it. We must follow the example of Solon, who gave the Athenians, not the best government he could devise, but the best they would receive.

Mr. KING remarked, as to the comparative expense, that the establishment of inferior tribunals would cost infinitely less than the appeals that would be prevented by them.

On this question, as moved by Mr. Wilson and Mr. Madison,—

Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 8; Connecticut, South Carolina, no, 2; New York, divided.94 (In the printed Journal, New Jersey, no.)

The committee then rose, and the house adjourned.

Wednesday,*June* 6.

In Committee of the Whole.—Mr. PINCKNEY, according to previous notice, and rule obtained, moved, "that the first branch of the national legislature be elected by the state legislatures, and not by the people;" contending that the people were less fit judges in such a case, and that the legislatures would be less likely to promote the adoption of the new government if they were to be excluded from all share in it.

Mr. RUTLEDGE seconded the motion.

Mr. GERRY. Much depends on the mode of election. In England, the people will probably lose their liberty from the smallness of the proportion having a right of suffrage. Our danger arises from the opposite extreme. Hence, in Massachusetts, the worst men get into the legislature. Several members of that body had lately been convicted of infamous crimes. Men of indigence, ignorance, and baseness, spare no pains, however dirty, to carry their point against men who are superior to the artifices practised. He was not disposed to run into extremes. He was as much principled as ever against aristocracy and monarchy. It was necessary, on the one hand, that the people should appoint one branch of the government, in order to inspire them with the necessary confidence; but he wished the election, on the other, to be so modified as to secure more effectually a just preference of merit. His idea was, that the people should nominate certain persons, in certain districts, out of whom the state legislatures should make the appointment.

Mr. WILSON. He wished for vigor in the government, but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The government ought to possess, not only, first, the *force,* but second, the *mind or sense,* of the people at large. The legislature ought to be the most exact transcript of the whole society. Representation is made necessary only because it is impossible for the people to act collectively. The opposition was to be expected, he said, from the *governments,* not from the citizens, of the states. The latter had parted, as was observed by Mr. KING, *with all the necessary powers;* and it was immaterial to them by whom they were exercised, if well exercised. The state officers were to be the losers of power. The people, he supposed, would be rather more attached to the national government than to the state governments as being more important in itself, and more flattering to their pride. There is no danger of improper elections, if made by *large* districts. Bad elections proceed from the smallness of the districts, which give an opportunity to bad men to intrigue themselves into office.

Mr. SHERMAN. If it were in view to abolish the state governments, the elections ought to be by the people. If the state governments are to be continued, it is necessary, in order to preserve harmony between the national and state governments, that the elections to the former should be made by the latter. The right of participating in the national government would be sufficiently secured to the people by their election of the state legislatures. The objects of the Union, he thought, were few,—first, defence against foreign danger; secondly, against internal disputes and a resort to force; thirdly, treaties with foreign nations; fourthly, regulating foreign commerce, and drawing revenue from it. These, and perhaps a few lesser objects, alone rendered a confederation of the states necessary. All other matters, civil and criminal, would be much better in the hands of the states. The people are more happy in small than in large states. States may, indeed, be too small, as Rhode Island, and thereby be too subject to faction. Some others were, perhaps, too large, the powers of government not being able to pervade them. He was for giving the general government power to legislate and execute within a defined province.

Col. MASON. Under the existing Confederacy, Congress represent the *states,* and not the *people* of the states; their acts operate on the *states,* not on the *individuals.* The case will be changed in the new plan of government. The people will be represented: they ought therefore to choose the representatives. The requisites in actual representation are, that the representatives should sympathize with their constituents; should think as they think, and feel as they feel; and that for these purposes they should be residents among them. Much, he said, had been alleged against democratic elections. He admitted that much might be said; but it was to be considered that no government was free from imperfections and evils; and that improper elections, in many instances, were inseparable from republican governments. But compare these with the advantage of this form, in favor of the rights of the people—in favor of human nature. He was persuaded there was a better chance for proper elections by the people, if divided into large districts, than by the state legislatures. Paper money had been issued by the latter, when the former were against it. Was it to be supposed that the state legislatures, then, would not send to the national legislature patrons of such projects, if the choice depended on them?

Mr. MADISON considered an election of one branch, at least, of the legislature by the people immediately, as a clear principle of free government; and that this mode, under proper regulations, had the additional advantage of securing better representatives, as well as of avoiding too great an agency of the state governments in the general one. He differed from the member from Connecticut, (Mr. Sherman,) in thinking the objects mentioned to be all the principal ones that required a national government. Those were certainly important and necessary objects; but he combined with them the necessity of providing more effectually for the security of private rights, and the steady dispensation of justice. Interferences with these were evils which had, more perhaps than any thing else, produced this Convention. Was it to be supposed, that republican liberty could long exist under the abuses of it practised in some of the states? The gentleman (Mr. Sherman) had admitted that, in a very small state, faction and oppression would prevail. It was to be inferred, then, that wherever these prevailed, the state was too small. Had they not prevailed in the largest as well as the smallest, though less than in the smallest? And were we not thence admonished to enlarge the sphere as far as the nature of the government would admit? This was the only defence against the inconveniences of democracy consistent with the democratic form of government. All civilized societies would be divided into different sects, factions, and interests, as they happened to consist of rich and poor, debtors and creditors, the landed, the manufacturing, the commercial interests, the inhabitants of this district or that district, the followers of this political leader or that political leader, the disciples of this religious sect or that religious sect. In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger. What motives are to restrain them? A prudent regard to the maxim, that honesty is the best policy, is found, by experience, to be as little regarded by bodies of men as by individuals. Respect for character is always diminished in proportion to the number among whom the blame or praise is to be divided. Conscience—the only remaining tie—is known to be inadequate in individuals; in large numbers, little is to be expected from it. Besides, religion itself may become a motive to persecution and oppression. These observations are verified by the histories of every country, ancient and modern. In Greece and Rome, the rich and poor, the creditors and debtors, as well as the patricians and plebeians, alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens, and Carthage, and their respective provinces! the former possessing the power, and the latter being sufficiently distinguished to be separate objects of it. Why was America so justly apprehensive of parliamentary injustice? Because Great Britain had a separate interest, real or supposed, and, if her authority had been admitted, could have pursued that interest at our expense. We have seen the mere distinction of color made, in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man. What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is, that, where a majority are united by a common sentiment, and have an opportunity, the rights of the minor party become insecure. In a republican government, the majority, if united, have always an opportunity. The only remedy is, to enlarge the sphere, and thereby divide the

community into so great a number of interests and parties, that, in the first place, a majority will not be likely, at the same moment, to have a common interest separate from that of the whole, or of the minority; and, in the second place, that, in case they should have such an interest, they may not be so apt to unite in the pursuit of it. It was incumbent on us, then, to try this remedy, and, with that view, to frame a republican system on such a scale, and in such a form, as will control all the evils which have been experienced.

Mr. DICKINSON considered it essential that one branch of the legislature should be drawn immediately from the people, and expedient that the other should be chosen by the legislatures of the states. This combination of the state governments with the national government was as politic as it was unavoidable. In the formation of the Senate, we ought to carry it through such a refining process as will assimilate it, as nearly as may be, to the House of Lords in England. He repeated his warm eulogiums on the British constitution. He was for a strong national government, but for leaving the states a considerable agency in the system. The objection against making the former dependent on the latter might be obviated by giving to the Senate an authority permanent, and irrevocable for three, five, or seven years. Being thus independent, they will check and decide with uncommon freedom.

Mr. READ. Too much attachment is betrayed to the state governments. We must look beyond their continuance. A national government must soon of necessity swallow them all up. They will soon be reduced to the mere office of electing the national Senate. He was against patching up the old federal system: he hoped the idea would be dismissed. It would be like putting new cloth on an old garment. The Confederation was founded on temporary principles. It cannot last; it cannot be amended. If we do not establish a good government on new principles, we must either go to ruin, or have the work to do over again. The people at large are wrongly suspected of being averse to a general government. The aversion lies among interested men, who possess their confidence.

Mr. PIERCE was for an election by the people as to the first branch, and by the states as to the second branch; by which means the citizens of the states would be represented both *individually* and *collectively.*

Gen. PINCKNEY wished to have a good national government, and, at the same time, to leave a considerable share of power in the states. An election of either branch by the people, scattered as they are in many states, particularly in South Carolina, was totally impracticable. He differed from gentlemen who thought that a choice by the people would be a better guard against bad measures than by the legislatures. A majority of the people in South Carolina were notoriously for paper money as a legal tender; the legislature had refused to make it a legal tender. The reason was, that the latter had some sense of character, and were restrained by that consideration. The state legislatures, also, he said, would be more jealous, and more ready to thwart the national government, if excluded from a participation in it. The idea of abolishing these legislatures would never go down.

Mr. WILSON would not have spoken again, but for what had fallen from Mr. Read; namely, that the idea of preserving the state governments ought to be abandoned. He saw no incompatibility between the national and state governments, provided the latter were restrained to certain local purposes; nor any probability of their being devoured by the former. In all confederated systems, ancient and modern, the reverse had happened; the generality being destroyed gradually by the usurpations of the parts composing it.

On the question for electing the first branch by the state legislatures, as moved by Mr. PINCKNEY, it was negatived.

Connecticut, New Jersey, South Carolina, ay, 3; Massachusetts, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, no, 8.95

Mr. WILSON moved to reconsider the vote excluding the judiciary from a share in the revision of the laws, and to add, after "national executive," the words "with a convenient number of the national judiciary;" remarking the expediency of reënforcing the executive with the influence of that department.

Mr. MADISON seconded the motion. He observed, that the great difficulty in rendering the executive competent to its own defence arose from the nature of republican government, which could not give to an individual citizen that settled preëminence in the eyes of the rest, that weight of property, that personal interest against betraying the national interest, which appertain to an hereditary magistrate. In a republic, personal merit alone could be the ground of political exaltation; but it would rarely happen that this merit would be so preëminent as to produce universal acquiescence. The executive magistrate would be envied and assailed by disappointed competitors: his firmness therefore would need support. He would not possess those great emoluments from his station, nor that permanent stake in the public interest, which would place him out of the reach of foreign corruption. He would stand in need, therefore, of being controlled as well as supported. An association of the judges in his revisionary function would both double the advantage and diminish the danger. It would also enable the judiciary department the better to defend itself against legislative encroachments. Two objections had been made: first, that the judges ought not to be subject to the bias which a participation in the making of laws might give in the exposition of them; secondly, that the judiciary department ought to be separate and distinct from the other great departments. The first objection had some weight; but it was much diminished by reflecting, that a small proportion of the laws coming in question before a judge would be such wherein he had been consulted; that a small part of this proportion would be so ambiguous as to leave room for his prepossessions; and that but a few cases would probably arise, in the life of a judge, under such ambiguous passages. How much good, on the other hand, would proceed from the perspicuity, the conciseness, and the systematic character, which the code of laws would receive from the judiciary talents. As to the second objection, it either had no weight, or it applied with equal weight to the executive, and to the judiciary, revision of the laws. The maxim on which the objection was founded required a separation of the executive, as well as the judiciary, from the legislature and from each other. There would, in truth, however, be no improper mixture of these distinct

powers in the present case. In England, whence the maxim itself had been drawn, the executive had an absolute negative on the laws; and the supreme tribunal of justice (the House of Lords) formed one of the other branches of the legislature. In short, whether the object of the revisionary power was to restrain the legislature from encroaching on the other coördinate departments, or on the rights of the people at large, or from passing laws unwise in their principle or incorrect in their form, the utility of annexing the wisdom and weight of the judiciary to the executive seemed incontestable.

Mr. GERRY thought the executive, whilst standing alone, would be more impartial than when he could be covered by the sanction, and seduced by the sophistry, of the judges.

Mr. KING. If the unity of the executive was preferred for the sake of responsibility, the policy of it is as applicable to the revisionary as to the executive power.

Mr. PINCKNEY had been at first in favor of joining the heads of the principal departments, the secretary at war, of foreign affairs, &c., in the council of revision. He had, however, relinquished the idea, from a consideration that these could be called on by the executive magistrate whenever he pleased to consult them. He was opposed to the introduction of the judges into the business.

Col. MASON was for giving all possible weight to the revisionary institution. The executive power ought to be well secured against legislative usurpations on it. The purse and the sword ought never to get into the same hands, whether legislative or executive.

Mr. DICKINSON. Secrecy, vigor, and despatch are not the principal properties required in the executive. Important as these are, that of responsibility is more so, which can only be preserved by leaving it singly to discharge its functions. He thought, too, a junction of the judiciary to it involved an improper mixture of powers.

Mr. WILSON remarked, that the responsibility required belonged to his executive duties. The revisionary duty was an extraneous one, calculated for collateral purposes.

96 Mr. WILLIAMSON was for substituting a clause requiring two thirds for every effective act of the legislature, in place of the revisionary provision.

On the question for joining the judges to the executive in the revisionary business,—

Connecticut, New York, Virginia, ay, 3; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, no, 8.

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

The committee rose, and the House adjourned.

Thursday,*June* 7.

In Committee of the Whole.—Mr. PINCKNEY, according to notice, moved to reconsider the clause respecting the negative on state laws, which was agreed to, and to-morrow fixed for the purpose.

The clause providing for the appointment of the second branch of the national legislature, having lain blank since the last vote on the mode of electing it,—to wit, by the first branch,—Mr. DICKINSON now moved, "that the members of the second branch ought to be chosen by the individual legislatures."

Mr. SHERMAN seconded the motion; observing, that the particular states would thus become interested in supporting the national government, and that a due harmony between the two governments would be maintained. He admitted that the two ought to have separate and distinct jurisdictions, but that they ought to have a mutual interest in supporting each other.

Mr. PINCKNEY. If the small states should be allowed one senator only, the number will be too great; there will be eighty at least.

Mr. DICKINSON had two reasons for his motion—first, because the sense of the states would be better collected through their governments than immediately from the people at large; secondly, because he wished the Senate to consist of the most distinguished characters, distinguished for their rank in life and their weight of property, and bearing as strong a likeness to the British House of Lords as possible; and he thought such characters more likely to be selected by the state legislatures than in any other mode. The greatness of the number was no objection with him. He hoped there would be eighty, and twice eighty, of them. If their number should be small, the popular branch could not be balanced by them. The legislature of a numerous people ought to be a numerous body.

Mr. WILLIAMSON preferred a small number of senators, but wished that each state should have at least one. He suggested twenty-five as a convenient number. The different modes of representation in the different branches will serve as a mutual check.

Mr. BUTLER was anxious to know the ratio of representation before he gave any opinion.

Mr. WILSON. If we are to establish a national government that government ought to flow from the people at large. If one branch of it should be chosen by the legislatures, and the other by the people, the two branches will rest on different foundations, and dissensions will naturally arise between them. He wished the Senate to be elected by the people, as well as the other branch; the people might be divided into proper districts for the purpose; and he moved to postpone the motion of Mr. Dickinson, in order to take up one of that import.

Mr. MORRIS seconded him.

Mr. READ proposed, "that the Senate should be appointed, by the executive magistrate, out of a proper number of persons to be nominated by the individual legislatures." He said, he thought it his duty to speak his mind frankly. Gentlemen, he hoped, would not be alarmed at the idea. Nothing short of this approach towards a proper model of government would answer the purpose, and he thought it best to come directly to the point at once. His proposition was not seconded nor supported.

Mr. MADISON. If the motion (of Mr. Dickinson) should be agreed to, we must either depart from the doctrine of proportional representation, or admit into the Senate a very large number of members. The first is inadmissible, being evidently unjust. The second is inexpedient. The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch. Enlarge their number, and you communicate to them the vices which they are meant to correct. He differed from Mr. Dickinson, who thought that the additional number would give additional weight to the body. On the contrary, it appeared to him that their weight would be in an inverse ratio to their numbers. The example of the Roman tribunes was applicable. They lost their influence and power in proportion as their number was augmented. The reason seemed to be obvious. They were appointed to take care of the popular interests and pretensions at Rome; because the people, by reason of their numbers, could not act in concert, and were liable to fall into factions among themselves, and to become a prey to their aristocratic adversaries. The more the representatives of the people, therefore, were multiplied, the more they partook of the infirmities of their constituents, the more liable they became to be divided among themselves, either from their own indiscretions or the artifices of the opposite faction, and of course the less capable of fulfilling their trust. When the weight of a set of men depends merely on their personal characters, the greater the number, the greater the weight. When it depends on the degree of political authority lodged in them, the smaller the number, the greater the weight. These considerations might perhaps be combined in the intended Senate; but the latter was the material one.

Mr. GERRY. Four modes of appointing the Senate have been mentioned. First, by the first branch of the national legislature. This would create a dependence contrary to the end proposed. Secondly, by the national executive. This is a stride towards monarchy that few will think of. Thirdly, by the people. The people have two great interests, the landed interest, and the commercial, including the stockholders. To draw both branches from the people will leave no security to the latter interest; the people being chiefly composed of the landed interest, and erroneously supposing that the other interests are adverse to it. Fourthly, by the individual legislatures. The elections being carried through this refinement, will be most like to provide some check in favor of the commercial interest against the landed; without which, oppression will take place; and no free government can last long where that is the case. He was therefore in favor of this last.

Mr. DICKINSON.* The preservation of the states in a certain degree of agency is indispensable. It will produce that collision between the different authorities which should be wished for in order to check each other. To attempt to abolish the states altogether, would degrade the councils of our country, would be impracticable, would be ruinous. He compared the proposed national system to the solar system, in which

the states were the planets, and ought to be left to move freely in their proper orbits. The gentleman from Pennsylvania (Mr. Wilson) wished, he said, to extinguish these planets. If the state governments were excluded from all agency in the national one, and all power drawn from the people at large, the consequence would be, that the national government would move in the same direction as the state governments now do, and would run into all the same mischiefs. The reform would only unite the thirteen small streams into one great current, pursuing the same course without any opposition whatever. He adhered to the opinion that the Senate ought to be composed of a large number, and that their influence, from family weight and other causes, would be increased thereby. He did not admit that the tribunes lost their weight in proportion as their number was augmented, and gave an historical sketch of this institution. If the reasoning (of Mr. Madison) was good, it would prove that the number of the Senate ought to be reduced below ten, the highest number of the tribunitial corps.

Mr. WILSON. The subject, it must be owned, is surrounded with doubts and difficulties. But we must surmount them. The British government cannot be our model. We have no materials for a similar one. Our manners, our laws, the abolition of entails and of primogeniture, the whole genius of the people, are opposed to it. He did not see the danger of the states being devoured by the national government. On the contrary, he wished to keep them from devouring the national government. He was not, however, for extinguishing these planets, as was supposed by Mr. Dickinson; neither did he, on the other hand, believe that they would warm or enlighten the sun. Within their proper orbits they must still be suffered to act, for subordinate purposes, for which their existence is made essential by the great extent of our country. He could not comprehend in what manner the landed interest would be rendered less predominant in the Senate by an election through the medium of the legislatures than by the people themselves. If the legislatures, as was now complained, sacrificed the commercial to the landed interest, what reason was there to expect such a choice from them as would defeat their own views? He was for an election by the people, in large districts, which would be most likely to obtain men of intelligence and uprightness; subdividing the districts only for the accommodation of voters.

Mr. MADISON could as little comprehend in what manner family weight, as desired by Mr. Dickinson, would be more certainly conveyed into the Senate through elections by the state legislatures than in some other modes. The true question was, in what mode the best choice would be made. If an election by the people, or through any other channel than the state legislatures, promised as uncorrupt and impartial a preference of merit, there could surely be no necessity for an appointment by those legislatures. Nor was it apparent that a more useful check would be derived through that channel than from the people through some other. The great evils complained of were, that the state legislatures ran into schemes of paper money, &c., whenever solicited by the people, and sometimes without even the sanction of the people. Their influence, then, instead of checking a like propensity in the national legislature, may be expected to promote it. Nothing can be more contradictory than to say that the national legislature, without a proper check, will follow the example of the state legislatures, and, in the same breath, that the state legislatures are the only proper check.

Mr. SHERMAN opposed elections by the people, in districts, as not likely to produce such fit men as elections by the state legislatures.

Mr. GERRY insisted that the commercial and moneyed interest would be more secure in the hands of the state legislatures than of the people at large. The former have more sense of character, and will be restrained by that from injustice. The people are for paper money, when the legislatures are against it. In Massachusetts, the county conventions had declared a wish for a *depreciating* paper that would sink itself. Besides, in some states there are two branches in the legislature, one of which is somewhat aristocratic. There would, therefore, be so far a better chance of refinement in the choice. There seemed, he thought, to be three powerful objections against elections by districts. First, it is impracticable; the people cannot be brought to one place for the purpose; and, whether brought to the same place or not, numberless frauds would be unavoidable. Secondly, small states, forming part of the same district with a large one, or a large part of a large one, would have no chance of gaining an appointment for its citizens of merit. Thirdly, a new source of discord would be opened between different parts of the same district.

Mr. PINCKNEY thought the second branch ought to be permanent and independent; and that the members of it would be rendered more so by receiving their appointments from the state legislatures. This mode would avoid the rivalships and discontents incident to the election by districts. He was for dividing the states in three classes, according to their respective sizes, and for allowing to the first class three members; to the second, two; and to the third, one.

On the question for postponing Mr. Dickinson's motion, referring the appointment of the Senate to the state legislatures, in order to consider Mr. Wilson's, for referring it to the people,—

Pennsylvania, ay, 1; Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 10.

Col. MASON. Whatever power may be necessary for the national government, a certain portion must necessarily be left with the states. It is impossible for one power to pervade the extreme parts of the United States, so as to carry equal justice to them. The state legislatures, also, ought to have some means of defending themselves against encroachments of the national government. In every other department, we have studiously endeavored to provide for its self-defence. Shall we leave the states alone unprovided with the means for this purpose? And what better means can we provide, than the giving them some share in, or rather to make them a constituent part of, the national establishment? There is danger on both sides, no doubt; but we have only seen the evils arising on the side of the state governments. Those on the other side remain to be displayed. The example of Congress does not apply. Congress had no power to carry their acts into execution, as the national government will have.

On Mr. DICKINSON'S motion for an appointment of the Senate by the state legislatures,—

Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 10.97

Mr. GERRY gave notice, that he would to-morrow move for a re-consideration of the mode of appointing the national executive, in order to substitute an appointment by the state executives.

The committee rose, and the House adjourned.

Friday,*June* 8.

In Committee of the Whole.—On a reconsideration of the clause giving the national legislature a negative on such laws of the states as might be contrary to the Articles of Union, or treaties with foreign nations,—

Mr. PINCKNEY moved, "that the national legislature should have authority to negative all laws which they should judge to be improper." He urged that such a universality of the power was indispensably necessary to render it effectual; that the states must be kept in due subordination to the nation; that, if the states were left to act of themselves in any case, it would be impossible to defend the national prerogatives, however extensive they might be, on paper: that the acts of Congress had been defeated by this means; nor had foreign treaties escaped repeated violations; that this universal negative was in fact the corner-stone of an efficient national government; that, under the British government, the negative of the crown had been found beneficial, and the *states* are more one nation now than the *colonies* were then.

Mr. MADISON seconded the motion. He could not but regard an indefinite power to negative legislative acts of the states as absolutely necessary to a perfect system. Experience had evinced a constant tendency in the states to encroach on the federal authority; to violate national treaties; to infringe the rights and interests of each other; to oppress the weaker party within their respective jurisdictions. A negative was the mildest expedient that could be devised for preventing these mischiefs. The existence of such a check would prevent attempts to commit them. Should no such precaution be engrafted, the only remedy would be in an appeal to coercion. Was such a remedy eligible? Was it practicable? Could the national resources, if exerted to the utmost, enforce a national decree against Massachusetts, abetted, perhaps, by several of her neighbors? It would not be possible. A small proportion of the community, in a compact situation, acting on the defensive, and at one of its extremities, might at any time bid defiance to the national authority. Any government for the United States, formed on the supposed practicability of using force against the unconstitutional proceedings of the states, would prove as visionary and fallacious as the government of Congress. The negative would render the use of force unnecessary. The states could of themselves pass no operative act, any more than one branch of a legislature, where there are two branches, can proceed without the other. But, in order to give the negative this efficacy, it must extend to all cases. A discrimination would only be a fresh source of contention between the two authorities. In a word, to recur to the illustrations borrowed from the planetary system, this prerogative of the general government is the great pervading principle that must control the centrifugal tendency

of the states; which, without it, will continually fly out of their proper orbits, and destroy the order and harmony of the political system.

Mr. WILLIAMSON was against giving a power that might restrain the states from regulating their internal police.

Mr. GERRY could not see the extent of such a power, and was against every power that was not necessary. He thought a remonstrance against unreasonable acts of the states would restrain them. If it should not, force might be resorted to. He had no objection to authorize a negative to paper money, and similar measures. When the Confederation was depending before Congress, Massachusetts was then for inserting the power of emitting paper money among the exclusive powers of Congress. He observed, that the proposed negative would extend to the regulations of the militia—a matter on which the existence of the state might depend. The national legislature, with such a power, may enslave the states. Such an idea as this will never be acceded to. It has never been suggested or conceived among the people. No speculative projector—and there are enough of that character among us, in politics as well as in other things—has, in any pamphlet or newspaper, thrown out the idea. The states, too, have different interests, and are ignorant of each other's interests. The negative, therefore, will be abused. New states, too, having separate views from the old states, will never come into the Union. They may even be under some foreign influence. Are they, in such case, to participate in the negative on the will of the other states?

Mr. SHERMAN thought the cases in which the negative ought to be exercised might be defined. He wished the point might not be decided till a trial at least should be made for that purpose.

Mr. WILSON would not say what modifications of the proposed power might be practicable or expedient. But, however novel it might appear, the principle of it, when viewed with a close and steady eye, is right. There is no instance in which the laws say that the individual should be bound in one case, and at liberty to judge whether he will obey or disobey in another. The cases are parallel. Abuses of the power over the individual persons may happen, as well as over the individual states. Federal liberty is to the states what civil liberty is to private individuals; and states are not more unwilling to purchase it, by the necessary concession of their political sovereignty, than the savage is to purchase civil liberty by the surrender of the personal sovereignty which he enjoys in a state of nature. A definition of the cases in which the negative should be exercised is impracticable. A discretion must be left on one side or the other. Will it not be most safely lodged on the side of the national government? Among the first sentiments expressed in the first Congress, one was, that Virginia is no more, that Massachusetts is no more, that Pennsylvania is no more, &c.;—we are now one nation of brethren;—we must bury all local interests and distinctions. This language continued for some time. The tables at length began to turn. No sooner were the state governments formed than their jealousy and ambition began to display themselves. Each endeavored to cut a slice from the common loaf, to add to its own morsel; till at length the Confederation became frittered down to the impotent condition in which it now stands. Review the progress of the Articles of Confederation through Congress, and compare the first and last draught of it. To

correct its vices is the business of this Convention. One of its vices is the want of an effectual control in the whole over its parts. What danger is there that the whole will unnecessarily sacrifice a part? But reverse the case, and leave the whole at the mercy of each part, and will not the general interest be continually sacrificed to local interests?

Mr. DICKINSON deemed it impossible to draw a line between the cases proper, and improper, for the exercise of the negative. We must take our choice of two things. We must either subject the states to the danger of being injured by the power of the national government, or the latter to the danger of being injured by that of the states. He thought the danger greater from the states. To leave the power doubtful would be opening another spring of discord, and he was for shutting as many of them as possible.

Mr. BEDFORD, in answer to his colleague's question, where would be the danger to the states from this power, would refer him to the smallness of his own state, which may be injured at pleasure without redress. It was meant, he found, to strip the small states of their equal right of suffrage. In this case, Delaware would have about one ninetieth for its share in the general councils; whilst Pennsylvania and Virginia would possess one third of the whole. Is there no difference of interests, no rivalship of commerce, of manufactures? Will not these large states crush the small ones, whenever they stand in the way of their ambitious or interested views? This shows the impossibility of adopting such a system as that on the table, or any other founded on a change in the principle of representation. And, after all, if a state does not obey the law of the new system, must not force be resorted to, as the only ultimate remedy, in this as in any other system? It seems as if Pennsylvania and Virginia, by the conduct of their deputies, wished to provide a system in which they would have an enormous and monstrous influence. Besides, how can it be thought that the proposed negative can be exercised? Are the laws of the states to be suspended in the most urgent cases, until they can be sent seven or eight hundred miles, and undergo the deliberation of a body who may be incapable of judging of them? Is the national legislature, too, to sit continually, in order to revise the laws of the states?

Mr. MADISON observed, that the difficulties which had been started were worthy of attention, and ought to be answered before the question was put. The case of laws of urgent necessity must be provided for by some emanation of the power from the national government into each state so far as to give a temporary assent, at least. This was the practice in the royal colonies before the revolution, and would not have been inconvenient if the supreme power of negativing had been faithful to the American interest, and had possessed the necessary information. He supposed that the negative might be very properly lodged in the Senate alone, and that the more numerous and expensive branch, therefore, might not be obliged to sit constantly. He asked Mr. Bedford, what would be the consequence to the small states of a dissolution of the Union, which seemed likely to happen if no effectual substitute was made for the defective system existing; and he did not conceive any effectual system could be substituted on any other basis than that of a proportional suffrage. If the large states possessed the avarice and ambition with which they were charged, would the small

ones in their neighborhood be more secure when all control of a general government was withdrawn?

Mr. BUTLER was vehement against the negative in the proposed extent, as cutting off all hope of equal justice to the distant states. The people there would not, he was sure, give it a hearing.

On the question for extending the negative power to all cases, as proposed by Mr. Pinckney and Mr. Madison,—

Massachusetts, Pennsylvania, Virginia, (Mr. Randolph and Mr. Mason, no; Mr. Blair, Dr. M'Clurg, and Mr. Madison, ay; Gen. Washington not consulted,) ay, 3; Connecticut, New York, New Jersey, Maryland, North Carolina, South Carolina, Georgia, no, 7; Delaware, divided, (Mr. Read and Mr. Dickinson, ay; Mr. Bedford and Mr. Basset, no.)98

On motion of Mr. GERRY and Mr. KING, to-morrow was assigned for reconsidering the mode of appointing the national executive; the reconsideration being voted for by all the states except Connecticut and North Carolina.

Mr. PINCKNEY and Mr. RUTLEDGE moved to add to the fourth resolution, agreed to by the committee, the following, viz.: "that the states be divided into three classes; the first class to have three members, the second two, and the third one member, each; than an estimate be taken of the comparative importance of each state at fixed periods, so as to ascertain the number of members they may from time to time be entitled to." The committee then rose, and the House adjourned.

Saturday,*June* 9.

Mr. Luther Martin, from Maryland, took his seat.

In Committee of the Whole.—Mr. GERRY, according to previous notice given by him, moved "that the national executive should be elected by the executives of the states, whose proportion of votes should be the same with that allowed to the states in the election of the Senate." If the appointment should be made by the national legislature, it would lessen that independence of the executive which ought to prevail; would give birth to intrigue and corruption between the executive and legislature previous to the election, and to partiality in the executive afterwards to the friends who promoted him. Some other mode, therefore, appeared to him necessary. He proposed that of appointing by the state executives, as most analogous to the principle observed in electing the other branches of the national government: the first branch being chosen by the *people* of the states, and the second by the *legislatures* of the states, he did not see any objection against letting the executive be appointed by the *executives* of the states. He supposed the executives would be most likely to select the fittest men, and that it would be their interest to support the man of their own choice.

Mr. RANDOLPH urged strongly the inexpediency of Mr. Gerry's mode of appointing the national executive. The confidence of the people would not be secured by it to the national magistrate. The small states would lose all chance of an appointment from

within themselves. Bad appointments would be made, the executives of the states being little conversant with characters not within their own small spheres. The state executives, too, notwithstanding their constitutional independence, being in fact dependent on the state legislatures, will generally be guided by the views of the latter, and prefer either favorites within the states, or such as it may be expected will be most partial to the interests of the state. A national executive thus chosen will not be likely to defend with becoming vigilance and firmness the national rights against state encorachments. Vacancies also must happen. How can these be filled? He could not suppose, either, that the executives would feel the interest in supporting the national executive which had been imagined. They will not cherish the great oak which is to reduce them to paltry shrubs.

On the question for referring the appointment of the national executive to the state executives, as proposed by Mr. Gerry,—

Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, no, 9; Delaware, divided.99

Mr. PATTERSON moved, that the committee resume the clause relating to the rule of suffrage in the national legislature.

Mr. BREARLY seconds him. He was sorry, he said, that any question on this point was brought into view. It had been much agitated in Congress at the time of forming the Confederation, and was then rightly settled by allowing to each sovereign state an equal vote. Otherwise, the smaller states must have been destroyed instead of being saved. The substitution of a ratio, he admitted, carried fairness on the face of it, but, on a deeper examination, was unfair and unjust. Judging of the disparity of the states by the quota of Congress, Virginia would have sixteen votes, and Georgia but one. A like proportion to the others will make the whole number ninety. There will be three large states, and ten small ones. The large states, by which he meant Massachusetts, Pennsylvania, and Virginia, will carry every thing before them. It had been admitted, and was known to him from facts within New Jersey, that where large and small counties were united into a district for electing representatives for the district, the large counties always carried their point, and consequently the large states would do so. Virginia with her sixteen votes will be a solid column indeed, a formidable phalanx. While Georgia, with her solitary vote, and the other little states, will be obliged to throw themselves constantly into the scale of some large one, in order to have any weight at all. He had come to the Convention with a view of being as useful as he could, in giving energy and stability to the federal government. When the proposition for destroying the equality of votes came forward, he was astonished, he was alarmed. Is it fair, then, it will be asked, that Georgia should have an equal vote with Virginia? He would not say it was. What remedy, then? One only: that a map of the United States be spread out, that all the existing boundaries be erased, and that a new partition of the whole be made into thirteen equal parts.

Mr. PATTERSON considered the proposition for a proportional representation as striking at the existence of the lesser states. He would premise, however, to an investigation of this question, some remarks on the nature, structure, and powers of

the Convention. The Convention, he said, was formed in pursuance of an act of Congress; that this act was recited in several of the commissions, particularly that of Massachusetts, which he required to be read; that the amendment of the Confederacy was the object of all the laws and commissions on the subject; that the Articles of the Confederation were therefore the proper basis of all the proceedings of the Convention; that we ought to keep within its limits, or we should be charged by our constituents with usurpation; that the people of America were sharp-sighted, and not to be deceived. But the commissions under which we acted were not only the measure of our power, they denoted also the sentiments of the states on the subject of our deliberation. The idea of a national government, as contradistinguished from a federal one, never entered into the mind of any of them; and to the public mind we must accommodate ourselves. We have no power to go beyond the federal scheme; and if we had, the people are not ripe for any other. We must follow the people; the people will not follow us. The *proposition* could not be maintained, whether considered in reference to us as a nation, or as a confederacy. A confederacy supposes sovereignty in the members composing it, and sovereignty supposes equality. If we are to be considered as a nation, all state distinctions must be abolished, the whole must be thrown into botchpot, and when an equal division is made, then there may be fairly an equality of representation. He held up Virginia, Massachusetts, and Pennsylvania, as the three large states, and the other ten as small ones; repeating the calculations of Mr. Brearly, as to the disparity of votes which would take place, and affirming that the small states would never agree to it. He said there was no more reason that a great individual state, contributing much, should have more votes than a small one, contributing little, than that a rich individual citizen should have more votes than an indigent one. If the ratable property of A was to that of B as forty to one, ought A, for that reason, to have forty times as many votes as B? Such a principle would never be admitted; and, if it were admitted, would put B entirely at the mercy of A. As A has more to be protected with B, so he ought to contribute more for the common protection. The same may be said of a large state, which has more to be protected than a small one. Give the large states an influence in proportion to their magnitude, and what will be the consequence? Their ambition will be proportionally increased, and the small states will have every thing to fear. It was once proposed by Galloway, and some others, that America should be represented in the British Parliament, and then be bound by its laws. America could not have been entitled to more than one third of the representatives which would fall to the share of Great Britain: would American rights and interests have been safe under an authority thus constituted? It has been said that, if a national government is to be formed so as to operate on the people, and not on the states, the representatives ought to be drawn from the people. But why so? May not a legislature, filled by the state legislatures, operate on the people who choose the state legislatures? Or may not a practicable coercion be found? He admitted that there was none such in the existing system. He was attached strongly to the plan of the existing Confederacy, in which the people choose their legislative representatives, and the legislatures their federal representatives. No other amendments were wanting than to mark the orbits of the states with due precision, and provide for the use of coercion, which was the great point. He alluded to the hint, thrown out by Mr. Wilson, of the necessity to which the large states might be reduced, of confederating among themselves, by a refusal of the others to concur. Let them unite if they please, but let them remember that they have no authority to compel the

others to unite. New Jersey will never confederate on the plan before the committee. She would be swallowed up. He had rather submit to a monarch, to a despot, than to such a fate. He would not only oppose the plan here, but, on his return home, do every thing in his power to defeat it there.

Mr. WILSON hoped, if the Confederacy should be dissolved, that a *majority,*—nay, a *minority* of the states would unite for their safety. He entered elaborately into the defence of a proportional representation, stating, for his first position, that, as all authority was derived from the people, equal numbers of people ought to have an equal number of representatives, and different numbers of people, different numbers of representatives. This principle had been improperly violated in the Confederation, owing to the urgent circumstances of the time. As to the case of A and B, stated by Mr. Patterson, he observed that, in districts as large as the states, the number of people was the best measure of their comparative wealth. Whether, therefore, wealth or numbers was to form the ratio, it would be the same. Mr. Patterson admitted persons, not property, to be the measure of suffrage. Are not the citizens of Pennsylvania equal to those of New Jersey? Does it require one hundred and fifty of the former to balance fifty of the latter? Representatives of different districts ought clearly to hold the same proportion to each other, as their respective constituents hold to each other. If the small states will not confederate on this plan, Pennsylvania, and he presumed some other states, would not confederate on any other. We have been told that, each state being sovereign, all are equal. So each man is naturally a sovereign over himself, and all men are therefore naturally equal. Can he retain this equality when he becomes a member of civil government? He cannot. As little can a sovereign state, when it becomes a member of a federal government. If New Jersey will not part with her sovereignty, it is vain to talk of government. A new partition of the states is desirable, but evidently and totally impracticable.

Mr. WILLIAMSON illustrated the cases by a comparison of the different states to counties of different sizes within the same state; observing, that proportional representation was admitted to be just in the latter case, and could not, therefore, be fairly contested in the former.

The question being about to be put, Mr. PATTERSON hoped that, as so much depended on it, it might be thought best to postpone the decision till to-morrow; which was done, *nem. con.*

The committee rose, and the House adjourned.

Monday,*June* 11.

Mr. Abraham Baldwin, from Georgia, took his seat.

In Committee of the Whole.—The clause concerning the rule of suffrage in the national legislature, postponed on Saturday, was resumed.

Mr. SHERMAN proposed, that the proportion of suffrage in the first branch should be according to the respective numbers of free inhabitants; and that in the second branch,

or Senate, each state should have one vote and no more. He said, as the states would remain possessed of certain individual rights, each state ought to be able to protect itself; otherwise, a few large states will rule the rest. The House of Lords in England, he observed, had certain particular rights under the constitution, and hence they have an equal vote with the House of Commons, that they may be able to defend their rights.

Mr. RUTLEDGE proposed, that the proportion of suffrage in the first branch should be according to the quotas of contribution. The justice of this rule, he said, could not be contested. Mr. BUTLER urged the same idea; adding, that money was power; and that the states ought to have weight in the government in proportion to their wealth.

Mr. KING and Mr. WILSON, in order to bring the question to a point, moved, "that the right of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation." The clause, so far as it related to suffrage in the first branch, was postponed, in order to consider this motion. [In the printed Journal, Mr. RUTLEDGE is named as the seconder of the motion.]

Mr. DICKINSON contended for the *actual* contributions of the states, as the rule of their representation and suffrage in the first branch. By thus connecting the interests of the states with their duty, the latter would be sure to be performed.

Mr. KING remarked, that it was uncertain what mode might be used in levying a national revenue; but that it was probable, imposts would be one source of it. If the *actual* contributions were to be the rule, the non-importing states, as Connecticut and New Jersey, would be in a bad situation, indeed. It might so happen that they would have no representation. This situation of particular states had been always one powerful argument in favor of the five *per cent.* impost.

The question being about to be put, Dr. FRANKLIN said, he had thrown his ideas of the matter on a paper; which Mr. Wilson read to the committee, in the words following:—

"Mr. Chairman: It has given me great pleasure to observe, that till this point—the proportion of representation—came before us, our debates were carried on with great coolness and temper. If any thing of a contrary kind has on this occasion appeared, I hope it will not be repeated; for we are sent here to *consult,* not to *contend,* with each other; and declarations of a fixed opinion, and of determined resolution never to change it, neither enlighten nor convince us. Positiveness and warmth on one side naturally beget their like on the other and tend to create and augment discord and division, in a great concern wherein harmony and union are extremely necessary to give weight to our councils, and render them effectual in promoting and securing the common good.

"I must own, that I was originally of opinion it would be better if every member of Congress, or our national council, were to consider himself rather as a representative of the whole than as an agent for the interests of a particular state; in which case, the

proportion of members for each state would be of less consequence, and it would not be very material whether they voted by states or individually. But as I find this is not to be expected, I now think the number of representatives should bear some proportion to the number of the represented, and that the decisions should be by the majority of members, not by the majority of the states. This is objected to from an apprehension that the greater states would then swallow up the smaller. I do not at present clearly see what advantage the greater states could propose to themselves by swallowing up the smaller, and therefore do not apprehend they would attempt it. I recollect that, in the beginning of this century, when the union was proposed of the two kingdoms, England and Scotland, the Scotch patriots were full of fears, that, unless they had an equal number of representatives in Parliament, they should be ruined by the superiority of the English. They finally agreed, however, that the different proportions of importance in the union of the two nations should be attended to, whereby they were to have only forty members in the House of Commons, and only sixteen in the House of Lords—a very great inferiority of numbers. And yet to this day I do not recollect that any thing has been done in the Parliament of Great Britain to the prejudice of Scotland; and whoever looks over the lists of public officers, civil and military, of that nation, will find, I believe, that the North Britons enjoy at least their full proportion of emolument.

"But, sir, in the present mode of voting by states, it is equally in the power of the lesser states to swallow up the greater; and this is mathematically demonstrable. Suppose, for example, that seven smaller states had each three members in the House, and the six larger to have, one with another, six members; and that, upon a question, two members of each smaller state should be in the affirmative, and one in the negative, they would make—affirmatives, 14; negatives, 7; and that all the larger states should be unanimously in the negative, they would make, negatives, 36; in all, affirmatives, 14, negatives 43.

"It is, then, apparent, that the fourteen carry the question against the forty-three, and the minority overpowers the majority, contrary to the common practice of assemblies in all countries and ages.

"The greater states, sir, are naturally as unwilling to have their property left in the disposition of the smaller, as the smaller are to have theirs in the disposition of the greater. An honorable gentleman has, to avoid this difficulty, hinted a proposition of equalizing the states. It appears to me an equitable one, and I should, for my own part, not be against such a measure, if it might be found practicable. Formerly, indeed, when almost every province had a different constitution,—some with greater, others with fewer, privileges,—it was of importance to the borderers, when their boundaries were contested, whether, by running the division lines, they were placed on one side or the other. At present, when such differences are done away, it is less material. The interest of a state is made up of the interests of its individual members. If they are not injured, the state is not injured. Small states are more easily well and happily governed than large ones. If, therefore, in such an equal division, it should be found necessary to diminish Pennsylvania. I should not be averse to the giving a part of it to New Jersey, and another to Delaware. But as there would probably be considerable difficulties in adjusting such a division, and, however equally made at first, it would

be continually varying by the augmentation of inhabitants in some states, and their fixed proportion in others, and thence frequently occasion new divisions, I beg leave to propose, for the consideration of the committee, another mode, which appears to me to be as equitable, more easily carried into practice, and more permanent in its nature.

"Let the weakest state say what proportion of money or force it is able and willing to furnish for the general purposes of the Union;

"Let all the others oblige themselves to furnish each an equal proportion;

"The whole of these joint supplies to be absolutely in the disposition of Congress;

"The Congress, in this case, to be composed of an equal number of delegates from each state;

"And their decisions to be by the majority of individual members voting.

"If these joint and equal supplies should, on particular occasions, not be sufficient, let Congress make requisitions on the richer and more powerful states for further aids, to be voluntarily afforded, leaving to each state the right of considering the necessity and utility of the aid desired, and of giving more or less, as it should be found proper.

"This mode is not new. It was formerly practised with success by the British government with respect to Ireland and the colonies. We sometimes gave even more than they expected, or thought just to accept; and, in the last war, carried on while we were united, they gave us back in five years a million sterling. We should probably have continued such voluntary contributions, whenever the occasions appeared to require them, for the common good of the empire. It was not till they chose to force us, and to deprive us of the merit and pleasure of voluntary contributions, that we refused and resisted. These contributions, however, were to be disposed of at the pleasure of a government in which we had no representative. I am, therefore, persuaded, that they will not be refused to one in which the representation shall be equal.

"My learned colleague (Mr. Wilson) has already mentioned, that the present method of voting by states was submitted to originally by Congress under a conviction of its impropriety, inequality, and injustice. This appears in the words of their resolution. It is of the sixth of September, 1774. The words are,—

" 'Resolved, That, in determining questions in this Congress, each colony or province shall have one vote; the Congress not being possessed of, or at present able to procure, materials for ascertaining the importance of each colony.' "

On the question for agreeing to Mr. King's and Mr. Wilson's motion, it passed in the affirmative.

Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 7; New York, New Jersey, Delaware, no, 3; Maryland, divided.

It was then moved by Mr. RUTLEDGE, seconded by Mr. BUTLER, to add to the words "equitable ratio of representation," at the end of the motion just agreed to, the words "according to the quotas of contribution." On motion of Mr. WILSON, seconded by Mr. PINCKNEY, this was postponed in order to add, after the words "equitable ratio of representation," the words following—"in proportion to the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes, in each state"—this being the rule in the act of Congress, agreed to by eleven states, for apportioning quotas of revenue on the states, and requiring a census only every five, seven, or ten years.

Mr. GERRY thought property not the rule of representation. Why, then, should the blacks, who were property in the south, be, in the rule of representation, more than the cattle and horses of the north?

On the question,—

Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; New Jersey, Delaware, no, 2.100

Mr. SHERMAN moved, that a question be taken, whether each state shall have one vote in the second branch. Every thing, he said, depended on this. The smaller states would never agree to the plan on any other principle than an equality of suffrage in this branch.

Mr. ELLSWORTH seconded the motion. On the question for allowing each state one vote in the second branch,—

Connecticut, New York, New Jersey, Delaware, Maryland, ay, 5; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 6.

Mr. WILSON and Mr. HAMILTON moved, that the right of suffrage in the second branch ought to be according to the same rule as in the first branch.

On this question for making the ratio of representation the same in the second as in the first branch, it passed in the affirmative.

Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 6; Connecticut, New York, New Jersey, Delaware, Maryland, no, 5.101

The eleventh resolution, for guarantying republican government and territory to each state, being considered, the words "or partition" were, on motion of Mr. MADISON, added after the words "voluntary junction."

Massachusetts, New York, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 7; Connecticut, New Jersey, Delaware, Maryland, no, 4.

Mr. READ disliked the idea of guarantying territory. It abetted the idea of distinct states, which would be a perpetual source of discord. There can be no cure for this evil but in doing away states altogether, and uniting them all into one great society.

Alterations having been made in the resolution, making it read, "that a republican constitution, and its existing laws, ought to be guarantied to each state by the United States," the whole was agreed to, *nem. con.*

The thirteenth resolution, for amending the national Constitution, hereafter, without consent of the national legislature, being considered, several members did not see the necessity of the resolution at all, nor the propriety of making the consent of the national legislature unnecessary.

Col. MASON urged the necessity of such a provision. The plan now to be formed will certainly be defective, as the Confederation has been found on trial to be. Amendments, therefore, will be necessary; and it will be better to provide for them in an easy, regular, and constitutional way, than to trust to chance and violence. It would be improper to require the consent of the national legislature, because they may abuse their power, and refuse their assent on that very account. The opportunity for such an abuse may be the fault of the Constitution calling for amendment.

Mr. RANDOLPH enforced these arguments.

The words "without requiring the consent of the national legislature," were postponed. The other provision in the clause passed, *nem. con.*[102]

The fourteenth resolution, requiring oaths from the members of the state governments to observe the national Constitution and laws, being considered,—

Mr. SHERMAN opposed it, as unnecessarily intruding into the state jurisdictions.

Mr. RANDOLPH considered it necessary to prevent that competition between the national Constitution and laws, and those of the particular states, which had already been felt. The officers of the states are already under oath to the states. To preserve a due impartiality, they ought to be equally bound to the national government. The national authority needs every support we can give it. The executive and judiciary of the states, notwithstanding their nominal independence on the state legislatures, are in fact so dependent on them, that, unless they be brought under some tie to the national system, they will always lean too much to the state systems, whenever a contest arises between the two.

Mr. GERRY did not like the clause. He thought there was as much reason for requiring an oath of fidelity to the states from national officers, as *vice versa.*

Mr. LUTHER MARTIN moved to strike out the words requiring such an oath from the state officers, viz., "within the several states," observing, that if the new oath should be contrary to that already taken by them, it would be improper; if coincident, the oaths already taken will be sufficient.

On the question for striking out, as proposed by Mr. L. Martin,—

Connecticut, New Jersey, Delaware, Maryland, ay, 4; Massachusetts, New York, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 7.

Question on the whole resolution, as proposed by Mr. Randolph,—

Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 6; Connecticut, New York, New Jersey, Delaware, Maryland, no, 5.103

The committee rose, and the House adjourned.

Tuesday,*June* 12.

In Committee of the Whole.—The question was taken on the fifteenth resolution, to wit, referring the new system to the people of the United States for ratification. It passed in the affirmative.

Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 6; Connecticut, New York, New Jersey, no, 3; Delaware, Maryland, divided. (Pennsylvania omitted in the printed Journal. The vote is there entered as of June 11.)104

Mr. SHERMAN and Mr. ELLSWORTH moved to fill the blank left in the fourth resolution, for the periods of electing the members of the first branch, with the words, "every year;" Mr. Sherman observing, that he did it in order to bring on some question.

Mr. RUTLEDGE proposed "every two years."

Mr. JENIFER proposed "every three years;" observing, that the too great frequency of elections rendered the people indifferent to them, and made the best men unwilling to engage in so precarious a service.

Mr. MADISON seconded the motion for three years. Instability is one of the great vices of our republics to be remedied. Three years will be necessary, in a government so extensive, for members to form any knowledge of the various interests of the states to which they do not belong, and of which they can know but little from the situation and affairs of their own. One year will be almost consumed in preparing for, and travelling to and from, the seat of national business.

Mr. GERRY. The people of New England will never give up the point of annual elections. They know of the transition made in England from triennial to septennial elections, and will consider such an innovation here as the prelude to a like usurpation. He considered annual elections as the only defence of the people against tyranny. He was as much against a triennial house, as against an hereditary executive.

Mr. MADISON observed, that, if the opinions of the people were to be our guide, it would be difficult to say what course we ought to take. No member of the Convention

could say what the opinions of his constituents were at this time; much less could he say what they would think, if possessed of the information and lights possessed by the members here; and still less, what would be their way of thinking six or twelve months hence. We ought to consider what was right and necessary in itself for the attainment of a proper government. A plan adjusted to this idea will recommend itself. The respectability of this Convention will give weight to their recommendation of it. Experience will be constantly urging the adoption of it; and all the most enlightened and respectable citizens will be its advocates. Should we fall short of the necessary and proper point, this influential class of citizens will be turned against the plan, and little support, in opposition to them, can be gained to it from the unreflecting multitude.

Mr. GERRY repeated his opinion, that it was necessary to consider what the people would approve. This had been the policy of all legislators. If the reasoning (of Mr. Madison) were just, and we supposed a limited monarchy the best form in itself, we ought to recommend it, though the genius of the people was decidedly adverse to it, and, having no hereditary distinctions among us, we were destitute of the essential materials for such an innovation.

On the question for the triennial election of the first branch,—

New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, ay, 7; Massachusetts, (Mr. King, ay, Mr. Gorham, wavering,) Connecticut, North Carolina, South Carolina, no. 4.105

The words requiring members of the first branch to be of the age of—years, were struck out—Maryland alone, no.

The words "*liberal compensation for members*" being considered, Mr. MADISON moved to insert the words "and fixed." He observed, that it would be improper to leave the members of the national legislature to be provided for by the state legislatures, because it would create an improper dependence; and to leave them to regulate their own wages was an indecent thing, and might in time prove a dangerous one. He thought wheat, or some other article of which the average price, throughout a reasonable period preceding, might be settled in some convenient mode, would form a proper standard.

Col. MASON seconded the motion; adding, that it would be improper, for other reasons, to leave the wages to be regulated by the states. First, the different states would make different provision for their representatives, and an inequality would be felt among them, whereas he thought they ought to be in all respects equal; secondly, the parsimony of the states might reduce the provision so low, that, as had already happened in choosing delegates to Congress, the question would be, not who were most fit to be chosen, but who were most willing to serve.

On the question for inserting the words "and fixed,"—

New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 8; Massachusetts, Connecticut, South Carolina, no, 3.

Dr. FRANKLIN said, he approved of the amendment just made for rendering the salaries as fixed, as possible but disliked the word "*liberal.*" He would prefer the word "moderate," if it was necessary to substitute any other. He remarked the tendency of abuses, in every case, to grow of themselves when once begun, and related very pleasantly the progression in ecclesiastical benefices, from the first departure from the gratuitous provision for the apostles, to the establishment of the papal system. The word "liberal" was struck out, *nem. con.*

On the motion of Mr. PIERCE, that the wages should be paid out of the national treasury,—

Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 8; Connecticut, New York, South Carolina, no, 3.

Question on the clause relating to term of service and compensation of the first branch,—

Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 8; Connecticut, New York, South Carolina, no, 3.

On a question for striking out the "*ineligibility* of members of the national legislature to *state offices,*"—

Connecticut, New York, North Carolina, South Carolina, ay, 4; New Jersey, Pennsylvania, Delaware, Virginia, Georgia, no, 5; Massachusetts, Maryland, divided.

On the question for agreeing to the clause as amended,—

Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 10; Connecticut, no, 1.

On the question for making members of the national legislature *ineligible* to any office under the national government for the term of three years after ceasing to be members,—

Maryland, ay, 1; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no, 10.

On the question for such ineligibility for one year,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, ay, 8; New York, Georgia, no, 2; Maryland, divided.

On the question moved by Mr. Pinckney, for striking out "incapable of reëlection into the first branch of the national legislature for—years, and subject to recall," agreed to, *nem. con.*[106]

On the question for striking out from the fifth resolution the words requiring members of the senatorial branch to be of the age of—years at least,—

Connecticut, New Jersey, Pennsylvania, ay, 3; Massachusetts, New York, Delaware, Maryland, Virginia, South Carolina, no, 6; North Carolina, Georgia, divided.

On the question for filling the blank with "thirty years," as the qualification, it was agreed to,—

Massachusetts, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, ay, 7; Connecticut, New Jersey, Delaware, Georgia, no, 4.

Mr. SPAIGHT moved to fill the blank for the duration of the appointments to the second branch of the national legislature with the words "seven years."

Mr. SHERMAN thought seven years too long. He grounded his opposition, he said, on the principle that, if they did their duty well, they would be reëlected; and if they acted amiss, an earlier opportunity should be allowed for getting rid of them. He preferred five years, which would be between the terms of the first branch and of the executive.

Mr. PIERCE proposed three years. Seven years would raise an alarm. Great mischiefs have arisen in England from their septennial act, which was reprobated by most of their patriotic statesmen.

Mr. RANDOLPH was for the term of seven years. The democratic licentiousness of the state legislatures proved the necessity of a firm Senate. The object of this second branch is to control the democratic branch of the national legislature. If it be not a firm body, the other branch, being more numerous, and coming immediately from the people, will overwhelm it. The Senate of Maryland, constituted on like principles, had been scarcely able to stem the popular torrent. No mischief can be apprehended, as the concurrence of the other branch, and in some measure of the executive, will in all cases be necessary. A firmness and independence may be the more necessary, also, in this branch, as it ought to guard the Constitution against encroachments of the executive, who will be apt to form combinations with the demagogues of the popular branch.

Mr. MADISON considered seven years as a term by no means too long. What we wished was, to give to the government that stability which was every where called for, and which the enemies of the republican form alleged to be inconsistent with its nature. He was not afraid of giving too much stability, by the term of seven years. His fear was, that the popular branch would still be too great an overmatch for it. It was to be much lamented that we had so little direct experience to guide us. The constitution of Maryland was the only one that bore any analogy to this part of the plan. In no instance had the Senate of Maryland created just suspicions of danger from it. In some instances, perhaps, it may have erred by yielding to the House of Delegates. In every instance of their opposition to the measures of the House of Delegates, they had had with them the suffrages of the most enlightened and impartial people of the other

states, as well as of their own. In the states where the Senates were chosen in the same manner as the other branches of the legislature, and held their seats for four years, the institution was found to be no check whatever against the instabilities of the other branches. He conceived it to be of great importance that a stable and firm government, organized in the republican form, should be held out to the people. If this be not done, and the people be left to judge of this species of government by the operations of the defective systems under which they now live, it is much to be feared the time is not distant, when, in universal disgust, they will renounce the blessing which they have purchased at so dear a rate, and be ready for any change that may be proposed to them.

On the question for "seven years," as the term for the second branch,—

New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Connecticut, no, 1; Massachusetts, (Mr. Gorham and Mr. King, ay; Mr. Gerry and Mr. Strong, no;) New York, divided.107

Mr. BUTLER and Mr. RUTLEDGE proposed that the members of the second branch should be entitled to no salary or compensation for their services. On the question,—*

Connecticut, Delaware, South Carolina, ay, 3; New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, no, 7; Massachusetts, divided.

It was then moved, and agreed, that the clauses respecting the stipends and inelegibility of the second branch be the same as of the first branch,—Connecticut disagreeing to the ineligibility. It was moved and seconded to alter the ninth resolution, so as to read, "that the jurisdiction of the supreme tribunal shall be, to hear and determine, in the dernier resort, all piracies, felonies, &c."

It was moved and seconded to strike out "all piracies and felonies on the high seas," which was agreed to.

It was moved, and agreed, to strike out "all captures from an enemy."

It was moved, and agreed, to strike out "other states," and insert "two distinct states of the Union."

It was moved, and agreed, to postpone the consideration of the ninth resolution, relating to the judiciary.

The committee then rose, and the house adjourned.

Wednesday,*June* 13.

In the Committee of the Whole.—The ninth resolution being resumed,—

The latter part of the clause relating to the jurisdiction of the national tribunals was struck out, *nem. con.,* in order to leave full room for their organization.

Mr. RANDOLPH and Mr. MADISON then moved the following resolution respecting a national judiciary, viz.: "that the jurisdiction of the national judiciary shall extend to cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony." Agreed to.[108]

Mr. PINCKNEY and Mr. SHERMAN moved to insert, after the words "one supreme tribunal," the words "the judges of which to be appointed by the national legislature."

Mr. MADISON objected to an appointment by the whole legislature. Many of them are incompetent judges of the requisite qualifications. They were too much influenced by their partialities. The candidate who was present, who had displayed a talent for business in the legislative field, who had, perhaps, assisted ignorant members in business of their own or of their constituents, or used other winning means, would, without any of the essential qualifications for an expositor of the laws, prevail over a competitor not having these recommendations, but possessed of every necessary accomplishment. He proposed that the appointment should be made by the Senate; which, as a less numerous and more select body, would be more competent judges, and which was sufficiently numerous to justify such a confidence in them.

Mr. Sherman and Mr. Pinckney withdrew their motion, and the appointment by the Senate was agreed to, *nem. con.*

Mr. GERRY moved to restrain the senatorial branch from originating money bills. The other branch was more immediately the representatives of the people, and it was a maxim, that the people ought to hold the purse-strings. If the Senate should be allowed to originate such bills, they would repeat the experiment, till chance should furnish a set of representatives in the other branch who will fall into their snares.

Mr. BUTLER saw no reason for such a discrimination. We were always following the British constitution, when the reason of it did not apply. There was no analogy between the House of Lords and the body proposed to be established. If the Senate should be degraded by any such discriminations, the best men would be apt to decline serving in it, in favor of the other branch. And it will lead the latter into the practice of tacking other clauses to money bills.

Mr. MADISON observed, that the commentators on the British constitution had not yet agreed on the reason of the restriction on the House of Lords, in money bills. Certain it was, there could be no similar reason in the case before us. The Senate would be the representatives of the people as well as the first branch. If they should have any dangerous influence over it, they would easily prevail on some member of the latter to originate the bill they wished to be passed. As the Senate would be generally a more capable set of men, it would be wrong to disable them from any preparation of the business, especially of that which was most important, and, in our republics, worse prepared than any other. The gentleman, in pursuance of his principle, ought to carry the restraint to the *amendment,* as well as the *originating* of money bills; since an addition of a given sum would be equivalent to a distinct proposition of it.

Mr. KING differed from Mr. Gerry, and concurred in the objections to the proposition.

Mr. READ favored the proposition, but would not extend the restraint to the case of amendments.

Mr. PINCKNEY thinks the question premature. If the Senate should be formed on the *same* proportional representation as it stands at present, they should have equal power; otherwise, if a different principle should be introduced.

Mr. SHERMAN. As both branches must concur, there can be no danger, whichever way the Senate may be formed. We establish two branches in order to get more wisdom, which is particularly needed in the finance business. The Senate bear their share of the taxes, and are also the representatives of the people. "What a man does by another, he does by himself," is a maxim. In Connecticut, both branches can originate, in all cases, and it has been found safe and convenient. Whatever might have been the reason of the rule as to the House of Lords, it is clear that no good arises from it now even there.

Gen. PINCKNEY. This distinction prevails in South Carolina, and has been a source of pernicious disputes between the two branches. The constitution is now evaded by informal schedules of amendments, handed from the Senate to the other House.

Mr. WILLIAMSON wishes for a question, chiefly to prevent rediscussion. The restriction will have one advantage: it will oblige some member in the lower branch to move, and people can then mark him.

On the question for excepting money bills, as proposed by Mr. Gerry,—

New York, Delaware, Virginia, ay, 3; Massachusetts, Connecticut, New Jersey, Maryland, North Carolina, South Carolina, Georgia, no, 7.109

The committee rose, and Mr. GORHAM made report, which was postponed till to-morrow, to give an opportunity for other plans to be proposed: the report was in the words following:—

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

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

3. Resolved, That the members of the first branch of the national legislature ought to be elected by the people of the several states for the term of three years; to receive fixed stipends by which they may be compensated for the devotion of their time to the public service, to be paid out of the national treasury; to be ineligible to any office established by a particular state, or under the authority of the United States, (except those peculiarly belonging to the functions of the first branch,) during the term of service, and, under the national government, for the space of one year after its expiration.

4. Resolved, That the members of the second branch of the national legislature ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for a term sufficient to insure their independence, namely, seven years; to receive fixed stipends by which they may be compensated for the devotion of their time to the public service, to be paid out of the national treasury; to be ineligible to any office established by a particular state, or under the authority of the United States, (except those peculiarly belonging to the functions of the second branch,) during the term of service, and, under the national government, for the space of one year after its expiration.

5. Resolved, That each branch ought to possess the right of originating acts.

6. Resolved, That the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the Confederation; and moreover, to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation; to negative all laws passed by the several states contravening, in the opinion of the national legislature, the Articles of Union or any treaties subsisting under the authority of the Union.

7. Resolved, That the rights of suffrage in the first branch of the national legislature ought not to be according to the rule established in the Articles of Confederation, but according to some equitable ratio of representation; namely, in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons, not comprehended in the foregoing description, except Indians not paying taxes in each state.

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

9. Resolved, That a national executive be instituted, to consist of a single person; to be chosen by the national legislature, for the term of seven years; with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for, to be ineligible a second time, and to be removable on impeachment and conviction of malpractices or neglect of duty; to receive a fixed stipend by which he may be compensated for the devotion of his time to the public service, to be paid out of the national treasury.

10. Resolved, That the national executive shall have a right to negative any legislative act which shall not be afterwards passed by two thirds of each branch of the national legislature.

11. Resolved, That a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature, to hold their offices during good behavior, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase or

diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution.

12. Resolved, That the national legislature be empowered to appoint inferior tribunals.

13. Resolved, That the jurisdiction of the national judiciary shall extend to all cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony.

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

15. Resolved, That provision ought to be made for the continuance of Congress, and their authorities and privileges, until a given day after the reform of the Articles of Union shall be adopted, and for the completion of all their engagements.

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

17. Resolved, That provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary.

18. Resolved, That the legislative, executive, and judiciary powers, within the several states, ought to be bound by oath to support the Articles of Union.

19. Resolved, That the amendments which shall be offered to the Confederation by the Convention, ought, at a proper time or times after the approbation of Congress, to be submitted to an assembly or assemblies recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.110

Thursday,*June* 14.

Mr. PATTERSON observed to the Convention, that it was the wish of several deputations, particularly that of New Jersey, that further time might be allowed them to contemplate the plan reported from the Committee of the Whole, and to digest one purely federal, and contradistinguished from the reported plan. He said, they hoped to have such a one ready by to-morrow to be laid before the Convention: and the Convention adjourned, that leisure might be given for the purpose.

Friday,*June* 15.

In Convention.—Mr. PATTERSON laid before the Convention the plan which, he said, several of the deputations wished to be substituted in place of that proposed by Mr. Randolph. After some little discussion of the most proper mode of giving it a fair deliberation, it was agreed, that it should be referred to a Committee of the Whole; and that, in order to place the two plans in due comparison, the other should be recommitted. At the earnest request of Mr. Lansing, and some other gentleman, it was

also agreed that the Convention should not go into Committee of the Whole on the subject till to-morrow; by which delay the friends of the plan proposed by Mr. Patterson would be better prepared to explain and support it, and all would have an opportunity of taking copies.*

The propositions from New Jersey, moved by Mr. Patterson, were in the words following:

1. Resolved, That the Articles of Confederation ought to be so revised, corrected and enlarged, as to render the federal Constitution adequate to the exigencies of government, and the preservation of the Union.

2. Resolved, That, in addition to the powers vested in the United States in Congress by the present existing Articles of Confederation, they be authorized to pass acts for raising a revenue, by levying a duty or duties on all goods or merchandises of foreign growth or manufacture, imported into any part of the United States; by stamps on paper, vellum, or parchment; and by a postage on all letters or packages passing through the general post-office;—to be applied to such federal purposes as they shall deem proper and expedient; to make rules and regulations for the collection thereof; and the same, from time to time, to alter and amend in such manner as they shall think proper: to pass acts for the regulation of trade and commerce, as well with foreign nations as with each other;—provided that all punishments, fines, forfeitures, and penalties, to be incurred for contravening such acts, rules, and regulations, shall be adjudged by the common-law judiciaries of the state in which any offence contrary to the true intent and meaning of such acts, rules, and regulations, shall have been committed or perpetrated, with liberty of commencing in the first instance all suits and prosecutions for that purpose in the superior common-law judiciary in such state; subject, nevertheless, for the correction of all errors, both in law and fact, in rendering judgment, to an appeal to the judiciary of the United States.

3. Resolved, That whenever requisitions shall be necessary, instead of the rule for making requisitions mentioned in the Articles of Confederation, the United States in Congress be authorized to make such requisitions in proportion to the whole number of white and other free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians not paying taxes; that, if such requisitions he not complied with in the time specified therein, to direct the collection thereof in the non-complying states, and for that purpose to devise and pass acts directing and authorizing the same;—provided, that none of the powers hereby vested in the United States in Congress shall be exercised without the consent of at least—states; and in that proportion, if the number of confederated states should hereafter be increased or diminished.

4. Resolved, That the United States in Congress be authorized to elect a federal executive, to consist of—persons; to continue in office for the term of—years; to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons composing the executive at the time of such increase or diminution; to be paid out of the federal

treasury: to be incapable of holding any other office or appointment during their time of service, and for—years thereafter; to be ineligible a second time, and removable by Congress, on application by a majority of the executives of the several states: that the executive, besides their general authority to execute the federal acts, ought to appoint all federal officers not otherwise provided for, and to direct all military operations;—provided, that none of the persons composing the federal executive shall, on any occasion, take command of any troops, so as personally to conduct any military enterprise, as general, or in any other capacity.

5. Resolved, That a federal judiciary be established, to consist of a supreme tribunal, the judges of which to be appointed by the executive, and to hold their offices during good behavior; to receive punctually, at stated times, a fixed compensation for their services, in which no increase nor diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. That the judiciary so established shall have authority to hear and determine, in the first instance, on all impeachments of federal officers, and, by way of appeal, in the dernier resort, in all cases touching the rights of ambassadors; in all cases of captures from an enemy; in all cases of piracies and felonies on the high seas; in all cases in which foreigners may be interested; in the construction of any treaty or treaties, or which may arise on any of the acts for the regulation of trade, or the collection of the federal revenue: that none of the judiciary shall, during the time they remain in office, be capable of receiving or holding any other office or appointment during their term of service, or for—thereafter.

6. Resolved, That all acts of the United States in Congress, made by virtue and in pursuance of the powers hereby, and by the Articles of Confederation, vested in them, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, so far forth as those acts or treaties shall relate to the said states or their citizens; and that the judiciary of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual states to the contrary notwithstanding; and that if any state, or any body of men in any state, shall oppose or prevent the carrying into execution such acts or treaties, the federal executive shall be authorized to call forth the power of the confederated states, or so much thereof as may be necessary, to enforce and compel an obedience to such acts, or an observance of such treaties.

7. Resolved, That provision be made for the admission of new states into the Union.

8. Resolved, That the rule for naturalization ought to be the same in every state.

9. Resolved, That a citizen of one state, committing an offence in another state of the Union, shall be deemed guilty of the same offence as if it had been committed by a citizen of the state in which the offence was committed.*111

Adjourned.

Saturday,*June* 16.

In Committee of the Whole, on the resolutions proposed by Mr. Patterson and Mr. Randolph, Mr. LANSING called for the reading of the first resolution of each plan, which he considered as involving principles directly in contrast. That of Mr. Patterson, says he, sustains the sovereignty of the respective states, that of Mr. Randolph destroys it. The latter requires a negative on all the laws of the particular states, the former only certain general power for the general good. The plan of Mr. Randolph, in short, absorbs all power, except what may be exercised in the little local matters of the states, which are not objects worthy of the supreme cognizance. He grounded his preference of Mr. Patterson's plan, chiefly, on two objections to that of Mr. Randolph,—first, want of power in the Convention to discuss and propose it; secondly, the improbability of its being adopted.

1. He was decidedly of opinion that the power of the Convention was restrained to amendments of a federal nature, and having for their basis the Confederacy in being. The acts of Congress, the tenor of the acts of the states, the commissions produced by the several deputations, all proved this. And this limitation of the power to an amendment of the Confederacy marked the opinion of the states, that it was unnecessary and improper to go farther. He was sure that this was the case with his state. New York would never have concurred in sending deputies to the Convention, if she had supposed the deliberations were to turn on a consolidation of the states, and a national government.

2. Was it probable that the states would adopt and ratify a scheme which they had never authorized us to propose, and which so far exceeded what they regarded as sufficient? We see by their several acts, particularly in relation to the plan of revenue proposed by Congress in 1783, not authorized by the Articles of Confederation, what were the ideas they then entertained. Can so great a change be supposed to have already taken place? To rely on any change which is hereafter to take place in the sentiments of the people, would be trusting to too great an uncertainty. We know only what their present sentiments are; and it is in vain to propose what will not accord with these. The states-will never feel a sufficient confidence in a general government, to give it a negative on their laws. The scheme is itself totally novel. There is no parallel to it to be found. The authority of Congress is familiar to the people, and an augmentation of the powers of Congress will be readily approved by them.

Mr. PATTERSON said, as he had on a former occasion given his sentiments on the plan proposed by Mr. Randolph, he would now, avoiding repetition as much as possible, give his reasons in favor of that proposed by himself. He preferred it because it accorded,—first, with the powers of the convention; secondly, with the sentiments of the people. If the Confederacy was radically wrong, let us return to our states, and obtain larger powers, not assume them ourselves. I came here not to speak my own sentiments, but the sentiments of those who sent me. Our object is not such a government as may be best in itself, but such a one as our constituents have authorized us to prepare, and as they will approve. If we argue the matter on the supposition that no confederacy at present exists, it cannot be denied that all the states stand on the footing of equal sovereignty. All, therefore, must concur before any can be bound. If a proportional representation be right, why do we not vote so here? If we argue on the fact that a federal compact actually exists, and consult the articles of it,

we still find an equal sovereignty to be the basis of it. [He reads the fifth Article of the Confederation, giving each state a vote; and the thirteenth, declaring that no alteration shall be made without unanimous consent.] This is the nature of all treaties. What is unanimously done, must be unanimously undone. It was observed, (by Mr. Wilson,) that the larger states gave up the point, not because it was right, but because the circumstances of the moment urged the concession. Be it so. Are they for that reason at liberty to take it back? Can the donor resume his gift without the consent of the donee? This doctrine may be convenient, but it is a doctrine that will sacrifice the lesser states. The larger states acceded readily to the Confederacy. It was the small ones that came in reluctantly and slowly. New Jersey and Maryland were the two last; the former objecting to the want of power in Congress over trade; both of them to the want of power to appropriate the vacant territory to the benefit of the whole. If the sovereignty of the states is to be maintained, the representatives must be drawn immediately from the states, not from the people; and we have no power to vary the idea of equal sovereignty. The only expedient that will cure the difficulty is that of throwing the states into hotchpot. To say that this is impracticable, will not make it so. Let it be tried, and we shall see whether the citizens of Massachusetts, Pennsylvania, and Virginia, accede to it. It will be objected, that coercion will be impracticable. But will it be more so in one plan than the other? Its efficacy will depend on the quantum of power collected, not on its being drawn from the states, or from the individuals; and, according to his plan, it may be exerted on individuals as well as according to that of Mr. Randolph. A distinct executive and judiciary also were equally provided by his plan. It is urged, that two branches in the legislature are necessary. Why? For the purpose of a check. But the reason for the precaution is not applicable to this case. Within a particular state, where party heats prevail, such a check may be necessary. In such a body as Congress, it is less necessary; and, besides, the delegations of the different states are checks on each other. Do the people at large complain of Congress? No. What they wish is, that Congress may have more power. If the power now proposed be not enough, the people hereafter will make additions to it. With proper powers Congress will act with more energy and wisdom than the proposed national legislature; being fewer in number, and more secreted and refined by the mode of election. The plan of Mr. Randolph will also be enormously expensive. Allowing Georgia and Delaware two representatives each in the popular branch, the aggregate number of that branch will be one hundred and eighty. Add to it half as many for the other branch, and you have two hundred and seventy members, coming once, at least, a year, from the most distant as well as the most central parts of the republic. In the present deranged state of our finances, can so expensive a system be seriously thought of? By enlarging the powers of Congress, the greatest part of this expense will be saved, and all purposes will be answered. At least, a trial ought to be made.

Mr. WILSON entered into a contrast of the principal points of the two plans, so far, he said, as there had been time to examine the one last proposed. These points were,—1. In the Virginia plan there are *two,* and in some degree *three,* branches in the legislature; in the plan from New Jersey, there is to be a *single* legislature only. 2. Representation of the people at large is the basis of one; the state legislatures the pillars of the other. 3. Proportional representation prevails in one, equality of suffrage in the other. 4. A single executive magistrate is at the head of the one; a plurality is

held out in the other. 5. In the one, a majority of the people of the United States must prevail; in the other, a minority may prevail. 6. The national legislature is to make laws in all cases to which the separate states are incompetent, &c.; in place of this, Congress are to have additional power in a few cases only. 7. A negative on the laws of the states; in place of this, coercion to be substituted. 8. The executive to be removable on impeachment and conviction, in one plan; in the other, to be removable at the instance of a majority of the executives of the states. 9. Revision of the laws provided for, in one; no such check in the other. 10. Inferior national tribunals, in one; none such in the other. 11. In the one, jurisdiction of national tribunals to extend, &c.; an appellate jurisdiction only allowed in the other. 12. Here, the jurisdiction is to extend to all cases affecting the national peace and harmony; there, a few cases only are marked out. 13. Finally, the ratification is, in this, to be by the people themselves; in that, by the legislative authorities, according to the thirteenth Article of the Confederation.

With regard to the *power of the Convention,* he conceived himself authorized to *conclude nothing,* but to be at liberty to *propose any thing.* In this particular, he felt himself perfectly indifferent to the two plans.

With *regard to the sentiments of the people,* he conceived it difficult to know precisely what they are. Those of the particular circle in which one moved were commonly mistaken for the general voice. He could not persuade himself that the state governments and sovereignties were so much the idols of the people, nor a national governernment so obnoxious to them, as some supposed. Why should a national government be unpopular? Has it less dignity? Will each citizen enjoy under it less liberty or protection? Will a citizen of *Delaware* be degraded by becoming a citizen of the *United* States? Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of their governments? No, sir. It is from the national councils that relief is expected. For these reasons, he did not fear that the people would not follow us into a national government; and it will be a further recommendation of Mr. Randolph's plan, that it is to be submitted to *them,* and not to the *legislatures,* for ratification.

Proceeding now to the first point on which he had contrasted the two plans, he observed, that, anxious as he was for some augmentation of the federal powers, it would be with extreme reluctance, indeed, that he could ever consent to give powers to Congress. He had two reasons, either of which was sufficient,—first, Congress, as a legislative body, does not stand on the people; secondly, it is a *single* body.

1. He would not repeat the remarks he had formerly made on the principles of representation. He would only say, that an inequality in it has ever been a poison contaminating every branch of government. In Great Britain, where this poison has had a full operation, the security of private rights is owing entirely to the purity of her tribunals of justice, the judges of which are neither appointed nor paid by a venal parliament. The political liberty of that nation, owing to the inequality of representation, is at the mercy of its rulers. He means not to insinuate that there is any parallel between the situation of that country and ours, at present. But it is a lesson we ought not to disregard, that the smallest bodies in Great Britain are notoriously the

most corrupt. Every other source of influence must also be stronger in small than in large bodies of men. When Lord Chesterfield had told us that one of the Dutch provinces had been seduced into the views of France, he need not have added that it was not Holland, but one of the *smallest* of them. There are facts among ourselves which are known to all. Passing over others, we will only remark that the *impost,* so anxiously wished for by the public, was defeated not by any of the *larger* states in the Union.

2. *Congress is a single legislature.* Despotism comes on mankind in different shapes—sometimes in an executive, sometimes in a military one. Is there no danger of a legislative despotism? Theory and practice both proclaim it. If the legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it, within itself, into distinct and independent branches. In a single House there is no check but the inadequate one of the virtue and good sense of those who compose it.

On another great point, the contrast was equally favorable to the plan reported by the Committee of the Whole. It vested the executive powers in a single magistrate. The plan of New Jersey vested them in a plurality. In order to control the legislative authority, you must divide it. In order to control the executive, you must unite it. One man will be more responsible than three. Three will contend among themselves, till one becomes the master of his colleagues. In the triumvirates of Rome, first Cæsar, then Augustus, are witnesses of this truth. The kings of Sparta, and the consuls of Rome, prove also the factious consequences of dividing the executive magistracy. Having already taken up so much time, he would not, he said, proceed to any of the other points. Those on which he had dwelt are sufficient of themselves; and on the decision of them the fate of the others will depend.

Mr. PINCKNEY.112 The whole comes to this, as he conceived. Give New Jersey an equal vote, and she will dismiss her scruples, and concur in the national system. He thought the Convention authorized to go any length, in recommending, which they found necessary to remedy the evils which produced this Convention.

Mr. ELLSWORTH proposed as a more distinctive form of collecting the mind of the committee on the subject, “that the legislative power of the United States should remain in Congress.” This was not seconded, though it seemed better calculated for the purpose than the first proposition of Mr. Patterson, in place of which Mr. Ellsworth wished to substitute it.

Mr. RANDOLPH was not scrupulous on the point of power. When the salvation of the republic was at stake, it would be treason to our trust, not to propose what we found necessary. He painted in strong colors the imbecility of the existing Confederacy, and the danger of delaying a substantial reform. In answer to the objection drawn from the sense of our constituents, as denoted by their acts relating to the Convention and the objects of their deliberation, he observed that, as each state acted separately in the case, it would have been indecent for it to have charged the existing constitution with all the vices which it might have perceived in it. The first state that set on foot this experiment would not have been justified in going so far,

ignorant as it was of the opinion of others, and sensible as it must have been of the uncertainty of a successful issue to the experiment. There are reasons certainly of a peculiar nature, where the ordinary cautions must be dispensed with; and this is certainly one of them. He would not, as far as depended on him, leave any thing that seemed necessary, undone. The present moment is favorable, and is probably the last that will offer.

The true question is, whether we shall adhere to the federal plan, or introduce the national plan. The insufficiency of the former has been fully displayed by the trial already made. There are but two modes by which the end of a general government can be attained: the first, by coercion, as proposed by Mr. Patterson's plan; the second, by real legislation, as proposed by the other plan. Coercion he pronounced to be *impracticable, expensive, cruel to individuals.* It tended, also, to habituate the instruments of it to shed the blood, and riot in the spoils of their fellow-citizens, and consequently train them up for the service of ambition. We must resort, therefore, to a *national legislation over individuals;* for which Congress are unfit. To vest such power in them would be blending the legislative with the executive, contrary to the received maxim on this subject. If the union of these powers, heretofore, in Congress has been safe, it has been owing to the general impotency of that body. Congress are, moreover, not elected by the people, but by the legislatures, who retain even a power of recall. They have, therefore, no will of their own; they are a mere diplomatic body, and are always obsequious to the views of the states, who are always encroaching on the authority of the United States. A provision for harmony among the states, as in trade, naturalization, &c.; for crushing rebellion, whenever it may rear its crest; and for certain other general benefits, must be made.

The powers for these purposes can never be given to a body inadequate as Congress are in point of representation, elected in the mode in which they are, and possessing no more confidence than they do: for, notwithstanding what has been said to the contrary, his own experience satisfied him that a rooted distrust of Congress pretty generally prevailed. A national government alone, properly constituted, will answer the purpose; and he begged it to be considered that the present is the last moment for establishing one. After this select experiment, the people will yield to despair.[113]

The committee rose, and the House adjourned.

Monday,*June* 18.

In Committee of the Whole, on the propositions of Mr. Patterson and Mr. Randolph. On motion of Mr. DICKINSON, to postpone the first resolution in Mr. Patterson's plan, in order to take up the following, viz.:—

"That the Articles of Confederation ought to be revised and amended, so as to render the government of the United States adequate to the exigencies, the preservation, and the prosperity of the Union,"—

the postponement was agreed to by ten states; Pennsylvania divided.

Mr. HAMILTON had been hitherto silent on the business before the Convention, partly from respect to others whose superior abilities, age, and experience, rendered him unwilling to bring forward ideas dissimilar to theirs; and partly from his delicate situation with respect to his own state, to whose sentiments, as expressed by his colleagues, he could by no means accede. The crisis, however, which now marked our affairs, was too serious to permit any scruples whatever to prevail over the duty imposed on every man to contribute his efforts for the public safety and happiness. He was obliged, therefore, to declare himself unfriendly to both plans. He was particularly opposed to that from New Jersey, being fully convinced that no amendment of the Confederation, leaving the states in possession of their sovereignty, could possibly answer the purpose. On the other hand, he confessed he was much discouraged, by the amazing extent of country, in expecting the desired blessings from any general sovereignty that could be substituted. As to the powers of the Convention, he thought the doubts started on that subject had arisen from distinctions and reasonings too subtle. A *federal* government he conceived to mean an association of independent communities into one. Different confederacies have different powers, and exercise them in different ways. In some instances, the powers are exercised over collective bodies; in others, over individuals, as in the German Diet, and among ourselves, in cases of piracy. Great latitude, therefore, must be given to the signification of the term. The plan last proposed departs, itself, from the *federal* idea, as understood by some, since it is to operate eventually on individuals. He agreed, moreover, with the honorable gentleman from Virginia, (Mr. Randolph,) that we owed it to our country to do, on this emergency, whatever we should deem essential to its happiness. The states sent us here to provide for the exigencies of the Union. To rely on and propose any plan not adequate to these exigencies, merely because it was not clearly within our powers, would be to sacrifice the means to the end. It may be said, that the *states* cannot *ratify* a plan not within the purview of the Article of the Confederation providing for alterations and amendments. But may not the states themselves, in which no constitutional authority equal to this purpose exists in the legislatures, have had in view a reference to the people at large? In the senate of New York, a proviso was moved, that no act of the Convention should be binding until it should be referred to the people and ratified; and the motion was lost by a single voice only, the reason assigned against it being, that it might possibly be found an inconvenient shackle.

The great question is, what provision shall we make for the happiness of our country? He would first make a comparative examination of the two plans, prove that there were essential defects in both, and point out such changes as might render a *national one* efficacious. The great and essential principles necessary for the support of government are—1. An active and constant interest in supporting it. This principle does not exist in the states, in favor of the federal government. They have evidently in a high degree, the *esprit de corps.* They constantly pursue internal interests adverse to those of the whole. They have their particular debts, their particular plans of finance, &c. All these, when opposed to, invariably prevail over, the requisitions and plans of Congress. 2. The love of power Men love power. The same remarks are applicable to this principle. The states have constantly shown a disposition rather to regain the powers delegated by them, than to part with more, or to give effect to what they had parted with. The ambition of their demagogues is known to hate the control of the

general government. It may be remarked, too, that the citizens have not that anxiety to prevent a dissolution of the general government as of the particular governments. A dissolution of the latter would be fatal; of the former, would still leave the purposes of government attainable to a considerable degree. Consider what such a state as Virginia will be in a few years—a few compared with the life of nations. How strongly will it feel its importance and self-sufficiency! 3. An habitual attachment of the people. The whole force of this tie is on the side of the state government. Its sovereignty is immediately before the eyes of the people; its protection is immediately enjoyed by them. From its hand distributive justice, and all those acts which familiarize and endear a government to a people, are dispensed to them. 4. *Force,* by which may be understood a *coercion of laws,* or *coercion of arms.* Congress have not the former, except in few cases. In particular states, this coercion is nearly sufficient; though he held it, in most cases, not entirely so. A certain portion of military force is absolutely necessary in large communities. Massachusetts is now feeling this necessity, and making provision for it. But how can this force be exerted on the states collectively? It is impossible. It amounts to a war between the parties. Foreign powers, also, will not be idle spectators. They will interpose; the confusion will increase; and a dissolution of the Union will ensue. 5. *Influence,*—he did not mean corruption, but a dispensation of those regular honors and emoluments which produce an attachment to the government. Almost all the weight of these is on the side of the states; and must continue so as long as the states continue to exist. All the passions, then, we see, of avarice, ambition, interest, which govern most individuals, and all public bodies, fall into the current of the states, and do not flow into the stream of the general government. The former, therefore, will generally be an overmatch for the general government, and render any confederacy in its very nature precarious. Theory is in this case fully confirmed by experience. The Amphictyonic Council had, it would seem, ample powers for general purposes. It had, in particular, the power of fining and using force against delinquent members. What was the consequence? Their decrees were mere signals of war. The Phocian war is a striking example of it. Philip, at length, taking advantage of their disunion, and insinuating himself into their councils, made himself master of their fortunes. The German confederacy affords another lesson. The authority of Charlemagne seemed to be as great as could be necessary. The great feudal chiefs, however, exercising their local sovereignties, soon felt the spirit, and found the means, of encroachments, which reduced the imperial authority to a nominal sovereignty. The Diet has succeeded; which, though aided by a prince, at its head, of great authority independently of his imperial attributes, is a striking illustration of the weakness of confederated governments. Other examples instruct us in the same truth. The Swiss Cantons have scarce any union at all, and have been more than once at war with one another. How then are all these evils to be avoided? Only by such a complete sovereignty in the general government as will turn all the strong principles and passions above mentioned on its side. Does the scheme of New Jersey produce this effect? Does it afford any substantial remedy whatever? On the contrary, it labors under great defects, and the defect of some of its provisions will destroy the efficacy of others. It gives a direct revenue to Congress, but this will not be sufficient. The balance can only be supplied by requisitions; which experience proves cannot be relied on. If states are to deliberate on the mode, they will also deliberate on the object, of the supplies; and will grant or not grant, as they approve or disapprove of it. The delinquency of one will invite and countenance it in others.

Quotas, too, must, in the nature of things, be so unequal, as to produce the same evil. To what standard will you resort? Land is a fallacious one. Compare Holland with Russia; France, or England, with other countries of Europe; Pennsylvania with North Carolina;—will the relative pecuniary abilities, in those instances, correspond with the relative value of land? Take numbers of inhabitants for the rule, and make like comparison of different countries, and you will find it to be equally unjust. The different degrees of industry and improvement in different countries render the first object a precarious measure of wealth. Much depends, too, on *situation.* Connecticut, New Jersey, and North Carolina, not being commercial states, and contributing to the wealth of the commercial ones, can never bear quotas assessed by the ordinary rules of proportion. They will, and must, fail in their duty. Their example will be followed,—and the union itself be dissolved. Whence, then, is the national revenue to be drawn? From commerce; even from exports, which, notwithstanding the common opinion, are fit objects of moderate taxation; from excise, &c. &c.—These, though not equal, are less unequal than quotas. Another destructive ingredient in the plan is that equality of suffrage which is so much desired by the small states. It is not in human nature that Virginia and the large states should consent to it; or, if they did, that they should long abide by it. It shocks too much all ideas of justice, and every human feeling. Bad principles in a government, though slow, are sure in their operation, and will gradually destroy it. A doubt has been raised whether Congress at present have a right to keep ships or troops in time of peace. He leans to the negative. Mr. Patterson's plan provides no remedy. If the powers proposed were adequate, the organization of Congress is such, that they could never be properly and effectually exercised. The members of Congress, being chosen by the states and subject to recall, represent all the local prejudices. Should the powers be found effectual, they will from time to time be heaped on them, till a tyrannic sway shall be established. The general power, whatever be its form, if it preserves itself, must swallow up the state powers. Otherwise, it will be swallowed up by them. It is against all the principles of a good government, to vest the requisite powers in such a body as Congress. Two sovereignties cannot coëxist within the same limits. Giving powers to Congress must eventuate in a bad government, or in no government. The plan of New Jersey, therefore, will not do. What, then, is to be done? Here he was embarrassed. The extent of the country to be governed discouraged him. The expense of a general government was also formidable; unless there were such a diminution of expense, on the side of the state governments, as the case would admit. If they were extinguished, he was persuaded that great economy might be obtained by substituting a general government. He did not mean, however, to shock the public opinion by proposing such a measure. On the other hand, he saw no *other* necessity for declining it. They are not necessary for any of the great purposes of commerce, revenue, or agriculture. Subordinate authorities, he was aware, would be necessary. There must be district tribunals; corporations for local purposes. But *cui bono* the vast and expensive apparatus now appertaining to the states? The only difficulty of a serious nature which occurred to him, was that of drawing representatives from the extremes to the centre of the community. What inducements can be offered that will suffice? The moderate wages for the first branch could only be a bait to little demagogues. Three dollars, or thereabouts, he supposed, would be the utmost. The Senate, he feared, from a similar cause, would be filled by certain undertakers, who wish for particular offices under the government.

This view of the subject almost led him to despair that a republican government could be established over so great an extent. He was sensible, at the same time, that it would be unwise to propose one of any other form. In his private opinion, he had no scruple in declaring, supported as he was by the opinion of so many of the wise and good, that the British government was the best in the world; and that he doubted much whether any thing short of it would do in America. He hoped gentlemen of different opinions would bear with him in this, and begged them to recollect the change of opinion on this subject which had taken place, and was still going on. It was once thought, that the power of Congress was amply sufficient to secure the end of their institution. The error was now seen by every one. The members most tenacious of republicanism, he observed, were as loud as any in declaiming against the vices of democracy. This progress of the public mind led him to anticipate the time, when others as well as himself would join in the praise bestowed by Mr. Neckar on the British constitution—namely, that it is the only government in the world "which unites public strength with individual security." In every community where industry is encouraged, there will be a division of it into the few and the many. Hence, separate interests will arise. There will be debtors and creditors, &c. Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many. Both, therefore, ought to have the power, that each may defend itself against the other. To the want of this check, we owe our paper money, instalment laws, &c. To the proper adjustment of it, the British owe the excellence of their constitution. Their House of Lords is a most noble institution. Having nothing to hope for by a change, and a sufficient interest, by means of their property, in being faithful to the national interest, they form a permanent barrier against every pernicious innovation, whether attempted on the part of the crown or of the commons. No temporary Senate will have firmness enough to answer the purpose. The senate of Maryland, which seems to be so much appealed to, has not yet been sufficiently tried. Had the people been unanimous and eager in the late appeal to them on the subject of a paper emission, they would have yielded to the torrent. Their acquiescing in such an appeal is a proof of it. Gentlemen differ in their opinions concerning the necessary checks, from the different estimates they form of the human passions. They suppose seven years a sufficient period to give the Senate an adequate firmness, from not duly considering the amazing violence and turbulence of the democratic spirit. When a great object of government is pursued, which seizes the popular passions, they spread like wild-fire and become irresistible. He appealed to the gentlemen from the New England States, whether experience had not there verified the remark. As to the executive, it seemed to be admitted that no good one could be established on republican principles. Was not this giving up the merits of the question; for can there be a good government without a good executive? The English model was the only good one on this subject. The hereditary interest of the king was so interwoven with that of the nation, and his personal emolument so great, that he was placed above the danger of being corrupted from abroad; and at the same time was both sufficiently independent and sufficiently controlled, to answer the purpose of the institution at home. One of the weak sides of republics was their being liable to foreign influence and corruption. Men of little character, acquiring great power, become easily the tools of intermeddling neighbors. Sweden was a striking instance. The French and English had each their parties during the late revolution, which was effected by the predominant influence of the former. What is the inference from all these observations? That we ought to go as far, in order to attain stability and

permanency, as republican principles will admit. Let one branch of the legislature hold their places for life, or at least during good behavior. Let the executive also, be for life. He appealed to the feelings of the members present, whether a term of seven years would induce the sacrifices of private affairs which an acceptance of public trust would require, so as to insure the services of the best citizens. On this plan, we should have in the Senate a permanent will, a weighty interest, which would answer essential purposes. But is this a republican government, it will be asked. Yes, if all the magistrates are appointed and vacancies are filled by the people, or a process of election originating with the people. He was sensible that an executive, constituted as he proposed, would have in fact but little of the power and independence that might be necessary. On the other plan, of appointing him for seven years, he thought the executive ought to have but little power. He would be ambitious, with the means of making creatures; and as the object of his ambition would be to *prolong* his power, it is probable that, in case of war, he would avail himself of the emergency, to evade or refuse a degradation from his place. An executive for life has not this motive for forgetting his fidelity, and will therefore be a safer depository of power. It will be objected, probably, that such an executive will be an *elective monarch,* and will give birth to the tumults which characterize that form of government. He would reply, that *monarch* is an indefinite term. It marks not either the degree or duration of power. If this executive magistrate would be a monarch for life, the other proposed by the report from the Committee of the Whole would be a monarch for seven years. The circumstance of being elective was also applicable to both. It had been observed, by judicious writers, that elective monarchies would be the best if they could be guarded against the *tumults* excited by the ambition and intrigues of competitors. He was not sure that tumults were an inseparable evil. He thought this character of elective monarchies had been taken rather from particular cases than from general principles. The election of Roman emperors was made by the *army.* In *Poland,* the election is made by great rival *princes,* with independent power, and ample means of raising commotions. In the German empire, the appointment is made by the electors and princes, who have equal motives and means for exciting cabals and parties. Might not such a mode of election be devised, among ourselves, as will defend the community against these effects in any dangerous degree? Having made these observations, he would read to the committee a sketch of a plan which he should prefer to either of those under consideration. He was aware that it went beyond the ideas of most members. But will such a plan be adopted out of doors? In return he would ask, will the people adopt the other plan? At present, they will adopt neither. But he sees the Union dissolving, or already dissolved—he sees evils operating in the states which must soon cure the people of their fondness for democracies—he sees that a great progress has been already made, and is still going on, in the public mind. He thinks, therefore, that the people will in time be unshackled from their prejudices; and whenever that happens, they will themselves not be satisfied at stopping where the plan of Mr. Randolph would place them, but be ready to go as far at least as he proposes. He did not mean to offer the paper he had sketched as a proposition to that committee. It was meant only to give a more correct view of his ideas, and to suggest the amendments which he should probably propose to the plan of Mr. Randolph, in the proper stages of its future discussion. He reads his sketch in the words following: to wit,

"I. The supreme legislative power of the United States of America to be vested in two different bodies of men; the one to be called the assembly, the other the senate; who, together, shall form the legislature of the United States, with power to pass all laws whatsoever, subject to the negative hereafter mentioned.

"II. The assembly to consist of persons elected by the people, to serve for three years.

"III. The senate to consist of persons elected to serve during good behavior; their election to be made by electors chosen for that purpose by the people. In order to this, the states to be divided into election districts. On the death, removal, or resignation of any senator, his place to be filled out of the district from which he came.

"IV. The supreme executive authority of the United States to be vested in a governor, to be elected to serve during good behavior; the election to be made by electors chosen by the people in the election districts aforesaid. The authorities and functions of the executive to be as follows: to have a negative on all laws about to be passed, and the execution of all laws passed; to have the direction of war when authorized or begun; to have, with the advice and approbation of the senate, the power of making all treaties; to have the sole appointment of the heads or chief officers of the departments of finance, war, and foreign affairs; to have the nomination of all other officers, (ambassadors to foreign nations included,) subject to the approbation or rejection of the senate; to have the power of pardoning all offences except treason, which he shall not pardon without the approbation of the senate.

"V. On the death, resignation, or removal of the governor, his authorities to be exercised by the president of the senate till a successor be appointed.

"VI. The senate to have the sole power of declaring war; the power of advising and approving all treaties; the power of approving or rejecting all appointments of officers, except the heads or chiefs of the departments of finance, war, and foreign affairs.

"VII. The supreme judicial authority to be vested in judges, to hold their offices during good behavior, with adequate and permanent salaries. This court to have original jurisdiction in all causes of capture, and an appellative jurisdiction in all causes in which the revenues of the general government, or the citizens of foreign nations, are concerned.

"VIII. The legislature of the United States to have power to institute courts in each state for the determination of all matters of general concern.

"IX. The governor, senators, and all officers of the United States, to be liable to impeachment formal and corrupt conduct; and, upon conviction, to be removed from office, and disqualified for holding any place of trust or profit; all impeachments to be tried by a court to consist of the chief—, or judge of the superior court of law of each state, provided such judge shall hold his place during good behavior and have a permanent salary.

"X. All laws of the particular states contrary to the constitution or laws of the United States to be utterly void; and, the better to prevent such laws being passed, the governor or president of each state shall be appointed by the general government, and shall have a negative upon the laws about to be passed in the state of which he is the governor or president.

"XI. No state to have any forces, land or naval; and the militia of all the states to be under the sole and exclusive direction of the United States, the officers of which to be appointed and commissioned by them."

On these several articles he entered into explanatory observations* corresponding with the principles of his introductory reasoning.114

The committee rose, and the House adjourned.

Tuesday,*June* 19.

In Committee of the Whole, on the propositions of Mr. Patterson. The substitute offered yesterday by Mr. Dickinson being rejected by a vote now taken on it,—

Connecticut, New York, New Jersey, Delaware, ay, 4; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 6; Maryland, divided.

Mr. Patterson's plan was again at large before the committee.

Mr. MADISON. Much stress has been laid by some gentlemen on the want of power in the Convention to propose any other than a *federal* plan. To what had been answered by others, he would only add, that neither of the characteristics attached to a *federal* plan would support this objection. One characteristic was, that, in a *federal* government, the power was exercised not on the people *individually,* but on the people *collectively,* on the *states.* Yet in some instances, as in piracies, captures, &c., the existing Confederacy: and in many instances the amendments to it proposed by Mr. Patterson, must operate immediately on individuals. The other characteristic was, that a *federal* government derived its appointments not immediately from the people, but from the states which they respectively composed. Here, too, were facts on the other side. In two of the states, Connecticut and Rhode Island, the delegates to Congress were chosen, not by the legislatures, but by the people at large; and the plan of Mr. Patterson intended no change in this particular.

It had been alleged, (by Mr. Patterson,) that the Confederation, having been formed by unanimous consent, could be dissolved by unanimous consent only. Does this doctrine result from the nature of compacts? Does it arise from any particular stipulation in the Articles of Confederation? If we consider the Federal Union as analagous to the fundamental compact by which individuals compose one society, and which must, in its theoretic origin at least, have been the unanimous act of the component members, it cannot be said that no dissolution of the compact can be effected without unanimous consent. A breach of the fundamental principles of the compact, by a part of the society, would certainly absolve the other part from their obligations to it. If the breach of *any* article, by *any* of the parties, does not set the

others at liberty, it is because the contrary is *implied* in the compact itself, and particularly by that law of it which gives an indefinite authority to the majority to bind the whole, in all cases. This latter circumstance shows, that we are not to consider the Federal Union as analogous to the social compact of individuals: for, if it were so, a majority would have a right to bind the rest, and even to form a new constitution for the whole; which the gentleman from New Jersey would be among the last to admit. If we consider the Federal Union as analogous, not to the social compacts among individual men, but to the conventions among individual states, what is the doctrine resulting from these conventions? Clearly, according to the expositors of the law of nations, that a breach of any one article, by any one party, leaves all the other parties at liberty to consider the whole convention as dissolved, unless they choose rather to compel the delinquent party to repair the breach. In some treaties, indeed, it is expressly stipulated, that a violation of particular articles shall not have this consequence, and even that particular articles shall remain in force during war, which is in general understood to dissolve all subsisting treaties. But are there any exceptions of this sort to the Articles of Confederation? So far from it, that there is not even an express stipulation that force shall be used to compel an offending member of the Union to discharge its duty. He observed, that the violations of the Federal Articles had been numerous and notorious. Among the most notorious was an act of New Jersey herself; by which she *expressly refused* to comply with a constitutional requisition of Congress, and yielded no further to the expostulations of their deputies, than barely to rescind her vote of refusal, without passing any positive act of compliance. He did not wish to draw any rigid inferences from these observations. He thought it proper, however, that the true nature of the existing Confederacy should be investigated, and he was not anxious to strengthen the foundations on which it now stands.

Proceeding to the consideration of Mr. Patterson's plan, he stated the object of a proper plan to be twofold—first, to preserve the Union; secondly, to provide a government that will remedy the evils felt by the states, both in their united and individual capacities. Examine Mr. Patterson's plan, and say whether it promises satisfaction in these respects.

1. Will it prevent the violations of the law of nations and of treaties, which, if not prevented, must involve us in the calamities of foreign wars? The tendency of the states to these violations has been manifested in sundry instances. The files of Congress contain complaints, already, from almost every nation with which treaties have been formed. Hitherto, indulgence has been shown to us. This cannot be the permanent disposition of foreign nations. A rupture with other powers is among the greatest of national calamities; it ought, therefore, to be effectually provided, that no part of a nation shall have it in its power to bring them on the whole. The existing Confederacy does not sufficiently provide against this evil. The proposed amendment to it does not supply the omission. It leaves the will of the states as uncontrolled as ever.

2. Will it prevent encroachments on the federal authority? A tendency to such encroachments has been sufficiently exemplified among ourselves, as well as in every other confederated republic, ancient and modern. By the Federal Articles, transactions

with the Indians appertain to Congress, yet in several instances the states have entered into treaties and wars with them. In like manner, no two or more states can form among themselves any treaties, &c., without the consent of Congress; yet Virginia and Maryland, in one instance—Pennsylvania and New Jersey, in another—have entered into compacts without previous application or subsequent apology. No state, again, can of right raise troops in time of peace without the like consent. Of all cases of the league, this seems to require the most scrupulous observance. Has not Massachusetts, notwithstanding, (the most powerful member of the Union,) already raised a body of troops? Is she not now augmenting them, without having even deigned to apprise Congress of her intentions? In fine, have we not seen the public land dealt out to Connecticut to bribe her acquiescence in the decree constitutionally awarded against her claim on the territory of Pennsylvania?—for no other possible motive can account for the policy of Congress in that measure. If we recur to the examples of other confederacies, we shall find in all of them the same tendency of the parts to encroach on the authority of the whole. He then reviewed the Amphictyonic and Achæan confederacies, among the ancients, and the Helvetic, Germanic, and Belgic, among the moderns; tracing their analogy to the United States in the constitution and extent of their federal authorities; in the tendency of the particular members to usurp on these authorities, and to bring confusion and ruin on the whole. He observed, that the plan of Mr. Patterson, besides omitting a control over the states, as a general defence of the federal prerogatives, was particularly defective in two of its provisions. In the first place, its ratification was not to be by the people at large, but by the *legislatures.* It could not, therefore, render the acts of Congress, in pursuance of their powers, even legally *paramount* to the acts of the states. And, in the second place, it gave to the federal tribunal an appellate jurisdiction only even in the criminal cases enumerated. The necessity of any such provision supposed a danger of undue acquittal in the state tribunals: of what avail would an appellate tribunal be after an acquittal? Besides, in most, if not all, of the states, the executives have, by their respective *constitutions,* the right of pardoning: how could this be taken from them by a legislative ratification only?

3. Will it prevent trespasses of the states on each other? Of these, enough has been already seen. He instanced acts of Virginia and Maryland, which gave a preference to their own citizens in cases where the citizens of other states are entitled to equality of privileges by the Articles of Confederation. He considered the emissions of paper money, and other kindred measures, as also aggressions. The states, relatively to one another, being each of them either debtor or creditor, the creditor states must suffer unjustly from every emission by the debtor states. We have seen retaliating acts on the subject, which threatened danger, not to the harmony only, but the tranquillity of the Union. The plan of Mr. Patterson, not giving even a negative on the acts of the states, left them as much at liberty as ever to execute their unrighteous projects against each other.

4. Will it secure the internal tranquillity of the states themselves: The insurrections in Massachusetts admonished all the states of the danger to which they were exposed. Yet the plan of Mr. Patterson contained no provisions for supplying the defect of the Confederation on this point. According to the republican theory, indeed, right and power, being both vested in the majority, are held to be synonymous. According to

fact and experience, a minority may, in an appeal to force, be an overmatch for the majority;—in the first place, if the minority happen to include all such as possess the skill and habits of military life, with such as possess the great pecuniary resources, one third may conquer the remaining two thirds; in the second place, one third of those who participate in the choice of rulers may be rendered a majority by the accession of those whose poverty disqualifies them from a suffrage, and who, for obvious reasons, must be more ready to join the standard of sedition than that of established government; and, in the third place, where slavery exists, the republican theory becomes still more fallacious.

5. Will it secure a good internal legislation and administration to the particular states? In developing the evils which vitiate the political system of the United States, it is proper to take into view those which prevail within the states individually, as well as those which affect them collectively; since the former indirectly affect the whole, and there is great reason to believe that the pressure of them had a full share in the motives which produced the present Convention. Under this head he enumerated and animadverted on—first, the multiplicity of the laws passed by the several states; secondly, the mutability of their laws; thirdly, the injustice of them; and, fourthly, the impotence of them;—observing that Mr. Patterson's plan contained no remedy for this dreadful class of evils, and could not therefore be received as an adequate provision for the exigencies of the community.

6. Will it secure the Union against the influence of foreign powers over its members? He pretended not to say that any such influence had yet been tried: but it was naturally to be expected that occasions would produce it. As lessons which claimed particular attention, he cited the intrigues practised among the Amphictyonic confederates, first by the kings of Persia, and afterwards, fatally, by Philip of Macedon; among the Achæans, first by Macedon, and afterwards, no less fatally, by Rome; among the Swiss, by Austria, France, and the lesser neighboring powers; among the members of the Germanic body, by France, England, Spain, and Russia; and in the Belgic republic, by all the great neighboring powers. The plan of Mr. Patterson, not giving to the general councils any negative on the will of the particular states, left the door open for the like pernicious machinations among ourselves.

7. He begged the smaller states, which were most attached to Mr. Patterson's plan, to consider the situation in which it would leave them. In the first place, they would continue to bear the whole expense of maintaining their delegates in Congress. It ought not to be said that, if they were willing to bear this burden, no others had a right to complain. As far as it led the smaller states to forbear keeping up a representation, by which the public business was delayed, it was evidently a matter of common concern. An examination of the minutes of Congress would satisfy every one, that the public business had been frequently delayed by this cause; and that the states most frequently unrepresented in Congress were not the larger states. He reminded the Convention of another consequence of leaving on a small state the burden of maintaining a representation in Congress. During a considerable period of the war, one of the representatives of Delaware, in whom alone, before the signing of the Confederation, the entire vote of that state, and after that event one half of its vote, frequently resided, was a citizen and resident of Pennsylvania, and held an office in

his own state incompatible with an appointment from it to Congress. During another period, the same state was represented by three delegates, two of whom were citizens of Pennsylvania, and the third a citizen of New Jersey. These expedients must have been intended to avoid the burden of supporting delegates from their own state. But whatever might have been the cause, was not, in effect, the vote of one state doubled, and the influence of another increased by it?115 In the second place, the coercion on which the efficacy of the plan depends can never be exerted but on themselves. The larger states will be impregnable, the smaller only can feel the vengeance of it. He illustrated the position by the history of the Amphictyonic confederates; and the ban of the German empire. It was the cobweb which could entangle the weak, but would be the sport of the strong.

8. He begged them to consider the situation in which they would remain, in case their pertinacious adherence to an inadmissible plan should prevent the adoption of any plan. The contemplation of such an event was painful; but it would be prudent to submit to the task of examining it at a distance, that the means of escaping it might be the more readily embraced. Let the union of the states be dissolved, and one of two consequences must happen. Either the states must remain individually independent and sovereign; or two or more confederacies must be formed among them. In the first event, would the small states be more secure against the ambition and power of their larger neighbors, than they would be under a general government pervading with equal energy every part of the empire, and naving an equal interest in protecting every part against every other part? In the second, can the smaller expect that their larger neighbors would confederate with them on the principle of the present Confederacy, which gives to each member an equal suffrage; or that they would exact less severe concessions from the smaller states, than are proposed in the scheme of Mr. Randolph?

The great difficulty lies in the affair of representation; and if this could be adjusted, all others would be surmountable. It was admitted by both the gentlemen from New Jersey, (Mr. Brearly and Mr. Patterson,) that it would not be *just to allow Virginia,* which was sixteen times as large as Delaware, an equal vote only. Their language was, that it would not be *safe for Delaware* to allow Virginia sixteen times as many votes. The expedient proposed by them was, that all the states should be thrown into one mass, and a new partition be made into thirteen equal parts. Would such a scheme be practicable? The dissimilarities existing in the rules of property, as well as in the manners, habits, and prejudices, of different states, amounted to a prohibition of the attempt. It had been found impossible for the power of one of the most absolute princes in Europe, (the king of France,) directed by the wisdom of one of the most enlightened and patriotic ministers (Mr. Neckar) that any age has produced, to equalize, in some points only, the different usages and regulations of the different provinces. But, admitting a general amalgamation and repartition of the states to be practicable, and the danger apprehended by the smaller states from a proportional representation to be real,—would not a particular and voluntary coalition of these with their neighbors be less inconvenient to the whole community, and equally effectual for their own safety? If New Jersey or Delaware conceived that an advantage would accrue to them from an equalization of the states, in which case they would necessarily form a junction with their neighbors, why might not this end be attained

by leaving them at liberty by the Constitution to form such a junction whenever they pleased? And why should they wish to obtrude a like arrangement on all the states, when it was, to say the least, extremely difficult, would be obnoxious to many of the states, and when neither the inconvenience, nor the benefit, of the expedient, to themselves, would be lessened by confining it to themselves? The prospect of many new states to the westward was another consideration of importance. If they should come into the Union at all, they would come when they contained but few inhabitants. If they should be entitled to vote according to their proportion of inhabitants, all would be right and safe. Let them have an equal vote, and a more objectionable minority than ever might give law to the whole.116

On a question for postponing generally the first proposition of Mr. Patterson's plan, it was agreed to,—New York and New Jersey only being, no.117

On the question, moved by Mr. KING, whether the committee should rise, and Mr. Randolph's proposition be reported without alteration, which was in fact a question whether Mr. Randolph's should be adhered to as preferable to those of Mr. Patterson,—

Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 7; New York, New Jersey, Delaware, no, 3; Maryland divided.

Mr. Randolph's plan, as reported from the committee [q. v. June 13th] being before the House, and—

The first resolution, "that a national government ought to be established, consisting, &c.," being taken up,

Mr. WILSON observed that, by a national government, he did not mean one that would swallow up the state governments, as seemed to be wished by some gentlemen. He was tenacious of the idea of preserving the latter. He thought, contrary to the opinion of Col. Hamilton, that they might not only subsist, but subsist on friendly terms with the former. They were absolutely necessary for certain purposes, which the former could not reach. All large governments must be subdivided into lesser jurisdictions. As examples he mentioned Persia, Rome, and particularly the divisions and subdivisions of England by Alfred.

Col. HAMILTON coincided with the proposition as it stood in the report. He had not been understood yesterday. By an abolition of the states, he meant that no boundary could be drawn between the national and state legislatures; that the former must therefore have indefinite authority. If it were limited at all, the rivalship of the states would gradually subvert it. Even as corporations, the extent of some of them, as Virginia, Massachusetts, &c., would be formidable. As *states,* he thought they ought to be abolished. But he admitted the necessity of leaving in them subordinate jurisdictions. The examples of Persia and the Roman empire, cited by Mr. Wilson, were, he thought, in favor of his doctrine, the great powers delegated to the satraps and proconsuls having frequently produced revolts and schemes of independence.

Mr. KING wished, as every thing depended on this proposition, that no objection might be improperly indulged against the phraseology of it. He conceived that the import of the term "states," "sovereignty," "*national,*" "federal," had been often used and applied in the discussions inaccurately and delusively. The states were not "sovereigns" in the sense contended for by some. They did not possess the peculiar features of sovereignty,—they could not make war, nor peace, nor alliances, nor treaties. Considering them as political beings, they were dumb, for they could not speak to any foreign sovereign whatever. They were deaf, for they could not hear any propositions from such sovereign. They had not even the organs or faculties of defence or offence, for they could not of themselves raise troops, or equip vessels, for war. On the other side, if the union of the states comprises the idea of a confederation, it comprises that also of consolidation. A union of the states is a union of the men composing them, from whence a *national* character results to the whole. Congress can act alone without the states; they can act, (and their acts will be binding,) against the instructions of the states. If they declare war, war is *de jure* declared; captures made in pursuance of it are lawful; no acts of the states can vary the situation, or prevent the judicial consequences. If the states, therefore, retained some portion of their sovereignty, they had certainly divested themselves of essential portions of it. If they formed a confederacy in some respects, they formed a nation in others. The Convention could clearly deliberate on and propose any alterations that Congress could have done under the Federal Articles. And could not Congress propose, by virtue of the last article, a change in any article whatever,—and as well that relating to the equality of suffrage as any other? He made these remarks to obviate some scruples which had been expressed. He doubted much the practicability of annihilating the states; but thought that much of their power ought to be taken from them.118

Mr. MARTIN said, he considered that the separation from Great Britain placed the thirteen states in a state of nature towards each other; that they would have remained in that state till this time, but for the Confederation; that they entered into the Confederation on the footing of equality; that they met now to amend it, on the same footing; and that he could never accede to a plan that would introduce an inequality, and lay ten states at the mercy of Virginia, Massachusetts, and Pennsylvania.

Mr. WILSON could not admit the doctrine that, when the colonies became independent of Great Britain, they became independent also of each other. He read the Declaration of Independence, observing thereon, that the *United Colonies* were declared to be free and independent states, and inferring, that they were independent, not *individually* but *unitedly,* and that they were confederated, as they were independent states.

Col. HAMILTON assented to the doctrine of Mr. Wilson. He denied the doctrine that the states were thrown into a state of nature. He was not yet prepared to admit the doctrine that the Confederacy could be dissolved by partial infractions of it. He admitted that the states met now on an equal footing, but could see no inference from that against concerting a change of the system in this particular. He took this occasion of observing, for the purpose of appeasing the fear of the small states, that two circumstances would render them secure under a national government in which they might lose the equality of rank which they now held: one was the local situation of the

three largest states, Virginia, Massachusetts and Pennsylvania. They were separated from each other by distance of place, and equally so by all the peculiarities which distinguish the interests of one state from those of another. No combination, therefore, could be dreaded. In the second place, as there was a gradation in the states, from Virginia, the largest, down to Delaware, the smallest, it would always happen that ambitious combinations among a few states might and would be counteracted by defensive combinations of greater extent among the rest. No combination has been seen among the large counties, merely as such, against lesser counties. The more close the union of the states, and the more complete the authority of the whole, the less opportunity will be allowed to the stronger states to injure the weaker.119 .

Adjourned.

Wednesday,*June* 20.

In Convention,—Mr. William Blount, from North Carolina, took his seat.

The first resolution of the report of the Committee of the Whole being before the House—

Mr. ELLSWORTH, seconded by Mr. GORHAM, moves to alter it, so as to run "that the government of the United States ought to consist of a supreme legislative, executive, and judiciary." This alteration, he said, would drop the word *national,* and retain the proper title "the United States." He could not admit the doctrine that a breach of any of the Federal Articles could dissolve the whole. It would be highly dangerous not to consider the Confederation as still subsisting. He wished, also, the plan of the Convention to go forth as an amendment of the Articles of the Confederation, since, under this idea, the authority of the legislatures could ratify it. If they are unwilling, the people will be so too. If the plan goes forth to the people for ratification, several succeeding conventions within the states would be unavoidable. He did not like these conventions. They were better fitted to pull down than to build up constitutions.

Mr. RANDOLPH did not object to the change of expression, but apprised the gentleman who wished for it, that he did not admit it for the reasons assigned; particularly that of getting rid of a reference to the people for ratification.

The motion of Mr. Ellsworth was acquiesced in, *nem. con.*

The second resolution, "That the national legislature ought to consist of two branches," being taken up, the word "national" struck out, as of course.

Mr. LANSING observed, that the true question here was, whether the Convention would adhere to, or depart from, the foundation of the present Confederacy; and moved, instead of the second resolution, "that the powers of legislation be vested in the United States in Congress." He had already assigned two reasons against such an innovation as was proposed,—first, the want of competent powers in the Convention; secondly, the state of the public mind. It had been observed, (by Mr. Madison), in discussing the first point, that in two states the delegates to Congress were chosen by

the people. Notwithstanding the first appearance of this remark, it had in fact no weight, as the delegates, however chosen, did not represent the people, merely as so many individuals, but as forming a sovereign state. Mr. Randolph put it, he said, on its true footing—namely that the public safety superseded the scruple arising from the review of our powers. But, in order to feel the force of this consideration, the same impression must be had of the public danger. He had not himself the same impression, and could not therefore dismiss his scruple. Mr. Wilson contended, that, as the Convention were only to recommend, they might recommend what they pleased. He differed much from him. Any act whatever of so respectable a body must have a great effect; and, if it does not succeed, will be a source of great dissensions. He admitted that there was no certain criterion of the public mind on the subject. He therefore recurred to the evidence of it given by the opposition in the states to the scheme of an impost. It could not be expected that those possessing sovereignty could ever voluntarily part with it. It was not to be expected from any one state, much less from thirteen. He proceeded to make some observations on the plan itself, and the arguments urged in support of it. The point of representation could receive no elucidation from the case of England. The corruption of the boroughs did not proceed from their comparative smallness; but from the actual fewness of the inhabitants, some of them not having more than one or two. A great inequality existed in the counties of England. Yet the like complaint of peculiar corruption in the small ones had not been made. It had been said that Congress represent the state prejudices:—will not any other body, whether chosen by the legislatures or people of the states, also represent their prejudices? It had been asserted by his colleague, (Col. Hamilton), that there was no coincidence of interests among the large states that ought to excite fears of oppression in the smaller. If it were true that such a uniformity of interests existed among the states, there was equal safety for all of them whether the representation remained as heretofore, or were proportioned as now proposed. It is proposed that the general legislature shall have a negative on the laws of the states. Is it conceivable that there will be leisure for such a task? There will, on the most moderate calculation, be as many acts sent up from the states as there are days in the year. Will the members of the general legislature be competent judges? Will a gentleman from Georgia be a judge of the expediency of a law which is to operate in New Hampshire? Such a negative would be more injurious than that of Great Britain heretofore was. It is said that the national government must have the influence arising from the grant of offices and honors. In order to render such a government effectual, he believed such an influence to be necessary. But if the states will not agree to it, it is in vain, worse than in vain, to make the proposition. If this influence is to be attained, the states must be entirely abolished. Will any one say, this would ever be agreed to? He doubted whether any general government, equally beneficial to all, can be attained. That now under consideration, he is sure, must be utterly unattainable. He had another objection. The system was too novel and complex. No man could foresee what its operation will be, either with respect to the general government or the state governments. One or other, it has been surmised, must absorb the whole.[120]

Col. MASON did not expect this point would have been reagitated. The essential differences between the two plans had been clearly stated. The principal objections against that of Mr. Randolph were, the *want of power,* and the *want of practicability.* There can be no weight in the first, as the fiat is not to be *here,* but in the people. He

thought with his colleague (Mr. Randolph) that there were, besides, certain crises, in which all the ordinary cautions yielded to public necessity. He gave, as an example, the eventual treaty with Great Britain, in forming which the commissioners of the United States had boldly disregarded the improvident shackles of Congress; had given to their country an honorable and happy peace; and, instead of being censured for the transgression of their powers, had raised to themselves a monument more durable than brass. The *impracticability* of gaining the public concurrence, he thought, was still more groundless. Mr. Lansing had cited the attempts of Congress to gain an enlargement of their powers, and had inferred, from the miscarriage of these attempts, the hopelessness of the plan which he (Mr. Lansing) opposed. He thought a very different inference ought to have been drawn, viz., that the plan which Mr. Lansing espoused, and which proposed to augment the powers of Congress, never could be expected to succeed. He meant not to throw any reflections on Congress as a body, much less on any particular members of it. He meant, however, to speak his sentiments without reserve on this subject; it was a privilege of age, and perhaps the only compensation which nature had given for the privation of so many other enjoyments; and he should not scruple to exercise it freely. Is it to be thought that the people of America, so watchful over their interests, so jealous of their liberties, will give up their all, will surrender both the sword and the purse, to the same body,—and that, too, not chosen immediately by themselves? They never will. They never ought. Will they trust such a body with the regulation of their trade, with the regulation of their taxes, with all the other great powers which are in contemplation? Will they give unbounded confidence to a secret journal,—to the intrigues, to the factions, which in the nature of things appertain to such an assembly? If any man doubts the existence of these characters of Congress, let him consult their Journals for the years ’78, ’79, and ’80. It will be said, that, if the people are averse to parting with power, why is it hoped that they will part with it to a national legislature? The proper answer is, that in this case they do not part with power: they only transfer it from one set of immediate representatives to another set. Much has been said of the unsettled state of the mind of the people. He believed the mind of the people of America, as elsewhere, was unsettled as to some points, but settled as to others. In two points he was sure it was well settled,—first, in an attachment to republican government; secondly, in an attachment to more than one branch in the legislature. Their constitutions accord so generally in both these circumstances, that they seem almost to have been preconcerted. This must either have been a miracle, or have resulted from the genius of the people. The only exceptions to the establishment of two branches in the legislature are the state of Pennsylvania, and Congress; and the latter the only single one not chosen by the people themselves. What has been the consequence? The people have been constantly averse to giving that body further powers. It was acknowledged by Mr. Patterson, that this plan could not be enforced without military coercion. Does he consider the force of this concession? The most jarring elements of nature, fire and water themselves, are not more incompatible than such a mixture of civil liberty and military execution. Will the militia march from one state into another, in order to collect the arrears of taxes from the delinquent members of the republic? Will they maintain an army for this purpose? Will not the citizens of the invaded state assist one another, till they rise as one man and shake off the Union altogether? Rebellion is the only case in which the military force of the state can be properly exerted against its citizens. In one point of view, he was struck with horror at the

prospect of recurring to this expedient. To punish the non-payment of taxes with death was a severity not yet adopted by despotism itself; yet this unexampled cruelty would be mercy compared to a military collection of revenue, in which the bayonet could make no discrimination between the innocent and the guilty. He took this occasion to repeat, that, notwithstanding his solicitude to establish a national government, he never would agree to abolish the state governments, or render them absolutely insignificant. They were as necessary as the general government, and he would be equally careful to preserve them. He was aware of the difficulty of drawing the line between them, but hoped it was not insurmountable. The Convention, though comprising so many distinguished characters, could not be expected to make a faultless government; and he would prefer trusting to posterity the amendment of its defects, rather than to push the experiment too far.121

Mr. LUTHER MARTIN agreed with Col. Mason as to the importance of the state governments: he would support them at the expense of the general government, which was instituted for the purpose of that support. He saw no necessity for two branches; and if it existed, Congress might be organized into two. He considered Congress as representing the people, being chosen by the legislatures, who were chosen by the people. At any rate, Congress represented the legislatures, and it was the legislatures, not the people, who refused to enlarge their powers. Nor could the rule of voting have been the ground of objection, otherwise ten of the states must always have been ready to place further confidence in Congress. The causes of repugnance must therefore be looked for elsewhere. At the separation from the British empire, the people of America preferred the establishment of themselves into thirteen separate sovereignties, instead of incorporating themselves into one. To these they look up for the security of their lives, liberties, and properties; to these they must look up. The federal government they formed to defend the whole against foreign nations in time of war, and to defend the lesser states against the ambition of the larger. They are afraid of granting power unnecessarily, lest they should defeat the original end of the Union; lest the powers should prove dangerous to the sovereignties of the particular states which the Union was meant to support, and expose the lesser to being swallowed up by the larger. He conceived, also, that the people of the states, having already vested their powers in their respective legislatures, could not resume them without a dissolution of their governments. He was against conventions in the states—was not against assisting states against rebellious subjects—thought the *federal* plan of Mr. Patterson did not require coercion more than the *national one,* as the latter must depend for the deficiency of its revenues on requisitions and quotas—and that a national judiciary, extended into the states, would be ineffectual, and would be viewed with a jealousy inconsistent with its usefulness.122

Mr. SHERMAN seconded and supported Mr. Lansing's motion. He admitted two branches to be necessary in the state legislatures, but saw no necessity in a confederacy of states. The examples were all of a single council. Congress carried us through the war, and perhaps as well as any government could have done. The complaints at present are, not that the views of Congress are unwise or unfaithful, but that their powers are insufficient for the execution of their views. The national debt, and the want of power somewhere to draw forth the national resources, are the great matters that press. All the states were sensible of the defect of power in Congress. He

thought much might be said in apology for the failure of the state legislatures to comply with the Confederation. They were afraid of leaning too hard on the people by accumulating taxes; no *constitutional* rule had been, of could be observed in the quotas; the accounts also were unsettled, and every state supposed itself in advance rather than in arrears. For want of a general system, taxes to a due amount had not been drawn from trade, which was the most convenient resource. As almost all the states had agreed to the recommendation of Congress on the subject of an impost, it appeared clearly that they were willing to trust Congress with power to draw a revenue from trade. There is no weight, therefore, in the argument drawn from a distrust of Congress; for money matters being the most important of all, if the people will trust them with power as to them, they will trust them with any other necessary powers. Congress, indeed, by the Confederation, have in fact the right of saying how much the people shall pay, and to what purpose it shall be applied; and this right was granted to them in the expectation that it would in all cases have its effect. If another branch were to be added to Congress, to be chosen by the people, it would serve to embarrass. The people would not much interest themselves in the elections; a few designing men in the large districts would carry their points; and the people would have no more confidence in their new representatives than in Congress. He saw no reason why the state legislatures should be unfriendly, as had been suggested, to Congress. If they appoint Congress, and approve of their measures, they would be rather favorable and partial to them. The disparity of the states in point of size, he perceived, was the main difficulty. But the large states had not yet suffered from the equality of votes enjoyed by the smaller ones. In all great and general points, the interests of all the states were the same. The state of Virginia, notwithstanding the equality of votes, ratified the Confederation without even proposing any alteration. Massachusetts also ratified without any material difficulty, &c. In none of the ratifications is the want of two branches noticed or complained of. To consolidate the states, as some had proposed, would dissolve our treaties with foreign nations, which had been formed with us as *confederated* states. He did not, however, suppose that the creation of two branches in the legislature would have such an effect. If the difficulty on the subject of representation cannot be otherwise got over, he would agree to have two branches, and a proportional representation in one of them, provided each state had an equal voice in the other. This was necessary, to secure the rights of the lesser states, otherwise three or four of the large states would rule the others as they please. Each state, like each individual, had its peculiar habits, usages, and manners, which constituted its happiness. It would not, therefore, give to others a power over this happiness, any more than an individual would do, when he could avoid it.[123]

Mr. WILSON urged the necessity of two branches; observed, that if a proper model was not to be found in other confederacies, it was not to be wondered at. The number of them was small, and the duration of some, at least, short. The Amphictyonic and Achæan were formed in the infancy of political science, and appear, by their history and fate, to have contained radical defects. The Swiss and Belgic confederacies were held together, not by any vital principle of energy, but by the incumbent pressure of formidable neighboring nations. The German owed its continuance to the influence of the House of Austria. He appealed to our own experience for the defects of our confederacy. He had been six years, of the twelve since the commencement of the revolution, a member of Congress, and had felt all its weaknesses. He appealed to the

recollection of others, whether, on many important occasions, the public interest had not been obstructed by the small members of the Union. The success of the revolution was owing to other causes than the constitution of Congress. In many instances it went on even against the difficulties arising from Congress themselves. He admitted that the large states did accede, as had been stated, to the Confederation in its present form; but it was the effect of necessity, not of choice. There are other instances of their yielding, from the same motive, to the unreasonable measures of the small states. The situation of things is now a little altered. He insisted that a jealousy would exist between the state legislatures and the general legislature, observing, that the members of the former would have views and feelings very distinct, in this respect, from their constituents. A private citizen of a state is indifferent whether power be exercised by the general or state legislatures, provided it be exercised most for his happiness. His representative has an interest in its being exercised by the body to which he belongs. He will therefore view the national legislature with the eye of a jealous rival. He observed that the addresses of Congress to the people at large had always been better received, and produced greater effect, than those made to the legislatures.124

On the question for postponing, in order to take up Mr. Lansing's proposition, "to vest the powers of legislation in Congress,"—

Connecticut, New York, New Jersey, Delaware, ay, 4; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 6. Maryland, divided.

On motion of the deputies from Delaware, the question on the second resolution in the report from the Committee of the Whole was postponed till to-morrow.

Adjourned.

Thursday,*June* 21.

In Convention.—Mr. Jonathan Dayton, from New Jersey, took his seat.

The second resolution in the report from the Committee of the Whole being under consideration,—

Dr. JOHNSON. On a comparison of the two plans which had been proposed from Virginia and New Jersey, it appeared that the peculiarity which characterized the latter was its being calculated to preserve the individuality of the states. The plan from Virginia did not profess to destroy this individuality altogether, but was charged with such a tendency. One gentleman alone, (Col. Hamilton,) in his animadversions on the plan of New Jersey, boldly and decisively contended for an abolition of the state governments. Mr. Wilson and the gentleman from Virginia, who also were adversaries of the plan of New Jersey, held a different language. They wished to leave the states in possession of a considerable, though a subordinate, jurisdiction. They had not yet, however, shown how this could consist with, or be secured against, the general sovereignty and jurisdiction which they proposed to give to the national government. If this could be shown, in such a manner as to satisfy the patrons of the New Jersey propositions that the individuality of the states would not be endangered,

many of their objections would, no doubt, be removed. If this could not be shown, their objections would have their full force. He wished it, therefore, to be well considered whether, in case the states, as was proposed, should retain some portion of sovereignty at least, this portion could be preserved, without allowing them to participate effectually in the general government—without giving them each a distinct and equal vote for the purpose of defending themselves in the general councils.

Mr. WILSON'S respect for Dr. Johnson, added to the importance of the subject, led him to attempt, unprepared as he was, to solve the difficulty which had been started. It was asked, how the general government and individuality of the particular states could be reconciled to each other,—and how the latter could be secured against the former? Might it not, on the other side, be asked, how the former was to be secured against the latter? It was generally admitted, that a jealousy and rivalship would be felt between the general and particular governments. As the plan now stood, though indeed contrary to his opinion, one branch of the general government (the Senate, or second branch) was to be appointed by the state legislatures. The state legislatures, therefore, by this participation in the general government, would have an opportunity of defending their rights. Ought not a reciprocal opportunity to be given to the general government of defending itself, by having an appointment of some one constituent branch of the state governments? If a security be necessary on one side, it would seem reasonable to demand it on the other. But, taking the matter in a more general view, he saw no danger to the states from the general government. In case a combination should be made by the large ones, it would produce a general alarm among the rest, and the project would be frustrated. But there was no temptation to such a project. The states having in general a similar interest, in case of any propositions in the national legislature to encroach on the state legislatures, he conceived a general alarm would take place in the national legislature itself; that it would communicate itself to the state legislatures; and would finally spread among the people at large. The general government will be as ready to preserve the rights of the states, as the latter are to preserve the rights of individuals,—all the members of the former having a common interest, as representatives of all the people of the latter, to leave the state governments in possession of what the people wish them to retain. He could not discover, therefore, any danger whatever on the side from which it was apprehended. On the contrary, he conceived that, in spite of every precaution, the general government would be in perpetual danger of encroachments from the state governments.125

Mr. MADISON was of opinion,—in the first place, that there was less danger of encroachment from the general government than from the state governments; and, in the second place, that the mischiefs from encroachments would be less fatal if made by the former, than if made by the latter.

1. All the examples of other confederacies prove the greater tendency, in such systems, to anarchy than to tyranny; to a disobedience of the members than usurpations of the federal head. Our own experience had fully illustrated this tendency. But it will be said, that the proposed change in the principles and form of the Union will vary the tendency; that the general government will have real and greater powers, and will be derived, in one branch at least, from the people, not from

the governments of the states. To give full force to this objection, let it be supposed for a moment that indefinite power should be given to the general legislature, and the states reduced to corporations dependent on the general legislature,—why should it follow that the general government would take from the states any branch of their power, as far as its operation was beneficial, and its continuance desirable to the people? In some of the states, particularly in Connecticut, all the townships are incorporated, and have a certain limited jurisdiction: have the representatives of the people of the townships in the legislature of the state ever endeavored to despoil the townships of any part of their local authority? As far as this local authority is convenient to the people, they are attached to it; and their representatives, chosen by and amenable to them, naturally respect their attachment to this, as much as their attachment to any other right or interest. The relation of a general government to state governments is parallel.

2. Guards were more necessary against encroachments of the state governments on the general government, than of the latter on the former. The great objection made against an abolition of the state governments was, that the general government could not extend its care to all the minute objects which fall under the cognizance of the local jurisdictions. The objection as stated lay not against the probable abuse of the general power, but against the imperfect use that could be made of it throughout so great an extent of country, and over so great a variety of objects. As far as its operation would be practicable, it could not in this view be improper; as far as it would be impracticable, the convenience of the general government itself would concur with that of the people in the maintenance of subordinate governments. Were it practicable for the general government to extend its care to every requisite object without the coöperation of the state governments, the people would not be less free, as members of one great republic, than as members of thirteen small ones. A citizen of Delaware was not more free than a citizen of Virginia; nor would either be more free than a citizen of America. Supposing, therefore, a tendency in the general government to absorb the state governments, no *fatal* consequence could result. Taking the reverse as the supposition, that a tendency should be left in the state governments towards an independence on the general government, and the gloomy consequences need not be pointed out. The imagination of them must have suggested to the states the experiment we are now making to prevent the calamity, and must have formed the chief motive with those present to undertake the arduous task.

On the question for resolving, “that the legislature ought to consist of two branches,”—

Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 7; New York, New Jersey, Delaware, no, 3; Maryland, divided.126

The *third* resolution of the report being taken into consideration—

Gen. PINCKNEY moved, “that the first branch, instead of being elected by the people, should be elected in such manner as the legislature of each state should direct.” He urged,—first, that this liberty would give more satisfaction, as the legislatures could then accommodate the mode to the convenience and opinions of the

people; secondly, that it would avoid the undue influence of large counties, which would prevail if the elections were to be made in districts, as must be the mode intended by the report of the committee; thirdly, that otherwise, disputed elections must be referred to the general legislature, which would be attended with intolerable expense and trouble to the distant parts of the republic.

Mr. L. MARTIN seconded the motion.

Col. HAMILTON considered the motion as intended manifestly to transfer the election from the people to the state legislatures, which would essentially vitiate the plan. It would increase that state influence which could not be too watchfully guarded against. All, too, must admit the possibility, in case the general government should maintain itself, that the state governments might gradually dwindle into nothing. The system, therefore, should not be engrafted on what might possibly fail.

Mr. MASON urged the necessity of retaining the election by the people. Whatever inconvenience may attend the democratic principle, it must actuate one part of the government. It is the only security for the rights of the people.

Mr. SHERMAN would like an election by the legislatures best, but is content with the plan as it stands.

Mr. RUTLEDGE could not admit the solidity of the distinction between a mediate and immediate election by the people. It was the same thing to act by one's self, and to act by another. An election by the legislature would be more refined than an election immediately by the people; and would be more likely to correspond with the sense of the whole community. If this Convention had been chosen by the people in districts, it is not to be supposed that such proper characters would have been preferred. The delegates to Congress, he thought, had also been fitter men than would have been appointed by the people at large.

Mr. WILSON considered the election of the first branch by the people not only as the corner-stone, but as the foundation, of the fabric; and that the difference between a mediate and immediate election was immense. The difference was particularly worthy of notice in this respect—that the legislatures are actuated not merely by the sentiment of the people, but have an official sentiment opposed to that of the general government, and perhaps to that of the people themselves.

Mr. KING enlarged on the same distinction. He supposed the legislatures would constantly choose men subservient to their own views, as contrasted to the general interest; and that they might even devise modes of election that would be subversive of the end in view. He remarked several instances in which the views of a state might be at variance with those of the general government; and mentioned particularly a competition between the national and state debts, for the most certain and productive funds.

Gen. PINCKNEY was for making the state governments a part of the general system. If they were to be abolished, or lose their agency, South Carolina and the other states would have but a small share of the benefits of government.

On the question for Gen. Pinckney's motion, to substitute "election of the first branch in such mode as the legislatures should appoint," instead of its being "elected by the people."

Connecticut, New Jersey, Delaware, South Carolina, ay, 4; Massachusetts, New York, Pennsylvania, Virginia, North Carolina, Georgia, no, 6; Maryland, divided.127

Gen. PINCKNEY then moved, "that the first branch be elected *by the people* in such mode as the legislatures should direct;" but waived it on its being hinted that such a provision might be more properly tried in the detail of the plan.

On the question for the election of the first branch "by the *people,*"—

Massachusetts, Connecticut, New York, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 9; New Jersey, no, 1; Maryland, divided.

The election of the first branch "for the term of three years," being considered,—

Mr. RANDOLPH moved to strike out "three years," and insert "two years." He was sensible that annual elections were a source of great mischiefs in the states, yet it was the want of such checks against the popular intemperance as were now proposed that rendered them so mischievous. He would have preferred annual to biennial, but for the extent of the United States, and the inconvenience which would result from them to the representatives of the extreme parts of the empire. The people were attached to frequency of elections. All the constitutions of the states, except that of South Carolina, had established annual elections.

Mr. DICKINSON. The idea of annual elections was borrowed from the ancient usage of England, a country much less extensive than ours. He supposed biennial would be inconvenient. He preferred triennial; and, in order to prevent the inconvenience of an entire change of the whole number at the same moment, suggested a rotation, by an annual election of one third.

Mr. ELLSWORTH was opposed to three years, supposing that even one year was preferable to two years. The people were fond of frequent elections, and might be safely indulged in one branch of the legislature. He moved for "one year."

Mr. STRONG seconded and supported the motion.

Mr. WILSON, being for making the first branch an effectual representation of the people at large, preferred an annual election of it. This frequency was most familiar and pleasing to the people. It would not be more inconvenient to them than triennial elections, as the people in all the states have annual meetings, with which the election of the national representatives might be made to coincide. He did not conceive that it

would be necessary for the national legislature to sit constantly, perhaps not half, perhaps not one fourth, of the year.

Mr. MADISON was persuaded that annual elections would be extremely inconvenient, and apprehensive that biennial would be too much so; he did not mean inconvenient to the electors, but to the representatives. They would have to travel seven or eight hundred miles from the distant parts of the Union; and would probably not be allowed even a reimbursement of their expenses. Besides, none of those who wished to be reëlected would remain at the seat of government, confiding that their absence would not affect them. The members of Congress had done this with few instances of disappointment. But as the choice was here to be made by the people themselves, who would be much less complaisant to individuals, and much more susceptible of impressions from the presence of a rival candidate, it must be supposed that the members from the most distant states would travel backwards and forwards at least as often as the elections should be repeated. Much was to be said, also, on the time requisite for new members (who would always form a large proportion) to acquire that knowledge of the affairs of the states in general, without which their trust could not be usefully discharged.

Mr. SHERMAN preferred annual elections, but would be content with biennial. He thought the representatives ought to return home and mix with the people. By remaining at the seat of government they would acquire the habits of the place, which might differ from those of their constituents.

Col. MASON observed, that, the states being differently situated, such a rule ought to be formed as would put them as nearly as possible on a level. If elections were annual, the Middle States would have a great advantage over the extreme ones. He wished them to be biennial, and the rather as in that case they would coincide with the periodical elections of South Carolina, as well as of the other states.

Col. HAMILTON urged the necessity of three years. There ought to be neither too much nor too little dependence on the popular sentiments. The checks in the other branches of the government would be but feeble, and would need every auxiliary principle that could be interwoven. The British house of commons were elected septennially, yet the democratic spirit of the constitution had not ceased. Frequency of elections tended to make the people listless to them, and to facilitate the success of little cabals. This evil was complained of in all the states. In Virginia, it had been lately found necessary to force the attendance and voting of the people by severe regulations.

On the question for striking out “three years,”—

Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 7; New York, Delaware, Maryland, no, 3; New Jersey, divided.

The motion for “two years” was then inserted, *nem. con.*[128]

Adjourned.

Friday,*June* 22.

In Convention.—The clause in the third resolution, "to receive fixed stipends, to be paid out of the national treasury," being considered,—

Mr. ELLSWORTH moved to substitute payment by the states, out of their own treasuries; observing, that the manners of different states were very different in the style of living, and in the profits accruing from the exercise of like talents. What would be deemed, therefore, a reasonable compensation in some states, in others would be very unpopular, and might impede the system of which it made a part.

Mr. WILLIAMSON favored the idea. He reminded the House of the prospect of new states to the westward. They would be too poor, would pay little into the common treasury, and would have a different interest from the old states. He did not think, therefore, that the latter ought to pay the expense of men who would be employed in thwarting their measures and interests.

Mr. GORHAM wished not to refer the matter to the state legislatures, who were always paring down salaries in such a manner as to keep out of office men most capable of executing the functions of them. He thought, also, it would be wrong to fix the compensation by the Constitution, because we could not venture to make it as liberal as it ought to be, without exciting an enmity against the whole plan. Let the national legislature provide for their own wages from time to time, as the state legislatures do. He had not seen this part of their power abused, nor did he apprehend an abuse of it.

Mr. RANDOLPH said he feared we were going too far in consulting popular prejudices. Whatever respect might be due to them in lesser matters, or in cases where they formed the permanent character of the people, he thought it neither incumbent on, nor honorable for, the Convention to sacrifice right and justice to that consideration. If the states were to pay the members of the national legislature, a dependence would be created that would vitiate the whole system. The whole nation has an interest in the attendance and services of the members. The national treasury, therefore, is the proper fund for supporting them.

Mr. KING urged the danger of creating a dependence on the states by leaving to them the payment of the members of the national legislature. He supposed it would be best to be explicit as to the compensation to be allowed. A reserve on that point, or a reference to the national legislature of the quantum, would excite greater opposition than any sum that would be actually necessary or proper.

Mr. SHERMAN contended for referring both the quantum, and the payment of it, to the state legislatures.

Mr. WILSON was against *fixing* the compensation, as circumstances would change, and call for a change of the amount. He thought it of great moment that the members of the national government should be left as independent as possible of the state governments in all respects.

Mr. MADISON concurred in the necessity of preserving the compensations for the national government independent on the state governments; but at the same time approved of *fixing* them by the Constitution, which might be done by taking a standard which would not vary with circumstances. He disliked particularly the policy, suggested by Mr. Williamson, of leaving the members from the poor states beyond the mountains to the precarious and parsimonious support of their constituents. If the Western States hereafter arising should be admitted into the Union, they ought to be considered as equals and as brethren. If their representatives were to be associated in the common councils, it was of common concern that such provisions should be made as would invite the most capable and respectable characters into the service.

Mr. HAMILTON apprehended inconvenience from *fixing* the wages. He was strenuous against making the national council dependent on the legislative rewards of the states. Those who pay are the masters of those who are paid. Payment by the states would be unequal, as the distant states would have to pay for the same term of attendance, and more days in travelling to and from the seat of government. He expatiated emphatically on the difference between the feelings and views of the *people* and the *governments* of the states, arising from the personal interest and official inducements which must render the latter unfriendly to the general government.

Mr. WILSON moved that the salaries of the first branch "be ascertained by the national legislature and be paid out of the national treasury."

Mr. MADISON thought the members of the legislature too much interested, to ascertain their own compensation. It would be indecent to put their hands into the public purse for the sake of their own pockets.

On this question, "shall the salaries of the first branch be ascertained by the national legislature?"

New Jersey, Pennsylvania, ay, 2; Massachusetts, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, no, 7; New York, Georgia, divided.

On the question for striking out "national treasury," as moved by Mr. Ellsworth,—

Mr. HAMILTON renewed his opposition to it. He pressed the distinction between the state governments and the people. The former would be the rivals of the general government. The state legislatures ought not, therefore, to be the paymasters of the latter.

Mr. ELLSWORTH. If we are jealous of the state governments, they will be so of us. If, on going home, I tell them we gave the general government such powers because we could not trust you, will they adopt it? And without their approbation it is a nullity.[129]

On the question,—

Massachusetts,* Connecticut, North Carolina, South Carolina, ay, 4; New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no, 5; New York, Georgia, divided.

So it passed in the negative.

On a question for substituting "adequate compensation" in place of "fixed stipends," it was agreed to, *nem. con.,* the friends of the latter being willing that the practicability of *fixing* the compensation should be considered hereafter in forming the details.130

It was then moved by Mr. BUTLER, that a question be taken on both points jointly, to wit, "adequate compensation to be paid out of the national treasury." It was objected to as out of order, the parts having been separately decided on. The president referred the question of order to the house, and it was determined to be in order,—

Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, ay, 6; New York, Pennsylvania, Virginia, Georgia, no, 4; Massachusetts, divided.

The question on the sentence was then postponed by South Carolina, in right of the state.131

Col. MASON moved to insert "twenty-five years of age as a qualification for the members of the first branch." He thought it absurd that a man to-day should not be permitted by the law to make a bargain for himself, and to-morrow should be authorized to manage the affairs of a great nation. It was the more extraordinary, as every man carried with him, in his own experience, a scale for measuring the deficiency of young politicians; since he would, if interrogated, be obliged to declare that his political opinions at the age of twenty-one were too crude and erroneous to merit an influence on public measures. It had been said, that Congress had proved a good school for our young men. It might be so, for any thing he knew; but if it were, he chose that they should bear the expense of their own education.

Mr. WILSON was against abridging the rights of election in any shape. It was the same thing whether this were done by disqualifying the objects of choice, or the persons choosing. The motion tended to damp the efforts of genius and of laudable ambition. There was no more reason for incapacitating *youth* than *age,* where the requisite qualifications were found. Many instances might be mentioned of signal services, rendered in high stations to the public, before the age of twenty-five. The present Mr. Pitt and Lord Bolingbroke were striking instances.

On the question for inserting "twenty-five years of age,"—

Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, ay, 7; Massachusetts, Pennsylvania, Georgia, no, 3; New York, divided.132

Mr. GORHAM moved to strike out the last member of the third resolution, concerning ineligibility of members of the first branch to office during the term of their membership, and for one year after. He considered it unnecessary and injurious. It was true, abuses had been displayed in Great Britain; but no one could say how far

they might have contributed to preserve the due influence of the government, nor what might have ensued in case the contrary theory had been tried.

Mr. BUTLER opposed it. This precaution against intrigue was necessary. He appealed to the example of Great Britain; where men get into parliament that they might get offices for themselves or their friends. This was the source of the corruption that ruined their government.

Mr. KING thought we were refining too much. Such a restriction on the members would discourage merit. It would also give a pretext to the executive for bad appointments, as he might always plead this as a bar to the choice he wished to have made.

Mr. WILSON was against fettering elections, and discouraging merit. He suggested, also, the fatal consequence, in time of war, of rendering, perhaps, the best commanders ineligible; appealed to our situation during the late war, and indirectly leading to a recollection of the appointment of the commander-in-chief out of Congress.

Col. MASON was for shutting the door at all events against corruption. He enlarged on the venality and abuses, in this particular, in Great Britain; and alluded to the multiplicity of foreign embassies by Congress. The disqualification he regarded as a cornerstone in the fabric.

Col. HAMILTON. There are inconveniences on both sides. We must take man as we find him; and if we expect him to serve the public, must interest his passions in doing so. A reliance on pure patriotism had been the source of many of our errors. He thought the remark of Mr. Gorham a just one. It was impossible to say what would be the effect in Great Britain of such a reform as had been urged. It was known that one of the ablest politicians (Mr. Hume) had pronounced all that influence on the side of the crown, which went under the name of *corruption,* an essential part of the weight which maintained the equilibrium of the constitution.

On Mr. Gorham's motion for striking out "ineligibility," it was lost by an equal division of the votes,—

Massachusetts, New Jersey, North Carolina, Georgia, ay, 4; Connecticut, Maryland, Virginia, South Carolina, no, 4; New York, Pennsylvania, Delaware, divided.

Adjourned.133

Saturday,*June* 23.

In Convention.—The third resolution being resumed,—

On the question, yesterday postponed by South Carolina, for agreeing to the whole sentence, "for allowing an adequate compensation, to be paid out of the *treasury of the United States,*"

Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, ay, 5; Connecticut, New York, Delaware, North Carolina, South Carolina, no, 5; Georgia, divided.

So the question was lost, and the sentence not inserted.134

Gen. PINCKNEY moves to strike out the ineligibility of members of the first branch to offices established "by a particular state." He argued from the inconvenience to which such a restriction would expose both the members of the first branch, and the states wishing for their services; and from the smallness of the object to be attained by the restriction. It would seem, from the ideas of some, that we are erecting a kingdom to be divided against itself: he disapproved such a fetter on the legislature.

Mr. SHERMAN seconds the motion. It would seem that we are erecting a kingdom at war with itself. The legislature ought not to be fettered in such a case.135

On the question,—

Connecticut, New York, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Massachusetts, Pennsylvania, Delaware, no, 3.

Mr. MADISON renewed his motion, yesterday made and waived, to render the members of the first branch "ineligible during their term of service, and for one year after, to such offices only, as should be established, or the emolument augmented, by the legislature of the United States during the time of their being members." He supposed that the unnecessary creation of offices, and increase of salaries, were the evils most experienced, and that if the door was shut against them, it might properly be left open for the appointment of members to other offices, as an encouragement to the legislative service.

Mr. ALEXANDER MARTIN seconded the motion.

Mr. BUTLER. The amendment does not go far enough, and would be easily evaded.136

Mr. RUTLEDGE was for preserving the legislature as pure as possible, by shutting the door against appointments of its own members to office, which was one source of its corruption.

Mr. MASON. The motion of my colleague is but a partial remedy for the evil. He appealed to him as a witness of the shameful partiality of the legislature of Virginia to its own members. He enlarged on the abuses and corruption in the British Parliament connected with the appointment of its members. He could not suppose that a sufficient number of citizens could not be found who would be ready, without the inducement of eligibility to offices, to undertake the legislative service. Genius and virtue, it may be said, ought to be encouraged. Genius, for aught he knew, might; but that virtue should be encouraged by such a species of venality, was an idea that at least had the merit of being new.

Mr. KING remarked that we were refining too much in this business; and that the idea of preventing intrigue and solicitation of offices was chimerical. You say, that no member shall himself be eligible to any office. Will this restrain him from availing himself of the same means which would gain appointments for himself, to gain them for his son, his brother, or any other object of his partiality? We were losing, therefore, the advantages on one side, without avoiding the evils on the other.

Mr. WILSON supported the motion. The proper cure, he said, for corruption in the legislature, was to take from it the power of appointing to offices. One branch of corruption would, indeed, remain,—that of creating unnecessary offices, or granting unnecessary salaries, and for that the amendment would be a proper remedy. He animadverted on the impropriety of stigmatizing with the name of venality the laudable ambition of rising into the honorable offices of the government,—an ambition most likely to be felt in the early and most incorrupt period of life, and which all wise and free governments had deemed it sound policy to cherish, not to check. The members of the legislature have, perhaps, the hardest and least profitable task of any who engage in the service of the state. Ought this merit to be made a disqualification?

Mr. SHERMAN observed that the motion did not go far enough. It might be evaded by the creation of a new office, the translation to it of a person from another office, and the appointment of a member of the legislature to the latter. A new embassy might be established to a new Court, and an ambassador taken from another, in order to *create* a vacancy for a favorite member. He admitted that inconve niences lay on both sides. He hoped there would be sufficient in ducements to the public service without resorting to the prospect of desirable offices; and, on the whole, was rather against the motion of Mr. Madison.

Mr. GERRY thought there was great weight in the objection of Mr. Sherman. He added, as another objection against admitting the eligibility of members in any case, that it would produce intrigues of ambitious men for displacing proper officers, in order to create vacancies for themselves. In answer to Mr. King, he observed, that, although members, if disqualified themselves, might still intrigue and cabal for their sons, brothers, &c., yet as their own interests would be dearer to them than those of their nearest connections, it might be expected they would go greater lengths to promote them.

Mr. MADISON had been led to this motion, as a middle ground between an eligibility in all cases and an absolute disqualification. He admitted the probable abuses of an eligibility of the members to offices, particularly within the gift of the legislature. He had witnessed the partiality of such bodies to their own members, as had been remarked of the Virginia Assembly by his colleague, (Col. Mason.) He appealed, however, to him in turn to vouch another fact not less notorious in Virginia,—that the backwardness of the best citizens to engage in the legislative service gave but too great success to unfit characters. The question was not to be viewed on one side only. The advantages and disadvantages on both ought to be fairly compared. The objects to be aimed at were, to fill all offices with the fittest characters, and to draw the wisest and most worthy citizens into the legislative service. If, on one hand, public bodies

were partial to their own members, on the other, they were as apt to be misled by taking characters on report, or the authority of patrons and dependents. All who had been concerned in the appointment of strangers, on those recommendations, must be sensible of this truth. Nor would the partialities of such bodies be obviated by disqualifying their own members. Candidates for office would hover round the seat of government, or be found among the residents there, and practise all the means of courting the favor of the members. A great proportion of the appointments made by the states were evidently brought about in this way. In the general government, the evil must be still greater, the characters of distant states being much less known throughout the United States than those of the distant parts of the same state. The elections by Congress had generally turned on men living at the seat of the federal government, or in its neighborhood. As to the next object, the impulse to the legislative service was evinced by experience to be in general too feeble with those best qualified for it. This inconvenience would also be more felt in the national government than in the state governments, as the sacrifices required from the distant members would be much greater, and the pecuniary provisions, probably, more disproportionate. It would therefore be impolitic to add fresh objections to the legislative service by an absolute disqualification of its members. The point in question was, whether this would be an objection with the most capable citizens. Arguing from experience, he concluded that it would. The legislature of Virginia would probably have been without many of its best members, if in that situation they had been ineligible to Congress, to the government, and other honorable offices of the state.

Mr. BUTLER thought characters fit for office would never be unknown.

Col. MASON. If the members of the legislature are disqualified, still the honors of the state will induce those who aspire to them to enter that service, as the field in which they can best display and improve their talents, and lay the train for their subsequent advancement.

Mr. JENIFER remarked, that in Maryland the senators, chosen for five years, could hold no other office; and that this circumstance gained them the greatest confidence of the people.

On the question for agreeing to the motion of Mr. Madison,—

Connecticut, New Jersey, ay, 2; New York, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 8; Massachusetts, divided.

Mr. SHERMAN moved to insert the words, “and incapable of holding” after the words “ineligible to,” which was agreed to without opposition.

The word “established,” and the words “under the national government,” were struck out of the third resolution.

Mr. SPAIGHT called for a division of the question, in consequence of which it was so put as that it turned on the first member of it, on the ineligibility of members *during the term for which they were elected*—whereon the states were,—

Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, ay, 8; Pennsylvania, Georgia, no, 2; Massachusetts, divided.

On the second member of the sentence, extending ineligibility of members to one year after the term for which they were elected,—

Col. MASON thought this esential to guard against evasions by resignations, and stipulations for office to be fulfilled at the expiration of the legislative term.

Mr. GERRY had known such a case.

Mr. HAMILTON. Evasions could not be prevented,—as by proxies, by friends holding for a year, and then opening the way, &c.

Mr. RUTLEDGE admitted the possibility of evasions, but was for contracting them as far as possible. On the question,—

New York, Delaware, Maryland, South Carolina, ay, 4; Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, Georgia, no, 6; Pennsylvania, divided.137

Adjourned.

Monday,*June* 25.

In Convention.—The fourth resolution being taken up,—

Mr. PINCKNEY spoke as follows:

The efficacy of the system will depend on this article. In order to form a right judgment in the case, it will be proper to examine the situation of this country more accurately than it has yet been done.

The people of the United States are perhaps the most singular of any we are acquainted with. Among them there are fewer distinctions of fortune, and less of rank, than among the inhabitants of any other nation. Every freeman has a right to the same protection and security; and a very moderate share of property entitles them to the possession of all the honors and privileges the public can bestow. Hence arises a greater equality than is to be found among the people of any other country; and an equality which is more likely to continue. I say, this equality is likely to continue; because in a new country, possessing immense tracts of uncultivated lands, where every temptation is offered to emigration, and where industry must be rewarded with competency there will be few poor, and few dependent. Every member of the society almost will enjoy an equal power of arriving at the supreme offices, and consequently of directing the strength and sentiments of the whole community. None will be excluded by birth, and few by fortune, from voting for proper persons to fill the

offices of government. The whole community will enjoy, in the fullest sense, that kind of political liberty which consists in the power the members of the state reserve to themselves of arriving at the public offices, or, at least, of having votes in the nomination of those who fill them.

If this state of things is true, and the prospect of its continuance probable, it is perhaps not politic to endeavor too close an imitation of a government calculated for a people whose situation is, and whose views ought to be, extremely different.

Much has been said of the constitution of Great Britain. I will confess that I believe it to be the best constitution in existence; but, at the same time, I am confident it is one that will not or cannot be introduced into this country for many centuries. If it were proper to go here into an historical dissertation on the British constitution, it might easily be shown that the peculiar excellence, the distinguishing feature, of that government cannot possibly be introduced into our system; that its balance between the crown and the people cannot be made a part of our Constitution; that we neither have nor can have the members to compose it, nor the rights, privileges, and properties, of so distinct a class of citizens to guard; that the materials for forming this balance or check do not exist, nor is there a necessity for having so permanent a part of our legislative, until the executive power is so constituted as to have something fixed and dangerous in its principle. By this I mean a sole, hereditary, though limited executive.

That we cannot have a proper body for forming a legislative balance between the inordinate power of the executive and the people, is evident from a review of the accidents and circumstances which gave rise to the peerage of Great Britain. I believe it is well ascertained, that the parts which compose the British constitution arose immediately from the forests of Germany; but the antiquity of the establishment of nobility is by no means clearly defined. Some authors are of opinion that the dignity denoted by the titles of *dux* and *comes,* was derived from the old Roman, to the German, empire; while others are of opinion that they existed among the Germans long before the Romans were acquainted with them. The institution, however, of nobility is immemorial among the nations who may properly be termed the ancestors of Great Britain. At the time they were summoned in England to become a part of the national council, the circumstances which contributed to make them a constituent part of that constitution must be well known to all gentlemen who have had industry and curiosity enough to investigate the subject. The nobles, with their possessions and dependents, composed a body permanent in their nature, and formidable in point of power. They had a distinct interest both from the king and the people,—an interest which could only be represented by themselves, and the guardianship of which could not be safely intrusted to others. At the time they were originally called to form a part of the national council, necessity perhaps, as much as other causes, induced the monarch to look up to them. It was necessary to demand the aid of his subjects in personal and pecuniary services. The power and possessions of the nobility would not permit taxation from any assembly of which they were not a part: and the blending of the deputies of the commons with them, and thus forming what they called their *parler-ment,* was perhaps as much the effect of chance as of any thing else. The commons were at that time completely subordinate to the nobles, whose consequence

and influence seem to have been the only reasons for their superiority; a superiority so degrading to the commons, that in the first summons, we find the peers are called upon to *consult,* the commons to *consent.* From this time the peers have composed a part of the British legislature; and, notwithstanding their power and influence have diminished, and those of the commons have increased, yet still they have always formed an excellent balance against either the encroachments of the crown or the people.

I have said that such a body cannot exist in this country for ages; and that, until the situation of our people is exceedingly changed, no necessity will exist for so permanent a part of the legislature. To illustrate this, I have remarked that the people of the United States are more equal in their circumstances than the people of any other country; that they have very few rich men among them—by rich men I mean those whose riches may have a dangerous influence, or such as are esteemed rich in Europe—perhaps there are not one hundred such on the continent; that it is not probable this number will be greatly increased; that the genius of the people, their mediocrity of situation, and the prospects which are afforded their industry, in a country which must be a new one for centuries, are unfavorable to the rapid distinction of ranks. The destruction of the right of primogeniture, and the equal division of the property of intestates, will also have an effect to preserve this mediocrity; for laws invariably affect the manners of people. On the other hand, that vast extent of unpeopled territory, which opens to the frugal and industrious a sure road to competency and independence, will effectually prevent, for a considerable time, the increase of the poor or discontented, and be the means of preserving that equality of condition which so eminently distinguishes us.

If equality is, as I contend, the leading feature of the United States, where, then, are the riches and wealth whose representation and protection is the peculiar province of this permanent body? Are they in the hands of the few who may be called rich,—in the possession of less than a hundred citizens? Certainly not. They are in the great body of the people, among whom there are no men of wealth, and very few of real poverty. Is it probable that a change will be created, and that a new order of men will arise? If, under the British government, for a century, no such change was produced, I think it may be fairly concluded it will not take place while even the semblance of republicanism remains. How is this change to be effected? Where are the sources from whence it is to flow? From the landed interest? No. That is too unproductive, and too much divided in most of the states. From the moneyed interest? If such exist at present, little is to be apprehended from that source. Is it to spring from commerce? I believe it would be the first instance in which a nobility sprang from merchants. Besides, sir, I apprehend that on this point the policy of the United States has been much mistaken. We have unwisely considered ourselves as the inhabitants of an old, instead of a new, country. We have adopted the maxims of a state full of people, and manufactures, and established in credit. We have deserted our true interest, and, instead of applying closely to those improvements in domestic policy which would have insured the future importance of our commerce, we have rashly and prematurely engaged in schemes as extensive as they are imprudent. This, however, is an error which daily corrects itself; and I have no doubt that a few more severe trials will

convince us, that very different commercial principles ought to govern the conduct of these states.

The people of this country are not only very different from the inhabitants of any state we are acquainted with in the modern world, but I assert that their situation is distinct from either the people of Greece or Rome, or of any states we are acquainted with among the ancients. Can the orders introduced by the institution of Solon, can they be found in the United States? Can the military habits and manners of Sparta be resembled to ours in habits and manners? Are the distinction of patrician and plebeian known among us? Can the Helvetic or Belgic confederacies, or can the unwieldly, unmeaning body called the Germanic empire, can they be said to possess either the same, or a situation like ours? I apprehend not. They are perfectly different, in their distinctions of rank, their constitutions, their manners, and their policy.

Our true situation appears to me to be this,—a new, extensive country, containing within itself the materials for forming a government capable of extending to its citizens all the blessings of civil and religious liberty—capable of making them happy at home. This is the great end of republican establishments. We mistake the object of our government, if we hope or wish that it is to make us respectable abroad. Conquests or superiority among other powers is not, or ought not ever to be, the object of republican systems. If they are sufficiently active and energetic to rescue us from contempt, and preserve our domestic happiness and security, it is all we can expect from them—it is more than almost any other government insures to its citizens.

I believe this observation will be found generally true—that no two people are so exactly alike, in their situation or circumstances, at to admit the exercise of the same government with equal benefit; that a system must be suited to the habits and genius of the people it is to govern, and must grow out of them.

The people of the United States may be divided into three classes—*professional men,* who must, from their particular pursuits, always have a considerable weight in the government, while it remains popular; *commercial men,* who may or may not have weight, as a wise or injudicious commercial policy is pursued. If that commercial policy is pursued which I conceive to be the true one, the merchants of this country will not, or ought not, for a considerable time, to have much weight in the political scale. The third is the *landed interest,* the owners and cultivators of the soil, who are, and ought ever to be, the governing spring in the system. These three classes, however distinct in their pursuits, are individually equal in the political scale, and may be easily proved to have but one interest. The dependence of each on the other is mutual. The merchant depends on the planter. Both must, in private as well as public affairs, be connected with the professional men; who in their turn must in some measure depend on them. Hence it is clear, from this manifest connection, and the equality which I before stated exists, and must, for the reasons then assigned, continue, that after all there is one, but one great and equal body of citizens composing the inhabitants of this country, among whom there are no distinctions of rank, and very few or none of fortune.

For a people thus circumstanced are we, then, to form a government; and the question is, what sort of government is best suited to them?

Will it be the British government? No. Why? Because Great Britain contains three orders of people distinct in their situation, their possessions, and their principles. These orders, combined, form the great body of the nation; and as, in national expenses, the wealth of the whole community must contribute, so ought each component part to be duly and properly represented. No other combination of power could form this due representation but the one that exists. Neither the peers or the people could represent the royalty; nor could the royalty and the people form a proper representation for the peers. Each, therefore, must of necessity be represented by itself, or the sign of itself; and this accidental mixture has certainly formed a government admirably well balanced.

But the United States contain but one order that can be assimilated to the British nation—this is, the order of Commons. They will not, surely, then, attempt to form a government consisting of three branches, two of which shall have nothing to represent. They will not have an executive and senate [hereditary,] because the king and lords of England are so. The same reasons do not exist, and therefore the same provisions are not necessary.

We must, as has been observed, suit our government to the people it is to direct. These are, I believe, as active, intelligent and susceptible of good government as any people in the world. The confusion which has produced the present relaxed state is not owing to them. It is owing to the weakness and [defects] of a government incapable of combining the various interests it is intended to unite, and destitute of energy. All that we have to do, then, is to distribute the powers of government in such a manner, and for such limited periods, as, while it gives a proper degree of permanency to the magistrate, will reserve to the people the right of election they will not or ought not frequently to part with. I am of opinion that this may easily be done; and that, with some amendments, the propositions before the committee will fully answer this end.

No position appears to me more true than this; that the general government cannot effectually exist without reserving to the states the possession of their local rights. They are the instruments upon which the Union must frequently depend for the support and execution of their powers, however immediately operating upon the people and not upon the states.

Much has been said about the propriety of abolishing the distinction of state governments, and having but one general system. Suffer me for a moment to examine this question.*138

The mode of constituting the second branch being under consideration, the word “national” was struck out, and “United States” inserted.

Mr. GORHAM inclined to a compromise as to the rule of proportion. He thought there was some weight in the objections of the small states. If Virginia should have sixteen votes and Delaware with several other states together sixteen, those from

Virginia would be more likely to unite than the others, and would therefore have an undue influence. This remark was applicable not only to states, but to counties or other districts of the same state. Accordingly, the constitution of Massachusetts had provided that the representatives of the larger districts should not be in an exact ratio to their numbers; and experience, he thought, had shown the provision to be expedient.

Mr. READ. The states have heretofore been in a sort of partnership. They ought to adjust their old affairs before they opened a new account. He brought into view the appropriation of the common interest in the western lands to the use of particular states. Let justice be done on this head: let the fund be applied fairly and equally to the discharge of the general debt; and the smaller states, who had been injured, would listen then, perhaps, to those ideas of just representation which had been held out.

Mr. GORHAM could not see how the Convention could interpose in the case. Errors, he allowed, had been committed on the subject. But Congress were now using their endeavors to rectify them. The best remedy would be such a government as would have vigor enough to do justice throughout. This was certainly the best chance that could be afforded to the smaller states.

Mr. WILSON. The question is, shall the members of the second branch be chosen by the legislatures of the states? When he considered the amazing extent of country, the immense population which is to fill it, the influence of the government we are to form will have, not only on the present generation of our people, and their multiplied posterity, but on the whole globe,—he was lost in the magnitude of the object. The project of Henry IV, and his statesmen was but the picture in miniature of the great portrait to be exhibited. He was opposed to an election by the state legislatures. In explaining his reasons, it was necessary to observe the twofold relation in which the people would stand—first, as citizens of the general government; and, secondly, as citizens of their particular state. The general government was meant for them in the first capacity: the state governments in the second. Both governments were derived from the people; both meant for the people; both therefore ought to be regulated on the same principles. The same train of ideas which belonged to the relation of the citizens to their state governments, was applicable to their relation to the general government; and, in forming the latter, we ought to proceed by abstracting as much as possible from the idea of the state governments. With respect to the province and object of the general government, they should be considered as having no existence. The election of the second branch by the legislatures will introduce and cherish local interests and local prejudices. The general government is not an assemblage of states, but of individuals, for certain political purposes. It is not meant for the states, but for the individuals composing them; the *individuals,* therefore, not the *states,* ought to be represented in it. A proportion in this representation can be preserved in the second as well as in the first branch; and the election can be made by electors chosen by the people for that purpose. He moved an amendment to that effect; which was not seconded.

Mr. ELLSWORTH saw no reason for departing from the mode contained in the report. Whoever chooses the member, he will be a citizen of the state he is to

represent, and will feel the same spirit, and act the same part, whether he be appointed by the people or the legislature. Every state has its particular views and prejudices which will find their way into the general council, through whatever channel they may flow. Wisdom was one of the characteristics which it was in contemplation to give the second branch: would not more of it issue from the legislatures than from an immediate election by the people? He urged the necessity of maintaining the existence and agency of the states. Without their coöperation it would be impossible to support a republican government over so great an extent of country. An army could scarcely render it practicable. The largest states are the worst governed. Virginia is obliged to acknowledge her incapacity to extend her government to Kentucky. Massachusetts cannot keep the peace one hundred miles from her capital, and is now forming an army for its support. How long Pennsylvania may be free from a like situation, cannot be foreseen. If the principles and materials of our government are not adequate to the extent of these single states, how can it be imagined that they can support a single government throughout the United States? The only chance of supporting a general government lies in grafting it on those of the individual states.

Dr. JOHNSON urged the necessity of preserving the state governments, which would be at the mercy of the general government on Mr. Wilson's plan.

Mr. MADISON thought it would obviate difficulty if the present resolution were postponed, and the eighth taken up, which is to fix the right of suffrage in the second branch.

Mr. WILLIAMSON professed himself a friend to such a system as would secure the existence of the state governments. The happiness of the people depended on it. He was at a loss to give his vote as to the Senate, until he knew the number of its members. In order to ascertain this, he moved to insert, after "second branch of the national legislature," the words, "who shall bear such proportion to the number of the first branch as one to—." He was not seconded.

Mr. MASON. It has been agreed on all hands that an efficient government is necessary; that, to render it such, it ought to have the faculty of self-defence; that, to render its different branches effectual, each of them ought to have the same power of self-defence. He did not wonder that such an agreement should have prevailed on these points. He only wondered that there should be any disagreement about the necessity of allowing the state governments the same self-defence. If they are to be preserved, as he conceived to be essential, they certainly ought to have this power; and the only mode left of giving it to them was by allowing them to appoint the second branch of the national legislature.

Mr. BUTLER, observing that we were put to difficulties at every step by the uncertainty whether an equality or a ratio of representation would prevail finally in the second branch, moved to postpone the fourth resolution, and to proceed to the eighth resolution on that point. Mr. MADISON seconded him.

On the question,—

New York, Virginia, South Carolina, Georgia, ay, 4; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, no, 7.

On a question to postpone the fourth, and take up the seventh, resolution,—

Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 5; Massachusetts, Connecticut, New York; New Jersey, Pennsylvania, Delaware, no, 6.

On the question to agree, "that the members of the second branch be chosen by the individual legislatures."—

Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, ay, 9; Pennsylvania, Virginia, no, 2.*139

On a question on the clause requiring the age of thirty years at least,—it was unanimously agreed to.

On a question to strike out the words, "sufficient to insure their independence," after the word "term,"—it was agreed to.

The clause, that the second branch hold their offices for a term of "seven years," being considered,—

Mr. GORHAM suggests a term of "four years," one fourth to be elected every year.

Mr. RANDOLPH supported the idea of rotation, as favorable to the wisdom and stability of the corps; which might possibly be always sitting, and aiding the executive, and moves, after "seven years," to add, "to go out in-fixed proportion;" which was agreed to.

Mr. WILLIAMSON suggests "six years," as more convenient for rotation than seven years.

Mr. SHERMAN seconds him.

Mr. READ proposed that they should hold their offices "during good behavior." Mr. R. MORRIS seconds him.

Gen. PINCKNEY proposed "four years." A longer time would fix them at the seat of government. They would acquire an interest there, perhaps transfer their property, and lose sight of the states they represent. Under these circumstances, the distant states would labor under great disadvantages.140

Mr. SHERMAN moved to strike out "seven years," in order to take questions on the several propositions.

On the question to strike out "seven,"—

Massachusetts, Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, ay, 7; Pennsylvania, Delaware, Virginia, no, 3; Maryland, divided.

On the question to insert "six years," which failed, five states being, ay; five, no; and one, divided,—

Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, ay, 5; Massachusetts, New York, New Jersey, South Carolina, Georgia, no, 5; Maryland, divided.

On a motion to adjourn, the votes were, five for, five against it; and one divided,—

Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, ay, 5; Massachusetts, New York, North Carolina, South Carolina, Georgia, no, 5; Maryland, divided.

On the question for "five years," it was lost,—

Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, ay, 5; Massachusetts, New York, New Jersey, South Carolina, Georgia, no, 5; Maryland, divided.

Adjourned.

Tuesday,*June* 26.

In Convention.—The duration of the second branch being under consideration,—

Mr. GORHAM moved to fill the blank with "six years," one third of the members to go out every second year.

Mr. WILSON seconded the motion.

Gen. PINCKNEY opposed six years, in favor of four years. The states, he said, had different interests. Those of the Southern, and of South Carolina in particular, were different from the Northern. If the senators should be appointed for a long term, they would settle in the state where they exercised their functions, and would in a little time be rather the representatives of that, than of the state appointing them.141

Mr. READ moved that the term be nine years. This would admit of a very convenient rotation, one third going out triennially. He would still prefer "during good behavior;" but being little supported in that idea, he was willing to take the longest term that could be obtained.

Mr. BROOM seconded the motion.

Mr. MADISON. In order to judge of the form to be given to this institution, it will be proper to take a view of the ends to be served by it. These were,—first, to protect the people against their rulers; secondly, to protect the people against the transient impressions into which they themselves might be led. A people deliberating in a temperate moment, and with the experience of other nations before them, on the plan of government most likely to secure their happiness, would first be aware, that those

charged with the public happiness might betray their trust. An obvious precaution against this danger would be, to divide the trust between different bodies of men, who might watch and check each other. In this they would be governed by the same prudence which has prevailed in organizing the subordinate departments of government, where all business liable to abuses is made to pass through separate hands, the one being a check on the other. It would next occur to such a people, that they themselves were liable to temporary errors, through want of information as to their true interest; and that men chosen for a short term, and employed but a small portion of that in public affairs, might err from the same cause. This reflection would naturally suggest, that the government be so constituted as that one of its branches might have an opportunity of acquiring a competent knowledge of the public interests. Another reflection equally becoming a people on such an occasion, would be, that they themselves, as well as a numerous body of representatives, were liable to err, also, from fickleness and passion. A necessary fence against this danger would be, to select a portion of enlightened citizens, whose limited number, and firmness, might seasonably interpose against impetuous counsels. It ought, finally, to occur to a people deliberating on a government for themselves, that, as different interests necessarily result from the liberty meant to be secured, the major interest might, under sudden impulses, be tempted to commit injustice on the minority. In all civilized countries the people fall into different classes, having a real or supposed difference of interests. There will be creditors and debtors; farmers, merchants, and manufacturers. There will be, particularly, the distinction of rich and poor. It was true, as had been observed, (by Mr. Pinckney,) we had not among us those hereditary distinctions of rank which were a great source of the contests in the ancient governments, as well as the modern states, of Europe; nor those extremes of wealth or poverty which characterize the latter. We cannot, however, be regarded, even at this time, as one homogeneous mass, in which every thing that affects a part will affect in the same manner the whole. In framing a system which we wish to last for ages, we should not lose sight of the changes which ages will produce. An increase of population will of necessity increase the proportion of those who will labor under all the hardships of life, and secretly sigh for a more equal distribution of its blessings. These may in time outnumber those who are placed above the feelings of indigence. According to the equal laws of suffrage, the power will slide into the hands of the former. No agrarian attempts have yet been made in this country; but symptoms of a levelling spirit, as we have understood, have sufficiently appeared, in a certain quarter, to give notice of the future danger. How is this danger to be guarded against, on the republican principles; how is the danger, in all cases of interested coalitions, to oppress the minority, to be guarded against? Among other means, by the establishment of a body, in the government, sufficiently respectable for its wisdom and virtue to aid, on such emergencies, the preponderance of justice, by throwing its weight into that scale. Such being the objects of the second branch in the proposed government, he thought a considerable duration ought to be given to it. He did not conceive that the term of nine years could threaten any real danger; but, in pursuing his particular ideas on the subject, he should require that the long term allowed to the second branch should not commence till such a period of life as would render a perpetual disqualification to be reëlected, little inconvenient, either in a public or private view. He observed, that, as it was more than probable we were now digesting a plan which, in its operation, would decide forever the fate of republican government, we ought, not only to provide every

guard to liberty that its preservation could require, but be equally careful to supply the defects which our own experience had particularly pointed out.142

Mr. SHERMAN. Government is instituted for those who live under it. It ought, therefore, to be so constituted as not to be dangerous to their liberties. The more permanency it has, the worse, if it be a bad government. Frequent elections are necessary to preserve the good behavior of rulers. They also tend to give permanency to the government, by preserving that good behavior, because it insures their reëlection. In Connecticut, elections have been very frequent, yet great stability and uniformity, both as to persons and measures, have been experienced from its original establishment to the present time—a period of more than a hundred and thirty years. He wished to have provision made for steadiness and wisdom, in the system to be adopted; but he thought six, or four, years would be sufficient. He should be content with either.

Mr. READ wished it to be observed, by the small states, that it was their interest that we should become one people as much as possible; that state attachments should be extinguished as much as possible; that the Senate should be so constituted as to have the feelings of citizens of the whole.

Mr. HAMILTON. He did not mean to enter particularly into the subject. He concurred with Mr. Madison in thinking we were now to decide forever the fate of republican government; and that if we did not give to that form due stability and wisdom, it would be disgraced and lost among ourselves, disgraced and lost to mankind forever. He acknowledged himself not to think favorably of republican government; but addressed his remarks to those who did think favorably of it, in order to prevail on them to tone their government as high as possible. He professed himself to be as zealous an advocate for liberty as any man whatever; and trusted he should be as willing a martyr to it, though he differed as to the form in which it was most eligible. He concurred, also, in the general observations of Mr. Madison on the subject, which might be supported by others if it were necessary. It was certainly true, that nothing like an equality of property existed; that an inequality would exist as long as liberty existed and that it would unavoidably result from that very liberty itself. This inequality of property constituted the great and fundamental distinction in society. When the tribunitial power had levelled the boundary between the *patricians* and *plebeians,* what followed? The distinction between rich and poor was substituted. He meant not, however, to enlarge on the subject. He rose principally to remark, that Mr. Sherman seemed not to recollect that one branch of the proposed government was so formed as to render it particularly the guardians of the poorer orders of citizens; nor to have adverted to the true causes of the stability which had been exemplified in Connecticut. Under the British system, as well as the federal, many of the great powers appertaining to government—particularly all those relating to foreign nations—were not in the hands of the government there. Their internal affairs, also, were extremely simple, owing to sundry causes, many of which were peculiar to that country. Of late the government had entirely given way to the people, and had in fact suspended many of its ordinary functions, in order to prevent those turbulent scenes which had appeared elsewhere. He asks Mr. Sherman, whether the state, at this time,

dare impose and collect a tax on the people? To these causes, and not to the frequency of elections, the effect, as far as it existed, ought to be chiefly ascribed.

Mr. GERRY wished we could be united in our ideas concerning a permanent government. All aim at the same end, but there are great differences as to the means. One circumstance, he thought, should be carefully attended to. There was not a one thousandth part of our fellow-citizens who were not against every approach towards monarchy,—will they ever agree to a plan which seems to make such an approach? The Convention ought to be extremely cautious in what they hold out to the people. Whatever plan may be proposed will be espoused with warmth by many, out of respect to the quarter it proceeds from, as well as from an approbation of the plan itself. And if the plan should be of such a nature as to rouse a violent opposition, it is easy to foresee that discord and confusion will ensue; and it is even possible that we may become a prey to foreign powers. He did not deny the position of Mr. Madison, that the majority will generally violate justice when they have an interest in so doing; but did not think there was any such temptation in this country. Our situation was different from that of Great Britain; and the great body of lands yet to be parcelled out and settled would very much prolong the difference. Notwithstanding the symptoms of injustice which had marked many of our public councils, they had not proceeded so far as not to leave hopes that there would be a sufficient sense of justice and virtue for the purpose of government. He admitted the evils arising from a frequency of elections, and would agree to give the senate a duration of four or five years. A longer term would defeat itself. It never would be adopted by the people.

Mr. WILSON did not mean to repeat what had fallen from others, but would add an observation or two which he believed had not yet been suggested. Every nation may be regarded in two relations—first, to its own citizens; secondly, to foreign nations. It is, therefore, not only liable to anarchy and tyranny within, but has wars to avoid, and treaties to obtain, from abroad. The Senate will probably be the depository of the powers concerning the latter objects. It ought therefore to be made respectable in the eyes of foreign nations. The true reason why Great Britain has not yet listened to a commercial treaty with us has been, because she had no confidence in the stability or efficacy of our government. Nine years, with a rotation, will provide these desirable qualities; and give our government an advantage in this respect over monarchy itself. In a monarchy, much must always depend on the temper of the man. In such a body, the personal character will be lost in the political. He would add another observation. The popular objection against appointing any public body for a long term, was, that it might, by gradual encroachments, prolong itself, first into a body for life, and finally become a hereditary one. It would be a satisfactory answer to this objection, that, as one third would go out triennally, there would be always three divisions holding their places from unequal times, and consequently acting under the influence of different views and different impulses.

On the question for nine years, one third to go out triennially,—

Pennsylvania, Delaware, Virginia, ay, 3; Massachusetts, Connecticut, New York, New Jersey, Maryland, North Carolina, South Carolina, Georgia, no, 8.

On the question for six years, one third to go out biennally,—

Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, ay, 7; New York, New Jersey, South Carolina, Georgia, no, 4.143

The clause of the fourth resolution, "to receive fixed stipends by which they may be compensated for their services," being considered,—

Gen. PINCKNEY proposed, that no salary should be allowed. As this (the senatorial) branch was meant to represent the wealth of the country, it ought to be composed of persons of wealth; and if no allowance was to be made, the wealthy alone would undertake the service. He moved to strike out the clause.

Dr. FRANKLIN seconded the motion. He wished the Convention to stand fair with the people. There were in it a number of young men who would probably be of the Senate. If lucrative appointments should be recommended, we might be chargeable with having carved out places for ourselves.

On the question,—

Massachusetts, Connecticut,* Pennsylvania, Maryland, South Carolina, ay, 5; New York, New Jersey, Delaware, Virginia, North Carolina, Georgia, no, 6.

Mr. WILLIAMSON moved to change the expression into these words, to wit, "to receive a compensation for the devotion of their time to the public service." The motion was seconded by Mr. ELLSWORTH, and agreed to by all the states except South Carolina. It seemed to be meant only to get rid of the word "fixed," and leave greater room for modifying the provision on this point.

Mr. ELLSWORTH moved to strike out, "to be paid out of the national treasury," and insert, "to be paid by their respective states." If the Senate was meant to strengthen the government, it ought to have the confidence of the states. The states will have an interest in keeping up a representation, and will make such provision for supporting the members as will insure their attendance.

Mr. MADISON considered this as a departure from a fundamental principle, and subverting the end intended by allowing the Senate a duration of six years. They would, if this motion should be agreed to, hold their places during pleasure; during the pleasure of the state legislatures. One great end of the institution was, that, being a firm, wise, and impartial body, it might not only give stability to the general government, in its operations on individuals, but hold an even balance among different states. The motion would make the Senate, like Congress, the mere agents and advocates of state interests and views, instead of being the impartial umpires and guardians of justice and the general good. Congress had lately, by the establishment of a board with full powers to decide on the mutual claims between the United States and the individual states, fairly acknowledged themselves to be unfit for discharging this part of the business referred to them by the Confederation.

Mr. DAYTON considered the payment of the Senate by the states as fatal to their independence. He was decided for paying them out of the national treasury.

On the question for payment of the Senate to be left to the states, as moved by Mr. ELLSWORTH, it passed in the negative,—

Connecticut, New York, New Jersey, South Carolina, Georgia, ay, 5; Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no, 6.144

Col. MASON. He did not rise to make any motion, but to hint an idea which seemed to be proper for consideration. One important object in constituting the Senate was, to secure the rights of property. To give them weight and firmness for this purpose, a considerable duration in office was thought necessary. But a longer term than six years would be of no avail in this respect, if needy persons should be appointed. He suggested, therefore, the propriety of annexing to the office a qualification of property. He thought this would be very practicable; as the rules of taxation would supply a scale for measuring the degree of wealth possessed by every man.

A question was then taken, whether the words "to be paid out of the national treasury," should stand,—

Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, ay, 5; Connecticut, New York, New Jersey, North Carolina, South Carolina, Georgia, no, 6.

Mr. BUTLER moved to strike out the ineligibility of senators to *state offices.*

Mr. WILLIAMSON seconded the motion.

Mr. WILSON remarked the additional dependence this would create in the senators on the states. The longer the time, he observed, allotted to the officer, the more complete will be the dependence, if it exists at all.

Gen. PINCKNEY was for making the states, as much as could be conveniently done, a part of the general government. If the Senate was to be appointed by the states, it ought, in pursuance of the same idea, to be paid by the states; and the states ought not to be barred from the opportunity of calling members of it into offices at home. Such a restriction would also discourage the ablest men from going into the Senate.

Mr. WILLIAMSON moved a resolution, so penned as to admit of the two following questions,—first, whether the members of the Senate should be ineligible to, and incapable of holding, offices *under the United States;* secondly, whether, &c., under the *particular states.*

On the question to postpone, in order to consider Mr. Williamson's resolution,—

Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Massachusetts, New York, New Jersey, no, 3.145

Mr. GERRY and Mr. MADISON move to add to Mr. Williamson's first question, "and for one year thereafter."

On this amendment,—

Connecticut, New York, Delaware, Maryland, Virginia, North Carolina, South Carolina, ay, 7; Massachusetts, New Jersey, Pennsylvania, Georgia, no, 4.

On Mr. Williamson's first question as amended, viz., "ineligible and incapable, &c., for one year, &c."—agreed to unanimously.

On the second question, as to ineligibility, &c., to *state offices,*—

Massachusetts, Pennsylvania, Virginia, ay, 3; Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, no, 8.

The fifth resolution, "that each branch have the right of originating acts," was agreed to, *nem con.*146

Adjourned.

Wednesday,*June* 27.

In Convention.—Mr. RUTLEDGE moved to postpone the sixth resolution, defining the powers of Congress, in order to take up the seventh and eighth, which involved the most fundamental points, the rules of suffrage in the two branches; which was agreed to, *nem con.*

A question being proposed on the seventh resolution, declaring that the suffrage in the first branch should be according to an equitable ratio,—

Mr. L. MARTIN contended, at great length, and with great eagerness, that the general government was meant merely to preserve the state governments, not to govern individuals: that its powers ought to be kept within narrow limits: that if too little power was given to it, more might be added; but that if too much, it could never be resumed: that individuals, as such, have little to do but with their own states: that the general government has no more to apprehend from the states composing the Union, while it pursues proper measures, than a government over individuals has to apprehend from its subjects: that to resort to the citizens at large, for their sanction to a new government, will be throwing them back into a state of nature: that the dissolution of the state governments is involved in the nature of the process: that the people have no right to do this, without the consent of those to whom they have delegated their power for state purposes: through their tongues only they can speak, through their ears only they can hear: that the states have shown a good disposition to comply with the acts of Congress, weak, contemptibly weak, as that body has been; and have failed through inability alone to comply: that the heaviness of the private debts, and the waste of property during the war, were the chief causes of this inability: that he did not conceive the instances mentioned, by Mr. Madison, of compacts between Virginia and Maryland, between Pennsylvania and New Jersey, or of troops

raised by Massachusetts for defence against the rebels, to be violations of the Articles of Confederation: that an equal vote in each state was essential to the federal idea, and was founded in justice and freedom, not merely in policy: that though the states may give up this right of sovereignty, yet they had not, and ought not: that the states, like individuals, were, in a state of nature, equally sovereign and free. In order to prove that individuals in a state of nature are equally free and independent, he read passages from Locke, Vattel, Lord Somers, Priestly. To prove that the case is the same with states, till they surrender their equal sovereignty, he read other passages in Locke, and Vattel, and also Rutherford: that the states, being equal, cannot treat of confederate so as to give up an equality of votes, without giving up their liberty: that the propositions on the table were a system of slavery for ten states: that as Virginia, Massachusetts, and Pennsylvania, have forty two ninetieths of the votes, they can do as they please, without a miraculous union of the other ten: that they will have nothing to do but to gain over one of the ten, to make them complete masters of the rest: that they can then appoint an executive, and judiciary, and legislature for them, as they please: that there was, and would continue, a natural predilection and partiality in men for their own states: that the states, particularly the smaller, would never allow a negative to be exercised over their laws: that no state, in ratifying the Confederation, had objected to the equality of votes: that the complaints at present ran not against this equality, but the want of power: that sixteen members from Virginia would be more likely to act in concert than a like number formed of members from different states: that, instead of a junction of the small states as a remedy, he thought a division of the large states would be more eligible. This was the substance of a speech which was continued more than three hours. He was too much exhausted, he said, to finish his remarks, and reminded the House that he should to-morrow resume them.

Adjourned.

Thursday,*June* 28.

In Convention.—Mr. L. MARTIN resumed his discourse, contending that the general government ought to be formed for the states, not for individuals: that if the states were to have votes in proportion to their numbers of people, it would be the same thing whether their representatives were chosen by the legislatures or the people; the smaller states would be equally enslaved: that if the large states have the same interest with the smaller, as was urged, there could be no danger in giving them an equal vote: they would not injure themselves, and they could not injure the large ones, on that supposition, without injuring themselves; and if the interests were not the same, the inequality of suffrage would be dangerous to the smaller states: that it will be in vain to propose any plan offensive to the rulers of the states, whose influence over the people will certainly prevent their adopting it: that the large states were weak at present in proportion to their extent, and could only be made formidable to the small ones by the weight of their votes: that, in case a dissolution of the Union should take place, the small states would have nothing to fear from their power: that if, in such a case, the three great states should league themselves together, the other ten could do so too; and that he had rather see partial confederacies take place than the plan on the table. This was the substance of the residue of his discourse, which was delivered with much diffuseness, and considerable vehemence.147

Mr. LANSING and Mr. DAYTON moved to strike out "not," so that the seventh article might read, "that the right of suffrage in the first branch ought to be according to the rule established by the Confederation."

Mr. DAYTON expressed great anxiety that the question might not be put till to-morrow, Governor Livingston being kept away by indisposition, and the representation of New Jersey thereby suspended.

Mr. WILLIAMSON thought that, if any political truth could be grounded on mathematical demonstration, it was, that if the states were equally sovereign now, and parted with equal proportions of sovereignty, that they would remain equally sovereign. He could not comprehend how the smaller states would be injured in the case, and wished some gentleman would vouchsafe a solution of it. He observed that the small states, if they had a plurality of votes, would have an interest in throwing the burdens off their own shoulders on those of the large ones. He begged that the expected addition of new states from the westward might be taken into view. They would be small states; they would be poor states; they would be unable to pay in proportion to their numbers, their distance from market rendering the produce of their labor less valuable: they would consequently be tempted to combine for the purpose of laying burdens on commerce and consumption, which would fall with greater weight on the old states.

Mr. MADISON said, he was much disposed to concur in any expedient, not inconsistent with fundamental principles, that could remove the difficulty concerning the rule of representation. But he could neither be convinced that the rule contended for was just, nor that it was necessary for the safety of the small states against the large states. That it was not just, had been conceded by Mr. Brearley and Mr. Patterson themselves. The expedient proposed by them was a new partition of the territory of the United States. The fallacy of the reasoning drawn from the equality of sovereign states, in the formation of compacts, lay in confounding mere treaties, in which were specified certain duties to which the parties were to be bound, and certain rules by which their subjects were to be reciprocally governed in their intercourse, with a compact by which an authority was created paramount to the parties, and making laws for the government of them. If France, England, and Spain, were to enter into a treaty for the regulation of commerce, &c., with the Prince of Monacho, and four or five other of the smallest sovereigns of Europe, they would not hesitate to treat as equals, and to make the regulations perfectly reciprocal. Would the case be the same, if a council were to be formed of deputies from each, with authority and discretion to raise money, levy troops, determine the value of coin, &c.? Would thirty or forty millions of people submit their fortunes into the hands of a few thousands? If they did, it would only prove that they expected more from the terror of their superior force, than they feared from the selfishness of their feeble associates. Why are counties of the same states represented in proportion to their numbers? Is it because the representatives are chosen by the people themselves? So will be the representatives in the national legislature. Is it because the larger have more at stake than the smaller? The case will be the same with the larger and smaller states. Is it because the laws are to operate immediately on their persons and properties? The same is the case, in some degree, as the Articles of Confederation stand; the same will

be the case, in a far greater degree, under the plan proposed to be substituted. In the cases of captures, of piracies, and of offences in a federal army, the property and persons of individuals depend on the laws of Congress. By the plan proposed, a complete power of taxation—the highest prerogative of supremacy—is proposed to be vested in the national government. Many other powers are added, which assimilate it to the government of individual states. The negative proposed on the state laws will make it an essential branch of the state legislatures, and of course will require that it should be exercised by a body established on like principles with the branches of those legislatures. That it is not necessary to secure the small states against the large ones, he conceived to be equally obvious. Was a combination of the large ones dreaded? This must arise either from some interest common to Virginia, Massachusetts, and Pennsylvania, and distinguishing them from the other states; or from the mere circumstance of similarity of size. Did any such common interest exist? In point of situation, they could not have been more effectually separated from each other by the most jealous citizen of the most jealous states. In point of manners, religion, and the other circumstances which sometimes beget affection between different communities, they were not more assimilated than the other states. In point of the staple productions, they were as dissimilar as any three other states in the Union. The staple of Massachusetts was *fish,* of Pennsylvania *flour,* of Virginia *tobacco.* Was a combination to be apprehended from the mere circumstance of equality of size? Experience suggested no such danger. The Journals of Congress did not present any peculiar association of these states in the votes recorded. It had never been seen that different counties in the same state, conformable in extent, but disagreeing in other circumstances, betrayed a propensity to such combinations. Experience rather taught a contrary lesson. Among individuals of superior eminence and weight in society, rivalships were much more frequent than coalitions. Among independent nations, preëminent over their neighbors, the same remark was verified. Carthage and Rome tore one another to pieces, instead of uniting their forces to devour the weaker nations of the earth. The houses of Austria and France were hostile as long as they remained the greatest powers of Europe. England and France have succeeded to the preëminence and to the enmity. To this principle we owe perhaps our liberty. A coalition between those powers would have been fatal to us. Among the principal members of ancient and modern confederacies, we find the same effect from the same cause. The contentions, not the coalitions, of Sparta, Athens, and Thebes, proved fatal to the smaller members of the Amphictyonic confederacy. The contentions, not the combinations, of Russia and Austria, have distracted and oppressed the German Empire. Were the large states formidable, *singly,* to their smaller neighbors? On this supposition, the latter ought to wish for such a general government as will operate with equal energy on the former as on themselves. The more lax the band, the more liberty the larger will have to avail themselves of their superior force. Here, again, experience was an instructive monitor. What is the situation of the weak, compared with the strong, in those stages of civilization in which the violence of individuals is least controlled by an efficient government? The heroic period of ancient Greece, the feudal licentiousness of the middle ages of Europe, the existing condition of the American savages, answer this question. What is the situation of the minor sovereigns in the great society of independent nations, in which the more powerful are under no control but the nominal authority of the law of nations? Is not the danger to the former exactly in proportion to their weakness? But

there are cases still more in point. What was the condition of the weaker members of the Amphictyonic confederacy? Plutarch (see Life of Themistocles) will inform us, that it happened but too often, that the strongest cities corrupted and awed the weaker, and that judgment went in favor of the more powerful party. What is the condition of the lesser states in the German confederacy? We all know that they are exceedingly trampled upon, and that they owe their safety, as far as they enjoy it, partly to their enlisting themselves under the rival banners of the preëminent members, partly to alliances with neighboring princes, which the constitution of the empire does not prohibit. What is the state of things in the lax system of the Dutch confederacy? Holland contains about half the people, supplies about half the money, and by her influence silently and indirectly governs the whole republic. In a word, the two extremes before us are, a perfect separation, and a perfect incorporation of the thirteen states. In the first case, they would be independent nations, subject to no law but the law of nations. In the last, they would be mere counties of one entire republic, subject to one common law. In the first case, the smaller states would have every thing to fear from the larger. In the last, they would have nothing to fear. The true policy of the small states, therefore, lies in promoting those principles, and that form of government, which will most approximate the states to the condition of counties. Another consideration may be added. If the general government be feeble, the larger states, distrusting its continuance, and foreseeing that their importance and security may depend on their own size and strength, will never submit to a partition. Give to the general government sufficient energy and permanency, and you remove the objection. Gradual partitions of the large, and junctions of the small states, will be facilitated, and time may effect that equalization which is wished for by the small states now, but can never be accomplished at once.148

Mr. WILSON. The leading argument of those who contend for equality of votes among the states, is, that the states, as such, being equal, and being represented, not as districts of individuals, but in their political and corporate capacities, are entitled to an equality of suffrage. According to this mode of reasoning, the representation of the boroughs in England, which has been allowed on all hands to be the rotten part of the constitution, is perfectly right and proper. They are, like the states, represented in their corporate capacity; like the states, therefore, they are entitled to equal voices—Old Sarum to as many as London. And instead of the injury supposed hitherto to be done to London, the true ground of complaint lies with Old Sarum: for London, instead of two, which is her proper share, sends four representatives to Parliament.149

Mr. SHERMAN. The question is, not what rights naturally belong to man, but how they may be most equally and effectually guarded in society. And if some give up more than others, in order to obtain this end, there can be no room for complaint. To do otherwise, to require an equal concession from all, if it would create danger to the rights of some, would be sacrificing the end to the means. The rich man who enters into society along with the poor man gives up more than the poor man, yet, with an equal vote, he is equally safe. Were he to have more votes than the poor man, in proportion to his superior stake, the rights of the poor man would immediately cease to be secure. This consideration prevailed when the Articles of Confederation were formed.150

The determination of the question, for striking out the word "not," was put off till to-morrow, at the request of the deputies from New York.

Dr. FRANKLIN. Mr. President, the small progress we have made after four or five weeks' close attendance and continual reasonings with each other—our different sentiments on almost every question, several of the last producing as many noes as ayes—is, methinks, a melancholy proof of the imperfection of the human understanding. We indeed seem to feel our own want of political wisdom, since we have been running about in search of it. We have gone back to ancient history for models of government, and examined the different forms of those republics which, having been formed with the seeds of their own dissolution, now no longer exist. And we have viewed modern states all round Europe, but find none of their constitutions suitable to our circumstances.

In this situation of this assembly, groping, as it were, in the dark, to find political truth, and scarce able to distinguish it when presented to us, how has it happened, sir, that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings? In the beginning of the contest with Great Britain, when we were sensible of danger, we had daily prayer in this room for the divine protection. Our prayers, sir, were heard, and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a superintending Providence in our favor. To that kind Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful Friend? Or do we imagine that we no longer need his assistance? I have lived, sir, a long time, and, the longer I live, the more convincing proofs I see of this truth—*that God governs in the affairs of men.* And if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, sir, in the sacred writings, that "except the Lord build the house, they labor in vain that build it." I firmly believe this; and I also believe that without his concurring aid we shall succeed, in this political building, no better than the builders of Babel. We shall be divided by our little partial local interests; our projects will be confounded; and we ourselves shall become a reproach and by-word down to future ages. And, what is worse, mankind may hereafter, from this unfortunate instance, despair of establishing governments by human wisdom, and leave it to chance, war, and conquest.

I therefore beg leave to move that, henceforth, prayers imploring the assistance of Heaven, and its blessings on our deliberations, be held in this assembly every morning before we proceed to business, and that one or more of the clergy of this city be requested to officiate in that service.

Mr. SHERMAN seconded the motion.

Mr. HAMILTON and several others expressed their apprehensions that, however proper such a resolution might have been at the beginning of the Convention, it might at this late day, in the first place, bring on it some disagreeable animadversions; and, in the second, lead the public to believe that the embarrassments and dissensions within the Convention had suggested this measure. It was answered, by Dr.

FRANKLIN, Mr. SHERMAN, and others, that the past omission of a duty could not justify a further omission; that the rejection of such a proposition would expose the Convention to more unpleasant animadversions than the adoption of it; and that the alarm out of doors, that might be excited for the state of things within, would at least be as likely to do good as ill.

Mr. WILLIAMSON observed, that the true cause of the omission could not be mistaken. The Convention had no funds.

Mr. RANDOLPH proposed, in order to give a favorable aspect to the measure, that a sermon be preached at the request of the Convention on the Fourth of July, the anniversary of Independence; and thenceforward prayers, &c., to be read in the Convention every morning. Dr. FRANKLIN seconded this motion. After several unsuccessful attempts for silently postponing this matter by adjourning, the adjournment was at length carried, without any vote on the motion.151

Friday,*June* 29.

In Convention.—Dr. JOHNSON. The controversy must be endless whilst gentlemen differ in the grounds of their arguments: those on one side considering the states as districts of people composing one political society, those on the other considering them as so many political societies. The fact is, that the states do exist as political societies, and a government is to be formed for them in their political capacity, as well as for the individuals composing them. Does it not seem to follow, that if the states, as such, are to exist, they must be armed with some power of self-defence? This is the idea of Col. Mason, who appears to have looked to the bottom of this matter. Besides the aristocratic and other interests, which ought to have the means of defending themselves, the states have their interests as such, and are equally entitled to like means. On the whole, he thought that as, in some respects, the states are to be considered in their political capacity, and, in others, as districts of individual citizens, the two ideas embraced on different sides, instead of being opposed to each other, ought to be combined—that in *one* branch the *people* ought to be represented, in the *other,* the *states.*

Mr. GORHAM. The states, as now confederated, have no doubt a right to refuse to be consolidated, or to be formed into any new system. But he wished the small states, which seemed most ready to object, to consider which are to give up most, they or the larger ones. He conceived that a rupture of the Union would be an event unhappy for all; but surely the large states would be least unable to take care of themselves, and to make connections with one another. The weak, therefore, were most interested in establishing some general system for maintaining order. If, among individuals composed partly of weak and partly of strong, the former most need the protection of law and government, the case is exactly the same with weak and powerful states. What would be the situation of Delaware, (for these things, he found, must be spoken out, and it might as well be done at first as last,) what would be the situation of Delaware in case of a separation of the states? Would she not be at the mercy of Pennsylvania? Would not her true interest lie in being consolidated with her, and ought she not now to wish for such a union with Pennsylvania, under one government,

as will put it out of the power of Pennsylvania to oppress her? Nothing can be more ideal than the danger apprehended by the states from their being formed into one nation. Massachusetts was originally three colonies, viz., old Massachusetts, Plymouth, and the Province of Maine. These apprehensions existed then. An incorporation took place, all parties were safe and satisfied, and every distinction is now forgotten. The case was similar with Connecticut and New Haven. The dread of union was reciprocal; the consequence of it equally salutary and satisfactory. In like manner, New Jersey has been made one society out of two parts. Should a separation of the states take place, the fate of New Jersey would be worst of all. She has no foreign commerce, and can have but little. Pennsylvania and New York will continue to levy taxes on her consumption. If she consults her interest, she would beg of all things to be annihilated. The apprehensions of the small states ought to be appeased by another reflection. Massachusetts will be divided. The province of Maine is already considered as approaching the term of its annexation to it; and Pennsylvania will probably not increase, considering the present state of her population, and other events that may happen. On the whole, he considered a union of the states as necessary to their happiness, and a firm general government as necessary to their union. He should consider it his duty, if his colleagues viewed the matter in the same light he did, to stay here as long as any other state would remain with them, in order to agree on some plan that could, with propriety, be recommended to the people.

Mr. ELLSWORTH did not despair. He still trusted that some good plan of government would be devised and adopted.

Mr. READ. He should have no objection to the system if it were truly national, but it has too much of a federal mixture in it. The little states, he thought, had not much to fear. He suspected that the large states felt their want of energy, and wished for a general government to supply the defect. Massachusetts was evidently laboring under her weakness, and he believed Delaware would not be in much danger if in her neighborhood. Delaware had enjoyed tranquillity, and he flattered himself would continue to do so. He was not, however, so selfish as not to wish for a good general government. In order to obtain one, the whole states must be incorporated. If the states remain, the representatives of the large ones will stick together, and carry every thing before them. The executive, also, will be chosen under the influence of this partiality, and will betray it in his administration. These jealousies are inseparable from the scheme of leaving the states in existence. They must be done away. The ungranted lands, also, which have been assumed by particular states, must be given up. He repeated his approbation of the plan of Mr. Hamilton, and wished it to be substituted for that on the table.

Mr. MADISON agreed with Dr. Johnson, that the mixed nature of the government ought to be kept in view, but thought too much stress was laid on the rank of the states as political societies. There was a gradation, he observed, from the smallest corporation, with the most limited powers, to the largest empire, with the most perfect sovereignty. He pointed out the limitations on the sovereignty of the states, as now confederated. Their laws, in relation to the paramount law of the Confederacy, were analagous to that of bye-laws to the supreme law within a state. Under the proposed government, the powers of the states will be much further reduced. According to the

views of every member, the general government will have powers far beyond those exercised by the British Parliament when the states were part of the British empire. It will in particular, have the power, without the consent of the state legislatures, to levy money directly from the people themselves, and, therefore, not to divest such *unequal* portions of the people as composed the several states of an *equal* voice, would subject the system to the reproaches and evils which have resulted from the vicious representation in Great Britain.

He entreated the gentlemen representing the small states to renounce a principle which was confessedly unjust, which could never be admitted, and which, if admitted, must infuse mortality into a Constitution which we wished to last forever. He prayed them to ponder well the consequences of suffering the Confederacy to go to pieces. It had been said that the want of energy in the large states would be a security to the small. It was forgotten that this want of energy proceeded from the supposed security of the states against all external danger. Let each state depend on itself for its security, and let apprehensions arise of danger from distant powers or from neighboring states, and the languishing condition of all the states, large as well as small, would soon be transformed into vigorous and high-toned governments. His great fear was, that their governments would then have too much energy; that this might not only be formidable in the large to the small states, but fatal to the internal liberty of all. The same causes which have rendered the old world the theatre of incessant wars, and have banished liberty from the face of it, would soon produce the same effects here. The weakness and jealousy of the small states would quickly introduce some regular military force, against sudden danger from their powerful neighbors. The example would be followed by others, and would soon become universal. In time of actual war, great discretionary powers are constantly given to the executive magistrate. Constant apprehension of war has the same tendency to render the head too large for the body. A standing military force, with an overgrown executive, will not long be safe companions to liberty. The means of defence against foreign danger have been always the instruments of tyranny at home. Among the Romans it was a standing maxim, to excite a war whenever a revolt was apprehended. Throughout all Europe, the armies kept up under the pretext of defending, have enslaved, the people. It is, perhaps, questionable, whether the best-concerted system of absolute power in Europe could maintain itself, in a situation where no alarms of external danger could tame the people to the domestic yoke. The insular situation of Great Britain was the principal cause of her being an exception to the general fate of Europe. It has rendered less defence necessary, and admitted a kind of defence which could not be used for the purpose of oppression. These consequences, he conceived, ought to be apprehended, whether the states should run into a total separation from each other, or should enter into partial confederacies. Either event would be truly deplorable, and those who might be accessary to either could never be forgiven by their country, nor by themselves.152

* Mr. HAMILTON observed, that individuals forming political societies modify their rights differently, with regard to suffrage. Examples of it are found in all the states. In all of them some individuals are deprived of the right altogether, not having the requisite qualification of property. In some of the states, the right of suffrage is allowed in some cases and refused in others. To vote for a member in one branch, a

certain quantum of property—to vote for a member in another branch of the legislature, a higher quantum of property, is required. In like manner, states may modify their right of suffrage differently, the larger exercising a larger, the smaller a smaller, share of it. But as states are a collection of individual men, which ought we to respect most, the rights of the people composing them, or of the artificial beings resulting from the composition? Nothing could be more preposterous or absurd than to sacrifice the former to the latter. It has been said that, if the smaller states renounce their *equality,* they renounce, at the same time, their *liberty.* The truth is, it is a contest for power, not for liberty. Will the men composing the small states be less free than those composing the larger? The state of Delaware, having forty thousand souls, will lose *power,* if she has one tenth only of the votes allowed to Pennsylvania, having four hundred thousand; but will the people of Delaware *be less free,* if each citizen has an equal vote with each citizen of Pennsylvania? He admitted that common residence within the same state would produce a certain degree of attachment, and that this principle might have a certain influence on public affairs. He thought, however, that this might, by some precautions, be in a great measure excluded, and that no material inconvenience could result from it, as there could not be any ground for combination among the states whose influence was most dreaded. The only considerable distinction of interests lay between the carrying and non-carrying states—which divides, instead of uniting, the largest states. No considerable inconvenience had been found from the division of the state of New York into different districts of different sizes.

Some of the consequences of a dissolution of the Union, and the establishment of partial confederacies, had been pointed out. He would add another of a most serious nature. Alliances will immediately be formed with different rival and hostile nations of Europe, who will foment disturbances among ourselves, and make us parties to all their own quarrels. Foreign nations having American dominion, are, and must be, jealous of us. Their representatives betray the utmost anxiety for our fate; and for the result of this meeting, which must have an essential influence on it. It had been said, that respectability in the eyes of foreign nations was not the object at which we aimed; that the proper object of republican government was domestic tranquillity and happiness. This was an ideal distinction. No government could give us tranquillity and happiness at home, which did not possess sufficient stability and strength to make us respectable abroad. This was the critical moment for forming such a government. We should run every risk in trusting to future amendments. As yet we retain the habits of union. We are weak, and sensible of our weakness. Henceforward, the motives will become feebler, and the difficulties greater. It is a miracle that we are now here, exercising our tranquil and free deliberations on the subject. It would be madness to trust to future miracles. A thousand causes must obstruct a reproduction of them.153

Mr. PIERCE considered the equality of votes under the Confederation as the great source of the public difficulties. The members of Congress were advocates for local advantages. State distinctions must be sacrificed as far as the general good required, but without destroying the states. Though from a small state, he felt himself a citizen of the United States.

Mr. GERRY urged, that we never were independent states, were not such now, and never could be, even on the principles of the Confederation. The states, and the advocates for them, were intoxicated with the idea of their *sovereignty.* He was a member of Congress at the time the Federal Articles were formed. The injustice of allowing each state an equal vote was long insisted on. He voted for it, but it was against his judgment, and under the pressure of public danger, and the obstinacy of the lesser states. The present Confederation he considered as dissolving. The fate of the Union will be decided by the Convention. If they do not agree on something, few delegates will probably be appointed to Congress. If they do, Congress will probably be kept up till the new system should be adopted. He lamented that, instead of coming here like a band of brothers, belonging to the same family, we seemed to have brought with us the spirit of political negotiators.

Mr. L. MARTIN remarked, that the language of the states being *sovereign and independent,* was once familiar and understood; though it seemed now so strange and obscure. He read those passages in the Articles of Confederation which describe them in that language.

On the question, as moved by Mr. Lansing, shall the word "not" be struck out,—

Connecticut, New York, New Jersey, Delaware, ay, 4; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 6; Maryland, divided.

On the motion to agree to the clause as reported, "that the rule of suffrage in the first branch ought not to be according to that established by the Articles of the Confederation,"—

Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 6; Connecticut, New York, New Jersey, Delaware, no, 4; Maryland, divided.

Dr. JOHNSON and Mr. ELLSWORTH moved to postpone the residue of the clause, and take up the eighth resolution.

On the question,—

Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Massachusetts, Delaware, no, 2.

Mr. ELLSWORTH moved, "that the rule of suffrage in the second branch be the same with that established by the Articles of Confederation." He was not sorry, on the whole, he said, that the vote just passed had determined against this rule in the first branch. He hoped it would become a ground of compromise with regard to the second branch. We were partly national, partly federal. The proportional representation in the first branch was conformable to the national principle, and would secure the large states against the small. An equality of voices was conformable to the federal principle, and was necessary to secure the small states against the large. He trusted that on this middle ground a compromise would take place. He did not see that it could on any other, and if no compromise should take place, our meeting would not only be in vain, but worse than in vain. To the eastward, he was sure Massachusetts

was the only state that would listen to a proposition for excluding the states, as equal political societies, from an equal voice in both branches. The others would risk every consequence rather than part with so dear a right. An attempt to deprive them of it was at once cutting the body of America in two, and, as he supposed would be the case, somewhere about this part of it. The large states, he conceived, would, notwithstanding the equality of votes, have an influence that would maintain their superiority. Holland, as had been admitted, (by Mr. Madison,) had, notwithstanding a like equality in the Dutch confederacy, a prevailing influence in the public measures. The power of self-defence was essential to the small states. Nature had given it to the smallest insect of the creation. He could never admit that there was no danger of combinations among the large states. They will, like individuals, find out and avail themselves of the advantage to be gained by it. It was true the danger would be greater if they were contiguous, and had a more immediate and common interest. A defensive combination of the small states was rendered more difficult by their greater number. He would mention another consideration of great weight. The existing Confederation was founded on the equality of the states in the article of suffrage,—was it meant to pay no regard to this antecedent plighted faith? Let a strong executive, a judiciary, and legislative power, be created, but let not too much be attempted, by which all may be lost. He was not in general a half-way man, yet he preferred doing half the good we could, rather than do nothing at all. The other half may be added when the necessity shall be more fully experienced.

Mr. BALDWIN could have wished that the powers of the general legislature had been defined, before the mode of constituting it had been agitated. He should vote against the motion of Mr. Ellsworth, though he did not like the resolution as it stood in the report of the Committee of the Whole. He thought the second branch ought to be the representation of property, and that, in forming it, therefore, some reference ought to be had to the relative wealth of their constituents, and to the principles on which the senate of Massachusetts was constituted. He concurred with those who thought it would be impossible for the general legislature to extend its cares to the local matters of the states.154

Adjourned.

Saturday,*June* 30.

In Convention.—Mr. BREARLY moved that the president write to the executive of New Hampshire, informing it that the business depending before the Convention was of such a nature as to require the immediate attendance of the deputies of that state. In support of his motion, he observed, that the difficulties of the subject, and the diversity of opinions, called for all the assistance we could possibly obtain. (It was well understood that the object was to add New Hampshire to the number of states opposed to the doctrine of proportional representation, which it was presumed, from her relative size, she must be adverse to.)

Mr. PATTERSON seconded the motion.

Mr. RUTLEDGE could see neither the necessity nor propriety of such a measure. They are not unapprized of the meeting, and can attend if they choose. Rhode Island might as well be urged to appoint and send deputies. Are we to suspend the business until the deputies arrive? If we proceed, he hoped all the great points would be adjusted before the letter could produce its effect.

Mr. KING said he had written more than once as a private correspondent, and the answer gave him every reason to expect that state would be represented very shortly, if it should be so at all. Circumstances of a personal nature had hitherto prevented it. A letter could have no effect.

Mr. WILSON wished to know, whether it would be consistent with the rule or reason of secrecy, to communicate to New Hampshire that the business was of such a nature as the motion described. It would spread a great alarm. Besides, he doubted the propriety of soliciting any state on the subject, the meeting being merely voluntary.

On motion of Mr. Brearly,

New York, New Jersey, ay, 2; Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, no, 5; Maryland, divided. Pennsylvania, Delaware, Georgia, not on the floor.155

The motion of Mr. Ellsworth being resumed, for allowing each state an equal vote in the second branch,—

Mr. WILSON did not expect such a motion after the establishment of the contrary principle in the first branch; and considering the reasons which would oppose it, even if an equal vote had been allowed in the first branch. The gentleman from Connecticut (Mr. Ellsworth) had pronounced, that, if the motion should not be acceded to, of all the states north of Pennsylvania, one only would agree to any general government. He entertained more favorable hopes of Connecticut and of the other Northern States. He hoped the alarms exceeded their cause, and that they would not abandon a country to which they were bound by so many strong and endearing ties. But should the deplored event happen, it would neither stagger his sentiments nor his duty. If the minority of the people of America refuse to coalesce with the majority on just and proper principles, if a separation must take place, it could never happen on better grounds. The votes of yesterday against the just principle of representation were as twenty-two to ninety of the people of America. Taking the opinions to be the same on this point,—and he was sure, if there was any room for change, it could not be on the side of the majority,—the question will be, Shall less than one fourth of the United States withdraw themselves from the Union, or shall more than three fourths renounce the inherent, indisputable, and unalienable rights of men, in favor of the artificial system of states? If issue must be joined, it was on this point he would choose to join it. The gentleman from Connecticut, in supposing that the preponderance secured to the majority in the first branch had removed the objections to an equality of votes in the second branch, for the security of the minority, narrowed the case extremely. Such an equality will enable the minority to control, in all cases whatsoever, the sentiments and interests of the majority. Seven states will control six: seven states, according to

the estimates that had been used, composed twenty-four ninetieths of the whole people. It would be in the power, then, of less than one third to overrule two thirds, whenever a question should happen to divide the states in that manner. Can we forget for whom we are forming a government? Is it for *men,* or for the imaginary beings called *states?* Will our honest constituents be satisfied with metaphysical distinctions? Will they, ought they to, be satisfied with being told, that the one third compose the greater number of states? The rule of suffrage ought on every principle to be the same in the second as in the first branch. If the government be not laid on this foundation, it can be neither solid nor lasting. Any other principle will be local, confined, and temporary. This will expand with the expansion, and grow with the growth, of the United States. Much has been said of an imaginary combination of three states. Sometimes a danger of monarchy, sometimes of aristocracy, has been charged on it. No explanation, however, of the danger has been vouchsafed. It would be easy to prove, both from reason and history, that rivalships would be more probable than coalitions; and that there are no coinciding interests that could produce the latter. No answer has yet been given to the observations of Mr. Madison on this subject. Should the executive magistrate be taken from one of the large states, would not the other two be thereby thrown into the scale with the other states? Whence, then, the danger of monarchy? Are the people of the three large states more aristocratic than those of the small ones? Whence, then, the danger of aristocracy from their influence? It is all a mere illusion of names. We talk of states, till we forget what they are composed of. Is a real and fair majority the natural hotbed of aristocracy? It is a part of the definition of this species of government, or rather of tyranny, that the smaller number governs the greater. It is true that a majority of states in the second branch cannot carry a law against a majority of the people in the first. But this removes half only of the objection. Bad governments are of two sorts,—first, that which does too little; secondly, that which does too much; that which fails through weakness, and that which destroys through oppression. Under which of these evils do the United States at present groan? Under the weakness and inefficiency of its government. To remedy this weakness we have been sent to this Convention. If the motion should be agreed to, we shall leave the United States fettered precisely as heretofore; with the additional mortification of seeing the good purposes of the fair representation of the people, in the first branch, defeated in the second. Twenty-four will still control sixty-six. He lamented that such a disagreement should prevail on the point of representation; as he did not foresee that it would happen on the other point most contested, the boundary between the general and the local authorities. He thought the states necessary and valuable parts of a good system.

Mr. ELLSWORTH. The capital objection of Mr. Wilson, “that the minority will rule the majority,” is not true. The power is given to the few to save them from being destroyed by the many. If an equality of votes had been given to them in both branches, the objection might have had weight. Is it a novel thing that the few should have a check on the many? Is it not the case in the British constitution, the wisdom of which so many gentlemen have united in applauding? Have not the House of Lords, who form so small a proportion of the nation, a negative on the laws, as a necessary defence of their peculiar rights against the encroachments of the commons? No instance of a confederacy has existed in which an equality of voices has not been exercised by the members of it. We are running from one extreme to another. We are

razing the foundations of the building, when we need only repair the roof. No salutary measure has been lost for want of *a majority of the states* to favor it. If security be all that the great states wish for, the first branch secures them. The danger of combinations among them is not imaginary. Although no particular abuses could be foreseen by him, the possibility of them would be sufficient to alarm him. But he could easily conceive cases in which they might result from such combinations. Suppose that, in pursuance of some commercial treaty or arrangement, three or four free ports, and no more, were to be established, would not combinations be formed in favor of Boston, Philadelphia, and some port of the Chesapeake? A like concert might be formed in the appointment of the great offices. He appealed again to the obligations of the federal pact, which was still in force, and which had been entered into with so much solemnity; persuading himself that some regard would still be paid to the plighted faith under which each state, small as well as great, held an equal right of suffrage in the general councils. His remarks were not the result of partial or local views. The state he represented (Connecticut) held a middle rank.156

Mr. MADISON did justice to the able and close reasoning of Mr. Ellsworth, but must observe that it did not always accord with itself. On another occasion, the large states were described by him as the aristocratic states, ready to oppress the small. Now, the small are the House of Lords, requiring a negative to defend them against the more numerous Commons. Mr. Ellsworth had also erred in saying that no instance had existed in which confederated states had not retained to themselves a perfect equality of suffrage. Passing over the German system, in which the king of Prussia has nine voices, he reminded Mr. Ellsworth of the Lycian confederacy, in which the component members had votes proportioned to their importance, and which Montesquieu recommends as the fittest model for that form of government. Had the fact been as stated by Mr. Ellsworth, it would have been of little avail to him, or rather would have strengthened the arguments against him; the history and fate of the several confederacies, modern as well as ancient, demonstrating some radical vice in their structure. In reply to the appeal of Mr. Ellsworth to the faith plighted in the existing federal compact, he remarked, that the party claiming from others an adherence to a common engagement ought at least to be guiltless itself of a violation. Of all the states, however, Connecticut was perhaps least able to urge this plea. Besides the various omissions to perform the stipulated acts, from which no state was free, the legislature of that state had, by a pretty recent vote, *positively refused* to pass a law for complying with the requisitions of Congress, and had transmitted a copy of the vote to Congress. It was urged, he said, continually, that an equality of votes in the second branch was not only necessary to secure the small, but would be perfectly safe to the large ones, whose majority in the first branch was an effectual bulwark. But, notwithstanding this apparent defence the majority of states might still injure the majority of the people. In the first place, they could *obstruct* the wishes and interests of the majority. Secondly, they could *extort* measures repugnant to the wishes and interest of the majority. Thirdly, they could *impose* measures adverse thereto; as the second branch will probably exercise some great powers, in which the first will not participate. He admitted that every peculiar interest, whether in any class of citizens, or any description of states, ought to be secured as far as possible. Wherever there is danger of attack, there ought to be given a constitutional power of defence. But he contended that the states were divided into different interests, not by their difference

of size, but by other circumstances; the most material of which resulted partly from climate, but principally from the effects of their having, or not having, slaves. These two causes concurred in forming the great division of interests in the United States. It did not lie between the large and small states. It lay between the northern and southern: and if any defensive power were necessary, it ought to be mutually given to these two interests. He was so strongly impressed with this important truth, that he had been casting about in his mind for some expedient that would answer the purpose. The one which had occurred was, that, instead of proportioning the votes of the states, in both branches, to their respective numbers of inhabitants, computing the slaves in the ratio of five to three, they should be represented in one branch according to the number of free inhabitants only; and in the other, according to the whole number, counting the slaves as free. By this arrangement the southern scale would have the advantage in one House, and the northern in the other. He had been restrained from proposing this expedient by two considerations; one was his unwillingness to urge any diversity of interests on an occasion where it is but too apt to arise of itself; the other was the inequality of powers that must be vested in the two branches, and which would destroy the equilibrium of interests.

Mr. ELLSWORTH assured the House, that, whatever might be thought of the representatives of Connecticut, the state was entirely federal in her disposition. He appealed to her great exertions, during the war, in supplying both men and money. The muster-rolls would show she had more troops in the field than Virginia. If she had been delinquent, it had been from inability, and not more so than other states.

Mr. SHERMAN. Mr. Madison animadverted on the delinquency of the states; when his object required him to prove that the constitution of Congress was faulty. Congress is not to blame for the faults of the states. Their measures have been right, and the only thing wanting has been a further power in Congress to render them effctual.

Mr. DAVIE was much embarrassed, and wished for explanations. The report of the committee, allowing the legislatures to choose the Senate, and establishing a proportional representation in it, seemed to be impracticable. There will, according to this rule, be ninety members in the outset, and the number will increase as new states are added. It was impossible that so numerous a body could possess the activity and other qualities required in it. Were he to vote on the comparative merits of the report, as it stood, and the amendment, he should be constrained to prefer the latter. The appointment of the Senate by electors, chosen by the people for that purpose, was, he conceived, liable to an insuperable difficulty. The larger counties or districts, thrown into a general district, would certainly prevail over the smaller counties or districts, and merit in the latter would be excluded altogether. The report, therefore, seemed to be right in referring the appointment to the legislatures, whose agency in the general system did not appear to him objectionable, as it did to some others. The fact was, that the local prejudices and interests, which could not be denied to exist, would find their way into the national councils, whether the representatives should be chosen by the legislatures or by the people themselves. On the other hand, if a proportional representation was attended with insuperable difficulties, the making the Senate the representative of the states looked like bringing us back to Congress again, and

shutting out all the advantages expected from it. Under this view of the subject, he could not vote for any plan for the Senate yet proposed. He thought that, in general, there were extremes on both sides. We were partly federal, partly national, in our union; and he did not see why the government might not in some respects operate on the states, in others on the people.

Mr. WILSON admitted the question concerning the number of senators to be embarrassing. If the smallest states be allowed one, and the others in proportion, the Senate will certainly be too numerous. He looked forward to the time when the smallest states will contain a hundred thousand souls at least. Let there be then one senator in each, for every hundred thousand souls, and let the states not having that number of inhabitants be allowed one. He was willing himself to submit to this temporary concession to the small states; and threw out the idea as a ground of compromise.

Dr. FRANKLIN. The diversity of opinions turns on two points. If a proportional representation takes place, the small states contend that their liberties will be in danger. If an equality of votes is to be put in its place, the large states say their money will be in danger. When a broad table is to be made, and the edges of planks do not fit, the artist takes a little from both, and makes a good joint. In like manner, here, both sides must part with some of their demands, in order that they may join in some accommodating proposition. He had prepared one, which he would read, that it might lie on the table for consideration. The proposition was in the words following:

“That the legislatures of the several states shall choose and send an equal number of delegates, namely,—, who are to compose the second branch of the general legislature.

“That in all cases or questions wherein the sovereignty of individual states may be affected, or whereby their authority over their own citizens may be diminished, or the authority of the general government within the several states augmented, each state shall have equal suffrage.

“That in the appointment of all civil officers of the general government, in the election of whom the second branch may by the constitution have part, each state shall have equal suffrage.

“That in fixing the salaries of such officers, and in all allowances for public services, and generally in all appropriations and dispositions of money to be drawn out of the general treasury, and in all laws for supplying that treasury, the delegates of the several states shall have suffrage in proportion to the sums which their respective states do actually contribute to the treasury.”

Where a ship had many owners, this was the rule of deciding on her expedition. He had been one of the ministers from this country to France during the joint war, and would have been very glad if allowed a vote in distributing the money to carry it on.

Mr. KING observed, that the simple question was, whether each state should have an equal vote in the second branch: that it must be apparent to those gentlemen who liked neither the motion for this equality, nor the report as it stood, that the report was as susceptible of melioration as the motion: that a reform would be nugatory and nominal only, if we should make another Congress of the proposed Senate: that if the adherence to an equality of votes was fixed and unalterable, there could not be less obstinacy on the other side; and that we were in fact cut asunder already, and it was in vain to shut our eyes against it: that he was, however, filled with astonishment, that, if we were convinced that every *man* in America was secured in all his rights, we should be ready to sacrifice this substantial good to the phantom of *state* sovereignty: that his feelings were more harrowed and his fears more agitated for his country than he could express: that he conceived this to be the last opportunity of providing for its liberty and happiness: that he could not, therefore, but repeat his amazement, that, when a just government, founded on a fair representation of the *people* of America, was within our reach, we should renounce the blessing, from an attachment to the ideal freedom and importance of *states:* that should this wonderful illusion continue to prevail, his mind was prepared for every event, rather than sit down under a government founded on a vicious principle of representation, and which must be as short-lived as it would be unjust. He might prevail on himself to accede to some such expedient as had been hinted by Mr. Wilson; but he never could listen to an equality of votes, as proposed in the motion.

Mr. DAYTON. When assertion is given for proof, and terror substituted for argument, he presumed they would have no effect, however eloquently spoken. It should have been shown that the evils we have experienced have proceeded from the equality, now objected to; and that the seeds of dissolution for the state governments are not sown in the general government. He considered the system on the table as a novelty, an amphibious monster; and was persuaded that it never would be received by the people.

Mr. MARTIN would never confederate, if it could not be done on just principles.

Mr. MADISON would acquiesce in the concession hinted by Mr. Wilson, on condition that a due independence should be given to the Senate. The plan in its present shape makes the Senate absolutely dependent on the states. The Senate, therefore, is only another edition of Congress. He knew the faults of that body, and had used a bold language against it. Still he would preserve the state rights as carefully as the trial by jury.

Mr. BEDFORD contended, that there was no middle way between a perfect consolidation and a mere confederacy of the states. The first is out of the question; and in the latter they must continue, if not perfectly, yet equally, sovereign. If political societies possess ambition, avarice, and all the other passions which render them formidable to each other, ought we not to view them in this light here? Will not the same motives operate in America as elsewhere? If any gentleman doubts it, let him look at the votes. Have they not been dictated by interest, by ambition? Are not the large states evidently seeking to aggrandize themselves at the expense of the small? They think, no doubt, that they have right on their side, but interest had blinded their

eyes. Look at Georgia. Though a small state at present, she is actuated by the prospect of soon being a great one. South Carolina is actuated both by present interest and future prospects. She hopes, too, to see the other states cut down to her own dimensions. North Carolina has the same motives of present and future interest. Virginia follows. Maryland is not on that side of the question. Pennsylvania has a direct and future interest. Massachusetts has a decided and palpable interest in the part she takes. Can it be expected that the small states will act from pure disinterestedness? Look at Great Britain. Is the representation there less unequal? But we shall be told, again, that that is the rotten part of the constitution. Have not the boroughs, however, held fast their constitutional rights? And are we to act with greater purity than the rest of mankind? An exact proportion in the representation is not preserved in any one of the states. Will it be said that an inequality of power will not result from an inequality of votes? Give the opportunity, and ambition will not fail to abuse it. The whole history of mankind proves it. The three large states have a common interest to bind them together in commerce. But whether a combination, as we supposed, or a competition, as others supposed, shall take place among them, in either case the small states must be ruined. We must, like Solon, make such a government as the people will approve. Will the smaller states ever agree to the proposed degradation of them? It is not true that the people will not agree to enlarge the powers of the present Congress. The language of the people has been, that Congress ought to have the power of collecting an impost, and of coercing the states where it may be necessary. On the first point they have been explicit, and, in a manner, unanimous in their declarations. And must they not agree to this, and similar measures, if they ever mean to discharge their engagements? The little states are willing to observe their engagements, but will meet the large ones on no ground but that of the Confederation. We have been told, with a dictatorial air, that this is the last moment for a fair trial in favor of a good government. It will be the last, indeed, if the propositions reported from the committee go forth to the people. He was under no apprehensions. The large states dare not dissolve the Confederation. If they do, the small ones will find some foreign ally, of more honor and good faith, who will take them by the hand, and do them justice. He did not mean, by this, to intimidate or alarm. It was a natural consequence, which ought to be avoided by enlarging the federal powers, not annihilating the federal system. This is what the people expect. All agree in the necessity of a more efficient government; and why not make such a one as they desire?157

Mr. ELLSWORTH. Under a national government, he should participate in the national security, as remarked by Mr. King; but that was all. What he wanted was domestic happiness. The national government could not descend to the local objects on which this depended. It could only embrace objects of a general nature. He turned his eyes, therefore, for the preservation of his rights, to the state governments. From these alone he could derive the greatest happiness he expects in this life. His happiness depends on their existence, as much as a new-born infant on its mother for nourishment. If this reasoning was not satisfactory, he had nothing to add that could be so.

Mr. KING was for preserving the states in a subordinate degree, and as far as they could be necessary for the purposes stated by Mr. Ellsworth. He did not think a full

answer had been given to those who apprehended a dangerous encroachment on their jurisdictions. Expedients might be devised, as he conceived, that would give them all the security the nature of things would admit of. In the establishment of societies, the constitution was, to the legislature, what the laws were to individuals. As the fundamental rights of individuals are secured by express provisions in the state constitutions, why may not a like security be provided for the rights of states in the national Constitution? The articles of union between England and Scotland furnish an example of such a provision, in favor of sundry rights of Scotland. When that union was in agitation, the same language of apprehension which has been heard from the smaller states was in the mouths of the Scotch patriots. The articles, however, have not been violated, and the Scotch have found an increase of prosperity and happiness. He was aware that this will be called a mere *paper security.* He thought it a sufficient answer to say, that, if fundamental articles of compact are no sufficient defence against physical power, neither will there be any safety against it, if there be no compact. He could not sit down without taking some notice of the language of the honorable gentleman from Delaware, (Mr. Bedford.) It was not he that had uttered a dictatorial language. This intemperance had marked the honorable gentleman himself. It was not he who, with a vehemence unprecedented in that House, had declared himself ready to turn his hopes from our common country, and court the protection of some foreign hand. This, too, was the language of the honorable member himself. He was grieved that such a thought had entered his heart. He was more grieved that such an expression had dropped from his lips. The gentleman could only excuse it to himself on the score of passion. For himself, whatever might be his distress, he would never court relief from a foreign power.

Adjourned.

Monday,*July* 2.

In Convention.—On the question for allowing each state one vote in the second branch, as moved by Mr. Ellsworth, it was lost, by an equal division of votes,—

Connecticut, New York, New Jersey, Delaware, Maryland, (Mr. Jenifer not being present, Mr. Martin alone voted,) ay, 5; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, no, 5; Georgia, divided, (Mr. Baldwin, ay, Mr. Houston, no.)

Mr. PINCKNEY thought an equality of votes in the second branch inadmissible. At the same time, candor obliged him to admit, that the large states would feel a partiality for their own citizens, and give them a preference in appointments: that they might also find some common points in their commercial interests, and promote treaties favorable to them. There is a real distinction between the northern and southern interests. North Carolina, South Carolina and Georgia, in their rice and indigo, had a peculiar interest, which might be sacrificed. How, then, shall the larger states be prevented from administering the general government as they please, without being themselves unduly subjected to the will of the smaller? By allowing them some, but not a full, proportion. He was extremely anxious that something should be done, considering this as the last appeal to a regular experiment. Congress have failed in

almost every effort for an amendment of the federal system. Nothing has prevented a dissolution of it but the appointment of this Convention; and he could not express his alarms for the consequence of such an event. He read his motion to form the states into classes, with an apportionment of senators among them. (See Article 4 of his plan—ante, p. 129.)

Gen. PINCKNEY was willing the motion might be considered. He did not entirely approve it. He liked better the motion of Dr. Franklin, (q. v. June 30, p. 266.) Some compromise seemed to be necessary, the states being exactly divided on the question for an equality of votes in the second branch. He proposed that a committee consisting of a member from each state should be appointed to devise and report some compromise.

Mr. L. MARTIN had no objection to a commitment, but no modifications whatever could reconcile the smaller states to the least diminution of their equal sovereignty.

Mr. SHERMAN. We are now at a full stop; and nobody, he supposed, meant that we should break up without doing something. A committee he thought most likely to hit on some expedient.

Mr. GOUVERNEUR MORRIS* thought a committee advisable, as the Convention had been equally divided. He had a stronger reason also. The mode of appointing the second branch tended, he was sure, to defeat the object of it. What is this object? To check the precipitation, changeableness, and excesses, of the first branch. Every man of observation had seen in the democratic branches of the state legislatures, precipitation—in Congress, changeableness—in every department, excesses against personal liberty, private property, and personal safety. What qualities are necessary to constitute a check in this case? *Abilities* and *virtue* are equally necessary in both branches. Something more, then, is now wanted. In the first place the checking branch must have a personal interest in checking the other branch. One interest must be opposed to another interest. Vices, as they exist, must be turned against each other. In the second place, it must have great personal property; it must have the aristocratic spirit; it must love to lord it through pride. Pride is, indeed, the great principle that actuates both the poor and the rich. It is this principle which in the former resists, in the latter abuses, authority. In the third place, it should be independent. In religion, the creature is apt to forget its Creator. That it is otherwise in political affairs, the late debates here are an unhappy proof. The aristocratic body should be as independent, and as firm, as the democratic. If the members of it are to revert to a dependence on the democratic choice, the democratic scale will preponderate. All the guards contrived by America have not restrained the senatorial branches of the legislatures from a servile complaisance to the democratic. If the second branch is to be dependent, we are better without it. To make it independent, it should be for life. It will then do wrong, it will be said. He believed so; he hoped so. The rich will strive to establish their dominion, and enslave the rest. They always did. They always will. The proper security against them is to form them into a separate interest. The two forces will then control each other. Let the rich mix with the poor, and, in a commercial country, they will establish an obligarchy. Take away commerce, and the democracy will triumph. Thus it has been all the world over. So it will be among us. Reason tells

us we are but men; and we are not to expect any particular interference of Heaven in our favor. By thus combining, and setting apart, the aristocratic interest, the popular interest will be combined against it. There will be a mutual check and mutual security. In the fourth place, an independence for life involves the necessary permanency. If we change our measures, nobody will trust us; and how avoid a change of measures, but by avoiding a change of men? Ask any man if he confides in Congress—if he confides in the state of Pennsylvania—if he will lend his money, or enter into contract? He will tell you, no. He sees no stability. He can repose no confidence. If Great Britain were to explain her refusal to treat with us, the same reasoning would be employed. He disliked the exclusion of the second branch from holding offices. It is dangerous. It is like the imprudent exclusion of the military officers, during the war, from civil appointments. It deprives the executive of the principal source of influence. If danger be apprehended from the executive, what a left-handed way is this of obviating it! If the son, the brother, or the friend, can be appointed, the danger may be even increased, as the disqualified father, &c., can then boast of a disinterestedness which he does not possess. Besides, shall the best, the most able, the most virtuous citizens, not be permitted to hold offices? Who then are to hold them? He was also against paying the senators. They will pay themselves, if they can. If they cannot, they will be rich, and can do without it. Of such the second branch ought to consist; and none but such can compose it, if they are not to be paid. He contended, that the executive should appoint the Senate, and fill up vacancies. This gets rid of the difficulty in the present question. You may begin with any ratio you please, it will come to the same thing. The members being independent, and for life, may be taken as well from one place as from another. It should be considered, too, how the scheme could be carried through the states. He hoped there was strength of mind enough in this House to look truth in the face. He did not hesitate, therefore, to say that loaves and fishes must bribe the demagogues. They must be made to expect higher offices under the general than the state governments. A Senate for life will be a noble bait. Without such captivating prospects, the popular leaders will oppose and defeat the plan. He perceived that the first branch was to be chosen by the people of the states, the second by those chosen by the people. Is not here a government by the states—a government by compact between Virginia in the first and second branch, Massachusetts in the first and second branch, &c.? This is going back to mere treaty. It is no government at all. It is altogether dependent on the states, and will act over again the part which Congress has acted. A firm government alone can protect our liberties. He fears the influence of the rich. They will have the same effect here as elsewhere, if we do not, by such a government, keep them within their proper spheres. We should remember that the people never act from reason alone. The rich will take the advantage of their passions, and make these the instruments for oppressing them. The result of the contest will be a violent aristocracy, or a more violent despotism. The schemes of the rich will be favored by the extent of the country. The people in such distant parts cannot communicate and act in concert. They will be the dupes of those who have more knowledge and intercourse. The only security against encroachments will be a select and sagacious body of men, instituted to watch against them on all sides. He meant only to hint these observations, without grounding any motion on them.

Mr. RANDOLPH favored the commitment, though he did not expect much benefit from the expedient. He animadverted on the warm and rash language of Mr. Bedford on Saturday; reminded the small states that if the large states should combine, some danger of which he did not deny, there would be a check in the revisionary power of the executive; and intimated that, in order to render this still more effectual, he would agree that, in the choice of an executive, each state should have an equal vote. He was persuaded that two such opposite bodies as Mr. Morris had planned could never long coëxist. Dissensions would arise, as has been seen even between the senate and house of delegates in Maryland; appeals would be made to the people; and in a little time commotions would be the result. He was far from thinking the large states could subsist of themselves, any more than the small; an avulsion would involve the whole in ruin; and he was determined to pursue such a scheme of government as would secure us against such a calamity.158

Mr. STRONG was for the commitment; and hoped the mode of constituting both branches would be referred. If they should be established on different principles, contentions would prevail, and there would never be a concurrence in necessary measures.

Dr. WILLIAMSON. If we do not concede on both sides, our business must soon be at an end. He approved of the commitment supposing that, as the committee would be a smaller body, a compromise would be pursued with more coolness.

Mr. WILSON objected to the committee, because it would decide according to that very rule of voting which was opposed on one side. Experience in Congress had also proved the inutility of committees consisting of members from each state.

Mr. LANSING would not oppose the commitment, though expecting little advantage from it.

Mr. MADISON opposed the commitment. He had rarely seen any other effect than delay from *such* committees in Congress. Any scheme of compromise that could be proposed in the committee might as easily be proposed in the House; and the report of the committee, where it contained merely the *opinion* of the committee, would neither shorten the discussion, nor influence the decision of the House.

Mr. GERRY was for the commitment. Something must be done, or we shall disappoint not only America, but the whole world. He suggested a consideration of the state we should be thrown into by the failure of the Union. We should be without an umpire to decide controversies, and must be at the mercy of events. What, too, is to become of our treaties—what of our foreign debts—what of our domestic? We must make concessions on both sides. Without these, the constitutions of the several states would never have been formed.

On the question for committing, generally,—

Massachusetts, Connecticut, New York, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; New Jersey, Delaware, no, 2.

On the question for committing it "to a member from each state,"—

Massachusetts, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 10; Pennsylvania, no, 1.

The committee, elected by ballot, were, Mr. Gerry, Mr. Ellsworth, Mr. Yates, Mr. Patterson, Dr. Franklin, Mr. Bedford, Mr. Martin, Mr. Mason, Mr. Davy, Mr. Rutledge, Mr. Baldwin.

That time might be given to the committee, and to such as choose to attend to the celebrations on the anniversary of Independence, the Convention adjourned till Thursday.

Thursday,*July* 5.

In Convention.—Mr. GERRY delivered in, from the committee appointed on Monday last, the following Report:159

"The committee to whom was referred the eighth resolution of the report from the Committee of the whole House, and so much of the seventh as has not been decided on, submit the following report:—

"That the subsequent propositions be recommended to the Convention on condition that both shall be generally adopted.

"1. That, in the first branch of the legislature, each of the states now in the Union shall be allowed one member for every forty thousand inhabitants, of the description reported in the seventh resolution of the Committee of the whole House: that each state not containing that number shall be allowed one member: that all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legislature, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public treasury but in pursuance of appropriations to be originated in the first branch.

"2. That, in the second branch, each state shall have an equal vote."*

Mr. GORHAM observed, that, as the report consisted of propositions mutually conditional, he wished to hear some explanations touching the grounds on which the conditions were estimated.

Mr. GERRY. The committee were of different opinions, as well as the deputations from which the committee were taken; and agreed to the report merely in order that some ground of accommodation might be proposed. Those opposed to the equality of votes have only assented conditionally; and if the other side do not generally agree, will not be under any obligation to support the report.

Mr. WILSON thought the committee had exceeded their powers.

Mr. MARTIN was for taking the question on the whole report.

Mr. WILSON was for a division of the question; otherwise, it would be a leap in the dark.

Mr. MADISON could not regard the privilege of originating money bills as any concession on the side of the small states. Experience proved that it had no effect. If seven states in the upper branch wished a bill to be originated, they might surely find some member, from some of the same states in the lower branch, who would originate it. The restriction as to amendments was of as little consequence. Amendments could be handed privately by the Senate to members in the other House. Bills could be negatived, that they might be sent up in the desired shape. If the Senate should yield to the obstinacy of the first branch, the use of that body, as a check, would be lost. If the first branch should yield to that of the Senate, the privilege would be nugatory. Experience had also shown, both in Great Britain, and the states having a similar regulation, that it was a source of frequent and obstinate altercations. These considerations had produced a rejection of a like motion on a former occasion, when judged by its own merits. It could not, therefore, be deemed any concession on the present, and left in force all the objections which had prevailed against allowing each state an equal voice. He conceived that the Convention was reduced to the alternative of either departing from justice in order to conciliate the smaller states, and the minority of the people of the United States, or of displeasing these, by justly gratifying the larger states and the majority of the people. He could not himself hesitate as to the option he ought to make. The Convention, with justice and a majority of the people on their side, had nothing to fear. With injustice and the minority on their side, they had every thing to fear. It was in vain to purchase concord in the Convention on terms which would perpetuate discord among their constituents. The Convention ought to pursue a plan which would bear the test of examination, which would be espoused and supported by the enlightened and impartial part of America, and which they could themselves vindicate and urge. It should be considered that, although at first many may judge of the system recommended by their opinion of the Convention, yet finally all will judge of the Convention by the system. The me its of the system alone can finally and effectually obtain the public suffrage. He was not apprehensive that the people of the small states would obstinately refuse to accede to a government founded on just principles, and promising them substantial protection. He could not suspect that Delaware would brave the consequences of seeking her fortunes apart from the other states, rather than submit to such a government; much less could he suspect that she would pursue the rash policy of courting foreign support, which the warmth of one of her representatives (Mr. Bedford) had suggested; or, if she should, that any foreign nation would be so rash as to hearken to the overture. As little could he suspect that the people of New Jersey, notwithstanding the decided tone of the gentleman from that state, would choose rather to stand on their own legs, and bid defiance to events, than to acquiesce under an establishment founded on principles, the justice of which they could not dispute, and absolutely necessary to redeem them from the exactions levied on them by the commerce of the neighboring states. A review of other states would prove that there was as little reason to apprehend an inflexible opposition elsewhere. Harmony in the Convention was, no doubt, much to be desired. Satisfaction to all the

states, in the first instance, still more so. But if the principal states, comprehending a majority of the people of the United States, should concur in a just and judicious plan, he had the firmest hopes that all the other states would by degrees accede to it.

Mr. BUTLER said, he could not let down his idea of the people of America so far as to believe they would, from mere respect to the Convention, adopt a plan evidently unjust. He did not consider the privilege concerning money bills as of any consequence. He urged that the second branch ought to represent the states according to their property.

Mr. GOUVERNEUR MORRIS thought the form as well as the matter of the report objectionable. It seemed, in the first place, to render amendment impracticable. In the next place, it seemed to involve a pledge to agree to the second part, if the first should be agreed to. He conceived the whole aspect of it to be wrong. He came here as a representative of America; he flattered himself he came here in some degree as a representative of the whole human race; for the whole human race will be affected by the proceedings of this Convention. He wished gentlemen to extend their views beyond the present moment of time; beyond the narrow limits of place from which they derive their political origin. If he were to believe some things which he had heard, he should suppose that we were assembled to truck and bargain for our particular states. He cannot descend to think that any gentlemen are really actuated by these views. We must look forward to the effects of what we do. These alone ought to guide us. Much has been said of the sentiments of the people. They were unknown. They could not be known. All that we can infer is, that, if the plan we recommend be reasonable and right, all who have reasonable minds and sound intentions will embrace it, notwithstanding what had been said by some gentlemen. Let us suppose that the larger states shall agree, and that the smaller refuse; and let us trace the consequences. The opponents of the system in the smaller states will no doubt make a party: and a noise, for a time; but the ties of interest, of kindred, and of common habits, which connect them with other states, will be too strong to be easily broken. In New Jersey, particularly, he was sure a great many would follow the sentiments of Pennsylvania and New York. This country must be united. If persuasion does not unite it, the sword will. He begged this consideration might have its due weight. The scenes of horror attending civil commotion cannot be described; and the conclusion of them will be worse than the term of their continuance. The stronger party will then make traitors of the weaker; and the gallows and halter will finish the work of the sword. How far foreign powers would be ready to take part in the confusions, he would not say. Threats that they will be invited have, it seems, been thrown out. He drew the melancholy picture of foreign intrusions, as exhibited in the history of Germany, and urged it as a standing lesson to other nations. He trusted that the gentlemen who may have hazarded such expressions did not entertain them till they reached their own lips. But, returning to the report, he could not think it in any respect calculated for the public good. As the second branch is now constituted, there will be constant disputes and appeals to the states, which will undermine the general government, and control and annihilate the first branch. Suppose that the delegates from Massachusetts and Rhode Island, in the upper house, disagree, and that the former are outvoted. What results? They will immediately declare that their state will not abide by the decision, and make such representations as will produce that effect.

The same may happen as to Virginia and other states. Of what avail, then, will be what is on paper? State attachments, and state importance, have been the bane of this country. We cannot annihilate, but we may perhaps take out the teeth of, the serpents. He wished our ideas to be enlarged to the true interest of man, instead of being circumscribed within the narrow compass of a particular spot. And, after all, how little can be the motive yielded by selfishness for such a policy! Who can say whether he himself, much less whether his children, will the next year be an inhabitant of this or that state?

Mr. BEDFORD. He found that what he had said, as to the small states being taken by the hand, had been misunderstood,—and he rose to explain. He did not mean that the small states would court the aid and interposition of foreign powers. He meant that they would not consider the federal compact as dissolved until it should be so by the acts of the large states. In this case, the consequence of the breach of faith on their part, and the readiness of the small states to fulfil their engagements, would be, that foreign nations having demands on this country would find it their interest to take the small states by the hand, in order to do themselves justice. This was what he meant. But no man can foresee to what extremities the small states may be driven by oppression. He observed, also, in apology, that some allowance ought to be made for the habits of his profession, in which warmth was natural and sometimes necessary. But is there not an apology in what was said by (Mr. Gouverneur Morris,) that the sword is to unite—by Mr. Gorham, that Delaware must be annexed to Pennsylvania, and New Jersey divided between Pennsylvania and New York? To hear such language without emotion, would be to renounce the feelings of a man and the duty of a citizen. As to the propositions of the committee, the lesser states have thought it necessary to have a security somewhere. This has been thought necessary for the executive magistrate of the proposed government, who has a sort of negative on the laws; and is it not of more importance that the states should be protected than that the executive branch of the government should be protected? In order to obtain this, the smaller states have conceded as to the constitution of the first branch, and as to money bills. If they be not gratified by correspondent concessions, as to the second branch, is it to be supposed they will ever accede to the plan? And what will be the consequence if nothing should be done? The condition of the United States requires that something should be immediately done. It will be better that a defective plan should be adopted, than that none should be recommended. He saw no reason why defects might not be supplied by meetings ten, fifteen, or twenty years hence.

Mr. ELLSWORTH said, he had not attended the proceedings of the committee, but was ready to accede to the compromise they had reported. Some compromise was necessary; and he saw none more convenient or reasonable.

Mr. WILLIAMSON hoped that the expressions of individuals would not be taken for the sense of their colleagues, much less of their states, which was not and could not be known. He hoped, also, that the meaning of those expressions would not be misconstrued or exaggerated. He did not conceive that (Mr. Gouverneur Morris) meant that the sword ought to be drawn against the smaller states. He only pointed out the probable consequences of anarchy in the United States. A similar exposition ought to be given of the expressions of (Mr. Gorham). He was ready to hear the report

discussed; but thought the propositions contained in it the most objectionable of any he had yet heard.

Mr. PATTERSON said, that he had, when the report was agreed to in the committee, reserved to himself the right of freely discussing it. He acknowledged that the warmth complained of was improper; but he thought the sword and the gallows little calculated to produce conviction. He complained of the manner in which Mr. Madison and Mr. G. Morris had treated the small states.

Mr. GERRY. Though he had assented to the report in the committee, he had very material objections to it. We were, however, in a peculiar situation. We were neither the same nation, nor different nations. We ought not, therefore, to pursue the one or the other of these ideas too closely. If no compromise should take place, what will be the consequence? A secession, he foresaw, would take place; for some gentlemen seemed decided on it. Two different plans will be proposed, and the result no man could foresee. If we do not come to some agreement among ourselves, some foreign sword will probably do the work for us.

Mr. MASON. The report was meant not as specific propositions to be adopted, but merely as a general ground of accommodation. There must be some accommodation on this point, or we shall make little further progress in the work. Accommodation was the object of the House in the appointment of the committee, and of the committee in the report they had made. And, however liable the report might be to objections, he thought it preferable to an appeal to the world by the different sides, as had been talked of by some gentlemen. It could not be more inconvenient to any gentleman to remain absent from his private affairs than it was for him; but he would bury his bones in this city rather than expose his country to the consequences of a dissolution of the Convention without any thing being done.

The first proposition in the report for fixing the representation in the first branch, “one member for every forty thousand inhabitants,” being taken up,—

Mr. GOUVERNEUR MORRIS objected to that scale of apprortionment. He thought property ought to be taken into the estimate as well as the number of inhabitants. Life and liberty were generally said to be of more value than property. An accurate view of the matter would, nevertheless, prove that property was the main object of society. The savage state was more favorable to liberty than the civilized; and sufficiently so to life. It was preferred by all men who had not acquired a taste for property; it was only renounced for the sake of property, which could only be secured by the restraints of regular government. These ideas might appear to some new, but they were nevertheless just. If property, then, was the main object of government, certainly it ought to be one measure of the influence due to those who were to be affected by the government. He looked forward, also, to that range of new states which would soon be formed in the West. He thought the rule of representation ought to be so fixed, as to secure to the Atlantic States a prevalence in the national councils. The new states will know less of the public interest than these; will have an interest in many respects different; in particular, will be little scrupulous of involving the community in wars, the burdens and operations of which would fall chiefly on the maritime states.

Provision ought, therefore, to be made to prevent the maritime states from being hereafter outvoted by them. He thought this might be easily done, by irrevocably fixing the number of representatives which the Atlantic States should respectively have, and the number which each new state will have. This would not be unjust, as the western settlers would previously know the conditions on which they were to possess their lands. It would be politic, as it would recommend the plan to the present, as well as future, interest of the states which must decide the fate of it.

Mr. RUTLEDGE. The gentleman last up had spoken some of his sentiments precisely. Property was certainly the principal object of society. If numbers should be made the rule of representation, the Atlantic States would be subjected to the Western. He moved that the first proposition in the report be postponed, in order to take up the following, viz.:

"That the suffrages of the several states be regulated and proportioned according to the sums to be paid towards the general revenue by the inhabitants of each state respectively: that an apportionment of suffrages, according to the ratio aforesaid, shall be made and regulated at the end of—years from the first meeting of the legislature of the United States, and at the end of every—years; but that for the present, and until the period above mentioned, the suffrages shall be for New Hampshire—, for Massachusetts—, &c."

Col. MASON said, the case of new states was not unnoticed in the committee: but it was thought, and he was himself decidedly of opinion, that if they made a part of the Union, they ought to be subject to no unfavorable discriminations. Obvious considerations required it.

Mr. RANDOLPH concurred with Mr. Mason.

On the question on Mr. Rutledge's motion,—

South Carolina, ay, 1; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no, 9; Georgia, not on the floor.

Adjourned.

Friday,*July* 6.

In Convention.—Mr. GOUVERNEUR MORRIS moved to commit so much of the report as relates to "one member for every forty thousand inhabitants." His view was, that they might absolutely fix the number for each state in the first instance; leaving the legislature at liberty to provide for changes in the relative importance of the states, and for the case of new states.

Mr. WILSON seconded the motion; but with a view of leaving the committee under no implied shackles.

Mr. GORHAM apprehended great inconvenience from fixing directly the number of representatives to be allowed to each state. He thought the number of inhabitants the true guide; though perhaps some departure might be expedient from the full proportion. The states, also, would vary in their relative extent by separations of parts of the largest states. A part of Virginia is now on the point of a separation. In the province of Maine, a convention is at this time deliberating on a separation from Massachusetts. In such events, the number of representatives ought certainly to be reduced. He hoped to see all the states made small by proper divisions, instead of their becoming formidable, as was apprehended, to the small states. He conceived, that, let the government be modified as it might, there would be a constant tendency in the state governments to encroach upon it; it was of importance, therefore, that the extent of the states should be reduced as much, and as fast, as possible. The stronger the government shall be made in the first instance, the more easily will these divisions be effected; as it will be of less consequence, in the opinion of the states, whether they be of great or small extent.

Mr. GERRY did not think, with his colleague, that the larger states ought to be cut up. This policy has been inculcated by the middling and small states, ungenerously, and contrary to the spirit of the Confederation. Ambitious men will be apt to solicit needless divisions, till the states be reduced to the size of counties. If this policy should still actuate the small states, the large ones could not confederate safely with them; but would be obliged to consult their safety by confederating only with one another. He favored the commitment, and thought that representation ought to be in the combined ratio of numbers of inhabitants and of wealth, and not of either singly.

Mr. KING wished the clause to be committed, chiefly in order to detach it from the report, with which it had no connection. He thought, also, that the ratio of representation proposed could not be safely fixed, since in a century and a half our computed increase of population would carry the number of representatives to an enormous excess; that the number of inhabitants was not the proper index of ability and wealth; that property was the primary object of society; and that, in fixing a ratio, this ought not to be excluded from the estimate. With regard to new states, he observed, that there was something peculiar in the business, which had not been noticed. The United States were now admitted to be proprietors of the country 160 north-west of the Ohio. Congress, by one of their ordinances, have impoliticly laid it out into ten states, and have made it a fundamental article of compact with those who may become settlers, that, as soon as the number in any one state shall equal that of the smallest of the thirteen original states, it may claim admission into the Union. Delaware does not contain, it is computed, more than thirty-five thousand souls; and, for obvious reasons, will not increase much for a considerable time. It is possible, then, that, if this plan be persisted in by Congress, ten new votes may be added, without a greater addition of inhabitants than are represented by the single vote of Pennsylvania. The plan, as it respects one of the new states, is already irrevocable—the sale of the lands having commenced, and the purchasers and settlers will immediately become entitled to all the privileges of the compact.

Mr. BUTLER agreed to the commitment, if the committee were to be left at liberty. He was persuaded that, the more the subject was examined, the less it would appear

that the number of inhabitants would be a proper rule of proportion. If there were no other objection, the changeableness of the standard would be sufficient. He concurred with those who thought some balance was necessary between the old and the new states. He contended strenuously, that property was the only just measure of representation. This was the great object of government; the great cause of war; the great means of carrying it on.

Mr. PINCKNEY saw no good reason for committing. The value of land had been found, on full investigation, to be an impracticable rule. The contributions of revenue, including imports and exports, must be too changeable in their amount; too difficult to be adjusted; and too injurious to the non-commercial states. The number of inhabitants appeared to him the only just and practicable rule. He thought the blacks ought to stand on an equality with the whites; but would agree to the ratio settled by Congress. He contended that Congress had no right, under the Articles of Confederation, to authorize the admission of new states, no such case having been provided for.

Mr. DAVY was for committing the clause, in order to get at the merits of the question arising on the report. He seemed to think that wealth or property ought to be represented in the second branch; and numbers in the first branch.

On the motion for committing, as made by Mr. Gouverneur Morris,—

Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 7; New York, New Jersey, Delaware, no, 3; Maryland, divided.

The members appointed by ballot were Mr. Gouverneur Morris, Mr. Gorham, Mr. Randolph, Mr. Rutledge, Mr. King.

Mr. WILSON signified, that his view in agreeing to the commitment was, that the committee might consider the propriety of adopting a scale similar to that established by the constitution of Massachusetts, which would give an advantage to the small states without substantially departing from the rule of proportion.

Mr. WILSON and Mr. MASON moved to postpone the clause relating to money bills, in order to take up the clause relating to an equality of votes in the second branch.

On the question of postponement,—

New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, ay, 8; Massachusetts, Connecticut, North Carolina, no, 3.

The clause relating to equality of votes being under consideration,—

Dr. FRANKLIN observed, that this question could not be properly put by itself, the committee having reported several propositions as mutual conditions of each other. He could not vote for it if separately taken; but should vote for the whole together.

Col. MASON perceived the difficulty, and suggested a reference of the rest of the report to the committee just appointed, that the whole might be brought into one view.

Mr. RANDOLPH disliked the reference to that committee, as it consisted of members from states opposed to the wishes of the small states, and could not, therefore, be acceptable to the latter.

Mr. MARTIN and Mr. JENIFER moved to postpone the clause till the committee last appointed should report.

Mr. MADISON observed, that if the uncommitted part of the report was connected with the part just committed, it ought also to be committed; if not connected, it need not be postponed till report should be made.

On the question for postponing, moved by Mr. Martin and Mr. Jenifer,—

Connecticut, New Jersey, Delaware, Maryland, Virginia, Georgia, ay, 6; Pennsylvania, North Carolina, South Carolina, no, 3; Massachusetts, New York, divided.

The first clause, relating to the originating of money bills, was then resumed.

Mr. GOUVERNEUR MORRIS was opposed to a restriction of this right in either branch, considered merely in itself, and as unconnected with the point of representation in the second branch. It will disable the second branch from proposing its own money plans, and giving the people an opportunity of judging, by comparison, of the merits of those proposed by the first branch.

Mr. WILSON could see nothing like a concession here on the part of the smaller states. If both branches were to say *yes* or *no,* it was of little consequence which should say *yes* or *no* first, which last. If either was, indiscriminately, to have the right of originating, the reverse of the report would, he thought, be most proper; since it was a maxim, that the least numerous body was the fittest for deliberation—the most numerous, for decision. He observed that this discrimination had been transcribed from the British into several American constitutions. But he was persuaded that, on examination of the American experiments, it would be found to be a “trifle light as air.” Nor could he ever discover the advantage of it in the parliamentary history of Great Britain. He hoped, if there was any advantage in the privilege, that it would be pointed out.

Mr. WILLIAMSON thought, that if the privilege were not common to both branches, it ought rather to be confined to the second, as the bills in that case would be more narrowly watched than if they originated with the branch having most of the popular confidence.

Mr. MASON. The consideration which weighed with the committee was, that the first branch would be the immediate representatives of the people; the second would not. Should the latter have the power of giving away the people’s money, they might soon forget the source from whence they received it. We might soon have an aristocracy.

He had been much concerned at the principles which had been advanced by some gentlemen, but had the satisfaction to find they did not generally prevail. He was a friend to proportional representation in both branches; but supposed that some points must be yielded for the sake of accommodation.

Mr. WILSON. If he had proposed that the second branch should have an independent disposal of public money, the observations of (Col. Mason) would have been a satisfactory answer. But nothing could be farther from what he had said. His question was, how is the power of the first branch increased, or that of the second diminished, by giving the proposed privilege to the former? Where is the difference, in which branch it begins, if both must concur in the end?

Mr. GERRY would not say that the concession was a sufficient one on the part of the small states. But he could not but regard it in the light of a concession. It would make it a constitutional principle, that the second branch were not possessed of the confidence of the people in money matters, which would lessen their weight and influence. In the next place, if the second branch were dispossessed of the privilege, they would be deprived of the opportunity which their continuance in office three times as long as the first branch would give them, of making three successive essays in favor of a particular point.

Mr. PINCKNEY thought it evident that the concession was wholly on one side, that of the large states; the privilege of originating money bills being of no account.

Mr. GOUVERNEUR MORRIS had waited to hear the good effects of the restriction. As to the alarm sounded, of an aristocracy, his creed was, that there never was, nor ever will be, a civilized society without an aristocracy. His endeavor was, to keep it as much as possible from doing mischief. The restriction, if it has any real operation, will deprive us of the services of the second branch in digesting and proposing money bills, of which it will be more capable than the first branch. It will take away the responsibility of the second branch, the great security for good behavior. It will always leave a plea, as to an obnoxious money bill, that it was disliked, but 161 could not be constitutionally amended, nor safely rejected. It will be a dangerous source of disputes between the two Houses. We should either take the British constitution altogether, or make one for ourselves. The executive there has dissolved two Houses, as the only cure for such disputes. Will our executive be able to apply such a remedy? Every law, directly or indirectly, takes money out of the pockets of the people. Again, what use may be made of such a privilege in case of great emergency! Suppose an enemy at the door, and money instantly and absolutely necessary for repelling him,—may not the popular branch avail itself of this duress, to extort concessions from the Senate, destructive of the constitution itself? He illustrated this danger by the example of the Long Parliament's expedients for subverting the House of Lords; concluding, on the whole, that the restriction would be either useless or pernicious.

Dr. FRANKLIN did not mean to go into a justification of the report; but as it had been asked what would be the use of restraining the second branch from meddling with money bills, he could not but remark, that it was always of importance that the people should know who had disposed of their money, and how it had been disposed of. It

was a maxim, that those who feel can best judge. This end would, he thought, be best attained, if money affairs were to be confined to the immediate representatives of the people. This was his inducement to concur in the report. As to the danger or difficulty that might arise from a negative in the second branch, where the people would not be proportionally represented, it might easily be got over by declaring that there should be no such negative; or, if that will not do, by declaring that there shall be no such branch at all.

Mr. MARTIN said, that it was understood, in the committee, that the difficulties and disputes which had been apprehended, should be guarded against in the detailing of the plan.

Mr. WILSON. The difficulties and disputes will increase with the attempts to define and obviate them. Queen Anne was obliged to dissolve her Parliament in order to terminate one of these obstinate disputes between the two Houses. Had it not been for the mediation of the crown, no one can say what the result would have been. The point is still *sub judice* in England. He approved of the principles laid down by the honorable president,* (Dr. Franklin,) his colleague, as to the expediency of keeping the people informed of their money affairs; but thought they would know as much, and be as well satisfied, in one way as in the other.

Gen. PINCKNEY was astonished that this point should have been considered as a concession. He remarked, that the restriction as to money bills had been rejected on the merits, singly considered, by eight states against three; and that the very states which now called it a concession were then against it, as nugatory or improper in itself.

On the question whether the clause relating to money bills, in the report of the committee consisting of a member from each state should stand as part of the report,—

Connecticut, New Jersey, Delaware, Maryland, North Carolina, ay, 5, Pennsylvania, Virginia, South Carolina, no, 3; Massachusetts, New York, Georgia, divided.

A question was then raised, whether the question was carried in the affirmative; there being but five ayes, out of eleven states, present. For the words of the rule, see May 28.

On this question,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, ay, 9; New York, Virginia, no, 2.

(In several preceding instances, like votes had *sub silentio* been entered as decided in the affirmative.)

Adjourned.

Saturday,*July* 7.

In Convention.—The question, Shall the clause, "allowing each state one vote in the second branch, stand as part of the report," being taken up,—

Mr. GERRY. This is the critical question. He had rather agree to it than have no accommodation. A government short of a proper national plan, if generally acceptable, would be preferable to a proper one which, if it could be carried at all, would operate on discontented states. He thought it would be best to suspend this question till the committee, appointed yesterday, should make report.

Mr. SHERMAN supposed that it was the wish of every one that some general government should be established. An equal vote in the second branch would, he thought, be most likely to give it the necessary vigor. The small states have more vigor in their governments than the large ones; the more influence, therefore, the large ones have, the weaker will be the government. In the large states it will be most difficult to collect the real and fair sense of the people; fallacy and undue influence will be practised with the most success; and improper men will most easily get into office. If they vote by states in the second branch, and each state has an equal vote, there must be always a majority of states, as well as a majority of the people, on the side of public measures, and the government will have decision and efficacy. If this be not the case in the second branch, there may be a majority of states against public measures; and the difficulty of compelling them to abide by the public determination will render the government feebler than it has ever yet been.

Mr. WILSON was not deficient in a conciliating temper, but firmness was sometimes a duty of higher obligation. Conciliation was also misapplied in this instance. It was pursued here rather among the representatives than among the constituents; and it would be of little consequence if not established among the latter; and there could be little hope of its being established among them, if the foundation should not be laid in justice and right.

On the question, Shall the words stand as part of the report?—

Connecticut, New York, New Jersey, Delaware, Maryland, North Carolina, ay, 6; Pennsylvania, Virginia, South Carolina, no, 3; Massachusetts, Georgia, divided.*

Mr. GERRY thought it would be proper to proceed to enumerate and define the powers to be vested in the general government, before a question on the report should be taken as to the rule of representation in the second branch.

Mr. MADISON observed, that it would be impossible to say what powers could be safely and properly vested in the government, before it was known in what manner the states were to be represented in it. He was apprehensive that, if a just representation were not the basis of the government, it would happen, as it did when the Articles of Confederation were depending, that every effectual prerogative would be withdrawn or withheld, and the new government would be rendered as impotent and as short-lived as the old.

Mr. PATTERSON would not decide whether the privilege concerning money bills were a valuable consideration or not; but he considered the mode and rule of representation in the first branch as fully so; and that after the establishment of that point, the small states would never be able to defend themselves without an equality of votes in the second branch. There was no other ground of accommodation. His resolution was fixed. He would meet the large states on that ground, and no other. For himself, he should vote against the report, because it yielded too much.

Mr. GOUVERNEUR MORRIS. He had no resolution unalterably fixed except to do what should finally appear to him right. He was against the report because it maintained the improper constitution of the second branch. It made it another Congress, a mere whisp of straw. It had been said (by Mr. Gerry) that the new government would be partly national, partly federal; that it ought, in the first quality, to protect individuals; in the second, the states. But in what quality was it to protect the aggregate interest of the whole? Among the many provisions which had been urged, he had seen none for supporting the dignity and splendor of the American empire. It had been one of our greatest misfortunes that the great objects of the nation had been sacrificed constantly to local views; in like manner as the general interest of states had been sacrificed to those of the counties. What is to be the check in the Senate? None; unless it be to keep the majority of the people from injuring particular states. But particular states ought to be injured for the sake of a majority of the people, in case their conduct should deserve it. Suppose they should insist on claims evidently unjust, and pursue them in a manne, detrimental to the whole body: suppose they should give themselves up to foreign influence: ought they to be protected in such cases? They were originally nothing more than colonial corporations. On the declaration of independence, a government was to be formed. The small states, aware of the necessity of preventing anarchy, and 162 taking advantage of the moment, extorted from the large ones an equality of votes. Standing now on that ground, they demand, under the new system, greater rights, as men, than their fellow-citizens of the large states. The proper answer to them is, that the same necessity, of which they formerly took advantage, does not now exist; and that the large states are at liberty now to consider what is right, rather than what may be expedient. We must have an efficient government, and if there be an efficiency in the local governments, the former is impossible. Germany alone proves it. Notwithstanding their common Diet, notwithstanding the great prerogatives of the emperor, as head of the empire, and his vast resources, as sovereign of his particular dominions, no union is maintained; foreign influence disturbs every internal operation, and there is no energy whatever in the general government. Whence does this proceed? From the energy of the local authorities; from its being considered of more consequence to support the Prince of Hesse than the happiness of the people of Germany. Do gentlemen wish this to be the case here? Good God, sir, is it possible they can so delude themselves? What—if all the charters and constitutions of the states were thrown into the fire, and all their demagogues into the ocean—what would it be to the happiness of America? And will not this be the case here, if we pursue the train in which the business lies? We shall establish an Aulic Council without an emperor to execute its decrees. The same circumstances which unite the people here, unite them in Germany. They have there a common language, a common law, common usages and manners, and a common interest in being united; yet their local jurisdictions destroy every tie. The case was

the same in the Grecian states. The United Netherlands are at this time torn in factions. With these examples before our eyes, shall we form establishments which must necessarily produce the same effects? It is of no consequence from what districts the second branch shall be drawn, if it be so constituted as to yield an asylum against these evils. As it is now constituted, he must be against its being drawn from the states in equal portions; but shall be ready to join in devising such an amendment of the plan, as will be most likely to secure our liberty and happiness.

Mr. SHERMAN and Mr. ELLSWORTH moved to postpone the question on the report from the committee of a member from each state, in order to wait for the report from the committee of five last appointed,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, ay, 6; New York, Virginia, North Carolina, South Carolina, Georgia, no, 5.

Adjourned.

Monday,*July* 9.

In Convention.—Mr. Daniel Carroll, from Maryland, took his seat.

Mr. GOUVERNEUR MORRIS delivered a report from the committee of five members, to whom was committed the clause in the report of the committee consisting of a member from each state, stating the proper ratio of representatives in the first branch to be as one to every forty thousand inhabitants, as follows, viz:

"The committee to whom was referred the first clause of the first proposition reported from the grand committee, beg leave to report:

"That, in the first meeting of the legislature, the first branch thereof consist of fifty-six members, of which number New Hampshire shall have 2, Massachusetts, 7, Rhode Island, 1, Connecticut, 4, New York, 5, New Jersey, 3, Pennsylvania, 8, Delaware, 1, Maryland, 4, Virginia, 9, North Carolina, 5, South Carolina, 5, Georgia, 2.

"But, as the present situation of the states may probably alter, as well in point of wealth as in the number of their inhabitants, that the legislature be authorized from time to time to augment the number of representatives. And in case any of the states shall hereafter be divided, or any two or more states united, or any new states created within the limits of the United States, the legislature shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principles of their wealth and number of inhabitants."

Mr. SHERMAN wished to know on what principles or calculations the report was founded. It did not appear to correspond with any rule of numbers, or of any requisition hitherto adopted by Congress.

Mr. GORHAM. Some provision of this sort was necessary in the outset. The number of blacks and whites, with some regard to supposed wealth, was the general guide. Fractions could not be observed. The legislature is to make alterations from time to

time, as justice and propriety may require. Two objections prevailed against the rule of one member for every forty thousand inhabitants. The first was, that the representation would soon be too numerous; the second, that the Western States, who may have a different interest, might, if admitted on that principle, by degrees outvote the Atlantic. Both these objections are removed. The number will be small in the first instance, and may be continued so. And the Atlantic States, having the government in their own hands, may take care of their own interest, by dealing out the right of representation in safe proportions to the Western States. These were the views of the committee.

Mr. L. MARTIN wished to know whether the committee were guided in the ratio by the wealth or number of inhabitants of the states, or both; noting its variations from former apportionments by Congress.

Mr. GOUVERNEUR MORRIS and Mr. RUTLEDGE moved to postpone the first paragraph, relating to the number of members to be allowed each state in the first instance, and to take up the second paragraph, authorizing the legislature to alter the number from time to time, according to wealth and inhabitants. The motion was agreed to, *nem. con.*

On the question on the second paragraph, taken without any debate,—

Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; New York, New Jersey, no, 2.

Mr. SHERMAN moved to refer the first part, apportioning the representatives, to a committee of a member from each state.

Mr. GOUVERNEUR MORRIS seconded the motion, observing that this was the only case in which such committees were useful.

Mr. WILLIAMSON thought it would be necessary to return to the rule of numbers, but that the Western States stood on different footing. If their property should be rated as high as that of the Atlantic States, then their representation ought to hold a like proportion; otherwise, if their property was not to be equally rated.

Mr. GOUVERNEUR MORRIS. The report is little more than a guess. Wealth was not altogether disregarded by the committee. Where it was apparently in favor of one state, whose numbers were superior to the numbers of another by a fraction only, a member extraordinary was allowed to the former, and so *vice versa.* The committee meant little more than to bring the matter to a point for the consideration of the House.

Mr. READ asked why Georgia was allowed two members, when her number of inhabitants had stood below that of Delaware.

Mr. GOUVERNEUR MORRIS. Such is the rapidity of the population of that state, that, before the plan takes effect, it will probably be entitled to two representatives.

Mr. RANDOLPH disliked the report of the committee, but had been unwilling to object to it. He was apprehensive that, as the number was not to be changed till the national legislature should please, a pretext would never be wanting to postpone alterations, and keep the power in the hands of those possessed of it. He was in favor of the commitment to a member from each state.

Mr. PATTERSON considered the proposed estimate for the future, according to the combined rules of numbers and wealth, as too vague. For this reason New Jersey was against it. He could regard negro slaves in no light but as property. They are no free agents, have no personal liberty, no faculty of acquiring property, but on the contrary are themselves property, and, like other property, entirely at the will of the master. Has a man in Virginia a number of votes in proportion to the number of his slaves? and if negroes are not represented in the states to which they belong, why should they be represented in the general government? What is the true principle of representation? It is an expedient by which an assembly of certain individuals, chosen by the people, is substituted in place of the inconvenient meeting of the people themselves. If such a meeting of the people was actually to take place, would the slaves vote? They would not. Why then should they be represented? He was also against such an indirect encouragement of the slave trade, observing, that Congress, in their act relating to the change of the eighth article of Confederation, had been ashamed to use the term “slaves,” and had substituted a description.

Mr. MADISON reminded Mr. Patterson that his doctrine of representation, which was, in its principle, the genuine one, must forever silence the pretensions of the small states to an equality of votes with the large ones. They ought to vote in the same proportion in which their citizens would do if the people of all the states were collectively met. He suggested, as a proper ground of compromise, that, in the first branch, the states should be represented according to their number of free inhabitants, and, in the second, which had, for one of its primary objects, the guardianship of property, according to the whole number, including slaves.

Mr. BUTLER urged warmly the justice and necessity of regarding wealth in the apportionment of representation.

Mr. KING had always expected that, as the Southern States are the richest, they would not league themselves with the Northern, unless some respect were paid to their superior wealth. If the latter expect those preferential distinctions in commerce, and other advantages which they will derive from the connection, they must not expect to receive them without allowing some advantages in return. Eleven out of thirteen of the states had agreed to consider slaves in the apportionment of taxation, and taxation and representation ought to go together.

On the question for committing the first paragraph of the report to a member from each state,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 9; New York, South Carolina, no, 2.

The committee appointed were Messrs. King, Sherman, Yates, Brearly, Gouverneur Morris, Read, Carroll, Madison, Williamson, Rutledge, Houston. Adjourned.

Tuesday,*July* 10.

In Convention.—Mr. KING reported, from the committee yesterday appointed, "that the states, at the first meeting of the general legislature, should be represented by sixty-five members, in the following proportions, to wit;

New Hampshire, by 3; Massachusetts, 8; Rhode Island, 1; Connecticut, 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia, 10; North Carolina, 5; South Carolina, 5; Georgia, 3.

Mr. RUTLEDGE moved that New Hampshire be reduced from three to two members. Her numbers did not entitle her to three, and it was a poor state.

Gen. PINCKNEY seconds the motion.

Mr. KING. New Hampshire has probably more than 120,000 inhabitants, and has an extensive country, of tolerable fertility. Its inhabitants may therefore be expected to increase fast. He remarked that the four Eastern States, having 800,000 souls, have one third fewer representatives than the four Southern States, having not more than 700,000 souls, rating the blacks as five for three. The eastern people will advert to these circumstances, and be dissatisfied. He believed them to be very desirous of uniting with their southern brethren, but did not think it prudent to rely so far on that disposition as to subject them to any gross inequality. He was fully convinced that the question concerning a difference of interests did not lie where it had hitherto been discussed, between the great and small states; but between the southern and eastern. For this reason he had been ready to yield something, in the proportion of representatives, 163 for the security of the southern. No principle would justify the giving them a majority. They were brought as near an equality as was possible. He was not averse to giving them a still greater security, but did not see how it could be done.

Gen. PINCKNEY. The report before it was committed was more favorable to the Southern States than as it now stands. If they are to form so considerable a minority, and the regulation of trade is to be given to the general government, they will be nothing more than overseers for the Northern States. He did not expect the Southern States to be raised to a majority of representatives; but wished them to have something like an equality. At present, by the alterations of the committee in favor of the Northern States, they are removed farther from it than they were before. One member, indeed, had been added to Virginia, which he was glad of, as he considered her as a Southern State. He was glad also that the members of Georgia were increased.

Mr. WILLIAMSON was not for reducing New Hampshire from three to two, but for reducing some others. The southern interest must be extremely endangered by the

present arrangement. The Northern States are to have a majority in the first instance, and the means of perpetuating it.

Mr. DAYTON observed, that the line between northern and southern interest had been improperly drawn; that Pennsylvania was the dividing state, there being six on each side of her.

Gen. PINCKNEY urged the reduction; dwelt on the superior wealth of the Southern States, and insisted on its having its due weight in the government.

Mr. GOUVERNEUR MORRIS regretted the turn of the debate. The states, he found, had many representatives on the floor. Few, he feared, were to be deemed the representatives of America. He thought the Southern States have, by the report, more than their share of representation. Property ought to have its weight, but not all the weight. If the Southern States are to supply money, the Northern States are to spill their blood. Besides, the probable revenue to be expected from the Southern States has been greatly overrated. He was against reducing New Hampshire.

Mr. RANDOLPH was opposed to a reduction of New Hampshire, not because she had a full title to three members, but because it was in his contemplation, first, to make it the duty, instead of leaving it to the discretion, of the legislature, to regulate the representation by a periodical census; secondly, to require more than a bare majority of votes in the legislature, in certain cases, and particularly in commercial cases.

On the question for reducing New Hampshire from three to two representatives, it passed in the negative.

North Carolina, South Carolina, ay, 2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, no, 8. (In the printed Journal, North Carolina, no; Georgia, ay.)

164 Gen. PINCKNEY and Mr. ALEXANDER MARTIN moved that six representatives, instead of five, be allowed to North Carolina.

On the question, it passed in the negative.

North Carolina, South Carolina, Georgia, ay, 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no, 7.

Gen. PINCKNEY and Mr. BUTLER made the same motion in favor of South Carolina.

On the question, it passed in the negative.

Delaware, North Carolina, South Carolina, Georgia, ay, 4; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, no, 7.

Gen. PINCKNEY and Mr. HOUSTON moved that Georgia be allowed four instead of three representatives; urging the unexampled celerity of its population.

On the question, it passed in the negative.

Virginia, North Carolina, South Carolina, Georgia, ay, 4; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, no, 7.

Mr. MADISON moved that the number allowed to each state be doubled. A *majority* of a *quorum* of sixty-five members was too small a number to represent the whole inhabitants of the United States. They would not possess enough of the confidence of the people, and would be too sparsely taken from the people to bring with them all the local information which would be frequently wanted. Double the number will not be too great, even with the future additions from the new states. The additional expense was too inconsiderable to be regarded in so important a case; and, as far as the augmentation might be unpopular on that score, the objection was overbalanced by its effect on the hopes of a greater number of the popular candidates.

Mr. ELLSWORTH urged the objection of expense; and that the greater the number, the more slowly would the business proceed, and the less probably be decided as it ought, at last. He thought the number of representatives too great in most of the state legislatures; and that a large number was less necessary in the general legislature than in those of the states; as its business would relate to a few great national objects only.

Mr. SHERMAN would have preferred fifty to sixty-five. The great distance they will have to travel will render their attendance precarious, and will make it difficult to prevail on a sufficient number of fit men to undertake the service. He observed that the expected increase from new states also deserved consideration.

Mr. GERRY was for increasing the number beyond sixty-five. The larger the number, the less the danger of their being corrupted. The people are accustomed to, and fond of, a numerous representation; and will consider their rights as better secured by it. The danger of excess in the number may be guarded against by fixing a point within which the numbers shall always be kept.

Col. MASON admitted, that the objection drawn from the consideration of expense had weight both in itself, and as the people 165166 might be affected by it. But he thought it outweighed by the objections against the smallness of the number. Thirty-eight will he supposes, as being a majority of sixty-five, form a quorum. Twenty will be a majority of thirty-eight. This was certainly too small a number to make laws for America. They would neither bring with them all the necessary information relative to various local interests, nor possess the necessary confidence of the people. After doubling the number, the laws might still be made by so few as almost to be objectionable on that account. Mr. READ was in favor of the motion. Two of the states (Delaware and Rhode Island) would have but a single member if the aggregate number should remain at sixty-five; and, in case of accident, to either of these, one state would have no representative present, to give explanations or informations of its interests or wishes. The people would not place their confidence in so small a number.

He hoped the objects of the general government would be much more numerous than seemed to be expected by some gentlemen, and that they would become more and more so. As to the new states, the highest number of representatives for the whole might be limited, and all danger of excess thereby prevented. Mr. RUTLEDGE opposed the motion. The representatives were too numerous in all the states. The full number allotted to the states may be expected to attend, and the lowest possible quorum should not therefore be considered. The interests of their constituents will urge their attendance too strongly for it to be omitted: and he supposed the general legislature would not sit more than six or eight weeks in the year.

On the question for doubling the number, it passed in the negative.

Delaware, Virginia, ay, 2; Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina, Georgia, no, 9.

On the question for agreeing to the apportionment of representatives, as amended by the last committee, it passed in the affirmative.

Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, ay, 9; South Carolina, Georgia, no, 2.

Mr. BROOME gave notice to the house, that he had concurred, with a reserve to himself of an intention to claim for his state an equal voice in the second branch; which he thought could not be denied after this concession of the small states as to the first branch.

Mr. RANDOLPH moved, as an amendment to the report of the committee of five, "that, in order to ascertain the alterations in the population and wealth of the several states, the legislature should be required to cause a census and estimate to be taken within one year after its first meeting; and every—years thereafter; and that the legislature arrange the representation accordingly."

Mr. GOUVERNEUR MORRIS opposed it, as fettering the legislature too much. Advantage may be taken of it in time of war or the apprehension of it, by new states, to extort particular favors. If the mode was to be fixed for taking a census, it might certainly be extremely inconvenient: if unfixed, the legislature may use such a mode as will defeat the object, and perpetuate the inequality. He was always against such shackles on the legislature. They had been found very pernicious in most of the state constitutions. He dwelt much on the danger of throwing such a preponderance into the western scale; suggesting that, in time, the western people would outnumber the Atlantic States. He wished therefore to put it in the power of the latter to keep a majority of votes in their own hands. It was objected, he said, that, if the legislature are left at liberty, they will never reädjust the representation. He admitted that this was possible, but he did not think it probable, unless the reasons against a revision of it were very urgent; and in this case it ought not to be done.

It was moved to postpone the proposition of Mr. Randolph, in order to take up the following, viz.: "that the committee of eleven, to whom was referred the report of the

committee of five on the subject of representation, be requested to furnish the Convention with the principles on which they grounded the report;" which was disagreed to,—South Carolina alone voting in the affirmative.

Adjourned.

Wednesday,*July* 11.

In Convention.—Mr. Randolph's motion, requiring the legislature to take a periodical census, for the purpose of redressing inequalities in the representation, was resumed.

Mr. SHERMAN was against shackling the legislature too much. We ought to choose wise and good men, and then confide in them.

Mr. MASON. The greater the difficulty we find in fixing a proper rule of representation, the more unwilling ought we to be to throw the task from ourselves on the general legislature. He did not object to the conjectural ratio which was to prevail in the outset; but considered a revision from time to time, according to some permanent and precise standard, as essential to the fair representation required in the first branch. According to the present population of America, the northern part of it had a right to preponderate, and he could not deny it. But he wished it not to preponderate hereafter, when the reason no longer continued. From the nature of man, we may be sure that those who have power in their hands will not give it up, while they can retain it. On the contrary, we know that they will always, when they can, rather increase it. If the Southern States, therefore, should have three fourths of the people of America within their limits, the Northern will hold fast the majority of representatives. One fourth will govern the three fourths. The Southern States will complain; but they may complain from generation to generation without redress. Unless some principle, therefore, which will do justice to them hereafter, shall be inserted in the Constitution, disagreeable as the declaration was to him, he must declare he could neither vote for the system here, nor support it in his state. Strong objections had been drawn from the danger to the Atlantic interests 167 from new Western States. Ought we to sacrifice what we know to be right in itself, lest it should prove favorable to states which are not yet in existence? If the Western States are to be admitted into the Union, as they arise, they must, he would repeat, be treated as equals, and subjected to no degrading discriminations. They will have the same pride, and other passions, which we have; and will either not unite with, or will speedily revolt from, the Union, if they are not in all respects placed on an equal footing with their brethren. It has been said, they will be poor, and unable to make equal contributions to the general treasury. He did not know but that, in time, they would be both more numerous and more wealthy than their Atlantic brethren. The extent and fertility of their soil made this probable; and though Spain might for a time deprive them of the natural outlet for their productions, yet she will, because she must, finally yield to their demands. He urged that numbers of inhabitants, though not always a precise standard of wealth, was sufficiently so for every substantial purpose.

Mr. WILLIAMSON was for making it a duty of the legislature to do what was right, and not leaving it at liberty to do or not to do it. He moved that Mr. Randolph's

propositions be postponed, in order to consider the following:—"that, in order to ascertain the alterations that may happen in the population and wealth of the several states, a census shall be taken of the free white inhabitants, and three fifths of those of other descriptions, on the first year after this government shall have been adopted, and every—year thereafter; and that the representation be regulated accordingly."

Mr. RANDOLPH agreed that Mr. Williamson's proposition should stand in place of his. He observed, that the ratio fixed for the first meeting was a mere conjecture; that it placed the power in the hands of that part of America which could not always be entitled to it; that this power would not be voluntarily renounced; and that it was consequently the duty of the Convention to secure its renunciation, when justice might so require, by some constitutional provisions. If equality between great and small states be inadmissible, because in that case unequal numbers of constituents would be represented by equal numbers of votes, was it not equally inadmissible, that a larger and more populous district of America should hereafter have less representation than a smaller and less populous district? If a fair representation of the people be not secured, the injustice of the government will shake it to its foundations. What relates to suffrage is justly stated, by the celebrated Montesquieu, as a fundamental article in republican governments. If the danger suggested by Mr. Gouverneur Morris be real, of advantage being taken of the legislature in pressing moments, it was an additional reason for tying their hands in such a manner that they could not sacrifice their trust to momentary considerations. Congress have pledged the public faith, to new states, that they shall be admitted on equal terms. They never would, nor ought to, accede on any other. The census must be taken under the direction of the general legislature. The states will be too much interested to take an impartial one for themselves.

Mr. BUTLER and Gen. PINCKNEY insisted that blacks be included in the rule of representation *equally* with the whites; and for that purpose moved that the words "three fifths" be struck out.

Mr. GERRY thought that three fifths of them was, to say the least, the full proportion that could be admitted.

Mr. GORHAM. This ratio was fixed by Congress as a rule of taxation. Then it was urged, by the delegates representing the states having slaves, that the blacks were still more inferior to freemen. At present, when the ratio of representation is to be established, we are assured that they are equal to freemen. The arguments on the former occasion had convinced him that three fifths was pretty near the just proportion, and he should vote according to the same opinion now.

Mr. BUTLER insisted, that the labor of a slave in South Carolina was as productive and valuable as that of a freeman in Massachusetts; that as wealth was the great means of defence and utility to the nation, they were equally valuable to it with freemen; and that, consequently, an equal representation ought to be allowed for them in a government which was instituted principally for the protection of property, and was itself to be supported by property.

Mr. MASON could not agree to the motion, notwithstanding it was favorable to Virginia, because he thought it unjust. It was certain that the slaves were valuable, as they raised the value of land, increased the exports and imports, and, of course, the revenue; would supply the means of feeding and supporting an army; and might, in cases of emergency, become themselves soldiers. As in these important respects they were useful to the community at large, they ought not to be excluded from the estimate of representation. He could not, however, regard them as equal to freemen, and could not vote for them as such. He added, as worthy of remark, that the Southern States have this peculiar species of property over and above the other species of property common to all the states.

Mr. WILLIAMSON reminded Mr. Gorham, that, if the Southern States contended for the inferiority of blacks to whites when taxation was in view, the Eastern States, on the same occasion, contended for their equality. He did not, however, either then or now, concur in either extreme, but approved of the ratio of three fifths.

On Mr. BUTLER'S motion, for considering blacks as equal to whites in the apportionment of representation,—

Delaware, South Carolina, Georgia, ay, 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, no, 7; New York, not on the floor.

Mr. GOUVERNEUR MORRIS said he had several objections to the proposition of Mr. Williamson. In the first place, it fettered the legislature too much. In the second place, it would exclude some states altogether, who would not have a sufficient number to entitle them to a single representation. In the third place, it will not consist with the resolution passed on Saturday last, authorizing the legislature to adjust the representation, from time to time, on the principles of population and wealth; nor with the principles of equity. If slaves were to be considered as inhabitants, not as wealth, then the said resolution would not be pursued; if as wealth, then, why is no other wealth but slaves included? These objections may perhaps be removed by amendments. His great objection was, that the number of inhabitants was not a proper standard of wealth. The amazing difference between the comparative numbers and wealth of different countries rendered all reasoning superfluous on the subject. Numbers might, with greater propriety, be deemed a measure of strength than of wealth; yet the late defence made by Great Britain against her numerous enemies proved, in the clearest manner, that it is entirely fallacious even in this respect.

Mr. KING thought there was great force in the objections of Mr. Gouverneur Morris. He would, however, accede to the proposition, for the sake of doing something.

Mr. RUTLEDGE contended for the admission of wealth in the estimate by which representation should be regulated. The Western States will not be able to contribute in proportion to their numbers; they should not therefore be represented in that proportion. The Atlantic States will not concur in such a plan. He moved that, "at the end of—years after the first meeting of the legislature, and of every—years thereafter, the legislature shall proportion the representation according to the principles of wealth and population."

Mr. SHERMAN thought the number of people alone the best rule for measuring wealth as well as representation; and that if the legislature were to be governed by wealth, they would be obliged to estimate it by numbers. He was at first for leaving the matter wholly to the discretion of the legislature; but he had been convinced, by the observations of (Mr. Randolph and Mr. Mason), that the *periods* and the *rule* of revising the representation, ought to be fixed by the constitution.

Mr. READ thought, the legislature ought not to be too much shackled. It would make the Constitution, like religious creeds, embarrassing to those bound to conform to it, and more likely to produce dissatisfaction and schism than harmony and union.

Mr. MASON objected to Mr. Rutledge's motion, as requiring of the legislature something too indefinite and impracticable, and leaving them a pretext for doing nothing.

Mr. WILSON had himself no objection to leaving the legislature entirely at liberty, but considered wealth as an impracticable rule.

Mr. GORHAM. If the Convention, who are comparatively so little biased by local views, are so much perplexed, how can it be expected that the legislature hereafter, under the full bias of those views, will be able to settle a standard? He was convinced, by the arguments of others and his own reflections, that the Convention ought to fix some standard or other.

Mr. GOUVERNEUR MORRIS. The arguments of others, and his own reflections, had led him to a very different conclusion. If we cannot agree on a rule that will be just at this time, how can we expect to find one that will be just in all times to come? Surely, those who come after us will judge better of things present than we can of things future. He could not persuade himself that numbers would be a just rule at any time. The remarks of (Mr. Mason) relative to the western country had not changed his opinion on that head. Among other objections, it must be apparent, they would not be able to furnish men equally enlightened, to share in the administration of our common interests. The busy haunts of men, not the remote wilderness, was the proper school of political talents. If the western people get the power into their hands, they will ruin the Atlantic interests. The back members are always most averse to the best measures. He mentioned the case of Pennsylvania formerly. The lower part of the state had the power in the first instance. They kept it in their own hands, and the country was the better for it. Another objection with him, against admitting the blacks into the census, was, that the people of Pennsylvania would revolt at the idea of being put on a footing with slaves. They would reject any plan that was to have such an effect. Two objections had been raised against leaving the adjustment of the representation, from time to time, to the discretion of the legislature. The first was, they would be unwilling to revise it at all. The second, that, by referring to *wealth,* they would be bound by a rule which, if willing, they would be unable to execute. The first objection distrusts their fidelity. But if their duty, their honor, and their oaths, will not bind them, let us not put into their hands our liberty, and all our other great interests; let us have no government at all. In the second place, if these ties will bind them, we need not distrust the practicability of the rule. It was followed in part by the committee in

the apportionment of representatives yesterday reported to the House. The best course that could be taken would be to leave the interests of the people to the representatives of the people.

Mr. MADISON was not a little surprised to hear this implicit confidence urged by a member who, on all occasions, had inculcated so strongly the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice and interest. If the representatives of the people would be bound by the ties he had mentioned, what need was there of a Senate? What of a revisionary power? But his reasoning was not only inconsistent with his former reasoning, but with itself. At the same time that he recommended this implicit confidence to the Southern States in the northern majority, he was still more zealous in exhorting all to a jealousy of a western majority. To reconcile the gentleman with himself, it must be imagined that he determined the human character by the points of the compass. The truth was, that all men having power ought to be distrusted to a certain degree. The case of Pennsylvania had been mentioned, where it was admitted that those who were possessed of the power in the original settlement never admitted the new settlements to a due share of it. England was a still more striking example. The power there had long been in the hands of the boroughs—of the minority—who had opposed and defeated every reform which had been attempted. Virginia was, in a less degree, another example. With regard to the Western States, he was clear and firm in opinion that no unfavorable distinctions were admissible, either in point of justice or policy. He thought, also, that the hope of contributions to the treasury from them had been much underrated. Future contributions, it seemed to be understood on all hands, would be principally levied on imports and exports. The extent and fertility of the western soil would, for a long time, give to agriculture a preference over manufactures. Trials would be repeated till some articles could be raised from it that would bear a transportation to places where they could be exchanged for imported manufactures. Whenever the Mississippi should be opened to them, (which would, of necessity, be the case as soon as their population would subject them to any considerable share of the public burden,) imposts on their trade could be collected with less expense and greater certainty than on that of the Atlantic States. In the mean time, as their supplies must pass through the *Atlantic States,* their contributions would be levied in the same manner with those of the Atlantic States. He could not agree that any substantial objection lay against fixing numbers for the perpetual standard of representation. It was said that representation and taxation were to go together; that taxation and wealth ought to go together; that population and wealth were not measures of each other. He admitted that, in different climates, under different forms of government, and in different stages of civilization, the inference was perfectly just. He would admit that, in no situation, numbers of inhabitants were an accurate measure of wealth. He contended, however, that in the United States it was sufficiently so for the object in contemplation. Although their climate varied considerably, yet, as the governments, the laws, and the manners, of all were nearly the same, and the intercourse between different parts perfectly free, population, industry, arts, and the value of labor, would constantly tend to equalize themselves. The value of labor might be considered as the principal criterion of wealth, and ability to support taxes, and this would find its level in different places, where the intercourse should be easy and free, with as much certainty as the value of money or any other

thing. Wherever labor would yield most, people would resort, till the competition should destroy the inequality. Hence it is that the people are constantly swarming from the more to the less populous places—from Europe to America—from the northern and middle parts of the United States to the southern and western. They go where land is cheaper, because there labor is dearer. If it be true that the same quantity of produce raised on the banks of the Ohio is of less value than on the Delaware, it is also true that the same labor will raise twice or thrice the quantity in the former, that it will raise in the latter, situation.

Col. MASON agreed with Mr. G. Morris, that we ought to leave the interests of the people to the representatives of the people; but the objection was, that the legislature would cease to be the representatives of the people. It would continue so no longer than the states now containing a majority of the people should retain that majority. As soon as the southern and western population should predominate, which must happen in a few years, the power would be in the hands of the minority, and would never be yielded to the majority, unless provided for by the Constitution.

On the question for postponing Mr. Williamson's motion, in order to consider that of Mr. Rutledge, it passed in the negative,—

Massachusetts, Pennsylvania, Delaware, South Carolina, Georgia, ay, 5; Connecticut, New Jersey, Maryland, Virginia, North Carolina, no, 5.

On the question on the first clause of Mr. Williamson's motion, as to taking a census of the *free* inhabitants, it passed in the affirmative,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, ay, 6; Delaware, Maryland, South Carolina, Georgia, no, 4.

The next clause, as to three fifths of the negroes, being considered,—

Mr. KING, being much opposed to fixing numbers as the rule of representation, was particularly so on account of the blacks. He thought the admission of them along with whites at all would excite great discontents among the states having no slaves. He had never said, as to any particular point, that he would in no event acquiesce in and support it; but he would say that, if in any case such a declaration was to be made by him, it would be in this. He remarked that, in the temporary allotment of representatives made by the committee, the Southern States had received more than the number of their white and three fifths of their black inhabitants entitled them to.

Mr. SHERMAN. South Carolina had not more beyond her proportion than New York and New Hampshire; nor either of them more than was necessary in order to avoid fractions, or reducing them below their proportion. Georgia had more, but the rapid growth of that state seemed to justify it. In general, the allotment might not be just, but, considering all circumstances, he was satisfied with it.

Mr. GORHAM supported the propriety of establishing numbers as the rule. He said that in Massachusetts estimates had been taken in the different towns, and that persons had been curious enough to compare these estimates with the respective numbers of

people, and it had been found, even including Boston, that the most exact proportion prevailed between numbers and property. He was aware that there might be some weight in what had fallen from his colleague, as to the umbrage which might be taken by the people of the Eastern States. But he recollected that, when the proposition of Congress for changing the eighth article of the Confederation was before the legislature of Massachusetts, the only difficulty then was, to satisfy them that the negroes ought not to have been counted equally with the whites, instead of being counted in the ratio of three fifths only.*

Mr. WILSON did not well see on what principle the admission of blacks, in the proportion of three fifths, could be explained. Are they admitted as citizens—then why are they not admitted on an equality with white citizens? Are they admitted as property—then why is not other property admitted into the computation? These were difficulties, however, which he thought must be overruled by the necessity of compromise. He had some apprehensions, also, from the tendency of the blending of the blacks with the whites, to give disgust to the people of Pennsylvania, as had been intimated by his colleague, (Mr. Gouverneur Morris.) But he differed from him in thinking numbers of inhabitants so incorrect a measure of wealth. He had seen the western settlements of Pennsylvania, and, on a comparison of them with the city of Philadelphia, could discover little other difference than that property was more unequally divided here than there. Taking the same number in the aggregate, in the two situations, he believed there would be little difference in their wealth and ability to contribute to the public wants.

Mr. GOUVERNEUR MORRIS was compelled to declare himself reduced to the dilemma of doing injustice to the Southern States, or to human nature, and he must therefore do it to the former; for he could never agree to give such encouragement to the slave trade as would be given by allowing them a representation for their negroes; and he did not believe those states would ever confederate on terms that would deprive them of that trade.

On the question for agreeing to include three fifths of the blacks,—

Connecticut, Virginia, North Carolina, Georgia, ay, 4; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland,† South Carolina, no, 6.

On the question as to taking the census "the first year after the meeting of the legislature,"—

Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, ay, 7; Connecticut, Maryland, Georgia, no, 3.

On filling the blank for the periodical census with fifteen years,—agreed to, *nem. con.*

Mr. MADISON moved to add, after "fifteen years," the words "at least," that the legislature might anticipate when circumstances were likely to render a particular year inconvenient.

On this motion, for adding "at least," it passed in the negative, the states being equally divided.

Massachusetts, Virginia, North Carolina, South Carolina, Georgia, ay, 5; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, no, 5.

A change in the phraseology of the other clause, so as to read, "and the legislature shall alter or augment the representation accordingly," was agreed to, *nem. con.*

On the question on the whole resolution of Mr. Williamson, as amended,—

Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 9.

So it was rejected unanimously.

Adjourned.

Thursday,*July* 12.

In Convention.—Mr. GOUVERNEUR MORRIS moved to add, to the clause empowering the legislature to vary the representation according to the principles of wealth and numbers of inhabitants, a proviso, "that taxation shall be in proportion to representation."

Mr. BUTLER contended, again, that representation should be according to the full number of inhabitants, including all the blacks, admitting the justice of Mr. Gouverneur Morris's motion.

Mr. MASON also admitted the justice of the principle, but was afraid embarrassments might be occasioned to the legislature by it. It might drive the legislature to the plan of requisitions.

Mr. GOUVERNEUR MORRIS admitted that some objections lay against his motion, but supposed they would be removed by restraining the rule to *direct* taxation. With regard to indirect taxes on *exports* and imports, and on consumption, the rule would be inapplicable. Notwithstanding what had been said to the contrary, he was persuaded that the imports and consumption were pretty nearly equal throughout the Union.

Gen. PINCKNEY liked the idea. He thought it so just that it could not be objected to; but foresaw that, if the revision of the census was left to the discretion of the legislature, it would never be carried into execution. The rule must be fixed, and the execution of it enforced by the Constitution. He was alarmed at what was said, (by Mr. Gouverneur Morris,) yesterday, concerning the negroes. He was now again alarmed at what had been thrown out concerning the taxing of exports. South Carolina has, in one year, exported to the amount of £600,000 sterling, all which was the fruit of the labor of her blacks. Will she be represented in proportion to this amount? She

will not. Neither ought she then to be subject to a tax on it. He hoped a clause would be inserted in the system, restraining the legislature from taxing exports.

Mr. WILSON approved the principle, but could not see how it could be carried into execution, unless restrained to direct taxation.

Mr. GOUVERNEUR MORRIS having so varied his motion by inserting the word "direct," it passed, *nem. con.,* as follows: "provided always that direct taxation ought to be proportioned to representation."

Mr. DAVIE said it was high time now to speak out. He saw that it was meant by some gentlemen to deprive the Southern States of any share of representation for their blacks. He was sure that North Carolina would never confederate on any terms that did not rate them at least as three fifths. If the Eastern States meant, therefore, to exclude them altogether, the business was at an end.

Dr. JOHNSON thought that wealth and population were the true, equitable rules of representation; but he conceived that these two principles resolved themselves into one, population being the best measure of wealth. He concluded, therefore, that the number of people ought to be established as the rule, and that all descriptions, including blacks *equally* with the whites, ought to fall within the computation. As various opinions had been expressed on the subject, he would move that a committee might be appointed to take them into consideration, and report them.

Mr. GOUVERNEUR MORRIS. It had been said that it is high time to speak out. As one member, he would candidly do so. He came here to form a compact for the good of America. He was ready to do so with all the states. He hoped and believed that all would enter into such a compact. If they would not, he was ready to join with any states that would. But as the compact was to be voluntary, it is in vain for the Eastern States to insist on what the Southern States will never agree to. It is equally vain for the latter to require what the other states can never admit, and he verily believed the people of Pennsylvania will never agree to a representation of negroes. What can be desired by these states more than has been already proposed—that the legislature shall, from time to time, regulate representation according to population and wealth?

Gen. PINCKNEY desired that the rule of wealth should be ascertained, and not left to the pleasure of the legislature; and that property in slaves should not be exposed to danger, under a government instituted for the protection of property.

The first clause in the report of the first grand committee was postponed.

Mr. ELLSWORTH, in order to carry into effect the principle established, moved to add to the last clause adopted by the House the words following: "and that the rule of contribution by direct taxation, for the support of the government of the United States, shall be the number of white inhabitants and three fifths of every other description, in the several states, until some other rule, that shall more accurately ascertain the wealth of the several states, can be devised and adopted by the legislature."

Mr. BUTLER seconded the motion, in order that it might be committed.

Mr. RANDOLPH was not satisfied with the motion. The danger will be revived, that the ingenuity of the legislature may evade or pervert the rule, so as to perpetuate the power where it shall be lodged in the first instance. He proposed, in lieu of Mr. Ellsworth's motion, "that, in order to ascertain the alterations in representation that may be required, from time to time, by changes in the relative circumstances of the states, a census shall be taken within two years from the first meeting of the general legislature of the United States, and once within the term of every—years afterwards, of all the inhabitants, in the manner and according to the ratio recommended by Congress, in their resolution of the 18th of April, 1783, (rating the blacks at three fifths of their number,) and that the legislature of the United States shall arrange the representation accordingly." He urged, strenuously, that express security ought to be provided for including slaves in the ratio of representation. He lamented that such a species of property existed; but, as it did exist, the holders of it would require this security. It was perceived that the design was entertained by some of excluding slaves altogether; the legislature, therefore, ought not to be left at liberty.

Mr. ELLSWORTH withdraws his motion, and seconds that of Mr. Randolph.

Mr. WILSON observed that less umbrage would, perhaps, be taken against an admission of the slaves into the rule of representation, if it should be so expressed as to make them indirectly only an ingredient in the rule, by saying that they should enter into the rule of taxation; and as representation was to be according to taxation, the end would be equally attained. He accordingly moved, and was seconded, so to alter the last clause adopted by the House, that, together with the amendment proposed, the whole should read as follows: "provided always that the representation ought to be proportioned according to direct taxation; and, in order to ascertain the alterations in the direct taxation which may be required, from time to time, by the changes in the relative circumstances of the states, *Resolved,* that a census be taken within two years from the first meeting of the legislature of the United States, and once within the term of every—years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the 18th of April, 1783, and that the legislature of the United States shall proportion the direct taxation accordingly."

Mr. KING. Although this amendment varies the aspect somewhat, he had still two powerful objections against tying down the legislature to the rule of numbers,—first, they were at this time an uncertain index of the relative wealth of the states; secondly, if they were a just index at this time, it cannot be supposed always to continue so. He was far from wishing to retain any unjust advantage whatever in one part of the republic. If justice was not the basis of the connection, it could not be of long duration. He must be short-sighted indeed who does not foresee that, whenever the Southern States shall be more numerous than the Northern, they can and will nold a language that will awe them into justice. If they threaten to separate now in case injury shall be done them, will their threats be less urgent or effectual when force shall back their demands? Even in the intervening period there will be no point of time at which they will not be able to say, Do us justice, or we will separate. He urged the necessity of placing confidence, to a certain degree, in every government; and did

not conceive that the proposed confidence, as to a periodical readjustment of the representation, exceeded that degree.

Mr. PINCKNEY moved to amend Mr. Randolph's motion, so as to make "blacks equal to the whites in the ratio of representation." This, he urged, was nothing more than justice. The blacks are the laborers, the peasants, of the Southern States. They are as productive of pecuniary resources as those of the Northern States. They add equally to the wealth, and, considering money as the sinew of war, to the strength, of the nation. It will also be politic with regard to the Northern States, as taxation is to keep pace with representation.

Gen. PINCKNEY moves to insert six years, instead of two, as the period, computing from the first meeting of the legislature, within which the first census should be taken. On this question for inserting six years instead of "two," in the proposition of Mr. Wilson, it passed in the affirmative.

Connecticut, New Jersey, Pennsylvania, Maryland, South Carolina, ay, 5; Massachusetts, Virginia, North Carolina, Georgia, no, 4; Delaware, divided.

On the question for filling the blank for the periodical census with "twenty years," it passed in the negative.

Connecticut, New Jersey, Pennsylvania, ay, 3; Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 7.

On the question for ten years, it passed in the affirmative.

Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Connecticut, New Jersey, no, 2.

On Mr. Pinckney's motion, for rating blacks as equal to whites, instead of as three fifths,—

South Carolina, Georgia, ay, 2; Massachusetts, Connecticut, (Dr. Johnson, ay,) New Jersey, Pennsylvania, (three against two,) Delaware, Maryland, Virginia, North Carolina, no, 8.

Mr. Randolph's proposition, as varied by Mr. Wilson, being read, for taking the question on the whole,—

Mr. GERRY urged that the principle of it could not be carried into execution, as the states were not to be taxed as states. With regard to taxes on imposts, he conceived they would be more productive where there were no slaves than where there were, the consumption being greater.

Mr. ELLSWORTH. In case of a poll-tax, there would be no difficulty. But there would probably be none. The sum allotted to a state may be levied without difficulty, according to the plan used by the state in raising its own supplies.

On the question on the whole proposition, as proportioning representation to direct taxation, and both to the white and three fifths of the black inhabitants, and requiring a census within six years, and within every ten years afterwards,—

168 Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, ay, 6; New Jersey, Delaware, no, 2; Massachusetts, South Carolina, divided.

Adjourned.

Friday,*July* 13.

In Convention.—It being moved to postpone the clause in the report of the committee of eleven as to the originating of money bills in the *first* branch, in order to take up the following, "that in the second branch each state shall have an equal voice,"—

Mr. GERRY moved to add, as an amendment to the last clause agreed to by the House, "that, from the first meeting of the legislature of the United States till a census shall be taken, all moneys to be raised for supplying the public treasury by direct taxation shall be assessed on the inhabitants of the several states according to the number of their representatives respectively in the first branch." He said this would be as just before as after the census, according to the general principle that taxation and representation ought to go together.

Mr. WILLIAMSON feared that New Hampshire will have reason to complain. Three members were allotted to her as a liberal allowance, for this reason, among others—that she might not suppose any advantage to have been taken of her absence. As she was still absent, and had no opportunity of deciding whether she would choose to retain the number on the condition of her being taxed in proportion to it, he thought the number ought to be reduced from three to two, before the question was taken on Mr. Gerry's motion.

Mr. READ could not approve of the proposition. He had observed, he said, in the committee a backwardness, in some of the members from the large states, to take their full proportion of representatives. He did not then see the motive. He now suspects it was to avoid their due share of taxation. He had no objection to a just and accurate adjustment of representation and taxation to each other.

Mr. GOUVERNEUR MORRIS and Mr. MADISON answered, that the charge itself involved an acquittal; since, notwithstanding the augmentation of the number of members allotted to Massachusetts and Virginia, the motion for proportioning the burdens thereto was made by a member from the former state, and was approved by Mr. Madison, from the latter, who was on the committee. Mr. Gouverneur Morris said, that he thought Pennsylvania had her due share in eight members; and he could not in candor ask for more. Mr. Madison said, that, having always conceived that the difference of interest in the United States lay not between the large and small, but the Northern and Southern States, and finding that the number of members allotted to the Northern States was greatly superior, he should have preferred an addition of two members to the Southern States—to wit, one to North and one to South Carolina,

rather than of one member to Virginia. He liked the present motion, because it tended to moderate the views both of the opponents and advocates for rating very high the negroes.

Mr. ELLSWORTH hoped the proposition would be withdrawn. It entered too much into detail. The general principle was already sufficiently settled. As fractions cannot be regarded in apportioning the number of representatives, the rule will be unjust, until an actual census shall be made. After that, taxation may be precisely proportioned, according to the principle established, to the *number of inhabitants.*

Mr. WILSON hoped the motion would not be withdrawn. If it should, it will be made from another quarter. The rule will be as reasonable and just before, as after, a census. As to fractional numbers, the census will not destroy, but ascertain them. And they will have the same effect after, as before, the census; for, as he understands the rule, it is to be adjusted not to the number of *inhabitants,* but of *representatives.*

Mr. SHERMAN opposed the motion. He thought the legislature ought to be left at liberty; in which case they would probably conform to the principles observed by Congress.

Mr. MASON did not know that Virginia would be a loser by the proposed regulation, but had some scruple as to the justice of it. He doubted much whether the conjectural rule which was to precede the census would be as just as it would be rendered by an actual census.

Mr. ELLSWORTH and Mr. SHERMAN moved to postpone the motion of Mr. Gerry.

On the question, it passed in the negative.

Connecticut, New Jersey, Delaware, Maryland, ay, 4; Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 6.

On the question on Mr. Gerry's motion, it passed in the negative, the states being equally divided.

Massachusetts, *Pennsylvania,* North Carolina, South Carolina, Georgia, ay, 5; Connecticut, New Jersey, Delaware, Maryland, *Virginia,* no, 5.

Mr. GERRY, finding that the loss of the question had proceeded from an objection, with some, to the proposed assessment of direct taxes on the *inhabitants* of the states, which might restrain the legislature to a poll-tax, moved his proposition again, but so varied as to authorize the assessment on the *states,* which leaves the mode to the legislature, viz.: "that, from the first meeting of the legislature of the United States until a census shall be taken, all moneys for supplying the public treasury by direct taxation shall be raised from the said several states, according to the number of their representatives respectively in the first branch."

On this varied question, it passed in the affirmative.

Massachusetts, *Virginia,* North Carolina, South Carolina, Georgia, ay, 5; Connecticut, New Jersey, Delaware, Maryland, no, 4; *Pennsylvania,* divided.

On the motion of Mr. RANDOLPH, the vote of Monday last, authorizing the legislature to adjust, from time to time, the representation upon the principles of *wealth* and numbers of inhabitants, was reconsidered by common consent, in order to strike out *wealth,* and adjust the resolution to that requiring periodical revisions according to the number of whites and three fifths of the blacks. The motion was in the words following:—

"But, as the present situation of the states may probably alter in the number of their inhabitants, that the legislature of the United States be authorized, from time to time, to apportion the number of representatives; and, in case any of the states shall hereafter be divided, or any two or more states united, or new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned."

Mr. GOUVERNEUR MORRIS opposed the alteration, as leaving still an incoherence. If negroes were to be viewed as inhabitants, and the revision was to proceed on the principle of numbers of inhabitants, they ought to be added in their entire number, and not in proportion of three fifths. If as property, the word *wealth* was right; and striking it out would produce the very inconsistency which it was meant to get rid of. The train of business, and the late turn which it had taken, had led him, he said, into deep meditation on it, and he would candidly state the result. A distinction had been set up, and urged, between the Northern and Southern States. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees, however, that it is persisted in; and the southern gentlemen will not be satisfied unless they see the way open to their gaining a majority in the public councils. The consequence of such a transfer of power from the maritime to the interior and landed interest, will, he foresees, be such an oppression to commerce, that he shall be obliged to vote for the vicious principle of equality in the second branch, in order to provide some defence for the Northern States against it. But, to come more to the point—either this distinction is fictitious or real; if fictitious, let it be dismissed, and let us proceed with due confidence. If it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other. There can be no end of demands for security, if every particular interest is to be entitled to it. The Eastern States may claim it for their fishery, and for other objects, as the Southern States claim it for their peculiar objects. In this struggle between the two ends of the Union, what part ought the Middle States, in point of policy, to take? To join their eastern brethren, according to his ideas. If the Southern States get the power into their hands, and be joined, as they will be, with the interior country, they will inevitably bring on a war with Spain for the Mississippi. This language is already held. The interior country, having no property nor interest exposed on the sea, will be little affected by such a war. He wished to know what security the Northern and Middle States will have against this danger. It has been said that North Carolina, South Carolina, and Georgia only, will in a little time have a majority of the people of America. They must in that case include

the great interior country, and every thing was to be apprehended from their getting the power into their hands.

Mr. BUTLER. The security the Southern States want is, that their negroes may not be taken from them, which some gentlemen within or without doors have a very good mind to do. It was not supposed that North Carolina, South Carolina, and Georgia, would have more people than all the other states, but many more relatively to the other states than they now have. The people and strength of America are evidently bearing southwardly, and south-westwardly.

Mr. WILSON. If a general declaration would satisfy any gentleman, he had no indisposition to declare his sentiments. Conceiving that all men, wherever placed, have equal rights, and are equally entitled to confidence, he viewed without apprehension the period when a few states should contain the superior number of people. The majority of people, wherever found, ought in all questions to govern the minority. If the interior country should acquire this majority, it will not only have the right, but will avail itself of it, whether we will or no. This jealousy misled the policy of Great Britain with regard to America. The fatal maxims espoused by her were, that the colonies were growing too fast, and that their growth must be stinted in time. What were the consequences? First, enmity on our part, then actual separation. Like consequences will result on the part of the interior settlements, if like jealousy and policy be pursued on ours. Further, if numbers be not a proper rule, why is not some better rule pointed out? No one has yet ventured to attempt it. Congress have never been able to discover a better. No state, as far as he had heard, had suggested any other. In 1783, after elaborate discussion of a measure of wealth, all were satisfied then, as they now are, that the rule of numbers does not differ much from the combined rule of numbers and wealth. Again, he could not agree that property was the sole or primary object of government and society. The cultivation and improvement of the human mind was the most noble object. With respect to this object, as well as to other *personal* rights, numbers were surely the natural and precise measure of representation. And with respect to property, they could not vary much from the precise measure. In no point of view, however, could the establishment of numbers, as the rule of representation in the first branch, vary his opinion as to the impropriety of letting a vicious principle into the second branch.

On the question to strike out *wealth,* and to make the change as moved by Mr. Randolph, it passed in the affirmative.

Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Delaware, divided.

Mr. READ moved to insert, after the word “divided,” “or enlarged by addition of territory;” which was agreed to, *nem con.*[*]

Adjourned.

Saturday,*July* 14.

169*In Convention.*—Mr. L. MARTIN called for the question on the whole report, including the parts relating to the origination of money bills, and the equality of votes in the second branch.

Mr. GERRY wished, before the question should be put, that the attention of the House might be turned to the dangers apprehended from western states. He was for admitting them on liberal terms, but not for putting ourselves into their hands. They will, if they acquire power, like all men, abuse it. They will oppress commerce, and drain our wealth into the western country. To guard against these consequences, he thought it necessary to limit the number of new states to be admitted into the Union, in such a manner that they should never be able to outnumber the Atlantic states. He accordingly moved, "that, in order to secure the liberties of the states already confederated, the number of representatives in the first branch, of the states which shall hereafter be established, shall never exceed in number the representatives from such of the states as shall accede to this Confederation.

Mr. KING seconded the motion.

Mr. SHERMAN thought there was no probability that the number of future states would exceed that of the existing states. If the event should ever happen, it was too remote to be taken into consideration at this time. Besides, we are providing for our posterity, for our children and our grandchildren, who would be as likely to be citizens of new western states as of the old states. On this consideration alone, we ought to make no such discrimination as was proposed by the motion.

Mr. GERRY. If some of our children should remove, others will stay behind; and he thought incumbent on us to provide for their interests. There was a rage for emigration from the Eastern States to the western country, and he did not wish those remaining behind to be at the mercy of the emigrants. Besides, foreigners are resorting to that country, and it is uncertain what turn things may take there.

On the question for agreeing to the motion of Mr. Gerry, it passed in the negative.

Massachusetts, Connecticut, Delaware, Maryland, ay, 4; New Jersey, Virginia, North Carolina, South Carolina, Georgia, no, 5; Pennsylvania, divided.

Mr. RUTLEDGE proposed to reconsider the two propositions touching the originating of money bills, in the first, and the equality of votes in the second, branch.

Mr. SHERMAN was for the question on the whole at once. It was, he said, a conciliatory plan; it had been considered in all its parts; a great deal of time had been spent upon it; and if any part should now be altered, it would be necessary to go over the whole ground again.

Mr. L. MARTIN urged the question on the whole. He did not like many parts of it. He did not like having two branches, nor the inequality of votes in the first branch. He was willing, however, to make trial of the plan, rather than do nothing.

Mr. WILSON traced the progress of the report through its several stages; remarking, that when, on the question concerning an equality of votes, the House was divided, our constituents, had they voted as their representatives did, would have stood as two thirds against the equality, and one third only in favor of it. This fact would ere long be known, and it would appear that this fundamental point has been carried by one third against two thirds. What hopes will our constituents entertain, when they find that the essential principles of justice have been violated in the outset of the government? As to the privilege of originating money bills, it was not considered by any as of much moment, and by many as improper in itself. He hoped both clauses would be reconsidered. The equality of votes was a point of such critical importance, that every opportunity ought to be allowed for discussing and collecting the mind of the Convention upon it.

Mr. L. MARTIN denies that there were two thirds against the equality of votes. The states that please to call themselves large are the weakest in the Union. Look at Massachusetts—look at Virginia—are they efficient states? He was for letting a separation take place, if they desired it. He had rather there should be two confederacies, than one founded on any other principle than an equality of votes, in the second branch at least.

Mr. WILSON was not surprised that those who say that a minority does more than a majority should say the minority is stronger than the majority. He supposed the next assertion will be, that they are richer also; though he hardly expected it would be persisted in, when the states shall be called on for taxes and troops.

Mr. GERRY also animadverted on Mr. L. Martin's remarks on the weakness of Massachusetts. He favored the reconsideration, with a view, not of destroying the equality of votes, but of providing that the states should vote *per capita,* which, he said, would prevent the delays and inconveniences that had been experienced in Congress, and would give a national aspect and spirit to the management of business. He did not approve of a reconsideration of the clause relating to money bills. It was of great consequence. It was the corner-stone of the accommodation. If any member of the Convention had the exclusive privilege of making propositions, would any one say that it would give him no advantage over other members? The report was not altogether to his mind: but he would agree to it as it stood, rather than throw it out altogether.

The reconsideration being tacitly agreed to,—

Mr. PINCKNEY moved, that, instead of an equality of votes, the states should be represented in the second branch as follows: New Hampshire by two members; Massachusetts, four; Rhode Island, one; Connecticut, three; New York, three; New Jersey, two; Pennsylvania, four; Delaware, one; Maryland, three; Virginia, five; North Carolina, three; South Carolina, three; Georgia, two; making in the whole, thirty-six.

Mr. WILSON seconds the motion.

Mr. DAYTON. The smaller states can never give up their equality. For himself, he would in no event yield that security for their rights.

Mr. SHERMAN urged the equality of votes, not so much as a security for the small states, as for the state governments, which could not be preserved unless they were represented, and had a negative in the general government. He had no objection to the members in the second branch voting *per capita,* as had been suggested by (Mr. Gerry).

Mr. MADISON concurred in this motion of Mr. Pinckney, as a reasonable compromise.

Mr. GERRY said, he should like the motion, but could see no hope of success. An accommodation must take place, and it was apparent, from what had been seen, that it could not do so on the ground of the motion. He was utterly against a partial confederacy, leaving other states to accede or not accede, as had been intimated.

Mr. KING said, it was always with regret that he differed from his colleagues, but it was his duty to differ from (Mr. Gerry) on this occasion. He considered the proposed government as substantially and formally a general and national government over the people of America. There never will be a case in which it will act as a federal government, on the states, and not on the individual citizens. And is it not a clear principle that, in a free government, those who are to be the objects of a government ought to influence the operations of it? What reason can be assigned, why the same rule of representation should not prevail in the second as in the first branch? He could conceive none. On the contrary, every view of the subject that presented itself seemed to require it. Two objections had been raised against it, drawn, first, from the terms of the existing compact; secondly, from a supposed danger to the smaller states. As to the first objection, he thought it inapplicable. According to the existing Confederation, the rule by which the public burden is to be apportioned is *fixed,* and must be pursued. In the proposed government, it cannot be fixed, because indirect taxation is to be substituted. The legislature, therefore, will have full discretion to impose taxes in such modes and proportions as they may judge expedient. As to the second objection, he thought it of as little weight. The general government can never wish to intrude on the state governments. There could be no temptation. None had been pointed out. In order to prevent the interference of measures which seemed most likely to happen, he would have no objection to throwing all the state debts into the federal debt, making one aggregate debt of about $70,000,000, and leaving it to be discharged by the general government. According to the idea of securing the state governments, there ought to be three distinct legislative branches. The second was admitted to be necessary, and was actually meant to check the first branch—to give more wisdom, system, and stability, to the government; and ought clearly, as it was to operate on the people, to be proportioned to them. For the third purpose, of securing the states, there ought then to be a third branch, representing the states as such, and guarding, by equal votes, their rights and dignities. He would not pretend to be as thoroughly acquainted with his immediate constituents as his colleagues; but it was his firm belief that Massachusetts would never be prevailed on to yield to an equality of votes. In New York, (he was sorry to be obliged to say any thing relative to that state in the absence

of its representatives, but the occasion required it,) in New York he had seen that the most powerful argument used by the considerate opponents to the grant of the impost to Congress, was pointed against the vicious constitution of Congress with regard to representation and suffrage. He was sure that no government would last that was not founded on just principles. He preferred the doing of nothing, to an allowance of an equal vote to all the states. It would be better, he thought, to submit to a little more confusion and convulsion than to submit to such an evil. It was difficult to say what the views of different gentlemen might be. Perhaps there might be some who thought no government coëxtensive with the United States could be established with a hope of its answering the purpose. Perhaps there might be other fixed opinions incompatible with the object we are pursuing. If there were, he thought it but candid that gentlemen should speak out, that we might understand one another.

Mr. STRONG. The Convention had been much divided in opinion. In order to avoid the consequences of it, an accommodation had been proposed. A committee had been appointed; and, though some of the members of it were averse to an equality of votes, a report had been made in favor of it. It is agreed, on all hands, that Congress are nearly at an end. If no accommodation takes place, the Union itself must soon be dissolved. It has been suggested that, if we cannot come to any general agreement, the principal states may form and recommend a scheme of government. But will the small states, in that case, ever accede to it? Is it probable that the large states themselves will, under such circumstances, embrace and ratify it? He thought the small states had made a considerable concession, in the article of money bills, and that they might naturally expect some concessions on the other side. From this view of the matter, he was compelled to give his vote for the report taken altogether.

Mr. MADISON expressed his apprehensions that, if the proper foundation of government was destroyed, by substituting an equality in place of a proportional representation, no proper superstructure would be raised. If the small states really wish for a government armed with the powers necessary to secure their liberties, and to enforce obedience on the larger members, as well as themselves, he could not help thinking them extremely mistaken in the means. He reminded them of the consequences of laying the *existing Confederation* on improper principles. All the principal parties to its compilation joined immediately in mutilating and fettering the government in such a manner that it has disappointed every hope placed on it. He appealed to the doctrine and arguments used by themselves on a former occasion. It had been very properly observed (by Mr. Patterson) that representation was an expedient by which the meeting of the people themselves was rendered unnecessary; and that the representatives ought therefore to bear a proportion to the votes which their constituents, if convened, would respectively have. Was not this remark as applicable to one branch of the representation as to the other? But it had been said that the government would, in its operation, be partly federal, partly national; that although in the latter respect the representatives of the people ought to be in proportion to the people, yet, in the former, it ought to be according to the number of states. If there was any solidity in this distinction, he was ready to abide by it; if there was none, it ought to be abandoned. In all cases where the general government is to act on the people, let the people be represented, and the votes be proportional. In all cases where the government is to act on the states as such, in like manner as Congress

now acts on them, let the states be represented, and the votes be equal. This was the true ground of compromise, if there was any ground at all. But he denied that there was any ground. He called for a single instance in which the general government was not to operate on the people individually. The practicability of making laws, with coercive sanctions, for the states as political bodies, had been exploded on all hands. He observed, that the people of the large states would, in some way or other, secure to themselves a weight proportioned to the importance accuring from their superior numbers. If they could not effect it by a proportional representation in the government, they would probably accede to no government which did not, in a great measure, depend for its efficacy on their voluntary coöperation: in which case, they would indirectly secure their object. The existing Confederacy proved that where the acts of the general government were to be executed by the particular governments, the latter had a weight in proportion to their importance. No one would say that, either in Congress or out of Congress, Delaware had equal weight with Pennsylvania. If the latter was to supply ten times as much money as the former, and no compulsion could be used, it was of ten times more importance that she should voluntarily furnish the supply. In the Dutch confederacy, the votes of the provinces were equal; but Holland, which supplies about half the money, governed the whole republic. He enumerated the objections against an equality of votes in the second branch, notwithstanding the proportional representation in the first. 1. The minority could negative the will of the majority of the people. 2. They could extort measures, by making them a condition of their assent to other necessary measures. 3. They could obtrude measures on the majority, by virtue of the peculiar powers which would be vested in the Senate. 4. The evil, instead of being cured by time, would increase with every new state that should be admitted, as they must all be admitted on the principle of equality. 5. The perpetuity it would give to the preponderance of the northern against the southern scale was a serious consideration. It seemed now to be pretty well undertood, that the real difference of interest lay, not between the large and small, but between the northern and southern, states. The institution of slavery, and its consequences, formed the line of discrimination. There were five states on the southern, eight on the northern side of this line. Should a proportional representation take place, it was true, the northern would still outnumber the other; but not in the same degree, at this time; and every day would tend towards an equilibrium.

Mr. WILSON would add a few words only. If equality in the second branch was an error that time would correct, he should be less anxious to exclude it, being sensible that perfection was unattainable in any plan; but being a fundamental and a perpetual error, it ought by all means to be avoided. A vice in the representation, like an error in the first concoction, must be followed by disease, convulsions, and, finally, death itself. The justice of the general principle of proportional representation has not, in argument at least, been yet contradicted. But it is said that a departure from it, so far as to give the states an equal vote in one branch of the legislature, is essential to their preservation. He had considered this position maturely, but could not see its application. That the states ought to be preserved, he admitted. But does it follow, that an equality of votes is necessary for the purpose? Is there any reason to suppose that, if their preservation should depend more on the large than on the small states, the security of the states against the general government would be diminished? Are the large states less attached to their existence, more likely to commit suicide, than the

small? An equal vote, then, is not necessary, as far as he can conceive, and is liable, among other objections, to this insuperable one: The great fault of the existing Confederacy is its inactivity. It has never been a complaint against Congress, that they governed overmuch. The complaint has been, that they have governed too little. To remedy this defect we were sent here. Shall we effect the cure by establishing an equality of votes, as is proposed? No; this very equality carries us directly to Congress,—to the system which it is our duty to rectify. The small states cannot indeed act, by virtue of this equality, but they may control the government, as they have done in Congress. This very measure is here prosecuted by a minority of the people of America. Is, then, the object of the Convention likely to be accomplished in this way? Will not our constituents say, "We sent you to form an efficient government, and you have given us one more complex, indeed, but having all the weakness of the former government"? He was anxious for uniting all the states under one government. He knew there were some respectable men who preferred three confederacies, united by offensive and defensive alliances. Many things may be plausibly said, some things may be justly said, in favor of such a project. He could not, however, concur in it himself; but he thought nothing so pernicious as bad first principles.

Mr. ELLSWORTH asked two questions. One of Mr. Wilson, whether he had ever seen a good measure fail in Congress for want of a majority of states in its favor. He had himself never known such an instance. The other of Mr. Madison, whether a negative lodged with the majority of the states, even the smallest, could be more dangerous than the qualified negative proposed to be lodged in a single executive magistrate, who must be taken from some one state.

Mr. SHERMAN signified that his expectation was, that the general legislature would in some cases act on the *federal principle* of requiring quotas. But he thought it ought to be empowered to carry their own plans into execution, if the states should fail to supply their respective quotas.

On the question for agreeing to Mr. Pinckney's motion, for allowing New Hampshire two, Massachusetts four, &c., it passed in the negative.

Pennsylvania, Maryland, Virginia, South Carolina, ay, 4; Massachusetts, (Mr. King, ay, Mr. Gorham absent,) Connecticut, New Jersey, Delaware, North Carolina, Georgia, no, 6.

Adjourned.

Monday,*July* 16.

In Convention.—On the question for agreeing to the whole report, as amended, and including the equality of votes in the second branch, it passed in the affirmative.

Connecticut, New Jersey, Delaware, Maryland, North Carolina, (Mr. Spaight, no,) ay, 5; Pennsylvania, Virginia, South Carolina, Georgia, no, 4; Massachusetts, divided, (Mr. Gerry, Mr. Strong, ay; Mr. King, Mr. Gorham, no.)

The whole, thus passed, is in the words following, viz.:—

"*Resolved,* That, in the original formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members, of which number New Hampshire shall send 3; Massachusetts, 8; Rhode Island, 1; Connecticut, 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia, 10; North Carolina, 5; South Carolina, 5; Georgia, 3. But as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged by addition of territory, or any two or more states united, or any new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned: provided always, that representation ought to be proportioned according to direct taxation. And in order to ascertain the alteration in the direct taxation, which may be required from time to time by the changes in the relative circumstances of the states,—

"*Resolved,* That a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the 18th day of April, 1783; and that the legislature of the United States shall proportion the direct taxation accordingly.

"*Resolved,* That all bills for raising or appropriating money, and for fixing the salaries of officers of the government of the United States, shall originate in the first branch of the legislature of the United States, and shall not be altered or amended in the second branch; and that no money shall be drawn from the public treasury but in pursuance of appropriations to be originated in the first branch.

170171 "*Resolved,* That, in the second branch of the legislature of the United States, each state shall have an equal vote."

The sixth resolution in the report from the committee of the whole House, which had been postponed, in order to consider the seventh and eighth resolutions, was now resumed. (See the resolution.)

"That the national legislature ought to possess the legislative rights vested in Congress by the Confederation,"

was agreed to, *nem. con.*

"And moreover to legislate in all cases to which the separate states are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation,"

being read for a question,—

Mr. BUTLER calls for some explanation of the extent of this power; particularly of the word *incompetent.* The vagueness of the terms rendered it impossible for any precise judgment to be formed.

Mr. GORHAM. The vagueness of the terms constitutes the propriety of them. We are now establishing general principles, to be extended hereafter into details, which will be precise and explicit.

Mr. RUTLEDGE urged the objection started by Mr. Butler; and moved that the clause should be committed, to the end that a specification of the powers comprised in the general terms might be reported.

On the question for commitment, the votes were equally divided.

Connecticut, Maryland, Virginia, South Carolina, Georgia, ay, 5; Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina, no, 5.

So it was lost.

Mr. RANDOLPH. The vote of this morning (involving an equality of suffrage in the second branch) had embarrassed the business extremely. All the powers given in the report from the committee of the whole were founded on the supposition that a proportional representation was to prevail in both branches of the legislature. When he came here this morning, his purpose was to have offered some propositions that might, if possible, have united a great majority of votes, and particularly might provide against the danger suspected on the part of the smaller states, by enumerating the cases in which it might lie, and allowing an equality of votes in such cases.* But finding, from the preceding vote, that they persist in demanding an equal vote in all cases; that they have succeeded in obtaining it; and that New York, if present, would probably be on the same side; he could not but think we were unprepared to discuss the subject further. It will probably be in vain to come to any final decision, with a bare majority on either side. For these reasons he wished the Convention to adjourn, that the large states might consider the steps proper to be taken, in the present solemn crisis of the business; and that the small states might also deliberate on the means of conciliation.

Mr. PATTERSON thought, with Mr. Randolph, that it was high time for the Convention to adjourn; that the rule of secrecy ought to be rescinded; and that our constituents should be consulted. No conciliation could be admissible, on the part of the smaller states, on any other ground than that of an equality of votes in the second branch. If Mr. Randolph would reduce to form his motion for an adjournment *sine die,* he would second it with all his heart.

Gen. PINCKNEY wished to know of Mr. Randolph, whether he meant an adjournment *sine die,* or only an adjournment for the day. If the former was meant, it differed much from his idea. He could not think of going to South Carolina and returning again to this place. Besides, it was chimerical, to suppose that the states, if consulted, would ever accord separately and beforehand.

Mr. RANDOLPH had never entertained an idea of an adjournment *sine die,* and was sorry that his meaning had been so readily and strangely misinterpreted. He had in view merely an adjournment till to-morrow, in order that some conciliatory experiment might, if possible, be devised; and that in case the smaller states should continue to hold back, the larger might then take such measures—he would not say what—as might be necessary.

Mr. PATTERSON seconded the adjournment till to-morrow, as an opportunity seemed to be wished by the larger states to deliberate further on conciliatory expedients.

On the question for adjourning till to-morrow, the states were equally divided,—

New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, ay, 5; Massachusetts, Connecticut, Delaware, South Carolina, Georgia, no, 5.

So it was lost.

Mr. BROOME thought it his duty to declare his opinion against an adjournment *sine die,* as had been urged by Mr. Patterson. Such a measure, he thought, would be fatal. Something must be done by the Convention, though it should be by a bare majority.

Mr. GERRY observed, that Massachusetts was opposed to an adjournment, because they saw no new ground of compromise. But as it seemed to be the opinion of so many states that a trial should be made, the state would now concur in the adjournment.

Mr. RUTLEDGE could see no need of an adjournment, because he could see no chance of a compromise. The little states were fixed. They had repeatedly and solemnly declared themselves to be so. All that the large states, then, had to do was, to decide whether they would yield or not. For his part, he conceived that, although we could not do what we thought best in itself, we ought to do something. Had we not better keep the government up a little longer, hoping that another convention will supply our omissions, than abandon every thing to hazard? Our constituents will be very little satisfied with us, if we take the latter course.

Mr. RANDOLPH and Mr. KING renewed the motion to adjourn till to-morrow.

On the question,—

Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, ay, 7; Connecticut, Delaware, no, 2; Georgia, divided.

Adjourned.

[On the morning following, before the hour of the Convention, a number of the members from the larger states, by common agreement, met for the purpose of consulting on the proper steps to be taken in consequence of the vote in favor of an equal representation in the second branch, and the apparent inflexibility of the smaller

states on that point. Several members from the latter states also attended. The time was wasted in vague conversation on the subject, without any specific proposition or agreement. It appeared, indeed, that the opinions of the members who disliked the equality of votes differed much as to the importance of that point, and as to the policy of risking a failure of any general act of the Convention by inflexibly opposing it. Several of them—supposing that no good government could or would be built on that foundation, and that, as a division of the Convention into two opinions was unavoidable, it would be better that the side comprising the principal states, and a majority of the people of America, should propose a scheme of government to the states, than that a scheme should be proposed on the other side—would have concurred in a firm opposition to the smaller states, and in a separate recommendation, if eventually necessary. Others seemed inclined to yield to the smaller states, and to concur in such an act, however imperfect and exceptionable, as might be agreed on by the Convention as a body, though decided by a bare majority of states and by a minority of the people of the United States. It is probable that the result of this consultation satisfied the smaller states that they had nothing to apprehend from a union of the larger in any plan whatever against the equality of votes in the second branch.]

Tuesday,*July* 17.

In Convention.—Mr. GOUVERNEUR MORRIS moved to reconsider the whole resolution agreed to yesterday concerning the constitution of the two branches of the legislature. His object was to bring the House to a consideration, in the abstract, of the powers necessary to be vested in the general government. It had been said, Let us know how the government is to be modelled, and then we can determine what powers can be properly given to it. He thought the most eligible course was, first to determine on the necessary powers, and then so to modify the government, as that it might be justly and properly enabled to administer them. He feared, if we proceeded to a consideration of the powers, whilst the vote of yesterday, including an equality of the states in the second branch, remained in force, a reference to it, either mental or expressed, would mix itself with the merits of every question concerning the powers. This motion was not seconded. (It was probably approved by several members, who either despaired of success, or were apprehensive that the attempt would inflame the jealousies of the smaller states.)

The sixth resolution in the report of the committee of the whole, relating to the powers, which had been postponed in order to consider the seventh and eight, relating to the constitution, of the national legislature, was now resumed.

Mr. SHERMAN observed, that it would be difficult to draw the line between the powers of the general legislature and those to be left with the states; that he did not like the definition contained in the resolution; and proposed, in its place, to the words "individual legislation," inclusive, to insert "to make laws binding on the people 172 of the United States in all cases which may concern the common interests of the Union; but not to interfere with the government of the individual states in any matters of internal police which respect the government of such states only, and wherein the general welfare of the United States is not concerned."

Mr. WILSON seconded the amendment, as better expressing the general principle.

Mr. GOUVERNEUR MORRIS opposed it. The internal police, as it would be called and understood by the states, ought to be infringed in many cases, as in the case of paper money, and other tricks by which citizens of other states may be affected.

Mr. SHERMAN, in explanation of his idea, read an enumeration of powers, including the power of levying taxes on trade, but not the power of *direct taxation.*

Mr. GOUVERNEUR MORRIS remarked the omission, and inferred, that, for the deficiencies of taxes on consumption, it must have been the meaning of Mr. Sherman that the general government should recur to quotas and requisitions, which are subversive of the idea of government.

Mr. SHERMAN acknowledged that his enumeration did not include direct taxation. Some provision, he supposed, must be made for supplying the deficiency of other taxation, but he had not formed any.

On the question on Mr. Sherman's motion, it passed in the negative.

Connecticut, Maryland, ay. 2; Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no, 8.

Mr. BEDFORD moved that the second member of the sixth resolution be so altered as to read, "and moreover to legislate in all cases for the general interests of the Union, and also in those to which the states are severally incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation."

Mr. GOUVERNEUR MORRIS seconds the motion.

Mr. RANDOLPH. This is a formidable idea, indeed. It involves the power of violating all the laws and constitutions of the states, and of intermeddling with their police. The last member of the sentence is also superfluous, being included in the first.

Mr. BEDFORD. It is not more extensive or formidable than the clause as it stands—*no state* being *separately* competent to legislate for the *general interests* of the Union.

On the question for agreeing to Mr. Bedford's motion, it passed in the affirmative.

Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, ay, 6; Connecticut, Virginia, South Carolina, Georgia, no, 4.

On the sentence as amended, it passed in the affirmative.

Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, ay, 8; South Carolina, Georgia, no, 2.

The next clause, "to negative all laws passed by the several states, contravening, in the opinion of the national legislature, the Articles of Union, or any treaties subsisting under the authority of the Union," was then taken up.

Mr. GOUVERNEUR MORRIS opposed this power as likely to be terrible to the states, and not necessary if sufficient legislative authority should be given to the general government.

Mr. SHERMAN thought it unnecessary, as the courts of the states would not consider as valid any law contravening the authority of the Union, and which the legislature would wish to be negatived.

Mr. L. MARTIN considered the power as improper and inadmissible. Shall all the laws of the states be sent up to the general legislature before they shall be permitted to operate?

Mr. MADISON considered the negative on the laws of the states as essential to the efficacy and security of the general government. The necessity of a general government proceeds from the propensity of the states to pursue their particular interests, in opposition to the general interest. This propensity will continue to disturb the system unless effectually controlled. Nothing short of a negative on their laws will control it. They will pass laws which will accomplish their injurious objects before they can be repealed by the general legislature, or set aside by the national tribunals. Confidence cannot be put in the state tribunals as guardians of the national authority and interests. In all the states, these are more or less dependent on the legislatures. In Georgia, they are appointed annually by the legislature. In Rhode Island, the judges who refused to execute an unconstitutional law were displaced; and others substituted, by the legislature, who would be the willing instruments of the wicked and arbitrary plans of their masters. A power of negativing the improper laws of the states is at once the most mild and certain means of preserving the harmony of the system. Its utility is sufficiently displayed in the British system. Nothing could maintain the harmony and subordination of the various parts of the empire, but the prerogative by which the crown stifles in the birth every act of every part tending to discord or encroachment. It is true, the prerogative is sometimes misapplied, through ignorance, or partiality to one particular part of the empire; but we have not the same reason to fear such misapplications in our system. As to the sending all laws up to the national legislature, that might be rendered unnecessary by some emanation of the power into the states, so far at least as to give a temporary effect to laws of immediate necessity.

Mr. GOUVERNEUR MORRIS was more and more opposed to the negative. The proposal of it would disgust all the states. A law that ought to be negatived will be set aside in the judiciary department, and, if that security should fail, may be repealed by a national law.

Mr. SHERMAN. Such a power involves a wrong principle—to 173 wit, that a law of a state contrary to the Articles of the Union would, if not negatived, be valid and operative.

Mr. PINCKNEY urged the necessity of the negative.

On the question for agreeing to the power of negativing laws of states, &c., it passed in the negative.

Massachusetts, Virginia, North Carolina, ay, 3; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, no, 7.

Mr. L. MARTIN moved the following resolution:—

"That the legislative acts of the United States, made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual states to the contrary notwithstanding."

Which was agreed to, *nem. con.*

The ninth resolution being taken up, the first clause, "that a national executive be instituted, to consist of a single person," was agreed to, *nem. con.*

The next clause, "to be chosen by the national legislature," being considered.—

Mr. GOUVERNEUR MORRIS was pointedly against his being so chosen. He will be the mere creature of the legislature, if appointed and impeachable by that body. He ought to be elected by the people at large—by the freeholders of the country. That difficulties attend this mode, he admits; but they have been found superable in New York and in Connecticut, and would, he believed, be found so in the case of an executive for the United States. If the people should elect, they will never fail to prefer some man of distinguished character or services; some man, if he might so speak, of Continental reputation. If the legislature elect, it will be the work of intrigue, of cabal, and of faction; it will be like the election of a pope by a conclave of cardinals; real merit will rarely be the title to the appointment. He moved to strike out "national legislature," and insert "citizens of the United States."

Mr. SHERMAN thought that the sense of the nation would be better expressed by the legislature than by the people at large. The latter will never be sufficiently informed of characters, and, besides, will never give a majority of votes to any one man. They will generally vote for some man in their own state, and the largest state will have the best chance for the appointment. If the choice be made by the legislature, a majority of voices may be made necessary to constitute an election.

Mr. WILSON. Two arguments have been urged against an election of the executive magistrate by the people. The first is, the example of Poland, where an election of the supreme magistrate is attended with the most dangerous commotions. The cases, he observed, were totally dissimilar. The Polish nobles have resources and dependants which enable them to appear in force, and to threaten the republic as well as each other. In the next place, the electors all assemble at one place; which would not be the

case with us. The second argument is, that a majority of the people would never concur. It might be answered, that the concurrence of a majority of the people is not a necessary principle of election, nor required as such in any of the states. But, allowing the objection all its force, it may be obviated by the expedient used in Massachusetts, where the legislature, by a majority of voices, decide, in case a majority of the people do not concur in favor of one of the candidates. This would restrain the choice to a good nomination at least, and prevent in a great degree intrigue and cabal. A particular objection with him against an absolute election by the legislature was, that the executive, in that case, would be too dependent to stand the mediator between the intrigues and sinister views of the representatives and the general liberties and interests of the people.

Mr. PINCKNEY did not expect this question would again have been brought forward, an election by the people being liable to the most obvious and striking objections. They will be led by a few active and designing men. The most populous states, by combining in favor of the same individual, will be able to carry their points. The national legislature, being most immediately interested in the laws made by themselves, will be most attentive to the choice of a fit man to carry them properly into execution.

Mr. GOUVERNEUR MORRIS. It is said that, in case of an election by the people, the populous states will combine and elect whom they please. Just the reverse. The people of such states cannot combine. If there be any combination, it must be among their representatives in the legislature. It is said, the people will be led by a few designing men. This might happen in a small district. It can never happen throughout the continent. In the election of a governor of New York, it sometimes is the case, in particular spots, that the activity and intrigues of little partisans are successful; but the general voice of the state is never influenced by such artifices. It is said, the multitude will be uninformed. It is true, they would be uninformed of what passed in the legislative conclave, if the election were to be made there; but they will not be uninformed of those great and illustrious characters which have merited their esteem and confidence. If the executive be chosen by the national legislature, he will not be independent of it; and, if not independent, usurpation and tyranny on the part of the legislature will be the consequence. This was the case in England in the last century. It has been the case in Holland, where their senates have engrossed all power. It has been the case every where. He was surprised that an election by the people at large should ever have been likened to the Polish election of the first magistrate. An election by the legislature will bear a real likeness to the election by the diet of Poland. The great must be the electors in both cases, and the corruption and cabal, which are known to characterize the one, would soon find their way into the other. Appointments made by numerous bodies are always worse than those made by single responsible individuals, or by the people at large.

Col. MASON. It is curious to remark the different language held at different times. At one moment we are told that the legislature is entitled to thorough confidence, and to indefinite power. At another, that it will be governed by intrigue and corruption, and cannot be trusted at all. But, not to dwell on this inconsistency, he would observe, that a government which is to last ought at least to be practicable. Would this be the case if

the proposed election should be left to the people at large? He conceived it would be as unnatural to refer the choice of a proper character for chief magistrate to the people, as it would to refer a trial of colors to a blind man. The extent of the country renders it impossible that the people can have the requisite capacity to judge of the respective pretensions of the candidates.

Mr. WILSON could not see the contrariety stated by (Col. Mason). The legislature might deserve confidence in some respects, and distrust in others. In acts which were to affect them and their constituents precisely alike, confidence was due; in others, jealousy was warranted. In the appointment to great offices, where the legislature might feel many motives not common to the public, confidence was surely misplaced. This branch of business, it was notorious, was the most corruptly managed of any that had been committed to legislative bodies.

Mr. WILLIAMSON conceived that there was the same difference between an election, in this case, by the people and by the legislature, as between an appointment by lot and by choice. There are at present distinguished characters, who are known perhaps to almost every man. This will not always be the case. The people will be sure to vote for some man in their own state; and the largest state will be sure to succeed. This will not be Virginia, however. Her slaves will have no suffrage. As the salary of the executive will be fixed, and he will not be eligible a second time, there will not be such a dependence on the legislature as has been imagined.

On the question on an election by the people, instead of the legislature, it passed in the negative.

Pennsylvania, ay, 1; Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 9.

Mr. L. MARTIN moved that the executive be chosen by electors appointed by the several legislatures of the individual states.

Mr. BROOME seconds.

On the question, it passed in the negative.

Delaware, Maryland, ay, 2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 8.

On the question on the words “to be chosen by the national legislature,” it passed unanimously in the affirmative.

174 “For the term of seven years,”—postponed, *nem. con.,* on motion of Mr. HOUSTON and Mr. GOUVERNEUR MORRIS;—

“To carry into execution the national laws,”—agreed to, *nem. con.;*—

“To appoint to offices in cases not otherwise provided for,”—agreed to, *nem. con.;*—

"To be ineligible a second time."—Mr. HOUSTON moved to strike out this clause.

Mr. SHERMAN seconds the motion.

Mr. GOUVERNEUR MORRIS espoused the motion. The ineligibility proposed by the clause, as it stood, tended to destroy the great motive to good behavior, the hope of being rewarded by a reappointment. It was saying to him, "Make hay while the sun shines."

On the question for striking out, as moved by Mr. Houston, it passed in the affirmative.

Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Georgia, ay, 6; Delaware, Virginia, North Carolina, South Carolina, no, 4.

The clause, "for the term of seven years," being resumed,—

Mr. BROOME was for a shorter term, since the executive magistrate was now to be reëligible. Had he remained ineligible a second time, he should have preferred a longer term.

Dr. M'CLURG* moved to strike out "seven years," and insert "during good behavior." By striking out the words declaring him not reëligible, he was put into a situation that would keep him dependent forever on the legislature; and he conceived the independence of the executive to be equally essential with that of the judiciary department.

Mr. GOUVERNEUR MORRIS seconded the motion. He expressed great pleasure in hearing it. This was the way to get a good government. His fear that so valuable an ingredient would not be attained had led him to take the part he had done. He was indifferent how the executive should be chosen, provided he held his place by this tenure.

Mr. BROOME highly approved the motion. It obviated all his difficulties.

Mr. SHERMAN considered such a tenure as by no means safe or admissible. As the executive magistrate is now reëligible, he will be on good behavior as far as will be necessary. If he behaves well, he will be continued; if otherwise, displaced, on a succeeding election.

Mr. MADISON.† If it be essential to the preservation of liberty that the legislative, executive, and judiciary powers be separate, it is essential to a maintenance of the separation, that they should be independent of each other. The executive could not be independent of the legislature, if dependent on the pleasure of that branch for a reappointment. Why was it determined that the judges should not hold their places by such a tenure? Because they might be tempted to cultivate the legislature by an undue complaisance, and thus render the legislature the virtual expositor, as well as the maker, of the laws. In like manner, a dependence of the executive on the legislature would render it the executor as well as the maker of laws; and then, according to the

observation of Montesquieu, tyrannical laws may be made that they may be executed in a tyrannical manner. There was an analogy between the executive and judiciary departments in several respects. The latter executed the laws in certain cases, as the former did in others. The former expounded and applied them for certain purposes, as the latter did for others. The difference between them seemed to consist chiefly in two circumstances;—first, the collective interest and security were much more in the power belonging to the executive, than to the judiciary, department; secondly, in the administration of the former, much greater latitude is left to opinion and discretion than in the administration of the latter. But, if the second consideration proves that it will be more difficult to establish a rule sufficiently precise for trying the executive than the judges, and forms an objection to the same tenure of office, both considerations prove that it might be more dangerous to suffer a union between the executive and legislative powers than between the judiciary and legislative powers. He conceived it to be absolutely necessary to a well-constituted-republic, that the two first should be kept distinct and independent of each other. Whether the plan proposed by the motion was a proper one, was another question; as it depended on the practicability of instituting a tribunal for impeachments as certain and as adequate in the one case as in the other. On the other hand, respect for the mover entitled his proposition to a fair hearing and discussion, until a less objectionable expedient should be applied for guarding against a dangerous union of the legislative and executive departments.

Col. MASON. This motion was made some time ago, and negatived by a very large majority. He trusted that it would be again negatived. It would be impossible to define the misbehavior in such a manner as to subject it to a proper trial; and perhaps still more impossible to compel so high an offender, holding his office by such a tenure, to submit to a trial. He considered an executive during good behavior as a softer name only for an executive for life; and that the next would be an easy step to hereditary monarchy. If the motion should finally succeed, he might himself live to see such a revolution. If he did not, it was probable his children or grandchildren would. He trusted there were few men in that House who wished for it. No state, he was sure, had so far revolted from republican principles, as to have the least bias in its favor.

175 Mr. MADISON was not apprehensive of being thought to favor any step towards monarchy. The real object with him was to prevent its introduction. Experience had proved a tendency in our government to throw all power into the legislative vortex. The executives of the states are in general little more than ciphers; the legislatures omnipotent. If no effectual check be devised for restraining the instability and encroachments of the latter, a revolution of some kind or other would be inevitable. The preservation of republican government, therefore, required some expedient for the purpose, but required evidently, at the same time, that, in devising it, the genuine principles of that form should be kept in view.

Mr. GOUVERNEUR MORRIS was as little a friend to monarchy as any gentleman. He concurred in the opinion, that the way to keep out monarchical government was to establish such a republican government as would make the people happy, and prevent a desire of change.

Dr. M'CLURG was not so much afraid of the shadow of monarchy as to be unwilling to approach it; nor so wedded to republican government as not to be sensible of the tyrannies that had been and may be exercised under that form. It was an essential object with him to make the executive independent of the legislature; and the only mode left for effecting it, after the vote destroying his ineligibility a second time, was to appoint him during good behavior.

On the questing for inserting "during good behavior," in place of "seven years, [with a reëligibility,]" it passed in the negative.

New Jersey, Pennsylvania, Delaware, Virginia, ay, 4; Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia, no, 6.*

On the motion to strike out "seven years," it passed in the negative.

Massachusetts, Pennsylvania, Delaware, North Carolina, ay, 4; Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia, no, 6.†

It was now unanimously agreed, that the vote which had struck out the words "to be ineligible a second time," should be reconsidered to-morrow.

Adjourned.

Wednesday,*July* 18.

In Convention.—On motion of Mr. L. MARTIN to fix to-morrow 176 for reconsidering the vote concerning the ineligibility of the executive a second time, it passed in the affirmative.

Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, ay, 8; New Jersey, Georgia, absent.

The residue of the ninth resolution, concerning the executive, was postponed till to-morrow.

The tenth resolution, "That the executive shall have a right to negative legislative acts not afterwards passed by two thirds of each branch," was passed, *nem. con.*

The eleventh resolution, "That a national judiciary shall be established, to consist of one supreme tribunal," agreed to, *nem. con.*

On the clause, "the judges of which to be appointed by the second branch of the national legislature,"—

Mr. GORHAM would prefer an appointment by the second branch to an appointment by the whole legislature; but he thought even that branch too numerous, and too little personally responsible, to insure a good choice. He suggested that the judges be appointed by the executive, with the advice and consent of the second branch, in the

mode prescribed by the constitution of Massachusetts. This mode had been long practised in that country, and was found to answer perfectly well.

Mr. WILSON would still prefer an appointment by the executive; but if that could not be attained, would prefer, in the next place, the mode suggested by Mr. Gorham. He thought it his duty, however, to move, in the first instance, "that the judges be appointed by the executive."

Mr. GOUVERNEUR MORRIS seconded the motion.

Mr. L. MARTIN was strenuous for an appointment by the second branch. Being taken from all the states, it would be best informed of characters, and most capable of making a fit choice.

Mr. SHERMAN concurred in the observations of Mr. Martin, adding that the judges ought to be diffused, which would be more likely to be attended to by the second branch than by the executive.

Mr. MASON. The mode of appointing the judges may depend in some degree on the mode of trying impeachments of the executive. If the judges were to form a tribunal for that purpose, they surely ought not to be appointed by the executive. There were insuperable objections, besides, against referring the appointment to the executive. He mentioned, as one, that, as the seat of government must be in some one state, and as the executive would remain in office for a considerable time,—for four, five, or six years at least,—he would insensibly form local and personal attachments, within the particular state, that would deprive equal merit elsewhere of an equal chance of promotion.

Mr. GORHAM. As the executive will be responsible, in point of character at least, for a judicious and faithful discharge of his trust, he will be careful to look through all the states for proper characters. The senators will be as likely to form their attachments at the seat of government, where they reside, as the executive. If they cannot get the man of the particular state to which they may respectively belong, they will be indifferent to the rest. Public bodies feel no personal responsibility, and give full play to intrigue and cabal. Rhode Island is a full illustration of the insensibility to character produced by a participation of numbers in dishonorable measures, and of the length to which a public body may carry wickedness and cabal.

Mr. GOUVERNEUR MORRIS supposed it would be improper for an impeachment of the executive to be tried before the judges. The latter would in such cases be drawn into intrigues with the legislature, and an impartial trial would be frustrated. As they would be much about the seat of government, they might even be previously consulted, and arrangements might be made for a prosecution of the executive. He thought, therefore, that no argument could be drawn from the probability of such a plan of impeachments, against the motion before the House.

Mr. MADISON suggested, that the judges might be appointed by the executive, with the concurrence of one third at least of the second branch. This would unite the

advantage of responsibility in the executive, with the security afforded in the second branch against any incautious or corrupt nomination by the executive.

Mr. SHERMAN was clearly for an election by the Senate. It would be composed of men nearly equal to the executive, and would of course have, on the whole, more wisdom. They would bring into their deliberations a more diffusive knowledge of characters. It would be less easy for candidates to intrigue with them than with the executive magistrate. For these reasons, he thought there would be a better security for a proper choice in the Senate than in the executive.

Mr. RANDOLPH. It is true that, when the appointment of the judges was vested in the second branch, an equality of votes had not been given to it. Yet he had rather leave the appointment there than give it to the executive. He thought the advantage of personal responsibility might be gained, in the Senate, by requiring the respective votes of the members to be entered on the Journal. He thought, too, that the hope of receiving appointments would be more diffusive, if they depended on the Senate, the members of which would be diffusively known, than if they depended on a single man, who could not be personally known to a very great extent; and, consequently, that opposition to the system would be so far weakened.

Mr. BEDFORD thought, there were solid reasons against leaving the appointment to the executive. He must trust more to information than the Senate. It would put it in his power to gain over the larger states by gratifying them with a preference of their citizens. The responsibility of the executive, so much talked of, was chimerical. He could not be punished for mistakes.

Mr. GORHAM remarked, that the Senate could have no better information than the executive. They must, like him, trust to 177 information from the members belonging to the particular state where the candidate resided. The executive would certainly be more answerable for a good appointment, as the whole blame of a bad one would full on him alone. He did not mean that he would be answerable under any other penalty than that of public censure, which with honorable minds was a sufficient one.

On the question for referring the appointment of the judges to the executive, instead of the second branch,—

Massachusetts, Pennsylvania, ay, 2; Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, no, 6; Georgia, absent.

Mr. GORHAM moved, “that the judges be nominated and appointed by the executive, by and with the advice and consent of the second branch; and every such nomination shall be made at least—days prior to such appointment.” This mode, he said, had been ratified by the experience of a hundred and forty years in Massachusetts. If the appointment should be left to either branch of the legislature, it will be a mere piece of jobbing.

Mr. GOUVERNEUR MORRIS seconded and supported the motion.

Mr. SHERMAN thought it less objectionable than an absolute appointment by the executive; but disliked it, as too much fettering the Senate.

On the question on Mr. Gorham's motion,—

Massachusetts, Pennsylvania, Maryland, Virginia, ay, 4; Connecticut, Delaware, North Carolina, South Carolina, no, 4; Georgia, absent.

Mr. MADISON moved, "that the judges should be nominated by the executive, and such nomination should become an appointment if not disagreed to within—days by two thirds of the second branch."

Mr. GOUVERNEUR MORRIS seconded the motion.

By common consent, the consideration of it was postponed till to-morrow.

"To hold their offices during good behavior, and to receive fixed salaries,"—agreed to, *nem. con.*

"In which [salaries of judges] no increase or diminution shall be made so as to affect the persons actually in office at the time."

Mr. GOUVERNEUR MORRIS moved to strike out "no increase." He thought the legislature ought to be at liberty to increase salaries, as circumstances might require; and that this would not create any improper dependence in the judges.

Dr. FRANKLIN was in favor of the motion. Money may not only become plentier, but the business of the department may increase, as the country becomes more populous.

Mr. MADISON. The dependence will be less if the *increase alone* should be permitted; but it will be improper even so far to permit a dependence. Whenever an increase is wished by the judges, or may be in agitation in the legislature, an undue complaisance in the former may be felt towards the latter. If at such a crisis there should be in court suits to which leading members of the legislature may be parties, the judges will be in a situation which ought not to be suffered, if it can be prevented. The variations in the value of money may be guarded against, by taking, for a standard, wheat or some other thing of permanent value. The increase of business will be provided for by an increase of the number who are to do it. An increase of salaries may easily be so contrived as not to affect persons in office.

Mr. GOUVERNEUR MORRIS. The value of money may not only alter, but the state of society may after. In this event, the same quantity of wheat, the same value, would not be the same compensation. The amount of salaries must always be regulated by the manners and the style of living in a country. The increase of business cannot be provided for in the supreme tribunal, in the way that has been mentioned. All the business of a certain description, whether more or less, must be done in that single tribunal. Additional labor alone in the judges can provide for additional business. Additional compensation, therefore, ought not to be prohibited.

On the question for striking out "no increase,"—

Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, South Carolina, ay, 6; Virginia, North Carolina, no, 2; Georgia, absent.

The whole clause, as amended, was then agreed to, *nem con.*

The twelfth resolution, "That the national legislature be empowered to appoint inferior tribunals," being taken up,—

Mr. BUTLER could see no necessity for such tribunals. The state tribunals might do the business.

Mr. L. MARTIN concurred. They will create jealousies and oppositions in the state tribunals, with the jurisdiction of which they will interfere.

Mr. GORHAM. There are in the states already federal courts, with jurisdiction for trial of piracies, &c., committed on the seas. No complaints have been made by the states or the courts of the states. Inferior tribunals are essential to render the authority of the national legislature effectual.

Mr. RANDOLPH observed, that the courts of the states cannot be trusted with the administration of the national laws. The objects of jurisdiction are such as will often place the general and local policy at variance.

Mr. GOUVERNEUR MORRIS urged also the necessity of such a provision.

Mr. SHERMAN was willing to give the power to the legislature, but wished them to make use of the state tribunals, whenever it could be done with safety to the general interest.

Col. MASON thought many circumstances might arise, not now to be foreseen, which might render such a power absolutely necessary.

On the question for agreeing to the twelfth resolution, empowering the national legislature to appoint inferior tribunals, it was agreed to, *nem. con.*

The clause of "impeachments of national officers," was struck out, on motion for the purpose.

The thirteenth resolution, "The jurisdiction of the national judiciary, &c.," being then taken up, several criticisms having been made on the definition, it was proposed by Mr. MADISON so to alter it as to read thus: "That the jurisdiction shall extend to all cases arising under the national laws, and to such other questions as may involve the national peace and harmony;" which was agreed to, *nem. con.*

The fourteenth resolution, providing for the admission of new states, was agreed to, *nem. con.*

The fifteenth resolution, "That provision ought to be made for the continuance of Congress, &c., and for the completion of their engagements," being considered,—

Mr. GOUVERNEUR MORRIS thought the assumption of their engagements might as well be omitted; and that Congress ought not to be continued till all the states should adopt the reform; since it may become expedient to give effect to it whenever a certain number of states shall adopt it.

Mr. MADISON. The clause can mean nothing more than that provision ought to be made for preventing an interregnum; which must exist, in the interval between the adoption of the new government and the commencement of its operation, if the old government should cease on the first of these events.

Mr. WILSON did not entirely approve of the manner in which the clause relating to the engagements of Congress was expressed; but he thought some provision on the subject would be proper, in order to prevent any suspicion that the obligations of the Confederacy might be dissolved along with the government under which they were contracted.

On the question on the first part, relating to the continuance of Congress,—

Virginia, North Carolina, South Carolina, ay, 3; Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Georgia, no, 6. (In the printed Journal, South Carolina, no.)

The second part, as to the completion of their engagements, was disagreed to, *nem. con.*

The sixteenth resolution, "That a republican constitution and its existing laws ought to be guarantied to each state by the United States," being considered,—

Mr. GOUVERNEUR MORRIS thought the resolution very objectionable. He should be very unwilling that such laws as exist in Rhode Island should be guarantied.

Mr. WILSON. The object is merely to secure the states against dangerous commotions, insurrections, and rebellions.

Col. MASON. If the general government should have no right to suppress rebellions against particular states, it will be in a bad situation indeed. As rebellions against itself originate in and against 178 individual states, it must remain a passive spectator of its own subversion.

Mr. RANDOLPH. The resolution has two objects,—first, to secure a republican government; secondly, to suppress domestic commotions. He urged the necessity of both these provisions.

Mr. MADISON moved to substitute, "that the constitutional authority of the states shall be guarantied to them respectively against domestic as well as foreign violence."

Dr. M'CLURG seconded the motion.

Mr. HOUSTON was afraid of perpetuating the existing constitutions of the states. That of Georgia was a very bad one, and he hoped would be revised and amended. It may also be difficult for the general government to decide between contending parties, each of which claim the sanction of the constitution.

Mr. L. MARTIN was for leaving the states to suppress rebellions themselves.

Mr. GORHAM thought it strange that a rebellion should be known to exist in the empire, and the general government should be restrained from interposing to subdue it. At this rate, an enterprising citizen might erect the standard of monarchy in a particular state; might gather together partisans from all quarters; might extend his views from state to state, and threaten to establish a tyranny over the whole,—and the general government be compelled to remain an inactive witness of its own destruction. With regard to different parties in a state, as long as they confine their disputes to words, they will be harmless to the general government and to each other. If they appeal to the sword, it will then be necessary for the general government, however difficult it may be to decide on the merits of their contest, to interpose, and put an end to it.

Mr. CARROLL. Some such provision is essential. Every state ought to wish for it. It has been doubted whether it is a *casus fœderis* at present; and no room ought to be left for such a doubt hereafter.

Mr. RANDOLPH moved to add, as an amendment to the motion, "and that no state be at liberty to form any other than a republican government."

Mr. MADISON seconded the motion.

Mr. RUTLEDGE thought it unnecessary to insert any guaranty. No doubt could be entertained but that Congress had the authority, if they had the means, to coöperate with any state in subduing a rebellion. It was and would be involved in the nature of the thing.

Mr. WILSON moved, as a better expression of the idea, "that a republican form of government shall be guarantied to each state; and that each state shall be protected against foreign and domestic violence."

This seeming to be well received, Mr. MADISON and Mr. RANDOLPH withdrew their propositions, and, on the question for agreeing to Mr. Wilson's motion, it passed, *nem. con.*

Adjourned.

Thursday,*July* 19.

In Convention.—On reconsideration of the vote rendering the executive reëligible a second time, Mr. MARTIN moved to reinstate the words, "to be ineligible a second time."

Mr. GOUVERNEUR MORRIS. It is necessary to take into one view all that relates to the establishment of the executive, on the due formation of which must depend the efficacy and utility of the union among the present and future states. It has been a maxim in political science, that republican government is not adapted to a large extent of country, because the energy of the executive magistracy cannot reach the extreme parts of it. Our country is an extensive one. We must either, then, renounce the blessings of the union, or provide an executive with sufficient vigor to pervade every part of it. This subject was of so much importance that he hoped to be indulged in an extensive view of it. One great object of the executive is, to control the legislature. The legislature will continually seek to aggrandize and perpetuate themselves, and will seize those critical moments produced by war, invasion, or convulsion, for that purpose. It is necessary, then, that the executive magistrate should be the guardian of the people, even of the lower classes, against legislative tyranny; against the great and the wealthy, who, in the course of things, will necessarily compose the legislative body. Wealth tends to corrupt the mind; to nourish its love of power; and to stimulate it to oppression. History proves this to be the spirit of the opulent. The check provided in the second branch was not meant as a check on legislative usurpations of power, but on the abuse of lawful powers, on the propensity of the first branch to legislate too much, to run into projects of paper money, and similar expedients. It is no check on legislative tyranny. On the contrary, it may favor it, and, if the first branch can be seduced, may find the means of success. The executive, therefore, ought to be so constituted as to be the great protector of the mass of the people. It is the duty of the executive to appoint the officers, and to command the forces, of the republic—to appoint, first, ministerial officers for the administration of public affairs; secondly, officers for the dispensation of justice. Who will be the best judges whether these appointments be well made? The people at large, who will know, will see, will feel, the effects of them. Again, who can judge so well of the discharge of military duties, for the protection and security of the people, as the people themselves, who are to be protected and secured? He finds, too, that the executive is not to be reëligible. What effect will this have? In the first place, it will destroy the great incitement to merit, public esteem, by taking away the hope of being rewarded with a reappointment. It may give a dangerous turn to one of the strongest passions in the human breast. The love of fame is the great spring to noble and illustrious actions. Shut the civil road to glory, and he may be compelled to seek it by the sword. In the second place, it will tempt him to make the most of the short space of time allotted him, to accumulate wealth and provide for his friends. In the third place, it will produce violations of the very Constitution it is meant to secure. In moments of pressing danger, the tried abilities and established character of a favorite magistrate will prevail over respect for the forms of the Constitution. The executive is also to be impeachable. This is a dangerous part of the plan. It will hold him in such dependence, that he will be no check on the legislature, will not be a firm guardian of the people and of the public interest. He will be the tool of a faction, of some leading demagogue in the legislature. These, then, are the faults of the executive establishment, as now proposed. Can no better establishment be devised? If he is to be the guardian of the people, let him be

appointed by the people. If he is to be a check on the legislature, let him not be impeachable. Let him be of short duration, that he may with propriety be reëligible. It has been said that the candidates for this office will not be known to the people. If they be known to the legislature, they must have such a notoriety and eminence of character, that they cannot possibly be unknown to the people at large. It cannot be possible that a man shall have sufficiently distinguished himself to merit this high trust, without having his character proclaimed by fame throughout the empire. As to the danger from an unimpeachable magistrate, he could not regard it as formidable. There must be certain great officers of state, a minister of finance, of war, of foreign affairs, &c. These, he presumes, will exercise their functions in subordination to the executive, and will be amenable, by impeachment, to the public justice. Without these ministers, the executive can do nothing of consequence. He suggested a biennial election of the executive, at the time of electing the first branch; and the executive to hold over, so as to prevent any interregnum in the administration. An election by the people at large, throughout so great an extent of country, could not be influenced by those little combinations and those momentary lies, which often decide popular elections within a narrow sphere. It will probably be objected, that the election will be influenced by the members of the legislature, particularly of the first branch; and that it will be nearly the same thing with an election by the legislature itself. It could not be denied that such an influence would exist. But it might be answered, that, as the legislature or the candidates for it would be divided, the enmity of one part would counteract the friendship of another; that if the administration of the executive were good, it would be unpopular to oppose his reëlection; if bad, it ought to be opposed, and a reappointment prevented; and, lastly, that, in every view, this indirect dependence on the favor of the legislature could not be so mischievous as a direct dependence for his appointment. He saw no alternative for making the executive independent of the legislature, but either to give him his office for life, or make him eligible by the people. Again, it might be objected, that two years would be too short a duration. But he believes that as long as he should behave himself well he would be continued in his place. The extent of the country would secure his reelection against the factions and discontents of particular states. It deserved consideration, also, that such an ingredient in the plan would render it extremely palatable to the people. These were the general ideas which occurred to him on the subject, and which led him to wish and move that the whole constitution of the executive might undergo reconsideration.

Mr. RANDOLPH urged the motion of Mr. L. Martin for restoring the words making the executive ineligible a second time. If he ought to be independent, he should not be left under a temptation to court a reappointment. If he should be reappointable by the legislature, he will be no check on it. His revisionary power will be of no avail. He had always thought and contended, as he still did, that the danger apprehended by the little states was chimerical; but those who thought otherwise ought to be peculiarly anxious for the motion. If the executive be appointed, as has been determined, by the legislature, he will probably be appointed, either by joint ballot of both houses, or be nominated by the first and appointed by the second branch. In either case, the large states will preponderate. If he is to court the same influence for his reappointment, will he not make his revisionary power, and all the other functions of his administration, subservient to the views of the large states? Besides, is there not great

reason to apprehend that, in case he should be reëligible, a false complaisance in the legislature might lead them to continue an unfit man in office, in preference to a fit one? It has been said, that a constitutional bar to reappointment will inspire unconstitutional endeavors to perpetuate himself. It may be answered, that his endeavors can have no effect unless the people be corrupt to such a degree as to render all precautions hopeless; to which may be added, that this argument supposes him to be more powerful and dangerous than other arguments which have been used admit, and consequently calls for stronger fetters on his authority. He thought an election by the legislature, with an incapacity to be elected a second time, would be more acceptable to the people than the plan suggested by Mr. Gouverneur Morris.

Mr. KING did not like the ineligibility. He thought there was great force in the remark of Mr. Sherman, that he who has proved himself most fit for an office ought not to be excluded by the Constitution from holding it. He would therefore prefer any other reasonable plan that could be substituted. He was much disposed to think, that in such cases the people at large would choose wisely. There was indeed some difficulty arising from the improbability of a general concurrence of the people in favor of any one man. On the whole, he was of opinion that an appointment by electors chosen by the people for the purpose would be liable to fewest objections.

Mr. PATTERSON'S ideas nearly coincided, he said, with those of Mr. King. He proposed that the executive should be appointed by electors, to be chosen by the states in a ratio that would allow one elector to the smallest, and three to the largest, states.

Mr. WILSON. It seems to be the unanimous sense that the executive should not be appointed by the legislature, unless he be rendered ineligible a second time. He perceived with pleasure that the idea was gaining ground of an election, mediately or immediately, by the people.

Mr. MADISON. If it be a fundamental principle of free government, that the legislative, executive, and judiciary powers should be *separately* exercised, it is equally so that they be *independently* exercised. There is the same, and perhaps greater, reason why the executive should be independent of the legislature, than why the judiciary should. A coalition of the two former powers would be more immediately and certainly dangerous to public liberty. It is essential, then, that the appointment of the executive should either be drawn from some source, or held by some tenure, that will give him a free agency with regard to the legislature. This could not be, if he was to be appointable, from time to time, by the legislature. It was not clear that an appointment in the first instance, even with an ineligibility afterwards, would not establish an improper connection between the two departments. Certain it was, that the appointment would be attended with intrigues and contentions that ought not to be unnecessarily admitted. He was disposed, for these reasons, to refer the appointment to some other source. The people at large was, in his opinion, the fittest in itself. It would be as likely as any that could be devised to produce an executive magistrate of distinguished character. The people generally could only know and vote for some citizen whose merits had rendered him an object of general attention and esteem. There was one difficulty, however, of a serious nature, attending an immediate choice by the people. The right of suffrage was much more diffusive in the

Northern than the Southern States; and the latter could have no influence in the election, on the score of the negroes. The substitution of electors obviated this difficulty, and seemed, on the whole, to be liable to fewest objections.

Mr. GERRY. If the executive is to be elected by the legislature, he certainly ought not to be reeligible. This would make him absolutely dependent. He was against a popular election. The people are uninformed, and would be misled by a few designing men. He urged the expediency of an appointment of the executive by electors to be chosen by the state executives. The people of the states will then choose the first branch, the legislatures of the states the second branch, of the national legislature; and the executives of the states the national executive. This, he thought, would form a strong attachment in the states to the national system. The popular mode of electing the chief magistrate would certainly be the worst of all. If he should be so elected, and should do his duty, he will be turned out for it, like Governor Bowdoin in Massachusetts, and President Sullivan in New Hampshire.

179 On the question on Mr. Gouverneur Morris's motion, to reconsider generally the constitution of the executive,—Massachusetts, Connecticut, New Jersey, and all the others, ay.

Mr. ELLSWORTH moved to strike out the appointment by the national legislature, and to insert, "to be chosen by electors, appointed by the legislatures of the states in the following ratio, to wit: one for each state not exceeding two hundred thousand inhabitants; two for each above that number, and not exceeding three hundred thousand; and three for each state exceeding three hundred thousand."

Mr. BROOME seconded the motion.

Mr. RUTLEDGE was opposed to all the modes, except the appointment by the national legislature. He will be sufficiently independent, if he be not reëligible.

Mr. GERRY preferred the motion of Mr. Ellsworth to an appointment by the national legislature, or by the people; though not to an appointment by the state executives. He moved that the electors proposed by Mr. Ellsworth should be twenty-five in number, and allotted in the following proportion: to New Hampshire, one; to Massachusetts, three; to Rhode Island, one; to Connecticut, two; to New York, two; to New Jersey, two; to Pennsylvania, three; to Delaware, one; to Maryland, two; to Virginia, three; to North Carolina, two; to South Carolina, two; to Georgia, one.

The question, as moved by Mr. Ellsworth, being divided, on the first part, "Shall the national executive be appointed by electors?"—

Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, ay, 6; North Carolina, South Carolina, Georgia, no, 3; Massachusetts, divided.

On the second part, "Shall the electors be chosen by the state legislatures?"—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, Georgia, ay, 8; Virginia, South Carolina, no, 2.

The part relating to the ratio in which the states should choose electors, was postponed, *nem. con.*

Mr. L. MARTIN moved, that the executive be ineligible a second time.

Mr. WILLIAMSON seconds the motion. He had no great confidence in electors to be chosen for the special purpose. They would not be the most respectable citizens, but persons not occupied in the high offices of government. They would be liable to undue influence, which might the more readily be practised, as some of them will probably be in appointment six or eight months before the object of it comes on.

Mr. ELLSWORTH supposed any persons might be appointed electors, except, solely, members of the national legislature.

On the question, "Shall he be ineligible a second time?"—

North Carolina, South Carolina, ay, 2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, no, 8.

On the question, "Shall the executive continue for seven years?" it passed in the negative.

180 Connecticut, South Carolina, Georgia, ay, 3; New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no, 5; Massachusetts, North Carolina, divided. (In the printed Journal, Connecticut, no; New Jersey, ay.)

Mr. KING was afraid we should shorten the term too much.

Mr. GOUVERNEUR MORRIS was for a short term, in order to avoid impeachments, which would be otherwise necessary.

Mr. BUTLER was against the frequency of the elections. Georgia and South Carolina were too distant to send electors often.

Mr. ELLSWORTH was for six years. If the elections be too frequent, the executive will not be firm enough. There must be duties which will make him unpopular for the moment. There will be *outs* as well as *ins*. His administration, therefore, will be attacked and misrepresented.

Mr. WILLIAMSON was for six years. The expense will be considerable, and ought not to be unnecessarily repeated. If the elections are too frequent, the best men will not undertake the service, and those of an inferior character will be liable to be corrupted.

On the question for six years,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Delaware, no.

Adjourned.

Friday,*July* 20.

In Convention.—The proposed ratio of electors for appointing the executive, to wit, one for each state whose inhabitants do not exceed two hundred thousand, &c., being taken up,—

Mr. MADISON observed, that this would make, in time, all or nearly all the states equal, since there were few that would not in time contain the number of inhabitants entitling them to three electors; that this ratio ought either to be made temporary, or so varied as that it would adjust itself to the growing population of the states.

Mr. GERRY moved that *in the first instance* the electors should be allotted to the states in the following ratio: to New Hampshire, one; Massachusetts, three; Rhode Island, one; Connecticut, two; New York, two; New Jersey, two; Pennsylvania, three; Delaware, one; Maryland, two; Virginia, three; North Carolina, two; South Carolina, two; Georgia, one.

On the question to postpone in order to take up this motion of Mr. Gerry, it passed in the affirmative.

Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 6; Connecticut, New Jersey, Delaware, Maryland, no, 4.

Mr. ELLSWORTH moved that two electors be allotted to New Hampshire. Some rule ought to be pursued; and New Hampshire has more than a hundred thousand inhabitants. He thought it would be proper also to allot two to Georgia.

Mr. BROOM and Mr. MARTIN moved to postpone Mr. Gerry's allotment of electors, leaving a fit ratio to be reported by the committee to be appointed for detailing the resolutions.

On this motion,—

New Jersey, Delaware, Maryland, ay, 3; Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 7.

Mr. HOUSTON seconded the motion of Mr. Ellsworth, to add another elector to New Hampshire and Georgia.

On the question,—

Connecticut, South Carolina, Georgia, ay, 3; Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no, 7.

Mr. WILLIAMSON moved as an amendment to Mr. Gerry's allotment of electors, in the first instance, that in future elections of the national executive, the number of electors to be appointed by the several states shall be regulated by their respective

numbers of representatives in the first branch, pursuing, as nearly as may be, the present proportions.

On the question on Mr. Gerry's ratio of electors,—

Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, ay, 6; New Jersey, Delaware, Maryland, Georgia, no, 4.

On the clause, "to be removable on impeachment and conviction for malpractice or neglect of duty," (see the ninth resolution,)—181

Mr. PINCKNEY and Mr. GOUVERNEUR MORRIS moved to strike out this part of the resolution. Mr. PINCKNEY observed, he ought not to be impeachable whilst in office.

Mr. DAVIE. If he be not impeachable whilst in office, he will spare no efforts or means whatever, to get himself reëlected. He considered this as an essential security for the good behavior of the executive.

Mr. WILSON concurred in the necessity of making the executive impeachable whilst in office.

Mr. GOUVERNEUR MORRIS. He can do no criminal act without coadjutors, who may be punished. In case he should be reëlected, that will be a sufficient proof of his innocence. Besides, who is to impeach? Is the impeachment to suspend his functions? If it is not, the mischief will go on. If it is, the impeachment will be nearly equivalent to a displacement, and will render the executive dependent on those who are to impeach.

Col. MASON. No point is of more importance than that the right of impeachment should be continued. Shall any man be above justice? Above all, shall that man be above it who can commit the most extensive injustice? When great crimes were committed, he was for punishing the principal as well as the coadjutors. There had been much debate and difficulty as to the mode of choosing the executive. He approved of that which had been adopted at first, namely, of referring the appointment to the national legislature. One objection against electors was the danger of their being corrupted by the candidates, and this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption, and by that means procured his appointment in the first instance, be suffered to escape punishment by repeating his guilt?

Dr. FRANKLIN was for retaining the clause, as favorable to the executive. History furnishes one example only of a first magistrate being formally brought to public justice. Every body cried out against this as unconstitutional. What was the practice before this, in cases where the chief magistrate rendered himself obnoxious: Why, recourse was had to assassination, in which he was not only deprived of his life, but of the opportunity of vindicating his character. It would be the best way, therefore, to provide in the Constitution for the regular punishment of the executive, where his

misconduct should deserve it, and for his honorable acquittal, where he should be unjustly accused.

Mr. GOUVERNEUR MORRIS admits corruption, and some few other offences, to be such as ought to be impeachable; but thought the cases ought to be enumerated and defined.

Mr. MADISON thought it indispensable that some provision should be made for defending the community against the incapacity, negligence, or perfidy of the chief magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers. The case of the executive magistracy was very distinguishable from that of the legislature, or any other public body holding offices of limited duration. It could not be presumed that all, or even the majority, of the members of an assembly would either lose their capacity for discharging, or be bribed to betray, their trust. Besides the restraints of their personal integrity and honor, the difficulty of acting in concert for purposes of corruption was a security to the public. And if one or a few members only should be seduced, the soundness of the remaining members would maintain the integrity and fidelity of the body. In the case of the executive magistracy, which was to be administered by a single man, loss of capacity, or corruption, was more within the compass of probable events, and either of them might be fatal to the republic.

Mr. PINCKNEY did not see the necessity of impeachments. He was sure they ought not to issue from the legislature, who would in that case hold them as a rod over the executive, and by that means effectually destroy his independence. His revisionary power, in particular, would be rendered altogether insignificant.

Mr. GERRY urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here, that the chief magistrate could do no wrong.

Mr. KING expressed his apprehensions that an extreme caution in favor of liberty might enervate the government we were forming. He wished the House to recur to the primitive axiom, that the three great departments of government should be separate and independent; that the executive and judiciary should be so as well as the legislative; that the executive should be so equally with the judiciary. Would this be the case if the executive should be impeachable? It had been said that the judiciary would be impeachable. But it should have been remembered, at the same time, that the judiciary hold their places not for a limited time, but during good behavior. It is necessary, therefore, that a form should be established for trying misbehavior. Was the executive to hold his place during good behavior? The executive was to hold his place for a limited time, like the members of the legislature. Like them, particularly the Senate, whose members would continue in appointment the same term of six years, he would periodically be tried for his behavior by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like them, therefore, he ought to be subject to no intermediate trial, by impeachment. He ought not to be impeachable unless he held his office during good

behavior—a tenure which would be most agreeable to him, provided an independent and effectual forum could be devised. But under no circumstances ought he to be impeachable by the legislature. This would be destructive of his independence, and of the principles of the Constitution. He relied on the vigor of the executive, as a great security for the public liberties.

Mr. RANDOLPH. The propriety of impeachments was a favorite principle with him. Guilt, wherever found, ought to be punished. The executive will have great opportunities of abusing his power, particularly in time of war, when the military force, and in some respects the public money, will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults and insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding, as much as possible, the influence of the legislature from the business. He suggested for consideration an idea which had fallen, (from Colonel Hamilton,) of composing a forum out of the judges belonging to the states; and even of requiring some preliminary inquest, whether just ground of impeachment existed.

Dr. FRANKLIN mentioned the case of the Prince of Orange, during the late war. An arrangement was made between France and Holland, by which their two fleets were to unite at a certain time and place. The Dutch fleet did not appear. Every body began to wonder at it. At length it was suspected that the stadtholder was at the bottom of the matter. This suspicion prevailed more and more. Yet, as he could not be impeached, and no regular examination took place, he remained in his office; and strengthening his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities and contentions. Had he been impeachable, a regular and peaceable inquiry would have taken place, and he would, if guilty, have been duly punished,—if innocent, restored to the confidence of the public.

Mr. KING remarked, that the case of the stadtholder was not applicable. He held his place for life, and was not periodically elected. In the former case, impeachments are proper to secure good behavior: in the latter, they are unnecessary, the periodical responsibility to electors being an equivalent security.

Mr. WILSON observed, that, if the idea were to be pursued, the senators, who are to hold their places during the same term with the executive, ought to be subject to impeachment and removal.

Mr. PINCKNEY apprehended, that some gentlemen reasoned on a supposition that the executive was to have powers which would not be committed to him. He presumed that his powers would be so circumscribed as to render impeachments unnecessary.

Mr. GOUVERNEUR MORRIS'S opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the executive was to continue for any length of time in office. Our executive was not like a magistrate having a life interest, much less like one having an hereditary interest, in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first magistrate in

foreign pay, without being able to guard against it by displacing him. One would think the king of England well secured against bribery. He has, as it were, a fee simple in the whole kingdom. Yet Charles II. was bribed by Louis XIV. The executive ought, therefore, to be impeachable for treachery. Corrupting his electors, and incapacity, were other causes of impeachment. For the latter he should be punished, not as a man but as an officer, and punished only by degradation from his office. This magistrate is not the king, but the prime minister. The people are the king. When we make him amenable to justice, however, we should take care to provide some mode that will not make him dependent on the legislature.

It was moved and seconded to postpone the question of impeachments; which was negatived,—Massachusetts and South Carolina, only, being ay.

On the question, Shall the executive be removable on impeachments? &c.,—

Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 8; Massachusetts, South Carolina, no, 2.

"The executive to receive fixed compensation,"—agreed to, *nem. con.*

"To be paid out of the national treasury,"—agreed to, New Jersey only in the negative.

Mr. GERRY and Mr. GOUVERNEUR MORRIS moved, "that the electors of the executive shall not be members of the national legislature, nor officers of the United States, nor shall the electors themselves be eligible to the supreme magistracy." Agreed to, *nem. con.*

Dr. M'CLURG asked, whether it would not be necessary, before a committee for detailing the Constitution should be appointed, to determine on the means by which the executive is to carry the laws into effect, and to resist combinations against them. Is he to have a military force for the purpose, or to have the command of the militia, the only existing force that can be applied to that use? As the resolutions now stand, the committee will have no determinate directions on this great point.

Mr. WILSON thought that some additional directions to the committee would be necessary.

Mr. KING. The committee are to provide for the end. Their discretionary power to provide for the means is involved, according to an established axiom.

Adjourned.

Saturday,*July* 21.

In Convention.—Mr. WILLIAMSON moved, "that the electors of the executive should be paid out of the national treasury for the service to be performed by them." Justice required this, as it was a national service they were to render. The motion was agreed to, *nem. con.*

Mr. WILSON moved, as an amendment to the tenth resolution, "that the supreme national judiciary should be associated with the executive in the revisionary power." This proposition had been before made and failed; but he was so confirmed by reflection in the opinion of its utility, that he thought it incumbent on him to make another effort. The judiciary ought to have an opportunity of remonstrating against projected encroachments on the people as well as on themselves. It had been said, that the judges, as expositors of the laws, would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous, may be destructive, and yet may not be so unconstitutional as to justify the judges in refusing to give them effect. Let them have a share in the revisionary power, and they will have an opportunity of taking notice of those characters of a law, and of counteracting, by the weight of their opinions, the improper views of the legislature. Mr. MADISON seconded the motion.

Mr. GORHAM did not see the advantage of employing the judges in this way. As judges, they are not to be presumed to possess any peculiar knowledge of the mere policy of public measures. Nor can it be necessary as a security for their constitutional rights. The judges in England have no such additional provision for their defence; yet their jurisdiction is not invaded. He thought it would be best to let the executive alone be responsible, and at most to authorize him to call on the judges for their opinions.

Mr. ELLSWORTH approved heartily of the motion. The aid of the judges will give more wisdom and firmness to the executive. They will possess a systematic and accurate knowledge of the laws, which the executive cannot be expected always to possess. The law of nations, also, will frequently come into question. Of this the judges alone will have competent information.

Mr. MADISON considered the object of the motion as of great importance to the meditated Constitution. It would be useful to the judiciary department by giving it an additional opportunity of defending itself against legislative encroachments. It would be useful to the executive, by inspiring additional confidence and firmness in exerting the revisionary power. It would be useful to the legislature, by the valuable assistance it would give in preserving a consistency, conciseness, perspicuity, and technical propriety in the laws—qualities peculiarly necessary, and yet shamefully wanting in our republican codes. It would, moreover, be useful to the community at large, as an additional check against a pursuit of those unwise and unjust measures which constituted so great a portion of our calamities. If any solid objection could be urged against the motion, it must be on the supposition that it tended to give too much strength, either to the executive, or judiciary. He did not think there was the least ground for this apprehension. It was much more to be apprehended, that, notwithstanding this coöperation of the two departments, the legislature would still be an overmatch for them. Experience in all the states had evinced a powerful tendency in the legislature to absorb all power into its vortex. This was the real source of danger to the American constitutions, and suggested the necessity of giving every defensive authority to the other departments that was consistent with republican principles.

Mr. MASON said, he had always been a friend to this provision. It would give a confidence to the executive which he would not otherwise have, and without which the revisionary power would be of little avail.

Mr. GERRY did not expect to see this point, which had undergone full discussion, again revived. The object, he conceived, of the revisionary power was merely to secure the executive department against legislative encroachment. The executive, therefore, who will best know and be ready to defend his rights, ought alone to have the defence of them. The motion was liable to strong objections. It was combining and mixing together the legislative and the other departments. It was establishing an improper coalition between the executive and judiciary departments. It was making statesmen of the judges, and setting them up as the guardians of the rights of the people. He relied, for his part, on the representatives of the people, as the guardians of their rights and interests. It was making the expositors of the laws the legislators, which ought never to be done. A better expedient for correcting the laws would be to appoint, as had been done in Pennsylvania, a person or persons of proper skill, to draw bills for the legislature.

Mr. STRONG thought, with Mr. Gerry, that the power of making ought to be kept distinct from that of expounding the laws. No maxim was better established. The judges, in exercising the function of expositors, might be influenced by the part they had taken in passing the laws.

Mr. GOUVERNEUR MORRIS. Some check being necessary on the legislature, the question is, in what hands it should be lodged. On one side, it was contended, that the executive alone ought to exercise it. He did not think that an executive appointed for six years, and impeachable whilst in office, would be a very effectual check. On the other side, it was urged, that he ought to be reënforced by the judiciary department. Against this it was objected, that expositors of laws ought to have no hand in making them, and arguments in favor of this had been drawn from England. What weight was due to them might be easily determined by an attention to facts. The truth was, that the judges in England had a great share in the legislation. They are consulted in difficult and doubtful cases. They may be, and some of them are, members of the legislature. They are, or may be, members of the privy council, and can there advise the executive, as they will do with us if the motion succeeds. The influence the English judges may have, in the latter capacity, in strengthening the executive check, cannot be ascertained, as the king, by his influence, in a manner dictates the laws. There is one difference in the two cases, however, which disconcerts all reasoning from the British to our proposed Constitution. The British executive has so great an interest in his prerogatives, and such power for means of defending them, that he will never yield any part of them. The interest of our executive is so inconsiderable and so transitory, and his means of defending it so feeble, that there is the justest ground to fear his want of firmness in resisting encroachments. He was extremely apprehensive that the auxiliary firmness and weight of the judiciary would not supply the deficiency. He concurred in thinking the public liberty in greater danger from legislative usurpations than from any other source. It had been said, that the legislature ought to be relied on, as the proper guardians of liberty. The answer was short and conclusive. Either bad laws will be pushed or not. On the latter supposition,

no check will be wanted; on the former, a strong check will be necessary. And this is the proper supposition. Emissions of paper money, largesses to the people, a remission of debts, and similar measures, will at some times be popular, and will be pushed for that reason. At other times, such measures will coincide with the interests of the legislature themselves, and that will be a reason not less cogent for pushing them. It may be thought that the people will not be deluded and misled in the latter case; but experience teaches another lesson. The press is indeed a great means of diminishing the evil; yet it is found to be unable to prevent it altogether.

Mr. L. MARTIN considered the association of the judges with the executive as a dangerous innovation, as well as one that could not produce the particular advantage expected from it. A knowledge of mankind, and of legislative affairs, cannot be presumed to belong in a higher degree to the judges than to the legislature. And as to the constitutionality of laws, that point will come before the judges in their official character. In this character they have a negative on the laws. Join them with the executive in the revision, and they will have a double negative. It is necessary that the supreme judiciary should have the confidence of the people. This will soon be lost, if they are employed in the task of remonstrating against popular measures of the legislature. Besides, in what mode and proportion are they to vote in the council of revision?

Mr. MADISON could not discover in the proposed association of the judges with the executive, in the revisionary check on the legislature, any violation of the maxim which requires the great departments of power to be kept separate and distinct. On the contrary, he thought it an auxiliary precaution in favor of the maxim. If a constitutional discrimination of the departments on paper were a sufficient security to each against encroachments of the others, all further provisions would indeed be superfluous. But experience had taught us a distrust of that security, and that it is necessary to introduce such a balance of powers and interests as will guaranty the provisions on paper. Instead, therefore, of contenting ourselves with laying down the theory, in the Constitution, that each department ought to be separate and distinct, it was proposed to add a defensive power to each, which should maintain the theory in practice. In so doing, we did not blend the departments together. We erected effectual barriers for keeping them separate. The most regular example of this theory was in the British constitution. Yet it was not only the practice there to admit the judges to a seat in the legislature, and in the executive councils, and submit to their previous examination all laws of a certain description, but it was a part of their constitution that the executive might negative any law whatever; a part of *their* constitution, which had been universally regarded as calculated for the preservation of the whole. The objection against a union of the judiciary and executive branches, in the revision of the laws, had either no foundation, or was not carried far enough. If such a union was an improper mixture of powers, or such a judiciary check on the laws was inconsistent with the theory of a free constitution, it was equally so to admit the executive to any participation in the making of laws; and the revisionary plan ought to be discarded altogether.

Col. MASON observed, that the defence of the executive was not the sole object of the revisionary power. He expected even greater advantages from it. Notwithstanding

the precautions taken in the constitution of the legislature, it would still so much resemble that of the individual states, that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect, not only of hindering the final passage of such laws, but would discourage demagogues from attempting to get them passed. It has been said, (by Mr. L. Martin,) that if the judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of judges they would have one negative. He would reply, that in this capacity they could impede in one case only the operation of laws. They could declare an unconstitutional law void. But with regard to every law however unjust, oppressive, or pernicious, that did not come plainly under this description, they would be under the necessity, as judges, to give it a free course. He wished the further use to be made of the judges of giving aid in preventing every improper law. Their aid will be the more valuable, as they are in the habit and practice of considering laws in their true principles and in all their consequences.

Mr. WILSON. The separation of the departments does not require that they should have separate objects, but that they should act separately, though on the same objects. It is necessary that the two branches of the legislature should be separate and distinct, yet they are both to act precisely on the same object.

Mr. GERRY had rather give the executive an absolute negative for its own defence, than thus to blend together the judiciary and executive departments. It will bind them together in an offensive and defensive alliance against the legislature, and render the latter unwilling to enter into a contest with them.

Mr. GOUVERNEUR MORRIS was surprised that any defensive provision for securing the effectual separation of the departments should be considered as an improper mixture of them. Suppose that the three powers were to be vested in three persons, by compact among themselves; that one was to have the power of making, another of executing, and a third of judging, the laws; would it not be very natural for the two latter, after having settled the partition on paper, to observe, and would not candor oblige the former to admit, that, as a security against legislative acts of the former, which might easily be so framed as to undermine the powers of the two others, the two others ought to be armed with a veto for their own defence; or at least to have an opportunity of stating their objections against acts of encroachment? And would any one pretend, that such a right tended to blend and confound powers that ought to be separately exercised? As well might it be said that if three neighbors had three distinct farms, a right in each to defend his farm against his neighbors, tended to blend the farms together.

Mr. GORHAM. All agree that a check on the legislature is necessary. But there are two objections against admitting the judges to share in it, which no observations on the other side seem to obviate. The first is, that the judges ought to carry into the exposition of the laws no prepossessions with regard to them; the second, that, as the judges will outnumber the executive, the revisionary check would be thrown entirely out of the executive hands, and, instead of enabling him to defend himself, would enable the judges to sacrifice him.

Mr. WILSON. The proposition is certainly not liable to all the objections which have been urged against it. According to (Mr. Gerry) it will unite the executive and judiciary in an offensive and defensive alliance against the legislature. According to (Mr. Gorham) it will lead to a subversion of the executive by the judiciary influence. To the first gentleman the answer was obvious—that the joint weight of the two departments was necessary to balance the single weight of the legislature. To the first objection stated by the other gentleman, it might be answered that, supposing the prepossession to mix itself with the exposition, the evil would be overbalanced by the advantages promised by the advantages promised by the expedient; to the second objection, that such a rule of voting might be provided, in the detail, as would guard against it.

Mr. RUTLEDGE thought the judges, of all men, the most unfit to be concerned in the revisionary council. The judges ought never to give their opinion on a law, till it comes before them. He thought it equally unnecessary. The executive could advise with the officers of state, as of war, finance, &c., and avail himself of their information and opinions.

On the question on Mr. Wilson's motion for joining the judiciary in the revision of laws, it passed in the negative.

Connecticut, Maryland, Virginia, ay, 3; Massachusetts, Delaware, North Carolina, South Carolina, no, 4; Pennsylvania, Georgia, divided; New Jersey, not present.[182]

The tenth resolution, giving the executive a qualified veto, requiring two thirds of each branch of the legislature to overrule it, was then agreed to, *nem. con.*

The motion made by Mr. Madison, on the 18th of July, and then postponed, "that the judges should be nominated by the executive, and such nominations become appointments, unless disagreed to by two thirds of the second branch of the legislature," was now resumed.[183]

Mr. MADISON stated, as his reasons for the motion—first, that it secured the responsibility of the executive, who would in general be more capable and likely to select fit characters than the legislature, or even the second branch of it, who might hide their selfish motives under the number concerned in the appointment; secondly, that, in case of any flagrant partiality or error in the nomination, it might be fairly presumed that two thirds of the second branch would join in putting a negative on it; thirdly, that, as the second branch was very differently constituted, when the appointment of the judges was formerly referred to it, and was now to be composed of equal votes from all the states, the principle of compromise which had prevailed in other instances required, in this, that there should be a concurrence of two authorities, in one of which the people, in the other the states, should be represented. The executive magistrate would be considered as a national officer, acting for and equally sympathizing with every part of the United States. If the second branch alone should have this power, the judges might be appointed by a minority of the people, though by a majority of the states, which could not be justified on any principle, as their proceedings were to relate to the people rather than to the states; and as it would,

moreover, throw the appointments entirely into the hands of the Northern States, a perpetual ground of jealousy and discontent would be furnished to the Southern States.

Mr. PINCKNEY was for placing the appointment in the second branch exclusively. The executive will possess neither the requisite knowledge of characters, nor confidence of the people for so high a trust.

Mr. RANDOLPH would have preferred the mode of appointment proposed formerly by Mr. Gorham, as adopted in the constitution of Massachusetts, but thought the motion depending so great an improvement of the clause, as it stands, that he anxiously wished it success. He laid great stress on the responsibility of the executive, as a security for fit appointments. Appointments by the legislatures have generally resulted from cabal, from personal regard, or some other consideration than a title derived from the proper qualifications. The same inconveniences will proportionally prevail, if the appointments be referred to either branch of the legislature, or to any other authority administered by a number of individuals.

Mr. ELLSWORTH would prefer a negative in the executive on a nomination by the second branch, the negative to be overruled by a concurrence of two thirds of the second branch, to the mode proposed by the motion, but preferred an absolute appointment by the second branch to either. The executive will be regarded by the people with a jealous eye. Every power for augmenting unnecessarily his influence will be disliked. As he will be stationary, it was not to be supposed he could have a better knowledge of characters. He will be more open to caresses and intrigues than the Senate. The right to supersede his nomination will be ideal only. A nomination under such circumstances will be equivalent to an appointment.

Mr. GOUVERNEUR MORRIS supported the motion. First, the states, in their corporate capacity, will frequently have an interest staked on the determination of the judges. As in the Senate the states are to vote, the judges ought not to be appointed by the Senate. Next to the impropriety of being judge in one's own cause, is the appointment of the judge. Secondly, it had been said the executive would be uninformed of characters. The reverse was the truth. The Senate will be so. They must take the character of candidates from the flattering pictures drawn by their friends. The executive, in the necessary intercourse with every part of the United States, required by the nature of his administration, will or may have the best possible information. Thirdly, it had been said that a jealousy would be entertained of the executive. If the executive can be safely trusted with the command of the army, there cannot surely be any reasonable ground of jealousy in the present case. He added that, if the objections against an appointment of the executive by the legislature had the weight that had been allowed, there must be some weight in the objection to an appointment of the judges by the legislature, or by any part of it.

Mr. GERRY. The appointment of the judges, like every other part of the Constitution, should be so modelled as to give satisfaction both to the people and to the states. The mode under consideration will give satisfaction to neither. He could not conceive that the executive could be as well informed of characters throughout the Union as the

Senate. It appeared to him, also, a strong objection, that two thirds of the Senate were required, to reject a nomination of the executive. The Senate would be constituted in the same manner as Congress, and the appointments of Congress have been generally good.

Mr. MADISON observed, that he was not anxious that two thirds should be necessary to disagree to a nomination. He had given this form to his motion, chiefly to vary it the more clearly from one which had just been rejected. He was content to obviate the objection last made, and accordingly so varied the motion as to let a majority reject.

Col. MASON found it his duty to differ from his colleagues in their opinions and reasonings on this subject. Notwithstanding the form of the proposition, by which the appointment seemed to be divided between the executive and Senate, the appointment was substantially vested in the former alone. The false complaisance which usually prevails in such cases will prevent a disagreement to the first nominations. He considered the appointment by the executive as a dangerous prerogative. It might even give him an influence over the judiciary department itself. He did not think the difference of interest between the Northern and Southern States could be properly brought into this argument. It would operate, and require some precautions in the case of regulating navigation, commerce, and imposts; but he could not see that it had any connection with the judiciary department.

On the question, the motion being now "that the executive should nominate, and such nominations should become appointments unless disagreed to by the Senate,"—

Massachusetts, Pennsylvania, Virginia, ay, 3; Connecticut, Delaware, Maryland, North Carolina, South Carolina, Georgia, no, 6.184

On the question for agreeing to the clause as it stands, by which the judges are to be appointed by the second branch,—

Connecticut, Delaware, Maryland, North Carolina South Carolina, Georgia, ay, 6; Massachusetts, Pennsylvania, Virginia, no, 3.

So it passed in the affirmative.

Adjourned.

Monday,*July* 23.

In Convention.—Mr. John Langdon and Mr. Nicholas Gillman, from New Hampshire, took their seats.

The seventeenth resolution, that provision ought to be made for future amendments of the articles of the Union, was agreed to, *nem. con.*

The eighteenth resolution, requiring the legislative, executive, and judiciary of the states to be bound by oath to support the Articles of Union, was taken into consideration.

Mr. WILLIAMSON suggests, that a reciprocal oath should be required from the national officers, to support the governments of the states.

Mr. GERRY moved to insert, as an amendment, that the oath of the officers of the national government, also, should extend to the support of the national government, which was agreed to, *nem. con.*

Mr. WILSON said, he was never fond of oaths, considering them as a left-handed security only. A good government did not need them, and a bad one could not or ought not to be supported. He was afraid they might too much trammel the members of the existing government, in case future alterations should be necessary, and prove an obstacle to the seventeenth resolution, just agreed to.

Mr. GORHAM did not know that oaths would be of much use, but could see no inconsistency between them and the seventeenth resolution, or any regular amendment of the Constitution. The oath could only require fidelity to the existing Constitution. A constitutional alteration of the Constitution could never be regarded as a breach of the Constitution, or of any oath to support it.

Mr. GERRY thought, with Mr. Gorham, there could be no shadow of inconsistency in the case. Nor could he see any other harm that could result from the resolution. On the other side, he thought one good effect would be produced by it. Hitherto the officers of the two governments had considered them as distinct from, and not as parts of, the general system, and had, in all cases of interference, given a preference to the state governments. The proposed oath will cure that error.

The resolution (the eighteenth) was agreed to, *nem. con.*

The nineteenth resolution, referring the new Constitution to assemblies to be chosen by the people, for the express purpose of ratifying it, was next taken into consideration.

Mr. ELLSWORTH moved that it be referred to the legislatures of the states for ratification. Mr. PATTERSON seconded the motion.

Col. MASON considered a reference of the plan to the authority of the people as one of the most important and essential of the resolutions. The legislatures have no power to ratify it. They are the mere creatures of the state constitutions, and cannot be greater than their creators. And he knew of no power in any of the constitutions—he knew there was no power in some of them—that could be competent to this object. Whither, then, must we resort? To the people, with whom all power remains that has not been given up in the constitutions derived from them. It was of great moment, he observed, that this doctrine should be cherished, as the basis of free government. Another strong reason was, that, admitting the legislatures to have a competent authority, it would be wrong to refer the plan to them, because succeeding legislatures, having equal authority, could undo the acts of their predecessors; and the national government would stand, in each state, on the weak and tottering foundation of an act of assembly. There was a remaining consideration, of some weight. In some

of the states, the governments were not derived from the clear and undisputed authority of the people. This was the case in Virginia. Some of the best and wisest citizens considered the constitution as established by an assumed authority. A national constitution derived from such a source would be exposed to the severest criticisms.

Mr. RANDOLPH. One idea has pervaded all our proceedings, to wit, that opposition as well from the states as from individuals will be made to the system to be proposed. Will it not then be highly imprudent to furnish any unnecessary pretext, by the mode of ratifying it? Added to other objections against a ratification by the legislative authority only, it may be remarked, that there have been instances in which the authority of the common law has been set up in particular states against that of the Confederation, which has had no higher sanction than legislative ratification. Whose opposition will be most likely to be excited against the system? That of the local demagogues who will be degraded by it from the importance they now hold. These will spare no efforts to impede that progress in the popular mind which will be necessary to the adoption of the plan, and which every member will find to have taken place in his own, if he will compare his present opinions with those he brought with him into the Convention. It is of great importance, therefore, that the consideration of this subject should be transferred from the legislatures, where this class of men have their full influence, to a field in which their efforts can be less mischievous. It is moreover worthy of consideration, that some of the states are averse to any change in their constitution, and will not take the requisite steps, unless expressly called upon, to refer the question to the people.

Mr. GERRY. The arguments of Col. Mason and Mr. Randolph prove too much. They prove an unconstitutionality in the present federal system, and even in some of the state governments. Inferences drawn from such a source must be inadmissible. Both the state governments and the federal government have been too long acquiesced in, to be now shaken. He considered the Confederation to be paramount to any state constitution. The last article of it, authorizing alterations, must consequently be so as well as the others; and every thing done in pursuance of the article must have the same high authority with the article. Great confusion, he was confident, would result from a recurrence to the people. They would never agree on any thing. He could not see any ground to suppose, that the people will do what their rulers will not. The rulers will either conform to or influence the sense of the people.

Mr. GORHAM was against referring the plan to the legislatures. 1. Men chosen by the people for the particular purpose will discuss the subject more candidly than members of the legislature, who are to lose the power which is to be given up to the general government. 2. Some of the legislatures are composed of several branches. It will consequently be more difficult, in these cases, to get the plan through the legislatures than through a convention. 3. In the states, many of the ablest men are excluded from the legislatures, but may be elected into a convention. Among these may be ranked many of the clergy, who are generally friends to good government. Their services were found to be valuable in the formation and establishment of the constitution of Massachusetts. 4. The legislatures will be interrupted with a variety of little business; by artfully pressing which, designing men will find means to delay from year to year, if not to frustrate altogether, the national system. 5. If the last

article of the Confederation is to be pursued, the unanimous concurrence of the states will be necessary. But will any one say that all the states are to suffer themselves to be ruined, if Rhode Island should persist in her opposition to general measures? Some other states might also tread in her steps. The present advantage, which New York seems to be so much attached to, of taxing her neighbors by the regulation of her trade, makes it very probable that she will be of the number. It would, therefore, deserve serious consideration, whether provision ought not to be made for giving effect to the system, without waiting for the unanimous concurrence of the states.

Mr. ELLSWORTH. If there be any legislatures who should find themselves incompetent to the ratification, he should be content to let them advise with their constituents, and pursue such a mode as would be competent. He thought more was to be expected from the legislatures, than from the people. The prevailing wish of the people in the Eastern States is, to get rid of the public debt: and the idea of strengthening the national government carries with it that of strengthening the public debt. It was said by Col. Mason, in the first place, that the legislatures have no authority in this case; and in the second, that their successors, having equal authority, could rescind their acts. As to the second point he could not admit it to be well founded. An act to which the states, by their legislatures, make themselves parties, becomes a compact from which no one of the parties can recede of itself. As to the first point, he observed that a new set of ideas seemed to have crept in since the Articles of Confederation were established. Conventions of the people, or with power derived expressly from the people, were not then thought of. The legislatures were considered as competent. Their ratification has been acquiesced in without complaint. To whom have Congress applied on subsequent occasions for further powers? To the legislatures, not to the people. The fact is, that we exist at present and we need not inquire how, as a federal society, united by a charter, one article of which is, that alterations therein may be made by the legislative authority of the states. It has been said, that, if the Confederation is to be observed, the states must *unanimously* concur in the proposed innovations. He would answer, that, if such were the urgency and necessity of our situation as to warrant a new compact among a part of the states, founded on the consent of the people, the same pleas would be equally valid in favor of a partial compact, founded on the consent of the legislatures.

Mr. WILLIAMSON thought the resolution (the nineteenth) so expressed, as that it might be submitted either to the legislatures or to conventions recommended by the legislatures. He observed that some legislatures were evidently unauthorized to ratify the system. He thought, too, that conventions were to be preferred, as more likely to be composed of the ablest men in the states.

Mr. GOUVERNEUR MORRIS considered the inference of Mr. Ellsworth from the plea of necessity, as applied to the establishment of a new system on the consent of the people of a part of the states, in favor of a like establishment on the consent of a part of the legislatures, as a *non sequitur.* If the Confederation is to be pursued, no alteration can be made without the unanimous consent of the legislatures. Legislative alterations not conformable to the federal compact would clearly not be valid. The judges would consider them as null and void. Whereas, in case of an appeal to the people of the United States, the supreme authority, the federal compact may be altered

by a *majority of them,* in like manner as the constitution of a particular state may be altered by a majority of the people of the state. The amendment moved by Mr. Ellsworth erroneously supposes, that we are proceeding on the basis of the Confederation. This Convention is unknown to the Confederation.

Mr. KING thought with Mr. Ellsworth that the legislatures had a competent authority, the acquiescence of the people of America in the Confederation being equivalent to a formal ratification by the people. He thought with Mr. Ellsworth, also, that the plea of necessity was as valid in the one case as the other. At the same time, he preferred a reference to the authority of the people, expressly delegated to conventions, as the most certain means of obviating all disputes and doubts concerning the legitimacy of the new Constitution, as well as the most likely means of drawing forth the best men in the states to decide on it. He remarked, that, among other objections made in the state of New York to granting powers to Congress, one had been, that such powers as would operate within the states could not be reconciled to the Constitution, and therefore were not grantable by the legislative authority. He considered it as of some consequence, also, to get rid of the scruples which some members of the state legislatures might derive from their oaths to support and maintain the existing constitutions.

Mr. MADISON thought it clear that the legislatures were incompetent to the proposed changes. These changes would make essential inroads on the state constitutions; and it would be a novel and dangerous doctrine, that a legislature could change the constitution under which it held its existence. There might indeed be some constitutions within the Union, which had given a power to the legislature to concur in alterations of the federal compact. But there were certainly some which had not; and, in the case of these, a ratification must of necessity be obtained from the people. He considered the difference between a system founded on the legislatures only, and one founded on the people, to be the true difference between a *league* or *treaty,* and a *constitution.* The former, in point of *moral obligation,* might be as inviolable as the latter. In point of *political operation,* there were two important distinctions in favor of the latter. First, a law violating a treaty ratified by a preëxisting law might be respected by the judges as a law, though an unwise or perfidious one. A law violating a constitution established by the people themselves would be considered by the judges as null and void. Secondly, the doctrine laid down by the law of nations in the case of treaties is, that a breach of any one article by any of the parties frees the other parties from their engagements. In the case of a union of people under one constitution, the nature of the pact has always been understood to exclude such an interpretation. Comparing the two modes, in point of expediency, he thought all the considerations which recommended this Convention, in preference to Congress, for proposing the reform, were in favor of state conventions, in preference to the legislatures, for examining and adopting it.

On the question on Mr. Ellsworth's motion to refer the plan to the legislatures of the states,—

Connecticut, Delaware, Maryland, ay, 3; New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 7.

Mr. GOUVERNEUR MORRIS moved, that the reference of the plan be made to one general convention, chosen and authorized by the people, to consider, *amend,* and establish the same. Not seconded.

On the question for agreeing to the nineteenth resolution, touching the mode of ratification as reported from the committee of the whole, viz., to refer the Constitution, after the approbation of Congress, to assemblies chosen by the people,—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Delaware, no, 1.185

Mr. GOUVERNEUR MORRIS and Mr. KING moved, that the representation in the second branch consist of—members from each state, who shall vote *per capita.*

Mr. ELLSWORTH said he had always approved of voting in that mode.

Mr. GOUVERNEUR MORRIS moved to fill the blank with *three.* He wished the Senate to be a pretty numerous body. If two members only should be allowed to each state, and a majority be made a quorum, the power would be lodged in fourteen members, which was too small a number for such a trust.

Mr. GORHAM preferred two to three members for the blank. A small number was most convenient for deciding on peace and war, &c., which he expected would be vested in the second branch. The number of states will also increase. Kentucky, Vermont, the Province of Maine, and Franklin, will probably soon be added to the present number. He presumed, also, that some of the largest states would be divided. The strength of the general government will be, not in the largeness, but the smallness, of the states.

Col. MASON thought *three* from each state, including new states, would make the second branch too numerous. Besides other objections, the additional expense ought always to form one, where it was not absolutely necessary.

Mr. WILLIAMSON. If the number be too great, the distant states will not be on an equal footing with the nearer states. The latter can more easily send and support their ablest citizens. He approved of the voting *per capita.*

On the question for filling the blank with “three,”—

Pennsylvania, ay, 1; New Hampshire, Massachusetts, Connecticut, Delaware, Virginia, North Carolina, South Carolina, Georgia, no, 8.186

On the question for filling it with “two,”—agreed to, *nem. con.*

Mr. L. MARTIN was opposed to voting *per capita,* as departing from the idea of the *states* being represented in the second branch.

Mr. CARROLL was not struck with any particular objection against the mode; but he did not wish so hastily to make so material an innovation.

On the question on the whole motion, viz., "the second branch to consist of two members from each state, and to vote *per capita,*"—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Maryland, no, 1.

Mr. HOUSTON and Mr. SPAIGHT moved, "that the appointment of the executive by electors chosen by the legislatures of the states," be reconsidered. Mr. HOUSTON urged the extreme inconveniency and the considerable expense of drawing together men from all the states for the single purpose of electing the chief magistrate.

On the question, which was put without debate,—

New Hampshire, Massachusetts, Connecticut, Delaware, North Carolina, South Carolina, Georgia, ay, 7; Pennsylvania, Maryland, Virginia, no, 3.

Ordered, that to-morrow be assigned for the reconsideration.

Connecticut and Pennsylvania, no; all the rest, ay.

Mr. GERRY moved, that the proceedings of the Convention for the establishment of a national government (except the part relating to the executive) be referred to a committee to prepare and report a constitution conformable thereto.

Gen. PINCKNEY reminded the Convention, that, if the committee should fail to insert some security to the Southern States against an emancipation of slaves, and taxes on exports, he should be bound by duty to his state to vote against their report.187

The appointment of a committee, as moved by Mr. Gerry, was agreed to, *nem. con.*

On the question, Shall the committee consist of ten members, one from each state present?—

All the states were no, except Delaware, ay.

Shall it consist of seven members?

New Hampshire, Massachusetts, Connecticut, Maryland, South Carolina, ay, 5; Pennsylvania, Delaware, Virginia, North Carolina, Georgia, no, 5.

The question being lost by an equal division of votes, it was agreed, *nem. con.,* that the committee should consist of five members, to be appointed to-morrow.

Adjourned.

Tuesday,*July* 24.

In Convention.—The appointment of the executive by electors being reconsidered,—

Mr. HOUSTON moved, that he be appointed by the national legislature, instead of "electors appointed by the state legislatures," according to the last decision of the mode. He dwelt chiefly on the improbability that capable men would undertake the service of electors from the more distant states.

Mr. SPAIGHT seconded the motion.

Mr. GERRY opposed it. He thought there was no ground to apprehend the danger urged by Mr. Houston. The election of the executive magistrate will be considered as of vast importance, and will create great earnestness. The best men, the governors of the states, will not hold it derogatory from their character to be the electors. If the motion should be agreed to, it will be necessary to make the executive ineligible a second time, in order to render him independent of the legislature; which was an idea extremely repugnant to his way of thinking.

Mr. STRONG supposed that there would be no necessity, if the executive should be appointed by the legislature, to make him ineligible a second time; as new elections of the legislature will have intervened; and he will not depend, for his second appointment, on the same set of men that his first was received from. It had been suggested that *gratitude* for his past appointment would produce the same effect as dependence for his future appointment. He thought very differently. Besides, this objection would lie against the electors, who would be objects of gratitude as well as the legislature. It was of great importance not to make the government too complex, which would be the case if a new set of men, like the electors, should be introduced into it. He thought, also, that the first characters in the states would not feel sufficient motives to undertake the office of electors.

Mr. WILLIAMSON was for going back to the original ground, to elect the executive for seven years, and render him ineligible a second time. The proposed electors would certainly not be men of the first, nor even of the second, grade in the states. These would all prefer a seat in the Senate, or the other branch of the legislature. He did not like the unity in the executive. He had wished the executive power to be lodged in three men, taken from three districts, into which the states should be divided. As the executive is to have a kind of veto on the laws, and there is an essential difference of interests between the Northern and Southern States, particularly in the carrying trade, the power will be dangerous, if the executive is to be taken from part of the Union, to the part from which he is not taken. The case is different here from what it is in England, where there is a sameness of interests throughout the kingdom. Another objection against a single magistrate is, that he will be an elective king, and will feel the spirit of one. He will spare no pains to keep himself in for life, and will then lay a train for the succession of his children. It was pretty certain, he thought, that we should at some time or other have a king; but he wished no precaution to be omitted that might postpone the event as long as possible. Ineligibility a second time appeared to him to be the best precaution. With this precaution he had no objection to a longer term than seven years. He would go as far as ten or twelve years.

Mr. GERRY moved, that the legislatures of the states should vote by ballot for the executive, in the same proportions as it had been proposed they should choose

electors; and that, in case a majority of the votes should not centre on the same person, the first branch of the national legislature should choose two out of the four candidates having most votes; and out of these two the second branch should choose the executive.

Mr. KING seconded the motion; and, on the question to postpone, in order to take it into consideration, the *noes* were so predominant, that the states were not counted.

On the question on Mr. Houston's motion, that the executive be appointed by the national legislature,—

New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia, ay, 7; Connecticut, Pennsylvania, Maryland, Virginia, no, 4.

Mr. L. MARTIN and Mr. GERRY moved to reinstate the ineligibility of the executive a second time.

Mr. ELLSWORTH. With many this appears a natural consequence of his being elected by the legislature. It was not the case with him. The executive, he thought, should be reëlected if his conduct proved him worthy of it. And he will be more likely to render himself worthy of it if he be rewardable with it. The most eminent characters, also, will be more willing to accept the trust under this condition, than if they foresee a necessary degradation at a fixed period.

Mr. GERRY. That the executive should be independent of the legislature, is a clear point. The longer the duration of his appointment, the more will his dependence be diminished. It will be better, then, for him to continue ten, fifteen, or even twenty years, and be ineligible afterwards.

Mr. KING was for making him reëligible. This is too great an advantage to be given up, for the small effect it will have on his dependence, if impeachments are to lie. He considered these as rendering the tenure during pleasure.

Mr. L. MARTIN, suspending his motion as to the ineligibility, moved, "that the appointment of the executive shall continue for eleven years."

Mr. GERRY suggested fifteen years.

Mr. KING, twenty years.* This is the medium life of princes.

Mr. DAVIE, eight years.

Mr. WILSON. The difficulties and perplexities into which the House is thrown proceed from the election by the legislature, which he was sorry had been reinstated. The inconvenience of this mode was such, that he would agree to almost any length of time in order to get rid of the dependence which must result from it. He was persuaded that the longest term would not be equivalent to a proper mode of election, unless indeed it should be during good behavior. It seemed to be supposed that, at a certain advance of life, a continuance in office would cease to be agreeable to the

officer, as well as desirable to the public. Experience had shown, in a variety of instances, that both a capacity and inclination for public service existed in very advanced stages. He mentioned the instance of a doge of Venice who was elected after he was eighty years of age. The popes have generally been elected at very advanced periods, and yet in no case had a more steady or a better-concerted policy been pursued than in the court of Rome. If the executive should come into office at thirty-five years of age, which he presumes may happen, and his continuance should be fixed at fifteen years, at the age of fifty, in the very prime of life, and with all the aid of experience, he must be cast aside like a useless hulk. What an irreparable loss would the British jurisprudence have sustained, had the age of fifty been fixed there as the ultimate limit of capacity or readiness to serve the public. The great luminary, Lord Mansfield, held his seat for thirty years after his arrival at that age. Notwithstanding what had been done, he could not but hope that a better mode of election would yet be adopted, and one that would be more agreeable to the general sense of the House. That time might be given for further deliberation, he would move that the present question be postponed till to-morrow.

Mr. BROOM seconded the motion to postpone.

Mr. GERRY. We seem to be entirely at a loss on this head. He would suggest whether it would not be advisable to refer the clause relating to the executive to the committee of detail to be appointed. Perhaps they will be able to hit on something that may unite the various opinions which have been thrown out.

Mr. WILSON. As the great difficulty seems to spring from the mode of election, he would suggest a mode which had not been mentioned. It was, that the executive be elected for six years by a small number, not more than fifteen, of the national legislature, to be drawn from it, not by ballot, but by lot, and who should retire immediately, and make the election without separating. By this mode, intrigue would be avoided in the first instance, and the dependence would be diminished. This was not, he said, a digested idea, and might be liable to strong objections.

Mr. GOUVERNEUR MORRIS. Of all possible modes of appointment, that by the legislature is the worst. If the legislature is to appoint, and to impeach, or to influence the impeachment, the executive will be the mere creature of it. He had been opposed to the impeachment, but was now convinced that impeachments must be provided for, if the appointment was to be of any duration. No man would say, that an executive known to be in the pay of an enemy should not be removable in some way or other. He had been charged, heretofore, (by Col. Mason,) with inconsistency in pleading for confidence in the legislature on some occasions, and urging a distrust on others. The charge was not well founded. The legislature is worthy of unbounded confidence in some respects, and liable to equal distrust in others. When their interest coincides precisely with that of their constituents, as happens in many of their acts, no abuse of trust is to be apprehended. When a strong personal interest happens to be opposed to the general interest, the legislature cannot be too much distrusted. In all public bodies there are two parties. The executive will necessarily be more connected with one than with the other. There will be a personal interest, therefore, in one of the parties to oppose, as well as in the other to support, him. Much had been said of the intrigues

that will be practised by the executive to get into office. Nothing had been said, on the other side, of the intrigues to get him out of office. Some leader of a party will always covet his seat, will perplex his administration, will cabal with the legislature, till he succeeds in supplanting him. This was the way in which the king of England was got out—he meant the real king, the minister. This was the way in which Pitt (Lord Chatham) forced himself into place. Fox was for pushing the matter still farther. If he had carried his India bill, which he was very near doing, he would have made the minister the king in form, almost, as well as in substance. Our president will be the British minister; yet we are about to make him appointable by the legislature. Something has been said of the danger of monarchy. If a good government should not now be formed, if a good organization of the executive should not be provided, he doubted whether we should not have something worse than a limited monarchy. In order to get rid of the dependence of the executive on the legislature, the expedient of making him ineligible a second time had been devised. This was as much as to say, we should give him the benefit of experience, and then deprive ourselves of the use of it. But, make him ineligible a second time, and prolong his duration even to fifteen years,—will he, by any wonderful interposition of Providence at that period, cease to be a man? No; he will be unwilling to quit his exaltation; the road to his object through the Constitution will be shut; he will be in possession of the sword a civil war will ensue, and the commander of the victorious army, on whichever side, will be the despot of America. This consideration renders him particularly anxious that the executive should be properly constituted. The vice here would not, as in some other parts of the system, be curable. It is the most difficult of all, rightly to balance the executive. Make him too weak—the legislature will usurp his power. Make him too strong—he will usurp on the legislature. He preferred a short period, a reëligibility, but a different mode of election. A long period would prevent an adoption of the plan. It ought to do so. He should himself be afraid to trust it. He was not prepared to decide on Mr. Wilson's mode of election just hinted by him. He thought it deserved consideration. It would be better that chance should decide than intrigue.

On the question to postpone the consideration of the resolution on the subject of the executive,—

Connecticut, Pennsylvania, Maryland, Virginia, ay, 4; New Hampshire, Massachusetts, New Jersey, North Carolina, South Carolina, Georgia, no, 6; Delaware, divided.

Mr. WILSON then moved, that the executive be chosen every—years by—electors, to be taken by lot from the national legislature, who shall proceed immediately to the choice of the executive, and not separate until it be made.

Mr. CARROLL seconds the motion.

Mr. GERRY. This is committing too much to chance. If the lot should fall on a set of unworthy men, an unworthy executive must be saddled on the country. He thought it had been demonstrated that no possible mode of electing by the legislature could be a good one.

Mr. KING. The lot might fall on a majority from the same state, which would insure the election of a man from that state. We ought to be governed by reason, not by chance. As nobody seemed to be satisfied, he wished the matter to be postponed.

Mr. WILSON did not move this as the best mode. His opinion remained unshaken, that we ought to resort to the people for the election. He seconded the postponement.

Mr. GOUVERNEUR MORRIS observed, that the chances were almost infinite against a majority of electors from the same state.

On a question whether the last motion was in order, it was determined in the affirmative,—ayes, 7; noes, 4.

On the question of postponement, it was agreed to, *nem. con.*

Mr. CARROLL took occasion to observe, that he considered the clause declaring that direct taxation on the states should be in proportion to representation, previous to the obtaining an actual census, as very objectionable; and that he reserved to himself the right of opposing it, if the report of the committee of detail should leave it in the plan.

Mr. GOUVERNEUR MORRIS hoped the committee would strike out the whole of the clause proportioning direct taxation to representation. He had only meant it as a bridge* to assist us over a certain gulf: having passed the gulf, the bridge may be removed. He thought the principle laid down with so much strictness liable to strong objections.

On a ballot for a committee to report a constitution conformable to the resolutions passed by the Convention, the members chosen were—

Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr. Ellsworth, Mr. Wilson.

On motion to discharge the committee of the whole from the propositions submitted to the Convention by Mr. C. Pinckney as the basis of a constitution, and to refer them to the committee of detail just appointed, it was agreed to, *nem. con.*

A like motion was then made and agreed to, *nem. con.,* with respect to the propositions of Mr. Patterson.

Adjourned.

Wednesday,*July* 25.

In Convention.—The clause relating to the executive being again under consideration,—

Mr. ELLSWORTH moved, “that the executive be appointed by the legislature, except when the magistrate last chosen shall have continued in office the whole term for which he was chosen, and be reeligible; in which case the choice shall be by electors

appointed by the legislatures of the states for that purpose." By this means a deserving magistrate may be reëlected without *making him dependent on the legislature.*

Mr. GERRY repeated his remark, that an election at all by the national legislature was radically and incurably wrong, and moved, "that the executive be appointed by the governors and presidents of the states, with advice of their councils; and where there are no councils, by electors chosen by the legislatures. The executives to vote in the following proportions, viz.:—."

Mr. MADISON. There are objections against every mode that has been, or perhaps can be, proposed. The election must be made either by some existing authority under the national or state constitutions, or by some special authority derived from the people, or by the people themselves. The two existing authorities under the national Constitution would be the legislative and judiciary. The latter, he presumed, was out of the question. The former was, in his judgment, liable to insuperable objections. Besides the general influence of that mode on the independence of the executive, in the first place, the election of the chief magistrate would agitate and divide the legislature so much, that the public interest would materially suffer by it. Public bodies are always apt to be thrown into contentions, but into more violent ones by such occasions than by any others. In the second place, the candidate would intrigue with the legislature; would derive his appointment from the predominant faction, and be apt to render his administration subservient to its views. In the third place, the ministers of foreign powers would have, and would make use of, the opportunity to mix their intrigues and influence with the election. Limited as the powers of the executive are, it will be an object of great moment with the great rival powers of Europe, who have American possessions, to have at the head of our government a man attached to their respective politics and interests. No pains, nor perhaps expense, will be spared, to gain from the legislature an appointment favorable to their wishes. Germany and Poland are witnesses of this danger. In the former, the election of the head of the empire, till it became in a manner hereditary, interested all Europe, and was much influenced by foreign interference. In the latter, although the elective magistrate has very little real power, his election has at all times produced the most eager interference of foreign princes, and has in fact at length slid entirely into foreign hands. The existing authorities in the states are the legislative, executive, and judiciary. The appointment of the national executive by the first was objectionable in many points of view, some of which had been already mentioned. He would mention one which of itself would decide his opinion. The legislatures of the states had betrayed a strong propensity to a variety of pernicious measures. One object of the national legislature was to control this propensity. One object of the national executive, so far as it would have a negative on the laws, was to control the national legislature, so far as it might be infected with a similar propensity. Refer the appointment of the national executive to the state legislatures, and this controlling purpose may be defeated. The legislatures can and will act with some kind of regular plan, and will promote the appointment of a man who will not oppose himself to a favorite object. Should a majority of the legislatures, at the time of election, have the same object, or different objects of the same kind, the national executive would be rendered subservient to them. An appointment by the state executives was liable, among other objections, to this insuperable one, that, being standing bodies, they

could and would be courted and intrigued with by the candidates, by their partisans, and by the ministers of foreign powers. The state judiciaries had not been, and he presumed would not be, proposed as a proper source of appointment. The option before us, then, lay between an appointment by electors chosen by the people, and an immediate appointment by the people. He thought the former mode free from many of the objections which had been urged against it, and greatly preferable to an appointment by the national legislature. As the electors would be chosen for the occasion, would meet at once, and proceed immediately to an appointment, there would be very little opportunity for cabal or corruption: as a further precaution, it might be required that they should meet at some place distinct from the seat of government, and even that no person within a certain distance of the place, at the time, should be eligible. This mode, however, had been rejected so recently, and by so great a majority, that it probably would not be proposed anew. The remaining mode was an election by the people, or rather by the qualified part of them at large. With all its imperfections, he liked this best. He would not repeat either the general arguments for, or the objection against, this mode. He would only take notice of two difficulties, which he admitted to have weight. The first arose from the disposition in the people to prefer a citizen of their own state, and the disadvantage this would throw on the smaller states. Great as this objection might be, he did not think it equal to such as lay against every other mode which had been proposed. He thought, too, that some expedient might be hit upon that would obviate it. The second difficulty arose from the disproportion of qualified voters in the Northern and Southern States, and the disadvantages which this mode would throw on the latter. The answer to this objection was, in the first place, that this disproportion would be continually decreasing under the influence of the republican laws introduced in the Southern States, and the more rapid increase of their population: in the second place, that local considerations must give way to the general interest. As an individual from the Southern States, he was willing to make the sacrifice.

Mr. ELLSWORTH. The objection drawn from the different sizes of the states is unanswerable. The citizens of the largest states would invariably prefer the candidate within the state; and the largest states would invariably have the man.

On the question on Mr. Ellsworth's motion as above,—

New Hampshire, Connecticut, Pennsylvania, Maryland, ay, 4; Massachusetts, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, no, 7.

Mr. PINCKNEY moved, "that the election by the legislature be qualified with a proviso, that no person be eligible for more than six years in any twelve years." He thought this would have all the advantage, and at the same time avoid in some degree the inconvenience, of an absolute ineligibility a second time.

Col. MASON approved the idea. It had the sanction of experience in the instance of Congress, and some of the executives of the states. It rendered the executive as effectually independent, as an ineligibility after his first election; and opened the way, at the same time, for the advantage of his future services. He preferred, on the whole, the election by the national legislature; though candor obliged him to admit, that there

was great danger of foreign influence, as had been suggested. This was the most serious objection, with him, that had been urged.

Mr. BUTLER. The two great evils to be avoided are, cabal at home, and influence from abroad. It will be difficult to avoid either, if the election be made by the national legislature. On the other hand, the government should not be made so complex and unwieldly as to disgust the states. This would be the case if the election should be referred to the people. He liked best an election by electors chosen by the legislatures of the states. He was against a reëligibility, at all events. He was also against a ratio of votes in the states. An equality should prevail in this case. The reasons for departing from it do not hold in the case of the executive, as in that of the legislature.

Mr. GERRY approved of Mr. Pinckney's motion, as lessening the evil.

Mr. GOUVERNEUR MORRIS was against a rotation in every case. It formed a political school, in which we were always governed by the scholars, and not by the masters. The evils to be guarded against in this case are,—first, the undue influence of the legislature; secondly, instability of councils; thirdly, misconduct in office. To guard against the first, we run into the second evil. We adopt a rotation which produces instability of councils. To avoid Scylla, we fall into Charybdis. A change of men is ever followed by a change of measures. We see this fully exemplified in the vicissitudes among ourselves, particularly in the state of Pennsylvania. The self-sufficiency of a victorious party scorns to tread in the paths of their predecessors. Rehoboam will not imitate Solomon. Secondly, the rotation in office will not prevent intrigue and dependence on the legislature. The man in office will look forward to the period at which he will become reëligible. The distance of the period, the improbability of such a protraction of his life, will be no obstacle. Such is the nature of man—formed by his benevolent Author, no doubt, for wise ends—that, although he knows his existence to be limited to a span, he takes his measures as if he were to live forever. But, taking another supposition, the inefficacy of the expedient will be manifest. If the magistrate does not look forward to his reëlection to the executive, he will be pretty sure to keep in view the opportunity of his going into the legislature itself. He will have little objection then to an extension of power on a theatre where he expects to act a distinguished part; and will be very unwilling to take any step that may endanger his popularity with the legislature, on his influence over which the figure he is to make will depend. Finally, to avoid the third evil, impeachments will be essential; and hence an additional reason against an election by the legislature. He considered an election by the people as the best, by the legislature as the worst, mode. Putting both these aside, he could not but favor the idea of Mr. Wilson, of introducing a mixture of lot. It will diminish, if not destroy, both cabal and dependence.

Mr. WILLIAMSON was sensible that strong objections lay against an election of the executive by the legislature, and that it opened a door for foreign influence. The principal objection against an election by the people seemed to be, the disadvantage under which it would place the smaller states. He suggested, as a cure for this difficulty, that each man should vote for three candidates; one of them he observed, would be probably of his own state, the other two of some other states; and as probably of a small as a large one.

Mr. GOUVERNEUR MORRIS liked the idea; suggesting, as an amendment, that each man should vote for two persons, one of whom at least should not be of his own state.

Mr. MADISON also thought something valuable might be made of the suggestion, with the proposed amendment of it. The second-best man in this case would probably be the first in fact. The only objection which occurred was, that each citizen, after having given his vote for his favorite fellow-citizen, would throw away his second on some obscure citizen of another state, in order to ensure the object of his first choice. But it could hardly be supposed that the citizens of many states would be so sanguine of having their favorite elected, as not to give their second vote with sincerity to the next object of their choice. It might, moreover, be provided, in favor of the smaller states, that the executive should not be eligible more than—times in—years from the same state.

Mr. GERRY. A popular election in this case is radically vicious. The ignorance of the people would put it in the power of some one set of men, dispersed through the Union and acting in concert, to delude them into any appointment. He observed that such a society of men existed in the order of the Cincinnati. They are respectable, united, and influential. They will, in fact, elect the chief magistrate in every instance, if the election be referred to the people. His respect for the characters composing this society could not blind him to the danger and impropriety of throwing such a power into their hands.

Mr. DICKINSON. As far as he could judge from the discussions which had taken place during his attendance, insuperable objections lay against an election of the executive by the national legislature; as also by the legislatures or executives of the states. He had long leaned towards an election by the people, which he regarded as the best and purest source. Objections, he was aware, lay against this mode, but not so great, he thought, as against the other modes. The greatest difficulty, in the opinion of the House, seemed to arise from the partiality of the states to their respective citizens. But might not this very partiality be turned to a useful purpose? Let the people of each state choose its best citizen. The people will know the most eminent characters of their own states; and the people of different states will feel an emulation in selecting those of whom they will have the greatest reason to be proud. Out of the thirteen names thus selected, an executive magistrate may be chosen either by the national legislature, or by electors appointed by it.

On a question, which was moved, for postponing Mr. Pinckney's motion, in order to make way for some such proposition as had been hinted by Mr. Williamson and others, it passed in the negative.

Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, ay, 5; New Hampshire, Massachusetts, Delaware, North Carolina, South Carolina, Georgia, no. 6.

On Mr. PINCKNEY'S motion, that no person shall serve in the executive more than six years in twelve years, it passed in the negative.

New Hampshire, Massachusetts, North Carolina, South Carolina, Georgia, ay, 5; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no, 6.

On a motion that the members of the Committee be furnished with copies of the proceedings, it was so determined, South Carolina alone being in the negative.

It was then moved, that the members of the House might take copies of the resolutions which had been agreed to; which passed in the negative.

Connecticut, New Jersey, Delaware, Virginia, North Carolina, ay, 5; New Hampshire, Massachusetts, Pennsylvania, Maryland, South Carolina, Georgia, no, 6.

Mr. GERRY and Mr. BUTLER moved to refer the resolution relating to the executive (except the clause making it consist of a single person) to the committee of detail.

Mr. WILSON hoped that so important a branch of the system would not be committed, until a general principle should be fixed by a vote of the House.

Mr. LANGDON was for the commitment.

Adjourned.

Thursday,*July* 26.

In Convention.—Mr. MASON. In every stage of the question relative to the executive, the difficulty of the subject, and the diversity of the opinions concerning it, have appeared; nor have any of the modes of constituting that department been satisfactory. First, it has been proposed that the election should be made by the people at large; that is, that an act which ought to be performed by those who know most of eminent characters and qualifications should be performed by those who know least; secondly, that the election should be made by the legislatures of the states; thirdly, by the executives of the states. Against these modes, also, strong objections have been urged. Fourthly, it has been proposed that the election should be made by electors chosen by the people for that purpose. This was at first agreed to; but on further consideration has been rejected. Fifthly, since which, the mode of Mr. Williamson, requiring each freeholder to vote for several candidates, has been proposed. This seemed, like many other propositions, to carry a plausible face, but on closer inspection is liable to fatal objections. A popular election in any form, as Mr. Gerry has observed, would throw the appointment into the hands of the Cincinnati, a society for the members of which he had a great respect, but which he never wished to have a preponderating influence in the government. Sixthly, another expedient was proposed by Mr. Dickinson, which is liable to so palpable and material an inconvenience, that he had little doubt of its being by this time rejected by himself. It would exclude every man who happened not to be popular within his own state; though the causes of his local unpopularity might be of such a nature, as to recommend him to the states at large. Seventhly, among other expedients, a lottery has been introduced. But as the tickets do not appear to be in much demand, it will probably not be carried on, and nothing therefore need be said on that subject. After reviewing all these various modes, he was led to conclude, that an election by the national legislature, as

originally proposed, was the best. If it was liable to objections, it was liable to fewer than any other. He conceived, at the same time, that a second election ought to be absolutely prohibited. Having for his primary object—for the polar star of his political conduct—the preservation of the rights of the people, he held it as an essential point, as the very palladium of civil liberty, that the great officers of state, and particularly the executive, should at fixed periods return to that mass from which they were at first taken, in order that they may feel and respect those rights and interests which are again to be personally valuable to them. He concluded with moving, that the constitution of the executive, as reported by the committee of the whole, be reinstated, viz., "that the executive be appointed for seven years, and be ineligible a second time."

Mr. DAVIE seconded the motion.

Dr. FRANKLIN. It seems to have been imagined by some, that the returning to the mass of the people was degrading the magistrate. This, he thought, was contrary to republican principles. In free governments, the rulers are the servants, and the people their superiors and sovereigns. For the former, therefore, to return among the latter, was not to *degrade,* but to *promote,* them. And it would be imposing an unreasonable burden on them, to keep them always in a state of servitude, and not allow them to become again one of the masters.

On the question on Col. Mason's motion, as above, it passed in the affirmative.

New Hampshire, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 7; Connecticut, Pennsylvania, Delaware, no, 3; Massachusetts, not on the floor.

Mr. GOUVERNEUR MORRIS was now against the whole paragraph. In answer to Col. Mason's position, that a periodical return of the great officers of the state into the mass of the people was the palladium of civil liberty, he would observe, that on the same principle the judiciary ought to be periodically degraded—certain it was, that the legislature ought, on every principle, yet no one had proposed, or conceived, that the members of it should not be reëligible. In answer to Dr. Franklin, that a return into the mass of the people would be a promotion instead of a degradation, he had no doubt that our executive, like most others, would have too much patriotism to shrink from the burden of his office, and too much modesty not to be willing to decline the promotion.

On the question on the whole resolution, as amended, in the words following:—

"That a national executive be instituted, to consist of a single person, to be chosen by the national legislature for the term of seven years, to be ineligible a second time, with power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for, to be removable on impeachment and conviction of malpractice or neglect of duty, to receive a fixed compensation for the devotion of his time to the public service, to be paid out of the national treasury,"—

it passed in the affirmative.

New Hampshire, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, ay, 6; Pennsylvania, Delaware, Maryland, no, 3; Massachusetts, not on the floor; Virginia, divided, (Mr. Blair and Col. Mason, ay; Gen. Washington and Mr. Madison, no; Mr. Randolph happened to be out of the House.)188

Mr. MASON moved,

"That the committee of detail be instructed to receive a clause, requiring certain qualifications of landed property, and citizenship of the United States, in members of the national legislature; and disqualifying persons having unsettled accounts with, or being indebted to, the United States, from being members of the national legislature."

He observed, that persons of the latter descriptions had frequently got into the state legislatures, in order to promote laws that might shelter their delinquencies; and that this evil had crept into Congress, if report was to be regarded.

Mr. PINCKNEY seconded the motion.

Mr. GOUVERNEUR MORRIS. If qualifications are proper, he would prefer them in the electors, rather than the elected. As to debtors of the United States, they are but few. As to persons having unsettled accounts, he believed them to be pretty many. He thought, however, that such a discrimination would be both odious and useless, and, in many instances, unjust and cruel. The delay of settlement had been more the fault of the public than of the individuals. What will be done with those patriotic citizens who have lent money, or services, or property, to their country, without having been yet able to obtain a liquidation of their claims? Are they to be excluded?

Mr. GORHAM was for leaving to the legislature the providing against such abuses as had been mentioned.

Col. MASON mentioned the parliamentary qualifications adopted in the reign of Queen Anne, which, he said, had met with universal approbation.

Mr. MADISON had witnessed the zeal of men, having accounts with the public, to get into the legislatures for sinister purposes. He thought, however, that, if any precaution were taken for excluding them, the one proposed by Col. Mason ought to be remodelled. It might be well to limit the exclusion to persons who had received money from the public, and had not accounted for it.

Mr. GOUVERNEUR MORRIS. It was a precept of great antiquity, as well as of high authority, that we should not be righteous overmuch. He thought we ought to be equally on our guard against being wise overmuch. The proposed regulation would enable the government to exclude particular persons from office as long as they pleased. He mentioned the case of the commander-in-chief's presenting his account for secret services, which, he said, was so moderate that every one was astonished at it, and so simple that no doubt could arise on it. Yet, had the auditor been disposed to delay the settlement, how easily he might have effected it, and how cruel would it be

in such a case to keep a distinguished and meritorious citizen under a temporary disability and disfranchisement. He mentioned this case, merely to illustrate the objectionable nature of the proposition. He was opposed to such minutious regulations in a constitution. The parliamentary qualifications quoted by Col. Mason had been disregarded in practice, and were but a scheme of the landed against the moneyed interest.

Mr. PINCKNEY and Gen. PINCKNEY moved to insert, by way of amendment, the words, "judiciary and executive," so as to extend the qualifications to those departments; which was agreed to, *nem. con.*

Mr. GERRY thought the inconvenience of excluding a few worthy individuals, who might be public debtors, or have unsettled accounts, ought not to be put in the scale against the public advantages of the regulation, and that the motion did not go far enough.

Mr. KING observed, that there might be great danger in requiring landed property as a qualification; since it might exclude the moneyed interest, whose aids may be essential, in particular emergencies, to the public safety.

Mr. DICKINSON was against any recital of qualifications in the Constitution. It was impossible to make a complete one; and a partial one would, by implication, tie up the hands of the legislature from supplying the omissions. The best defence lay in the freeholders who were to elect the legislature. Whilst this resource should remain pure, the public interest would be safe. If it ever should be corrupt, no little expedients would repel the danger. He doubted the policy of interweaving into a republican constitution a veneration for wealth. He had always understood that a veneration for poverty and virtue were the objects of republican encouragement. It seemed improper that any man of merit should be subjected to disabilities in a republic, where merit was understood to form the great title to public trust, honors, and rewards.

Mr. GERRY. If property be one object of government, provisions to secure it cannot be improper.

Mr. MADISON moved to strike out the word "landed," before the word "qualifications." If the proposition should be agreed to, he wished the committee to be at liberty to report the best criterion they could devise. Landed possessions were no certain evidence of real wealth. Many enjoyed them to a great extent who were more in debt than they were worth. The unjust laws of the states had proceeded more from this class of men than any others. It had often happened that men who had acquired landed property on credit got into the legislatures with a view of promoting an unjust protection against their creditors. In the next place, if a small quantity of and should be made the standard, it would be no security; if a large one, it would exclude the proper representatives of those classes of citizens who were not landholders. It was politic, as well as just, that the interests and rights of every class should be duly represented and understood in the public councils. It was a provision every where established, that the country should be divided into districts, and representatives taken from each, in order that the legislative assembly might equally understand and

sympathize with the rights of the people in every part of the community. It was not less proper, that every class of citizens should have an opportunity of making their rights be felt and understood in the public councils. The three principal classes into which our citizens were divisible, were the landed, the commercial, and the manufacturing. The second and third class bear, as yet, a small proportion to the first. The proportion, however, will daily increase. We see, in the populous countries of Europe now, what we shall be hereafter. These classes understand much less of each other's interests and affairs than men of the same class inhabiting different districts. It is particularly requisite, therefore, that the interests of one or two of them should not be left entirely to the care or impartiality of the third. This must be the case if landed qualifications should be required; few of the mercantile, and scarcely any of the manufacturing, class, choosing, whilst they continue in business, to turn any part of their stock into landed property. For these reasons he wished, if it were possible, that some other criterion than the mere possession of land should be devised. He concurred with Mr. Gouverneur Morris in thinking that qualifications in the electors would be much more effectual than in the elected. The former would discriminate between real and ostensible property in the latter; but he was aware of the difficulty of forming any uniform standard that would suit the different circumstances and opinions prevailing in the different states.

Mr. GOUVERNEUR MORRIS seconded the motion.

On the question for striking out "landed,"—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 10; Maryland, no, 1.

On the question on the first part of Col. Mason's proposition, as to "qualification of property and citizenship," as so amended,—

New Hampshire, Massachusetts, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Connecticut, Pennsylvania, Delaware, no, 3.

The second part, for disqualifying debtors, and persons having unsettled accounts, being under consideration,—

Mr. CARROLL moved to strike out. "having unsettled accounts."

Mr. GORHAM seconded the motion—observing, that it would put the commercial and manufacturing part of the people on a worse footing than others, as they would be most likely to have dealings with the public.

Mr. L. MARTIN. If these words should be struck out, and the remaining words concerning debtors retained, it will be the interest of the latter class to keep their accounts unsettled as long as possible.

Mr. WILSON was for striking them out. They put too much power in the hands of the auditors, who might combine with rivals in delaying settlements, in order to prolong the disqualifications of particular men. We should consider that we are providing a

constitution for future generations, and not merely for the peculiar circumstances of the moment. The time has been, and will again be, when the public safety may depend on the voluntary aids of individuals, which will necessarily open accounts with the public, and when such accounts will be a characteristic of patriotism. Besides, a partial enumeration of cases will disable the legislature from disqualifying odious and dangerous characters.

Mr. LANGDON was for striking out the whole clause, for the reasons given by Mr. Wilson. So many exclusions, he thought, too, would render the system unacceptable to the people.

Mr. GERRY. If the arguments used to-day were to prevail, we might have a legislature composed of public debtors, pensioners, placemen, and contractors. He thought the proposed disqualifications would be pleasing to the people. They will be considered as a security against unnecessary or undue burdens being imposed on them. He moved to add, “pensioners” to the disqualified characters; which was negatived.

Massachusetts, Maryland, Georgia, ay, 3; New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, South Carolina, no, 7; North Carolina, divided.

Mr. GOUVERNEUR MORRIS. The last clause, relating to public debtors, will exclude every importing merchant. Revenue will be drawn, it is foreseen, as much as possible from trade. Duties, of course, will be bonded; and the merchants will remain debtors to the public. He repeated that it had not been so much the fault of individuals, as of the public, that transactions between them had not been more generally liquidated and adjusted. At all events, to draw from our short and scanty experience rules that are to operate through succeeding ages does not savor much of real wisdom.

On the question for striking out, “persons having unsettled accounts with the United States,”—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, ay, 9; New Jersey, Georgia, no, 2.

Mr. ELLSWORTH was for disagreeing to the remainder of the clause disqualifying public debtors; and for leaving to the wisdom of the legislature, and the virtue of the citizens, the task of providing against such evils. Is the smallest as well as the largest debtor to be excluded? Then every arrear of taxes will disqualify. Besides, now is it to be known to the people, when they elect, who are, or are not, public debtors? The exclusion of pensioners and placemen in England is founded on a consideration not existing here. As persons of that sort are dependent on the crown, they tend to increase its influence.

Mr. PINCKNEY said he was at first a friend to the proposition, for the sake of the clause relating to qualifications of property; but he disliked the exclusion of public debtors. It went too far. It would exclude persons who had purchased confiscated

property, or should purchase western territory, of the public; and might be some obstacle to the sale of the latter.

On the question for agreeing to the clause disqualifying public debtors,—

North Carolina, Georgia, ay, 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, no, 9.189

Col. MASON observed, that it would be proper, as he thought, that some provision should be made in the Constitution against choosing for the seat of the general government the city or place at which the seat of any state government might be fixed. There were two objections against having them at the same place, which, without mentioning others, required some precaution on the subject. The first was, that it tended to produce disputes concerning jurisdiction. The second and principal one was, that the intermixture of the two legislatures tended to give a provincial tincture to the national deliberations. He moved that the committee be instructed to receive a clause to prevent the seat of the national government being in the same city or town with the seat of the government of any state, longer than until the necessary public buildings could be erected.

Mr. ALEXANDER MARTIN seconded the motion.

Mr. GOUVERNEUR MORRIS did not dislike the idea, but was apprehensive that such a clause might make enemies of Philadelphia and New York, which had expectations of becoming the seat of the general government.

Mr. LANGDON approved the idea also; but suggested the case of a state moving its seat of government to the national seat after the erection of the public buildings.

Mr. GORHAM. The precaution may be evaded by the national legislature, by delaying to erect the public buildings.

Mr. GERRY conceived it to be the general sense of America, that neither the seat of a state government, nor any large commercial city, should be the seat of the general government.

Mr. WILLIAMSON liked the idea, but, knowing how much the passions of men were agitated by this matter, was apprehensive of turning them against the system. He apprehended, also, that an evasion might be practised in the way hinted by Mr. Gorham.

Mr. PINCKNEY thought the seat of a state government ought to be avoided; but that a large town, or its vicinity, would be proper for the seat of the general government.

Col. MASON did not mean to press the motion at this time, not to excite any hostile passions against the system. He was content to withdraw the motion for the present.

Mr. BUTLER was for fixing, by the Constitution, the place, and a central one, for the seat of the national government.

The proceedings since Monday last were unanimously referred to the committee of detail; and the Convention then unanimously adjourned till Monday, August 6th, that the committee of detail might have time to prepare and report the Constitution. The whole resolutions, as referred, are as follows:—

1. *Resolved,* That the government of the United States ought to consist of a supreme legislative, judiciary, and executive.

2. *Resolved,* That the legislature consist of two branches.

3. *Resolved,* That the members of the first branch of the legislature ought to be elected by the people of the several states for the term of two years; to be paid out of the public treasury; to receive an adequate compensation for their services; to be of the age of twenty-five years at least; to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the first branch) during the term of service of the first branch.

4. *Resolved,* That the members of the second branch of the legislature of the United States ought to be chosen by the individual legislatures; to be of the age of thirty years at least; to hold their offices for six years, one third to go out biennially; to receive a compensation for the devotion of their time to the public service; to be ineligible to, and incapable of holding, any office under the authority of the United States (except those peculiarly belonging to the functions of the second branch) during the term for which they are elected, and for one year thereafter.

5. *Resolved,* That each branch ought to possess the right of originating acts.

6. *Resolved,* That the national legislature ought to possess the legislative rights vested in Congress by the Confederation; and, moreover, to legislate in all cases for the general interests of the Union, and also in those to which the states are separately incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation.

7. *Resolved,* That the legislative acts of the United States, made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states, or their citizens and inhabitants; and that the judiciaries of the several states shall be bound thereby in their decisions, any thing in the respective laws of the individual states to the contrary notwithstanding.

8. *Resolved,* That, in the general formation of the legislature of the United States, the first branch thereof shall consist of sixty-five members; of which number,

New Hampshire shall send 3; Massachusetts, 8; Rhode Island, 1; Connecticut, 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia, 10; North Carolina, 5; South Carolina, 5; Georgia, 3.

But, as the present situation of the states may probably alter in the number of their inhabitants, the legislature of the United States shall be authorized, from time to time, to apportion the number of representatives; and in case any of the states shall hereafter be divided, or enlarged by addition of territory, or any two or more states united, or any new states created within the limits of the United States, the legislature of the United States shall possess authority to regulate the number of representatives, in any of the foregoing cases, upon the principle of their number of inhabitants, according to the provisions hereafter mentioned, namely—Provided always, that representation ought to be proportioned to direct taxation. And, in order to ascertain the alteration in the direct taxation which may be required from time to time, by the changes in the relative circumstances of the states,—

9. *Resolved,* That a census be taken within six years from the first meeting of the legislature of the United States, and once within the term of every ten years afterwards, of all the inhabitants of the United States, in the manner and according to the ratio recommended by Congress in their resolution of the 18th of April, 1783: and that the legislature of the United States shall proportion the direct taxation accordingly.

10. *Resolved,* That all bills for raising or appropriating money, and for fixing the salaries of the officers of the government of the United States, shall originate in the first branch of the legislature of the United States, and shall not be altered or amended by the second branch; and that no money shall be drawn from the public treasury, but in pursuance of appropriations to be originated by the first branch.

11. *Resolved,* That, in the second branch of the legislature of the United States, each state shall have an equal vote.

12. *Resolved,* That a national executive be instituted, to consist of a single person; to be chosen by the national legislature for the term of seven years; to be ineligible a second time; with power to carry into execution the national laws; to appoint to offices in cases not otherwise provided for; to be removable on impeachment, and conviction of malpractice or neglect of duty; to receive a fixed compensation for the devotion of his time to the public service, to be paid out of the public treasury.

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

14. *Resolved,* That a national judiciary be established, to consist of one supreme tribunal, the judges of which shall be appointed by the second branch of the national legislature; to hold their offices during good behavior; to receive punctually, at stated times, a fixed compensation for their services, in which no diminution shall be made so as to affect the persons actually in office at the time of such diminution.

15. *Resolved,* That the national legislature be empowered to appoint inferior tribunals.

16. *Resolved,* That the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature, and to such other questions as involve the national peace and harmony.

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

18. *Resolved,* That a republican form of government shall be guarantied to each state; and that each state shall be protected against foreign and domestic violence.

19. *Resolved,* That provision ought to be made for the amendment of the Articles of Union, whensoever it shall seem necessary.

20. *Resolved,* That the legislative, executive, and judiciary powers, within the several states, and of the national government, ought to be bound, by oath, to support the Articles of Union.

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

22. *Resolved,* That the representation in the second branch of the legislature of the United States shall consist of two members from each state, who shall vote *per capita.*

23. *Resolved,* That it be an instruction to the committee to whom were referred the proceedings of the Convention for the establishment of a national government, to receive a clause, or clauses, requiring certain qualifications of property and citizenship in the United States, for the executive, the judiciary, and the members of both branches of the legislature of the United States.190

With the above resolutions were referred the propositions offered by Mr. C. Pinckney on the 29th of May, and by Mr. Patterson on the 15th of June.

Adjourned.

Monday,*August* 6.

In Convention.—Mr. John Francis Mercer, from Maryland, took his seat.

Mr. RUTLEDGE delivered in the report of the committee of detail, as follows—a printed copy being at the same time furnished to each member:

We, the people of the states of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, do

ordain, declare, and establish, the following Constitution for the government of ourselves and our posterity:—

Article I.—The style of the government shall be, "The United States of America."

Art. II.—The government shall consist of supreme legislative, executive, and judicial powers.

Art. III.—The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate; each of which shall in all cases have a negative on the other. The legislature shall meet on the first Monday in December in every year.

Art. IV.—Sect. 1. The members of the House of Representatives shall be chosen, every second year, by the people of the several states comprehended within this Union. The qualifications of the electors shall be the same, from time to time, as those of the electors, in the several states, of the most numerous branch of their own legislatures.

Sect. 2. Every member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen in the United States for at least three years before his election; and shall be, at the time of his election, a resident of the state in which he shall be chosen.

Sect. 3. The House of Representatives shall, at its first formation, and until the number of citizens and inhabitants shall be taken in the manner hereinafter described, consist of sixty-five members, of whom three shall be chosen in New Hampshire, eight in Massachusetts, one in Rhode Island and Providence Plantations, five in Connecticut, ix in New York, four in New Jersey, eight in Pennsylvania, one in Delaware, six in Maryland, ten in Virginia, five in North Carolina, five in South Carolina, and three in Georgia.

Sect. 4. As the proportions of numbers in different states will alter from time to time; as some of the states may hereafter be divided; as others may be enlarged by addition of territory; as two or more states may be united; as new states will be erected within the limits of the United States,—the legislature shall, in each of these cases, regulate the number of representatives by the number of inhabitants, according to the provisions hereinafter made, at the rate of one for every forty thousand.

Sect. 5. All bills for raising or appropriating money, and for fixing the salaries of the officers of government, shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No money shall be drawn from the public treasury, but in pursuance of appropriations that shall originate in the House of Representatives.

Sect. 6. The House of Representatives shall have the sole power of impeachment. It shall choose its speaker and other officers.

Sect. 7. Vacancies in the House of Representatives shall be supplied by writs of election from the executive authority of the state in the representation from which they shall happen.

Art. V.—Sect. 1. The Senate of the United States shall be chosen by the legislatures of the several states. Each legislature shall choose two members. Vacancies may be supplied by the executive until the next meeting of the legislature. Each member shall have one vote.

Sect. 2. The senators shall be chosen for six years; but immediately after the first election, they shall be divided, by lot, into three classes, as nearly as may be, numbered one, two, and three. The seats of the members of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year; of the third class at the expiration of the sixth year; so that a third part of the members may be chosen every second year.

Sect. 3. Every member of the Senate shall be of the age of thirty years at least; shall have been a citizen in the United States for at least four years before his election; and shall be, at the time of his election, a resident of the state for which he shall be chosen.

Sect. 4. The Senate shall choose its own President and other officers.

Art. VI.—Sect. 1. The times, and places, and manner, of holding the elections of the members of each House, shall be prescribed by the legislature of each state; but their provisions concerning them may, at any time, be altered by the legislature of the United States.

Sect. 2. The legislature of the United States shall have authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said legislature shall seem expedient.

Sect. 3. In each House a majority of the members shall constitute a quorum to do business; but a smaller number may adjourn from day to day.

Sect. 4. Each House shall be the judge of the elections, returns, and qualifications, of its own members.

Sect. 5. Freedom of speech and debate in the legislature shall not be impeached or questioned in any court or place out of the legislature; and the members of each House shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at Congress, and in going to and returning from it.

Sect. 6. Each House may determine the rules of its proceedings; may punish its members for disorderly behavior; and may expel a member.

Sect. 7. The House of Representatives, and the Senate when it shall be acting in a legislative capacity, shall keep a journal of their proceedings; and shall, from time to time, publish them; and the yeas and nays of the members of each House, on any

question, shall, at the desire of one fifth part of the members present, be entered on the Journal.

Sect. 8. Neither House, without the consent of the other, shall adjourn for more than three days, nor to any other place than that at which the two Houses are sitting. But this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the—Article.

Sect. 9. The members of each House shall be ineligible to, and incapable of holding, any office under the authority of the United States, during the time for which they shall respectively be elected; and the members of the Senate shall be ineligible to, and incapable of holding, any such office for one year afterwards.

Sect. 10. The members of each House shall receive a compensation for their services, to be ascertained and paid by the state in which they shall be chosen.

Sect. 11. The enacting style of the laws of the United States shall be, "Be it enacted, and it is hereby enacted, by the House of Representatives, and by the Senate, of the United States, in Congress assembled."

Sect. 12. Each House shall possess the right of originating bills, except in the cases before mentioned.

Sect. 13. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States for his revision. If, upon such revision, he approve of it, he shall signify his approbation by signing it. But if, upon such revision, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that House in which it shall have originated; who shall enter the objections at large on their Journal, and proceed to reconsider the bill. But if, after such reconsideration, two thirds of that House shall, notwithstanding the objections of the President, agree to pass it, it shall, together with his objections, be sent to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of the other House also, it shall become a law. But, in all such cases the votes of both Houses shall be determined by yeas and nays; and the names of the persons voting for or against the bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within seven days after it shall have been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return, in which case it shall not be a law.

Art. VII.—Sect. 1. The legislature of the United States shall have the power to lay and collect taxes, duties, imposts, and excises;

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

To establish an uniform rule of naturalization throughout the United States;

To coin money;

To regulate the value of foreign coin;

To fix the standard of weights and measures;

To establish post-offices;

To borrow money, and emit bills, on the credit of the United States;

To appoint a treasurer by ballot;

To constitute tribunals inferior to the supreme court;

To make rules concerning captures on land and water;

To declare the law and punishment of piracies and felonies committed on the high seas, and the punishment of counterfeiting the coin of the United States, and of offences against the law of nations;

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

To make war;

To raise armies;

To build and equip fleets;

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

And to make all laws that shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof.

Sect. 2. Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of blood, nor forfeiture, except during the life of the person attained.

Sect. 3. The proportions of direct taxation shall be regulated by the whole number of white and other free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes;) which number shall, within six years after the first meeting of the legislature, and within the term of every ten years afterwards, be taken in such a manner as the said legislature shall direct.

Sect. 4. No tax or duty shall be laid by the legislature on articles exported from any state; nor on the migration or importation of such persons as the several states shall think proper to admit; nor shall such migration or importation be prohibited.

Sect. 5. No capitation tax shall be laid, unless in proportion to the census hereinbefore directed to be taken.

Sect. 6. No navigation act shall be passed without the assent of two thirds of the members present in each House.

Sect. 7. The United States shall not grant any title of nobility.

Art. VIII.—The acts of the legislature of the United States made in pursuance of this Constitution, and all treaties made under the authority of the United States, shall be the supreme law of the several states, and of their citizens and inhabitants; and the judges in the several states shall be bound thereby in their decisions, any thing in the constitutions or laws of the several states to the contrary notwithstanding.

Art. IX.—Sect. 1. The Senate of the United States shall have power to make treaties, and to appoint ambassadors, and judges of the supreme court.

Sect. 2. In all disputes and controversies now subsisting, or that may hereafter subsist, between two or more states, respecting jurisdiction or territory, the Senate shall possess the following powers:—Whenever the legislature, or the executive authority, or lawful agent of any state, in controversy with another, shall, by memorial to the Senate, state the matter in question, and apply for a hearing, notice of such memorial and application shall be given, by order of the Senate, to the legislature, or the executive authority, of the other state in controversy. The Senate shall also assign a day for the appearance of the parties, by their agents, before that House. The agents shall be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question. But if the agents cannot agree, the Senate shall name three persons out of each of the several states; and from the list of such persons, each party shall alternately strike out one, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine, names, as the Senate shall direct, shall, in their presence, be drawn out by lot; and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy; provided a majority of the judges who shall hear the cause agree in the determination. If either party shall neglect to attend at the day assigned, without showing sufficient reasons for not attending, or being present shall refuse to strike, the Senate shall proceed to nominate three persons out of each state, and the Clerk of the Senate shall strike in behalf of the party absent or refusing. If any of the parties shall refuse to submit to the authority of such court, or shall not appear to prosecute or defend their claim or cause, the court shall nevertheless proceed to pronounce judgment. The judgment shall be final and conclusive. The proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public records, for the security of the parties concerned. Every commissioner shall, before he sit in judgment, take an oath, to be administered by one of the judges of the supreme or superior court of the state where

the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward."

Sect. 3. All controversies concerning lands claimed under different grants of two or more states, whose jurisdictions, as they respect such lands, shall have been decided or adjusted subsequently to such grants, or any of them, shall, on application to the Senate, be finally determined, as near as may be, in the same manner as is before prescribed for deciding controversies between different states.

Art. X.—Sect. 1. The executive power of the United States shall be vested in a single person. His style shall be, "The President of the United States of America," and his title shall be, "His Excellency." He shall be elected by ballot by the legislature. He shall hold his office during the term of seven years; but shall not be elected a second time.

Sect. 2. He shall, from time to time, give information to the legislature of the state of the Union. He may recommend to their consideration such measures as he shall judge necessary and expedient. He may convene them on extraordinary occasions. In case of disagreement between the two Houses, with regard to the time of adjournment, he may adjourn them to such time as he thinks proper. He shall take care that the laws of the United States be duly and faithfully executed. He shall commission all the officers of the United States; and shall appoint officers in all cases not otherwise provided for by this Constitution. He shall receive ambassadors, and may correspond with the supreme executives of the several states. He shall have power to grant reprieves and pardons, but his pardon shall not be pleadable in bar of an impeachment. He shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states. He shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during his continuance in office, Before he shall enter on the duties of his department, he shall take the following oath or affirmation, "I—solemnly swear (or affirm) that I will faithfully execute the office of President of the United States of America." He shall be removed from his office on impeachment by the House of Representatives, and conviction, in the supreme court, of treason, bribery, or corruption. In case of his removal, as aforesaid, death, resignation, or disability to discharge the powers and duties of his office, the President of the Senate shall exercise those powers and duties until another President of the United States be chosen, or until the disability of the President be removed.

Art. XI.—Sect. 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as shall, when necessary, from time to time, be constituted by the legislature of the United States.

Sect. 2. The judges of the supreme court, and of the inferior courts, shall hold their offices during good behavior. They shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Sect. 3. The jurisdiction of the supreme court shall extend to all cases arising under laws passed by the legislature of the United States; to all cases affecting ambassadors, other public ministers and consuls; to the trial of impeachments of officers of the

United States; to all cases of admiralty and maritime jurisdiction; to controversies between two or more states, (except such as shall regard territory or jurisdiction;) between a state and citizens of another state; between citizens of different states; and between a state, or the citizens thereof, and foreign states, citizens, or subjects. In cases of impeachment, cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, this jurisdiction shall be original. In all the other cases before mentioned, it shall be appellate, with such exceptions, and under such regulations, as the legislature shall make. The legislature may assign any part of the jurisdiction above mentioned, (except the trial of the President of the United States,) in the manner and under the limitations which it shall think proper, to such inferior courts as it shall constitute from time to time.

Sect. 4. The trial of all criminal offences (except in cases of impeachment) shall be in the state where they shall be committed; and shall be by jury.

Sect. 5. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States. But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Art. XII.—No state shall coin money; nor grant letters of marque and reprisal nor enter into any treaty, alliance, or confederation; nor grant any title of nobility.

Art. XIII.—No state, without the consent of the legislature of the United States, shall emit bills of credit, or make any thing but specie a tender in payment of debts; nor lay imposts or duties on imports; nor keep troops or ships of war in time of peace; nor enter into any agreement or compact with another state, or with any foreign power; nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of a delay until the legislature of the United States can be consulted.

Art. XIV.—The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Art. XV.—Any person charged with treason, felony, or high misdemeanor in any state, who shall flee from justice, and shall be found in any other state, shall, on demand of the executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of the offence.

Art. XVI.—Full faith shall be given in each state to the acts of the legislatures, and to the records and judicial proceedings of the courts and magistrates of every other state.

Art. XVII.—New states lawfully constituted or established within the limits of the United States may be admitted, by the legislature, into this government; but to such admission the consent of two thirds of the members present in each House shall be necessary. If a new state shall arise within the limits of any of the present states, the consent of the legislatures of such states shall be also necessary to its admission. If the admission be consented to, the new states shall be admitted on the same terms with

the original states. But the legislature may make conditions with the new states concerning the public debt which shall be then subsisting.

Art. XVIII.—The United States shall guaranty to each state a republican form of government; and shall protect each state against foreign invasions, and, on the application of its legislature, against domestic violence.

Art. XIX.—On the application of the legislatures of two thirds of the states in the Union, for an amendment of this Constitution, the legislature of the United States shall call a convention for that purpose.

Art. XX.—The members of the legislatures, and the executive and judicial officers of the United States, and of the several states, shall be bound by oath to support this Constitution.

Art. XXI.—The ratification of the conventions of—states shall be sufficient for organizing this Constitution.

Art. XXII.—This Constitution shall be laid before the United States in Congress assembled, for their approbation; and it is the opinion of this Convention, that it should be afterwards submitted to a convention chosen in each state, under the recommendation of its legislature, in order to receive the ratification of such convention.

Art. XXIII.—To introduce this government, it is the opinion of this Convention, that each assenting convention should notify its assent and ratification to the United States in Congress assembled; that Congress, after receiving the assent and ratification of the conventions of—states, should appoint and publish a day, as early as may be, and appoint a place, for commencing proceedings under this Constitution; that, after such publication, the legislatures of the several states should elect members of the Senate and direct the election of members of the House of Representatives; and that the members of the legislature should meet at the time and place assigned by Congress, and should, as soon as may be after their meeting, choose the President of the United States, and proceed to execute this Constitution.[191]

A motion was made to adjourn till Wednesday, in order to give leisure to examine the report; which passed in the negative.

Pennsylvania, Maryland, Virginia, ay, 3; New Hampshire, Massachusetts, Connecticut, North Carolina, South Carolina, no, 5.

The House then adjourned till to-morrow at eleven o'clock.

Tuesday,*Aug.* 7.

In Convention.—The report of the committee of detail being taken up,—

Mr. PINCKNEY moved that it be referred to a committee of the whole. This was strongly opposed by Mr. GORHAM and several others, as likely to produce

unnecessary delay; and was negatived,—Delaware, Maryland, and Virginia, only, being in the affirmative.192

The preamble of the report was agreed to, *nem. con.* So were articles 1 and 2.

Article 3 being considered,—Col. MASON doubted the propriety of giving each branch a negative on the other, "in all cases." There were some cases in which it was, he supposed, not intended to be given, as in the case of balloting for appointments.

Mr. G. MORRIS moved to insert "legislative acts," instead of "all cases." Mr. WILLIAMSON seconds him.

Mr. SHERMAN. This will restrain the operation of the clause too much. It will particularly exclude a mutual negative in the case of ballots, which he hoped would take place.

Mr. GORHAM contended, that elections ought to be made by *joint ballot.* If separate ballots should be made for the president, and the two branches should be each attached to a favorite, great delay, contention, and confusion, may ensue. These inconveniences have been felt, in Massachusetts, in the election of officers of little importance compared with the executive of the United States. The only objection against a joint ballot is, that it may deprive the Senate of their due weight; but this ought not to prevail over the respect due to the public tranquillity and welfare.

Mr. WILSON was for a joint ballot in several cases at least; particularly in the choice of a president; and was therefore for the amendment. Disputes between the two Houses, during and concerning the vacancy of the executive, might have dangerous consequences.

Col. MASON thought the amendment of Mr. Gouverneur Morris extended too far. Treaties are, in a subsequent part, declared to be laws; they will therefore be subjected to a negative, although they are to be made, as proposed, by the Senate alone. He proposed that the mutual negative should be restrained to "cases requiring the distinct assent" of the two Houses. Mr. GOVERNEUR MORRIS thought this but a repetition of the same thing; the mutual negative and distinct assent being equivalent expressions. Treaties, he thought, were not laws.

Mr. MADISON moved to strike out the words, "each of which shall in all cases have a negative on the other;" the idea being sufficiently expressed in the preceding member of the Article, vesting "the legislative power" in "distinct bodies;" especially as the respective powers, and mode of exercising them, were fully delineated in a subsequent article.

Gen. PINCKNEY seconded the motion.

On the question for inserting "legislative acts," as moved by Mr. Gouverneur Morris, it passed in the negative, the votes being equally divided.

New Hampshire, Massachusetts, Connecticut, Pennsylvania, North Carolina, ay, 5; Delaware, Maryland, Virginia, South Carolina, Georgia, no, 5.

On the question for agreeing to Mr. Madison's motion to strike out, &c.,—

New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, ay, 7; Connecticut, Maryland, North Carolina, no, 3.

Mr. MADISON wished to know the reasons of the committee for fixing by the constitution the time of meeting for the legislature; and suggested, that it be required only that one meeting at least should be held every year, leaving the time to be fixed or varied by law.

Mr. GOUVERNEUR MORRIS moved to strike out the sentence. It was improper to tie down the legislature to a particular time, or even to require a meeting every year. The public business might not require it. Mr. PINCKNEY concurred with Mr. Madison.

Mr. GORHAM. If the time be not fixed by the constitution, disputes will arise in the legislature; and the states will be at a loss to adjust thereto the times of their elections. In the New England states, the annual time of meeting had been long fixed by their charters and constitutions, and no inconvenience had resulted. He thought it necessary that there should be one meeting at least every year, as a check on the executive department.

Mr. ELLSWORTH was against striking out the words. The legislature will not know, till they are met, whether the public interest required their meeting or not. He could see no impropriety in fixing the day, as the Convention could judge of it as well as the legislature. Mr. WILSON thought, on the whole, it would be best to fix the day.

Mr. KING could not think there would be a necessity for a meeting every year. A great vice in our system was that of legislating too much. The most numerous objects of legislation belong to the states. Those of the national legislature were but few. The chief of them were commerce and revenue. When these should be once settled, alterations would be rarely necessary and easily made.

Mr. MADISON thought, if the time of meeting should be fixed by a law, it would be sufficiently fixed, and there would be no difficulty then, as had been suggested, on the part of the states, in adjusting their elections to it. One consideration appeared to him to militate strongly against fixing a time by the Constitution. It might happen that the legislature might be called together by the public exigencies, and finish their session but a short time before the annual period. In this case, it would be extremely inconvenient to reassemble so quickly, and without the least necessity. He thought one annual meeting ought to be required; but did not wish to make two unavoidable.

Col. MASON thought the objections against fixing the time insuperable; but that an annual meeting ought to be required as essential to the preservation of the Constitution. The extent of the country will supply business; and if it should not, the

legislature, besides *legislative,* is to have *inquisitorial* powers, which cannot safely be long kept in a state of suspension.

Mr. SHERMAN was decided for fixing the time, as well as for frequent meetings of the legislative body. Disputes and difficulties will arise between the two houses, and between both and the states, if the time be changeable. Frequent meetings of parliament were required, at the revolution in England, as an essential safeguard of liberty. So also are annual meetings in most of the American charters and constitutions. There will be business enough to require it. The western country, and the great extent and varying state of our affairs in general, will supply objects.

Mr. RANDOLPH was against fixing any day irrevocably; but as there was no provision made any where in the Constitution for regulating the periods of meeting, and some precise time must be fixed, until the legislature shall make provision, he could not agree to strike out the words altogether. Instead of which, he moved to add the words following: “unless a different day shall be appointed by law.”

Mr. MADISON seconded the motion; and, on the question,—

Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 8; New Hampshire, Connecticut, no, 2.

Mr. GOUVERNEUR MORRIS moved to strike out “December,” and insert “May.” It might frequently happen that our measures ought to be influenced by those in Europe, which were generally planned during the winter, and of which intelligence would arrive in the spring.

Mr. MADISON seconded the motion. He preferred May to December, because the latter would require the travelling to and from the seat of government in the most inconvenient seasons of the year.

Mr. WILSON. The winter is the most convenient season for business.

Mr. ELLSWORTH. The summer will interfere too much with private business, that of almost all the probable members of the legislature being more or less connected with agriculture.

Mr. RANDOLPH. The time is of no great moment now, as the legislature can vary it. On looking into the constitutions of the states, he found that the times of their elections (with which the elections of the national representatives would no doubt be made to coincide) would suit better with December than May, and it was advisable to render our innovations as little incommodious as possible.

On the question for “May” instead of “December,”—

South Carolina, Georgia, ay, 2; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no, 8.

Mr. REED moved to insert, after the word, "Senate," the words, "subject to the negative to be hereafter provided." His object was to give an absolute negative to the executive. He considered this as so essential to the Constitution, to the preservation of liberty, and to the public welfare, that his duty compelled him to make the motion.

Mr. GOUVERNEUR MORRIS seconded him; and, on the question,—

Delaware, ay, 1; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 9.

Mr. RUTLEDGE. Although it is agreed on all hands that an annual meeting of the legislature should be made necessary, yet that point seems not to be free from doubt, as the clause stands. On this suggestion, "once at least in every year," were inserted, *nem. con.*

Article 3, with the foregoing alterations, was agreed to, *nem. con.,* and is as follows: "The legislative power shall be vested in a Congress, to consist of two separate and distinct bodies of men, a House of Representatives and a Senate. The legislature shall meet at least once in every year; and such meeting shall be on the first Monday in December, unless a different day shall be appointed by law."193

Article 4, sect. 1, was taken up.

Mr. GOUVERNEUR MORRIS moved to strike out the last member of the section, beginning with the words, "qualifications of electors," in order that some other provision might be substituted which would restrain the right of suffrage to freeholders.

Mr. FITZSIMONS seconded the motion.

Mr. WILLIAMSON was opposed to it.

Mr. WILSON. This part of the report was well considered by the committee, and he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications for all the states. Unnecessary innovations, he thought, too, should be avoided. It would be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the state legislature, and to be excluded from a vote for those in the national legislature.

Mr. GOUVERNEUR MORRIS. Such a hardship would be neither great nor novel. The people are accustomed to it, and not dissatisfied with it, in several of the states. In some, the qualifications are different for the choice of the governor and of the representatives; in others, for different houses of the legislature. Another objection against the clause, as it stands, is, that it makes the qualifications of the national legislature depend on the will of the states, which he thought not proper.

Mr. ELLSWORTH thought the qualifications of the electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the state constitutions. The people will not readily subscribe to the national Constitution,

if it should subject them to be disfranchised. The states are the best judges of the circumstances and temper of their own people.

Col. MASON. The force of habit is certainly not attended to by those gentlemen who wish for innovations on this point. Eight or nine states have extended the right of suffrage beyond the freeholders. What will the people there say, if they should be disfranchised? A power to alter the qualifications would be a dangerous power in the hands of the legislature.

Mr. BUTLER. There is no right of which the people are more jealous than that of suffrage. Abridgments of it tend to the same revolution as in Holland, where they have at length thrown all power into the hands of the senates, who fill up vacancies themselves, and form a rank aristocracy.

Mr. DICKINSON had a very different idea of the tendency of vesting the right of suffrage in the freeholders of the country. He considered them as the best guardians of liberty; and the restriction of the right to them as a necessary defence against the dangerous influence of those multitudes, without property and without principle, with which our country, like all others, will in time abound. As to the unpopularity of the innovation, it was, in his opinion, chimerical. The great mass of our citizens is composed at this time of freeholders, and will be pleased with it.

Mr. ELLSWORTH. How shall the freehold be defined? Ought not every man, who pays a tax, to vote for the representative who is to levy and dispose of his money? Shall the wealthy merchants and manufacturers, who will bear a full share of the public burdens, be not allowed a voice in the imposition of them? Taxation and representation ought to go together.

Mr. GOUVERNEUR MORRIS. He had long learned not to be the dupe of words. The sound of aristocracy, therefore, had no effect upon him. It was the thing, not the name, to which he was opposed; and one of his principal objections to the Constitution, as it is now before us, is, that it threatens the country with an aristocracy. The aristocracy will grow out of the House of Representatives. Give the votes to people who have no property, and they will sell them to the rich, who will be able to buy them. We should not confine our attention to the present moment. The time is not distant when this country will abound with mechanics and manufacturers, who will receive their bread from their employers. Will such men be the secure and faithful guardians of liberty? Will they be the impregnable barrier against aristocracy? He was as little duped by the association of the words “taxation and representation.” The man who does not give his vote freely, is not represented. It is the man who dictates the vote. Children do not vote. Why? Because they want prudence; because they have no will of their own. The ignorant and the dependent can be as little trusted with the public interest. He did not conceive the difficulty of defining “freeholders” to be insuperable; still less that the restriction could be unpopular. Nine tenths of the people are at present freeholders, and these will certainly be pleased with it. As to merchants, &c., if they have wealth, and value the right, they can acquire it. If not, they don’t deserve it.

Col. MASON. We all feel too strongly the remains of ancient prejudices, and view things too much through a British medium. A freehold is the qualification in England, and hence it is imagined to be the only proper one. The true idea, in his opinion, was, that every man having evidence of attachment to, and permanent common interest with, the society, ought to share in all its rights and privileges. Was this qualification restrained to freeholders? Does no other kind of property but land evidence a common interest in the proprietor? Does nothing besides property mark a permanent attachment? Ought the merchant, the moneyed man, the parent of a number of children whose fortunes are to be pursued in his own country, to be viewed as suspicious characters, and unworthy to be trusted with the common rights of their fellow-citizens?

Mr. MADISON. The right of suffrage is certainly one of the fundamental articles of republican government, and ought not to be left to be regulated by the legislature. A gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms. Whether the constitutional qualification ought to be a freehold, would with him depend much on the probable reception such a change would meet with in the states where the right was now exercised by every description of people. In several of the states, a freehold was now the qualification. Viewing the subject in its merits alone, the freeholders of the country would be the safest depositories of republican liberty. In future times, a great majority of the people will not only be without landed, but any other sort of property. These will either combine, under the influence of their common situation,—in which case the rights of property and the public liberty will not be secure in their hands,—or, what is more probable, they will become the tools of opulence and ambition; in which case, there will be equal danger on another side. The example of England has been misconceived (by Col. Mason). A very small proportion of the representatives are there chosen by freeholders. The greatest part are chosen by the cities and boroughs, in many of which the qualification of suffrage is as low as it is in any one of the United States; and it was in the boroughs and cities, rather than the counties, that bribery most prevailed and the influence of the crown on elections was most dangerously exerted.*

Dr. FRANKLIN. It is of great consequence that we should not depress the virtue and public spirit of our common people; of which they displayed a great deal during the war, and which contributed principally to the favorable issue of it. He related the honorable refusal of the American seamen, who were carried in great numbers into the British prisons during the war, to redeem themselves from misery, or to seek their fortunes, by entering on board the ships of the enemies to their country; contrasting their patriotism with a contemporary instance, in which the British seamen, made prisoners by the Americans, readily entered on the ships of the latter, on being promised a share of the prizes that might be made out of their own country. This proceeded, he said, from the different manner in which the common people were treated in America and Great Britain. He did not think that the elected had any right, in any case, to narrow the privileges of the electors. He quoted, as arbitrary, the British statute setting forth the danger of tumultuous meetings, and, under that pretext, narrowing the right of suffrage to persons having freeholds of a certain value; observing, that this statute was soon followed by another, under the succeeding parliament, subjecting the people who had no votes to peculiar labors and hardships.

He was persuaded, also, that such a restriction as was proposed would give great uneasiness in the populous states. The sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description.

Mr. MERCER. The Constitution is objectionable in many points, but in none more than the present. He objected to the footing on which the qualification was put, but particularly to the *mode of election* by the people. The people cannot know and judge of the characters of candidates. The worst possible choice will be made. He quoted the case of the senate in Virginia, as an example in point. The people in towns can unite their votes in favor of one favorite, and by that means always prevail over the people of the country, who, being dispersed, will scatter their votes among a variety of candidates.

Mr. RUTLEDGE thought the idea of restraining the right of suffrage to the freeholders a very unadvised one. It would create division among the people; and make enemies of all those who should be excluded.

On the question for striking out, as moved by Mr. Gouverneur Morris, from the word "qualifications" to the end of the third article,—

Delaware, ay, 1; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, no, 7; Maryland, divided; Georgia, not present.

Adjourned.

Wednesday,*August* 8.

In Convention.—Article 4, sect. 1, being under consideration,—

Mr. MERCER expressed his dislike of the whole plan, and his opinion that it never could succeed.

Mr. GORHAM. He had never seen any inconvenience from allowing such as were not freeholders to vote, though it had long been tried. The elections in Philadelphia, New York, and Boston, where the merchants and mechanics vote, are at least as good as those made by freeholders only. The case in England was not accurately stated yesterday (by Mr. Madison). The cities and large towns are not the seat of crown influence and corruption. These prevail in the boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote. The people have been long accustomed to this right in various parts of America, and will never allow it to be abridged. We must consult their rooted prejudices, if we expect their concurrence in our propositions.

Mr. MERCER did not object so much to an election by the people at large, including such as were not freeholders, as to their being left to make their choice without any guidance. He hinted that candidates ought to be nominated by the state legislatures.194

On the question for agreeing to Article 4, sect. 1, it passed, *nem. con.*

Article 4, sect. 2, was then taken up.

Col. MASON was for opening a wide door for emigrants; but did not choose to let foreigners and adventurers make laws for us and govern us. Citizenship for three years was not enough for ensuring that local knowledge which ought to be possessed by the representative. This was the principal ground of his objection to so short a term. It might also happen, that a rich foreign nation, for example, Great Britain, might send over her tools, who might bribe their way into the legislature for insidious purposes. He moved that "seven" years, instead of "three," be inserted.

Mr. GOUVERNEUR MORRIS seconded the motion; and on the question, all the states agreed to it, except Connecticut.

Mr. SHERMAN moved to strike out the word "resident" and insert "inhabitant," as less liable to misconstruction.

Mr. MADISON seconded the motion. Both were vague, but the latter least so in common acceptation, and would not exclude persons absent occasionally, for a considerable time, on public or private business. Great disputes had been raised in Virginia concerning the meaning of residence as a qualification of representatives, which were determined more according to the affection or dislike to the man in question than to any fixed interpretation of the word.

Mr. WILSON preferred "inhabitant."

Mr. GOUVERNEUR MORRIS was opposed to both, and for requiring nothing more than a freehold. He quoted great disputes in New York, occasioned by these terms, which were decided by the arbitrary will of the majority. Such a regulation is not necessary. People rarely choose a non-resident. It is improper, as, in the first branch, *the people at large,* not the *states,* are represented.

Mr. RUTLEDGE urged and moved, that a residence of seven years should be required in the state wherein the member should be elected. An emigrant from New England to South Carolina or Georgia would know little of its affairs, and could not be supposed to acquire a thorough knowledge in less time.

Mr. READ reminded him that we were now forming a *nationalgovernment,* and such a regulation would correspond little with the idea that we were one people.

Mr. WILSON enforced the same consideration.

Mr. MADISON suggested the case of new states in the west, which could have, perhaps, no representation on that plan.

Mr. MERCER. Such a regulation would present a greater alienship than existed under the old federal system. It would interweave local prejudices and state distinctions in

the very Constitution which is meant to cure them. He mentioned instances of violent disputes raised in Maryland concerning the term "residence."

Mr. ELLSWORTH thought seven years of residence was by far too long a term; but that some fixed term of previous residence would be proper. He thought one year would be sufficient, but seemed to have no objection to three years.

Mr. DICKINSON proposed that it should read "inhabitant actually resident for—years." This would render the meaning less indeterminate.

Mr. WILSON. If a short term should be inserted in the blank, so strict an expression might be construed to exclude the members of the legislature, who could not be said to be actual residents in their states, whilst at the seat of the general government.

Mr. MERCER. It would certainly exclude men, who had once been inhabitants, and returning from residence elsewhere to resettle in their original state, although a want of the necessary knowledge could not in such cases be presumed.

Mr. MASON thought seven years too long, but would never agree to part with the principle. It is a valuable principle. He thought it a defect in the plan, that the representatives would be too few to bring with them all the local knowledge necessary. If residence be not required, rich men of neighboring states may employ with success the means of corruption in some particular district, and thereby get into the public councils after having failed in their own states. This is the practice in the boroughs of England.

On the question for postponing, in order to consider Mr. Dickinson's motion,—

Maryland, South Carolina, Georgia, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, no, 8.

On the question for inserting "inhabitant," in place of "resident,"—agreed to, *nem. con.*

Mr. ELLSWORTH and Col. MASON moved to insert "one year" for previous inhabitancy.

Mr. WILLIAMSON liked the report as it stood. He thought "resident" a good enough term. He was against requiring any period of previous residence. New residents, if elected, will be most zealous to conform to the will of their constituents, as their conduct will be watched with a more jealous eye.

Mr. BUTLER and Mr. RUTLEDGE moved "three years," in stead of "one year," for previous inhabitancy.

On the question for "three years,"—

South Carolina, Georgia, ay, 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no, 9.

On the question for "one year,"—

New Jersey, North Carolina, South Carolina, Georgia, ay, 4; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, no, 6; Maryland, divided.

Article 4, sect. 2, as amended in manner preceding, was agreed to, *nem. con.*195

Article 4, sect. 3, was then taken up.

Gen. PINCKNEY and Mr. PINCKNEY moved that the number of representatives allotted to South Carolina be "six."

On the question,—

Delaware, North Carolina, South Carolina, Georgia, ay, 4; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, no, 7.

The 3d sect. of article 4 was then agreed to.

Article 4, sect. 4, was then taken up.

Mr. WILLIAMSON moved to strike out, "according to the provisions hereinafter made," and to insert the words "according to the rule hereafter to be provided for direct taxation."—See article 7, sect. 3.

On the question for agreeing to Mr. Williamson's amendment,—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; New Jersey, Delaware, no, 2.

Mr. KING wished to know what influence the vote just passed was meant to have on the succeeding part of the report, concerning the admission of slaves into the rule of representation. He could not reconcile his mind to the article, if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, and he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore, because he had hoped that this concession would have produced a readiness, which had not been manifested, to strengthen the general government, and to mark a full confidence in it. The report under consideration had, by the tenor of it, put an end to all those hopes. In two great points, the hands of the legislature were absolutely tied. The importation of slaves could not be prohibited. Exports could not be taxed. Is this reasonable? What are the great objects of the general system? First, defence against foreign invasion; secondly, against internal sedition. Shall all the states, then, be bound to defend each, and shall each be at liberty to introduce a weakness which will render defence more difficult? Shall one part of the United States be bound to defend another part, and that other part be at liberty, not only to increase its own danger, but to withhold the compensation for the burden? If slaves are to be imported, shall not the exports produced by their labor supply a revenue the better to enable the general government to defend their masters?

There was so much inequality and unreasonableness in all this that the people of the Northern States could never be reconciled to it. No candid man could undertake to justify it to them. He had hoped that some accommodation would have taken place on this subject; that, at least, a time would have been limited for the importation of slaves. He never could agree to let them be imported without limitation, and then be represented in the national legislature. Indeed, he could so little persuade himself of the rectitude of such a practice, that he was not sure he could assent to it under any circumstances. At all events, either slaves should not be represented, or exports should be taxable.

Mr. SHERMAN regarded the slave trade as iniquitous; but the point of representation having been settled, after much difficulty and deliberation, he did not think himself bound to make opposition; especially as the present article, as amended, did not preclude any arrangement whatever on that point, in another place of the report.

Mr. MADISON objected to one for every forty thousand inhabitants as a perpetual rule. The future increase of population, if the Union should be permanent, will render the number of representatives excessive.

Mr. GORHAM. It is not to be supposed that the government will last so long as to produce this effect. Can it be supposed that this vast country, including the western territory, will, one hundred and fifty years hence, remain one nation?

Mr. ELLSWORTH. If the government should continue so long, alterations may be made in the Constitution, in the manner proposed in a subsequent article.

Mr. SHERMAN and Mr. MADISON moved to insert the words “not exceeding” before the words “one for every forty thousand;” which was agreed to, *nem. con.*

Mr. GOUVERNEUR MORRIS moved to insert “free” before the word “inhabitants.” Much, he said, would depend on this point. He never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the states where it prevailed. Compare the free regions of the Middle States, where a rich and noble cultivation marks the prosperity and happiness of the people, with the misery and poverty which overspread the barren wastes of Virginia, Maryland, and the other states having slaves. Travel through the whole continent, and you behold the prospect continually varying with the appearance and disappearance of slavery. The moment you leave the Eastern States, and enter New York, the effects of the institution become visible. Passing through the Jerseys, and entering Pennsylvania, every criterion of superior improvement witnesses the change. Proceed southwardly, and every step you take, through the great regions of slaves, presents a desert increasing with the increasing proportion of these wretched beings. Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens, and let them vote. Are they property? Why, then, is no other property included? The houses in this city (Philadelphia) are worth more than all the wretched slaves who cover the rice swamps of South Carolina. The admission of slaves into the representation, when fairly explained, comes to this,—that the inhabitant of Georgia and South Carolina, who goes to the coast of Africa, and, in

defiance of the most sacred laws of humanity, tears away his fellow-creatures from their dearest connections, and damns them to the most cruel bondage, shall have more votes, in a government instituted for the protection of the rights of mankind, than the citizen of Pennsylvania or New Jersey, who views, with a laudable horror, so nefarious a practice. He would add, that domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution. The vassalage of the poor has ever been the favorite offspring of aristocracy. And what is the proposed compensation to the Northern States, for a sacrifice of every principle of right, of every impulse of humanity? They are to bind themselves to march their militia for the defence of the Southern States, for their defence against those very slaves of whom they complain. They must supply vessels and seamen, in case of foreign attack. The legislature will have indefinite power to tax them by excises, and duties on imports, both of which will fall heavier on them than on the southern inhabitants; for the bohea tea used by a northern freeman will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness. On the other side, the Southern States are not to be restrained from importing fresh supplies of wretched Africans, at once to increase the danger of attack and the difficulty of defence; nay, they are to be encouraged to it, by an assurance of having their votes in the national government increased in proportion; and are, at the same time, to have their exports and their slaves exempt from all contributions for the public service. Let it not be said that direct taxation is to be proportioned to representation. It is idle to suppose that the general government can stretch its hand directly into the pockets of the people, scattered over so vast a country. They can only do it through the medium of exports, imports, and excises. For what, then, are all the sacrifices to be made? He would sooner submit himself to a tax for paying for all the negroes in the United States, than saddle posterity with such a Constitution.

Mr. DAYTON seconded the motion. He did it, he said, that his sentiments on the subject might appear, whatever might be the fate of the amendment.

Mr. SHERMAN did not regard the admission of the negroes into the ratio of representation as liable to such insuperable objections. It was the freemen of the Southern States who were, in fact, to be represented according to the taxes paid by them, and the negroes are only included in the estimate of the taxes. This was his idea of the matter.

Mr. PINCKNEY considered the fisheries, and the western frontier, as more burdensome to the United States than the slaves. He thought this could be demonstrated, if the occasion were a proper one.

Mr. WILSON thought the motion premature. An agreement to the clause would be no bar to the object of it.

On the question, on the motion to insert “free” before “inhabitants,”—

New Jersey, ay, 1; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 10.

On the suggestion of Mr. DICKINSON, the words, "provided that each state shall have one representative, at least," were added, *nem. con.*

Article 4, sect. 4, as amended, was agreed to, *nem. con.*[196]

Article 4, sect. 5, was then taken up.

Mr. PINCKNEY moved to strike out sect. 5, as giving no peculiar advantage to the House of Representatives, and as clogging the government. If the Senate can be trusted with the many great powers proposed, it surely may be trusted with that of originating money bills.

Mr. GORHAM was against allowing the Senate to *originate,* but was for allowing it only to *amend.*

Mr. GOUVERNEUR MORRIS. It is particularly proper that the Senate should have the right of originating money bills. They will sit constantly, will consist of a smaller number, and will be able to prepare such bills with due correctness, and so as to prevent delay of business in the other House.

Col. MASON was unwilling to travel over this ground again. To strike out the section was to unhinge the compromise of which it made a part. The duration of the Senate made it improper. He does not object to that duration; on the contrary, he approved of it. But, joined with the smallness of the number, it was an argument against adding this to the other great powers vested in that body. His idea of an aristocracy was, that it was the government of the few over the many. An aristocratic body, like the screw in mechanics, working its way by slow degrees, and holding fast whatever it gains, should ever be suspected of an encroaching tendency. The purse-strings should never be put into its hands.

Mr. MERCER considered the exclusive power of originating money bills as so great an advantage, that it rendered the equality of votes in the Senate ideal, and of no consequence.

Mr. BUTLER was for adhering to the principle which had been settled.

Mr. WILSON was opposed to it on its merits, without regard to the compromise.

Mr. ELLSWORTH did not think the clause of any consequence; but as it was thought of consequence by some members from the larger states, he was willing it should stand.

Mr. MADISON was for striking it out, considering it as of no advantage to the large states, as fettering the government, and as a source of injurious altercations between the two Houses.

On the question for striking out article 4, sect. 5,—

New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, ay, 7; New Hampshire, Massachusetts, Connecticut, North Carolina, no, 4.197

Adjourned.

Thursday,*August* 9.

In Convention.—Article 4, sect. 6, was taken up.

Mr. RANDOLPH expressed his dissatisfaction at the disagreement yesterday to sect. 5, concerning money bills, as endangering the success of the plan, and extremely objectionable in itself; and gave notice that he should move for a reconsideration of the vote.

Mr. WILLIAMSON said he had formed a like intention.

Mr. WILSON gave notice that he should move to reconsider the vote requiring seven instead of three years of citizenship, as a qualification of candidates for the House of Representatives.

Article 4, sect. 6 and 7, were agreed to, *nem. con.*

Article 5, sect. 1, was then taken up.

Mr. WILSON objected to vacancies in the Senate being supplied by the executives of the states. It was unnecessary, as the legislatures will meet so frequently. It removes the appointment too far from the people, the executives in most of the states being elected by the legislatures. As he had always thought the appointment of the executive by the legislative department wrong, so it was still more so that the executive should elect into the legislative department.

Mr. RANDOLPH thought it necessary, in order to prevent inconvenient chasms in the Senate. In some states the legislatures meet but once a year. As the Senate will have more power, and consist of a smaller number, than the other House, vacancies there will be of more consequence. The executives might be safely trusted, he thought, with the appointment for so short a time.

Mr. ELLSWORTH. It is only said that the executive *may* supply vacancies. When the legislative meeting happens to be near, the power will not be exerted. As there will be but two members from a state, vacancies may be of great moment.

Mr. WILLIAMSON. Senators may resign or not accept. This provision is therefore absolutely necessary.

On the question for striking out “vacancies shall be supplied by the executives,”—

Pennsylvania, ay, 1; New Hampshire, Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia, no, 8; Maryland, divided.

Mr. WILLIAMSON moved to insert, after "vacancies shall be supplied by the executives," the words, "unless other provision shall be made by the legislature" (of the state).

Mr. ELLSWORTH. He was willing to trust the legislature, or the executive, of a state, but not to give the former a discretion to refer appointments for the Senate to whom they pleased.

On the question on Mr. Williamson's motion,—

Maryland, North Carolina, South Carolina, Georgia, ay, 4; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, no, 6.

Mr. MADISON, in order to prevent doubts whether resignations could be made by senators, or whether they could refuse to accept, moved to strike out the words after "vacancies," and insert the words, "happening by refusals to accept, resignations, or otherwise, may be supplied by the legislature of the state in the representation of which such vacancies shall happen, or by the executive thereof until the next meeting of the legislature."

Mr. GOUVERNEUR MORRIS. This is absolutely necessary; otherwise, as members chosen into the Senate are disqualified from being appointed to any office, by sect. 9, of this article, it will be in the power of a legislature, by appointing a man a senator against his consent, to deprive the United States of his services.

The motion of Mr. Madison was agreed to, *nem. con.*

Mr. RANDOLPH called for a division of the section, so as to leave a distinct question on the last words, "each member shall have one vote." He wished this last sentence to be postponed until the reconsideration should have taken place on article 4, sect. 5, concerning money bills. If that section should not be reinstated, his plan would be to vary the representation in the Senate.

Mr. STRONG concurred in Mr. Randolph's ideas on this point.

Mr. READ did not consider the section as to money bills of any advantage to the larger states, and had voted for striking it out as being viewed in the same light by the larger states. If it was considered by them as of any value, and as a condition of the equality of votes in the Senate, he had no objection to its being reinstated.

Mr. WILSON, Mr. ELLSWORTH, and Mr. MADISON, urged, that it was of no advantage to the larger states; and that it might be a dangerous source of contention between the two Houses. All the principal powers of the national legislature had some relation to money.

Dr. FRANKLIN considered the two clauses, the originating of money bills and the equality of votes in the Senate, as essentially connected by the compromise which had been agreed to.

Col. MASON said, this was not the time for discussing this point. When the originating of money bills shall be reconsidered, he thought it could be demonstrated that it was of essential importance to restrain the right to the House of Representatives,—the immediate choice of the people.

Mr. WILLIAMSON. The state of North Carolina had agreed to an equality in the Senate, merely in consideration that money bills should be confined to the other House; and he was surprised to see the smaller states forsaking the condition on which they had received their equality.

On the question on the first section, down to the last sentence,—

New Hampshire, Connecticut, New Jersey, Delaware, Maryland, Virginia, Georgia, ay, 7; Massachusetts, Pennsylvania, North Carolina, no, 3; South Carolina, divided. (In the printed Journal, Pennsylvania, ay.)

Mr. RANDOLPH moved that the last sentence, "each member shall have one vote," be postponed.

It was observed that this could not be necessary; as, in case the sanction as to originating money bills should not be reinstated, and a revision of the Constitution should ensue, it would still be proper that the members should vote *per capita.* A postponement of the preceding sentence, allowing to each state two members, would have been more proper.

Mr. MASON did not mean to propose a change of this mode of voting *per capita,* in any event. But as there might be other modes proposed, he saw no impropriety in postponing the sentence. Each state may have two members, and yet may have unequal votes. He said that, unless the exclusive right of originating money bills should be restored to the House of Representatives, he should—not from obstinacy, but duty and conscience—oppose throughout the equality of representation in the Senate.

Mr. GOUVERNEUR MORRIS. Such declarations were, he supposed, addressed to the smaller states, in order to alarm them for their equality in the Senate, and induce them, against their judgments, to concur in restoring the section concerning money bills. He would declare, in his turn, that, as he saw no prospect of amending the Constitution of the Senate, and considered the section relating to money bills as intrinsically bad, he would adhere to the section establishing the equality, at all events.

Mr. WILSON. It seems to have been supposed by some, that the section concerning money bills is desirable to the large states. The fact was, that two of those states (Pennsylvania and Virginia) had uniformly voted against it, without reference to any other part of the system.

Mr. RANDOLPH urged, as Col. Mason had done, that the sentence under consideration was connected with that relating to money bills, and might possibly be

affected by the result of the motion for reconsidering the latter. That the postponement was therefore not improper.

On the question for postponing, "each member shall have one vote,"—

Virginia, North Carolina, ay, 2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, no, 8; New Hampshire, divided.

The words were then agreed to as part of the section.

Mr. RANDOLPH then gave notice that he should move to reconsider this whole article 5, sect. 1, as connected with article 4, sect. 5, as to which he had already given such notice.

Article 5, sect. 2, was then taken up.

Mr. GOUVERNEUR MORRIS moved to insert, after the words, "immediately after," the following: "they shall be assembled in consequence of," which was agreed to, *nem. con.,* as was then the whole section.

Article 5, sect. 3, was then taken up.

Mr. GOUVERNEUR MORRIS moved to insert fourteen instead of four years' citizenship, as a qualification for senators; urging the danger of admitting strangers into our public councils.

Mr. PINCKNEY seconded him.

Mr. ELLSWORTH was opposed to the motion, as discouraging meritorious aliens from emigrating to this country.

Mr. PINCKNEY. As the Senate is to have the power of making treaties and managing our foreign affairs, there is peculiar danger and impropriety in opening its door to those who have foreign attachments. He quoted the jealousy of the Athenians on this subject, who made it death for any stranger to intrude his voice into their legislative proceedings.

Col. MASON highly approved of the policy of the motion. Were it not that many, not natives of this country, had acquired great credit during the revolution, he should be for restraining the eligibility into the Senate to natives.

Mr. MADISON was not averse to some restrictions on this subject, but could never agree to the proposed amendment. He thought any restriction, however, in the *Constitution,* unnecessary and improper:—unnecessary, because the national legislature is to have the right of regulating naturalization, and can by virtue thereof fix different periods of residence, as conditions of enjoying different privileges of citizenship;—improper, because it will give a tincture of illiberality to the Constitution; because it will put it out of the power of the national legislature, even by

special acts of naturalization, to confer the full rank of citizens on meritorious strangers; and because it will discourage the most desirable class of people from emigrating to the United States. Should the proposed Constitution have the intended effect of giving stability and reputation to our government, great numbers of respectable Europeans, men who love liberty, and wish to partake its blessings, will be ready to transfer their fortunes hither. All such would feel the mortification of being marked with suspicious incapacitations, though they should not covet the public honors. He was not apprehensive that any dangerous number of strangers would be appointed by the state legislatures, if they were left at liberty to do so: nor that foreign powers would make use of strangers, as instruments for their purposes. Their bribes would be expended on men whose circumstances would rather stifle than excite jealousy and watchfulness in the public.

Mr. BUTLER was decidedly opposed to the admission of foreigners without a long residence in the country. They bring with them, not only attachments to other countries, but ideas of government so distinct from ours, that in every point of view they are dangerous. He acknowledged that, if he himself had been called into public life within a short time after his coming to America, his foreign habits, opinions, and attachments, would have rendered him an improper agent in public affairs. He mentioned the great strictness observed in Great Britain on this subject.

Dr. FRANKLIN was not against a reasonable time, but should be very sorry to see any thing like illiberality inserted in the Constitution. The people in Europe are friendly to this country. Even in the country with which we have been lately at war, we have now, and had during the war, a great many friends, not only among the people at large, but in both Houses of Parliament. In every other country in Europe, all the people are our friends. We found in the course of the revolution that many strangers served us faithfully, and that many natives took part against their country. When foreigners, after looking about for some other country in which they can obtain more happiness, give a preference to ours, it is a proof of attachment which ought to excite our confidence and affection.

Mr. RANDOLPH did not know but it might be problematical whether emigrations to this country were, on the whole, useful or not, but he could never agree to the motion for disabling them, for fourteen years, to participate in the public honors. He reminded the Convention of the language held by our patriots during the revolution, and the principles laid down in all our American constitutions. Many foreigners may have fixed their fortunes among us, under the faith of these invitations. All persons under this description, with all others who would be affected by such a regulation, would enlist themselves under the banners of hostility to the proposed system. He would go as far as seven years, but no farther.

Mr. WILSON said, he rose with feelings which were perhaps peculiar; mentioning the circumstance of his not being a native, and the possibility, if the ideas of some gentlemen should be pursued, of his being incapacitated from holding a place under the very Constitution which he had shared in the trust of making. He remarked the illiberal complexion which the motion would give to the system, and the effect which a good system would have in inviting meritorious foreigners among us, and the

discouragement and mortification they must feel from the degrading discrimination now proposed. He had himself experienced this mortification. On his removal into Maryland, he found himself, from defect of residence, under certain legal incapacities which never ceased to produce chagrin, though he assuredly did not desire, and would not have accepted, the offices to which they related. To be appointed to a place may be matter of indifference. To be incapable of being appointed is a circumstance grating and mortifying.

Mr. GOUVERNEUR MORRIS. The lesson we are taught is, that we should be governed as much by our reason, and as little by our feelings, as possible. What is the language of reason on this subject? That we should not be polite at the expense of prudence. There was a moderation in all things. It is said that some tribes of Indians carried their hospitality so far as to offer to strangers their wives and daughters. Was this a proper model for us? He would admit them to his house, he would invite them to his table, would provide for them comfortable lodgings, but would not carry the complaisance so far as to bed them with his wife. He would let them worship at the same altar, but did not choose to make priests of them. He ran over the privileges which emigrants would enjoy among us, though they should be deprived of that of being eligible to the great offices of government; observing that they exceeded the privileges allowed to foreigners in any part of the world; and that as every society, from a great nation down to a club, had the right of declaring the conditions on which new members should be admitted, there could be no room for complaint. As to those philosophical gentlemen, those citizens of the world, as they called themselves, he owned, he did not wish to see any of them in our public councils. He would not trust them. The men who can shake off their attachments to their own country can never love any other. These attachments are the wholesome prejudices which uphold all governments. Admit a Frenchman into your Senate, and he will study to increase the commerce of France: an Englishman, and he will feel an equal bias in favor of that of England. It has been said that the legislatures will not choose foreigners, at least improper ones. There was no knowing what legislatures would do. Some appointments made by them proved that every thing ought to be apprehended from the cabals practised on such occasions. He mentioned the case of a foreigner who left this state in disgrace, and worked himself into an appointment from another to Congress.

On the question, on the motion of Mr. Gouverneur Morris to insert fourteen in place of four years,—

New Hampshire, New Jersey, South Carolina, Georgia, ay, 4; Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no, 7.

On the question for thirteen years, moved by Mr. GOUVERNEUR MORRIS,—it was negatived, as above.

On ten years, moved by Gen. PINCKNEY, the votes were the same.

Dr. FRANKLIN reminded the Convention, that it did not follow, from an omission to insert the restriction in the Constitution, that the persons in question would be actually chosen into the legislature.

Mr. RUTLEDGE. Seven years of citizenship have been required for the House of Representatives. Surely a longer time is requisite for the Senate, which will have more power.

Mr. WILLIAMSON. It is more necessary to guard the Senate in this case, than the other House. Bribery and cabal can be more easily practised in the choice of the Senate, which is to be made by the legislatures, composed of a few men, than of the House of Representatives, who will be chosen by the people.

Mr. RANDOLPH will agree to nine years, with the expectation that it will be reduced to seven, if Mr. Wilson's motion to reconsider the vote fixing seven years for the House of Representatives should produce a reduction of that period.

On the question for nine years,—

New Hampshire, New Jersey, Delaware, Virginia, South Carolina, Georgia, ay, 6; Massachusetts, Connecticut, Pennsylvania, Maryland, no, 4; North Carolina, divided.

The term "resident" was struck out, and "inhabitant" inserted, *nem. con.*

Article 5, sect. 3, as amended, was then agreed to, *nem. con.*198

Article 5, sect. 4, was agreed to, *nem. con.*

Article 6, sect. 1, was then taken up.

Mr. MADISON and Mr. GOUVERNEUR MORRIS moved to strike out "each House," and to insert "the House of Representatives;" the right of the legislatures to regulate the times and places, &c., in the election of senators, being involved in the right of appointing them; which was disagreed to.

A division of the question being called for, it was taken on the first part down to "but their provisions concerning," &c.

The first part was agreed to, *nem. con.*

Mr. PINCKNEY and Mr. RUTLEDGE moved to strike out the remaining part, viz., "but their provisions concerning them may at any time be altered by the legislature of the United States." The states, they contended, could and must be relied on in such cases.

Mr. GORHAM. It would be as improper to take this power from the national legislature, as to restrain the British Parliament from regulating the circumstances of elections, leaving this business to the counties themselves.

Mr. MADISON. The necessity of a general government supposes that the state legislatures will sometimes fail or refuse to consult the common interest at the expense of their local convenience or prejudices. The policy of referring the appointment of the House of Representatives to the people, and not to the legislatures of the states, supposes that the result will be somewhat influenced by the mode. This view of the question seems to decide that the legislatures of the states ought not to have the uncontrolled right of regulating the times, places, and manner, of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot, or *viva voce,* should assemble at this place or that place, should be divided into districts, or all meet at one place, should all vote for all the representatives, or all in a district vote for a number allotted to the district,—these, and many other points, would depend on the legislatures, and might materially affect the appointments. Whenever the state legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the representation in the legislatures of particular states would produce a like inequality in their representation in the national legislature, as it was presumable that the counties having the power in the former case would secure it to themselves in the latter. What danger could there be in giving a controlling power to the national legislature? Of whom was it to consist? First, of a Senate to be chosen by the state legislatures. If the latter, therefore, could be trusted, their representatives could not be dangerous. Secondly, of representatives elected by the same people who elect the state legislatures. Surely, then, if confidence is due to the latter, it must be due to the former. It seems as improper in principle, though it might be less inconvenient in practice, to give to the state legislatures this great authority over the election of the representatives of the people in the general legislature, as it would be to give to the latter a like power over the election of their representatives in the state legislatures.

Mr. KING. If this power be not given to the national legislature their right of judging of the returns of their members may be frustrated. No probability has been suggested of its being abused by them. Although this scheme of erecting the general government on the authority of the state legislatures has been fatal to the federal establishment, it would seem as if many gentlemen still foster the dangerous idea.

Mr. GOUVERNEUR MORRIS observed, that the states might make false returns, and then make no provisions for new elections.

Mr. SHERMAN did not know but it might be best to retain the clause, though he had himself sufficient confidence in the state legislatures.

The motion of Mr. Pinckney and Mr. Rutledge did not prevail.

The word “respectively” was inserted after the word “state.”

On the motion of Mr. READ, the word “their” was struck out, and “regulations in such cases,” inserted, in place of “provisions concerning them,”—the clause then reading, “but regulations, in each of the foregoing cases, may, at any time, be made or

altered by the legislature of the United States." This was meant to give the national legislature a power not only to alter the provisions of the states, but to make regulations, in case the states should fail or refuse altogether. Article 6, sect. 1, as thus amended, was agreed to, *nem. con.*199

Adjourned.

Friday,*August* 10.

In Convention.—Article 6, sect. 2, was taken up.

Mr. PINCKNEY. The committee, as he had conceived, were instructed to report the proper qualifications of property for the members of the national legislature; instead of which they have referred the task to the national legislature itself. Should it be left on this footing, the first legislature will meet without any particular qualifications of property; and, if it should happen to consist of rich men, they might fix such qualifications as may be too favorable to the rich; if of poor men, an opposite extreme might be run into. He was opposed to the establishment of an undue aristrocratic influence in the Constitution, but he thought it essential that the members of the legislature, the executive, and the judges, should be possessed of competent property to make them independent and respectable. It was prudent, when such great powers were to be trusted, to connect the tie of property with that of reputation in securing a faithful administration. The legislature would have the fate of the nation put into their hands. The President would also have a very great influence on it. The judges would not only have important causes between citizen and citizen, but also where foreigners are concerned. They will even be the umpires between the United States and individual states, as well as between one state and another. Were he to fix the quantum of property which should be required, he should not think of less than one hundred thousand dollars for the President, half of that sum for each of the judges, and in like proportion for the members of the national legislature. He would, however, leave the sums blank. His motion was, that the President of the United States, the judges, and members of the legislature, should be required to swear that they were respectively possessed of a clear unincumbered estate, to the amount of—in the case of the President, &c., &c.

Mr. RUTLEDGE seconded the motion; observing, that the committee had reported no qualifications, because they could not agree on any among themselves, being embarrassed by the danger, on one side, of displeasing the people, by making them high, and, on the other, of rendering them nugatory, by making them low.

Mr. ELLSWORTH. The different circumstances of different parts of the United States, and the probable difference between the present and future circumstances of the whole, render it improper to have either *uniform* or *fixed* qualifications. Make them so high as to be useful in the Southern States, and they will be inapplicable to the Eastern States. Suit them to the latter, and they will serve no purpose in the former. In like manner, what may be accommodated to the existing state of things among us may be very inconvenient in some future state of them. He thought, for

these reasons, that it was better to leave this matter to the legislative discretion, than to attempt a provision for it in the Constitution.

Dr. FRANKLIN expressed his dislike to every thing that tended to debase the spirit of the common people. If honesty was often the companion of wealth, and if poverty was exposed to peculiar temptation, it was not less true that the possession of property increased the desire of more property. Some of the greatest rogues he was ever acquainted with were the richest rogues. We should remember the character which the Scripture requires in rulers, that they should be men hating covetousness. This Constitution will be much read and attended to in Europe; and, if it should betray a great partiality to the rich, will not only hurt us in the esteem of the most liberal and enlightened men there, but discourage the common people from removing to this country.

The motion of Mr. Pinckney was rejected by so general a *no,* that the states were not called.

Mr. MADISON was opposed to the section, as vesting an improper and dangerous power in the legislature. The qualifications of electors and elected were fundamental articles in a republican government, and ought to be fixed by the Constitution. If the legislature could regulate those of either, it can by degrees subvert the Constitution. A republic may be converted into an aristocracy or oligarchy, as well by limiting the number capable of being elected as the number authorized to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their constituents, there was the same reason for being jealous of them as there was for relying on them with full confidence, when they had a common interest. This was one of the former cases. It was as improper as to allow them to fix their own wages, or their own privileges. It was a power, also, which might be made subservient to the views of one faction against another. Qualifications founded on artificial distinctions may be devised by the stronger in order to keep out partizans of a weaker faction.

Mr. ELLSWORTH admitted that the power was not unexceptionable, but he could not view it as dangerous. Such a power with regard to the electors would be dangerous, because it would be much more liable to abuse.

Mr. GOUVERNEUR MORRIS moved to strike out “with regard to property,” in order to leave the legislature entirely at large.

Mr. WILLIAMSON. This would surely never be admitted. Should a majority of the legislature be composed of any particular description of men,—of lawyers, for example,—which is no improbable supposition, the future elections might be secured to their own body.

Mr. MADISON observed that the British Parliament possessed the power of regulating the qualifications, both of the electors and the elected; and the abuse they had made of it was a lesson worthy of our attention. They had made the changes, in both cases, subservient to their own views, or to the views of political or religious parties.

On the question on the motion to strike out "with regard to property,"—

Connecticut, New Jersey, Pennsylvania, Georgia, ay, 4; New Hampshire, Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, no, 7. (In the printed Journal, Delaware did not vote.)

Mr. RUTLEDGE was opposed to leaving the power to the legislature. He proposed that the qualifications should be the same as for members of the state legislatures.

Mr. WILSON thought it would be best, on the whole, to let the section go out. A uniform rule would probably never be fixed by the legislature; and this particular power would constructively exclude every other power of regulating qualifications.

On the question for agreeing to article 6, sect. 2,—

New Hampshire, Massachusetts, Georgia, ay, 3; Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, no, 7.200

On motion of Mr. WILSON to reconsider article 4, sect. 2, so as to restore "three," in place of "seven," years of citizenship, as a qualification for being elected into the House of Representatives,—

Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, ay, 6; New Hampshire, Massachusetts, New Jersey, South Carolina, Georgia, no, 5.

Monday next was then assigned for the reconsideration; all the states being ay, except Massachusetts and Georgia.

Article 6, sect. 3, was then taken up.

Mr. GORHAM contended that less than a majority in each House should be made a quorum; otherwise, great delay might happen in business, and great inconvenience from the future increase of numbers.

Mr. MERCER was also for less than a majority. So great a number will put it in the power of a few, by seceding at a critical moment to introduce convulsions, and endanger the government. Examples of secession have already happened in some of the states. He was for leaving it to the legislature to fix the quorum, as in Great Britain, where the requisite number is small, and no inconvenience has been experienced.

Col. MASON. This is a valuable and necessary part of the plan. In this extended country, embracing so great a diversity of interests, it would be dangerous to the distant parts to allow a small number of members of the two Houses to make laws. The Central States could always take care to be on the spot; and, by meeting earlier than the distant ones, or wearying their patience and outstaying them, could carry such measures as they pleased. He admitted that inconveniences might spring from the secession of a small number; but he had also known good produced by an apprehension of it. He had known a paper emission prevented by that cause in

Virginia. He thought the Constitution, as now moulded, was founded on sound principles, and was disposed to put into it extensive powers. At the same time, he wished to guard against abuses as much as possible. If the legislature should be able to reduce the number at all, it might reduce it as low as it pleased, and the United States might be governed by a junto. A majority of the number, which had been agreed on, was so few, that he feared it would be made an objection against the plan.

Mr. KING admitted there might be some danger of giving an advantage to the Central States; but was of opinion that the public inconvenience, on the other side, was more to be dreaded.

Mr. GOUVERNEUR MORRIS moved to fix the quorum at thirty-three members in the House of Representatives, and fourteen in the Senate. This is a majority of the present number, and will be a bar to the legislature. Fix the number low, and they will generally attend, knowing that advantage may be taken of their absence. The secession of a small number ought not to be suffered to break a quorum. Such events, in the states, may have been of little consequence. In the national councils, they may be fatal. Besides other mischiefs, if a few can break up a quorum, they may seize a moment when a particular part of the continent may be in need of immediate aid, to extort, by threatening a secession, some unjust and selfish measure.

Mr. MERCER seconded the motion.

Mr. KING said, he had just prepared a motion which, instead of fixing the numbers proposed by Mr. Gouverneur Morris as quorums made those the lowest numbers, leaving the legislature at liberty to increase them or not. He thought the future increase of members would render a majority of the whole extremely cumbersome.

Mr. MERCER agreed to substitute Mr. King’s motion in place of Mr. Morris’s.

Mr. ELLSWORTH was opposed to it. It would be a pleasing ground of confidence to the people, that no law or burden could be imposed on them by a few men. He reminded the movers that the Constitution proposed to give such a discretion, with regard to the number of representatives, that a very inconvenient number was not to be apprehended. The inconvenience of secessions may be guarded against, by giving to each House an authority to require the attendance of absent members.

Mr. WILSON concurred in the sentiments of Mr. Ellsworth.

Mr. GERRY seemed to think that some further precautions than merely fixing the quorum might be necessary. He observed, that, as seventeen would be a majority of a quorum of thirty-three, and eight of fourteen, questions might by possibility be carried in the House of Representatives by two large states, and in the Senate by the same states, with the aid of two small ones. He proposed that the number for a quorum in the House of Representatives should not exceed fifty, nor be less than thirty-three; leaving the intermediate discretion to the legislature.

Mr. KING. As the quorum could not be altered, without the concurrence of the President, by less than two thirds of each House, he thought there could be no danger in trusting the legislature.

Mr. CARROLL. This would be no security against the continuance of the quorums at thirty-three and fourteen, when they ought to be increased.

On the question on Mr. King's motion, that not less than thirty-three in the House of Representatives, nor less than fourteen in the Senate, should constitute a quorum, which may be increased by a law, on additions to the members in either House,—

Massachusetts, Delaware, ay, 2; New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 9.

Mr. RANDOLPH and Mr. MADISON moved to add to the end of article 6, sect. 3, "and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide." Agreed to by all except Pennsylvania, which was divided.

Article 6, sect. 3, was agreed to as amended, *nem. con.*201

Sections 4 and 5, of article 6, were then agreed to, *nem. con.*

Mr. MADISON observed, that the right of expulsion (article 6 sect. 6,) was too important to be exercised by a bare majority of a quorum, and, in emergencies of faction, might be dangerously abused. He moved that "with the concurrence of two thirds" might be inserted between "may" and "expel."

Mr. RANDOLPH and Mr. MASON approved the idea.

Mr. GOUVERNEUR MORRIS. This power may be safely trusted to a majority. To require more, may produce abuses on the side of the minority. A few men, from factious motives, may keep in a member who ought to be expelled.

Mr. CARROLL thought that the concurrence of two thirds, at least, ought to be required.

On the question requiring two thirds, in cases of expelling a member,—ten states were in the affirmative; Pennsylvania, divided.

Article 6, sect. 6, as thus amended, was then agreed to, *nem. con.*202

Article 6, sect. 7, was then taken up.

Mr. GOUVERNEUR MORRIS urged, that, if the yeas and nays were proper at all, any individual ought to be authorized to call for them; and moved an amendment to that effect. The small states may otherwise be under a disadvantage, and find it difficult to get a concurrence of one fifth.

Mr. RANDOLPH seconded the motion.

Mr. SHERMAN had rather strike out the yeas and nays altogether. They have never done any good, and have done much mischief. They are not proper, as the reasons governing the voter never appear along with them.

Mr. ELLSWORTH was of the same opinion.

Col. MASON liked the section as it stood. It was a middle way between two extremes.

Mr. GORHAM was opposed to the motion for allowing a single member to call the yeas and nays, and recited the abuses of it in Massachusetts; first, in stuffing the Journals with them on frivolous occasions; secondly, in misleading the people, who never know the reasons determining the votes.

The motion for allowing a single member to call the yeas and nays, was disagreed to, *nem. con.*

Mr. CARROLL and Mr. RANDOLPH moved to strike out the words, “each House,” and to insert the words, “the House of Representatives,” in sect. 7, article 6; and to add to the section the words, “and any member of the Senate shall be at liberty to enter his dissent.”

Mr. GOUVERNEUR MORRIS and Mr. WILSON observed, that, if the minority were to have a right to enter their votes and reasons, the other side would have a right to complain if it were not extended to them; and to allow it to both would fill the Journals, like the records of a court, with replications, rejoinders, &c.

On the question on Mr. Carroll’s motion, to allow a member to enter his dissent,—

Maryland, Virginia, South Carolina, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, no, 8.

Mr. GERRY moved to strike out the words, “when it shall be acting in its legislative capacity,” in order to extend the provision to the Senate when exercising its peculiar authorities; and to insert, “except such parts thereof as in their judgment require secrecy,” after the words, “publish them.” (It was thought by others that provision should be made with respect to these, when that part came under consideration which proposed to vest those additional authorities in the Senate.)

On this question for striking out the words, “when acting in its legislative capacity,”—

Massachusetts, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 7; Connecticut, New Jersey, Pennsylvania, no, 3; New Hampshire, divided.

Adjourned.

Saturday,*Aug.* 11.

In Convention.—Mr. MADISON and Mr. RUTLEDGE moved, "that each House shall keep a Journal of its proceedings, and shall publish the same from time to time; except such part of the proceedings of the Senate, when acting not in its legislative capacity, as may be judged by that House to require secrecy."

Mr. MERCER. This implies that other powers than legislative will be given to the Senate, which he hoped would not be given.

Mr. Madison and Mr. Rutledge's motion was disagreed to by all the states except Virginia.

Mr. GERRY and Mr. SHERMAN moved to insert, after the words, "publish them," the following, "except such as relate to treaties and military operations." Their object was to give each House a discretion in such cases. On this question,—

Massachusetts, Connecticut, ay, 2; New Hampshire, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no, 8.

Mr. ELLSWORTH. As the clause is objectionable in so many shapes, it may as well be struck out altogether. The legislature will not fail to publish their proceedings from time to time. The people will call for it, if it should be improperly omitted.

Mr. WILSON thought the expunging of the clause would be very improper. The people have a right to know what their agents are doing or have done, and it should not be in the option of the legislature to conceal their proceedings. Besides, as this is a clause in the existing Confederation, the not retaining it would furnish the adversaries of the reform with a pretext by which weak and suspicious minds may be easily misled.

Mr. MASON thought it would give a just alarm to the people, to make a conclave of their legislature.

Mr. SHERMAN thought the legislature might be trusted in this case, if in any.

203 On the question on the first part of the section, down to "*publish them,*" inclusive,—it was agreed to, *nem. con.*

On the question on the words to follow, to wit, "except such parts thereof as may in their judgment require secrecy,"—

Massachusetts, Connecticut, New Jersey, Virginia, North Carolina, Georgia, ay 6; Pennsylvania, Delaware, Maryland, South Carolina, no, 4; New Hampshire divided.

The remaining part, as to yeas and nays, was agreed to, *nem. con.*

Article 6, sect. 8, was then taken up.

Mr. KING remarked, that the section authorized the two Houses to adjourn to a new place. He thought this inconvenient. The mutability of place had dishonored the federal government, and would require as strong a cure as we could devise. He thought a law, at least, should be made necessary to a removal of the seat of government.

Mr. MADISON viewed the subject in the same light, and joined with Mr. King in a motion requiring a law.

Mr. GOUVERNEUR MORRIS proposed the additional alteration by inserting the words, "during the session," &c.

Mr. SPAIGHT. This will fix the seat of government at New York. The present Congress will convene them there in the first instance, and they will never be able to remove; especially, if the President should be a northern man.

Mr. GOUVERNEUR MORRIS. Such a distrust is inconsistent with all government.

Mr. MADISON supposed that a central place for the seat of government was so just, and would be so much insisted on by the House of Representatives, that, though a law should be made requisite for the purpose, it could and would be obtained. The necessity of a central residence of the government would be much greater under the new than old government. The members of the new government would be more numerous. They would be taken more from the interior parts of the states; they would not, like members of the present Congress, come so often from the distant states by water. As the powers and objects of the new government would be far greater than heretofore, more private individuals would have business calling them to the seat of it; and it was more necessary that the government should be in that position from which it could contemplate with the most equal eye, and sympathize most equally with, every part of the nation. These considerations, he supposed, would extort a removal, even if a law were made necessary. But, in order to quiet suspicions both within and without doors, it might not be amiss to authorize the two Houses, by a concurrent vote, to adjourn at their first meeting to the most proper place, and to require thereafter the sanction of a law to their removal.

The motion was accordingly moulded into the following form:—

"The legislature shall, at their first assembling, determine on a place at which their future sessions shall be held; neither House shall afterwards, during the session of the House of Representatives, without the consent of the other, adjourn for more than three days; nor shall they adjourn to any other place than such as shall have been fixed by law."

Mr. GERRY thought it would be wrong to let the President check the will of the two Houses on this subject at all.

Mr. WILLIAMSON supported the ideas of Mr. Spaight.

Mr. CARROLL was actuated by the same apprehensions.

Mr. MERCER. It will serve no purpose to require the two Houses, at their first meeting, to fix on a place. They will never agree.

After some further expressions from others, denoting an apprehension that the seat of government might be continued at an improper place if a law should be made necessary to a removal, and after the motion above stated, with another for recommitting the section, had been negatived, the section was left in the shape in which it was reported, as to this point. The words, "during the session of the legislature," were prefixed to the eighth section; and the last sentence, "but this regulation shall not extend to the Senate when it shall exercise the powers mentioned in the—article," struck out. The eighth section, as amended, was then agreed to.204

Mr. RANDOLPH moved, according to notice, to reconsider article 4, sect. 5, concerning money bills, which had been struck out. He argued,—first, that he had not wished for this privilege whilst a proportional representation in the Senate was in contemplation: but since an equality had been fixed in that House, the large states would require this compensation at least. Secondly, that it would make the plan more acceptable to the people, because they will consider the Senate as the more aristocratic body, and will expect that the usual guards against its influence will be provided, according to the example of Great Britain. Thirdly, the privilege will give some advantage to the House of Representatives, if it extends to the originating only; but still more, if it restrains the Senate from amending. Fourthly, he called on the smaller states to concur in the measure, as the condition by which alone the compromise had entitled them to an equality in the Senate. He signified that he should propose, instead of the original section, a clause specifying that the bills in question should be for the purpose of revenue, in order to repel the objection against the extent of the words, "*raising money,*" which might happen incidentally; and that the Senate should not so amend or alter as to increase or diminish the sum; in order to obviate the inconveniences urged against a restriction of the Senate to a simple affirmation or negative.

Mr. WILLIAMSON seconded the motion.

Mr. PINCKNEY was sorry to oppose the opportunity gentlemen asked to have the question again opened for discussion; but as he considered it a mere waste of time, he could not bring himself to consent to it. He said that, notwithstanding what had been said as to the compromise, he always considered this section as making no part of it. The rule of representation in the first branch was the true condition of that in the second branch. Several others spoke for and against the reconsideration, but without going into the merits.

On the question to reconsider,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, Georgia, ay, 9; Maryland, no, 1; South Carolina, divided; (In the printed Journal, New Jersey, no).

Monday was then assigned for the reconsideration.

Adjourned.

Monday,*August* 13.

In Convention.—Article 4, sect. 2, being reconsidered,—

Mr. WILSON and Mr. RANDOLPH moved to strike out "seven years," and insert "four years," as the requisite term of citizenship to qualify for the House of Representatives. Mr. Wilson said it was very proper the electors should govern themselves by this consideration; but unnecessary and improper that the Constitution should chain them down to it.

Mr. GERRY wished that in future the elegibility might be confined to natives. Foreign powers will intermeddle in our affairs, and spare no expense to influence them. Persons having foreign attachments will be sent among us and insinuated into our councils, in order to be made instruments for their purposes. Every one knows the vast sums laid out in Europe for secret services. He was not singular in these ideas. A great many of the most influential men in Massachusetts reasoned in the same manner.

Mr. WILLIAMSON moved to insert nine years, instead of seven. He wished this country to acquire, as fast as possible, national habits. Wealthy emigrants do more harm, by their luxurious examples, than good by the money they bring with them.

Col. HAMILTON was in general against embarrassing the government with minute restrictions. There was, on one side, the possible danger that had been suggested. On the other side, the advantage of encouraging foreigners was obvious and admitted. Persons in Europe of moderate fortunes will be fond of coming here, where they will be on a level with the first citizens. He moved that the section be so altered as to require merely "citizenship and inhabitancy." The right of determining the rule of naturalization will then leave a discretion to the legislature on this subject, which will answer every purpose.

Mr. MADISON seconded the motion. He wished to maintain the character of liberality which had been professed in all the constitutions and publications of America. He wished to invite foreigners of merit and republican principles among us. America was indebted to emigration for her settlement and prosperity. That part of America which had encouraged them most had advanced most rapidly in population, agriculture, and the arts. There was a possible danger, he admitted, that men with foreign predilections might obtain appointments; but it was by no means probable that it would happen in any dangerous degree. For the same reason that they would be attached to their native country, our own people would prefer natives of this country to them. Experience proved this to be the case. Instances were rare of a foreigner being elected by the people within any short space after his coming among us. If bribery was to be practised by foreign powers, it would not be attempted among the electors, but among the elected, and among natives having full confidence of the people, not among strangers, who would be regarded with a jealous eye.

Mr. WILSON cited Pennsylvania as a proof of the advantage of encouraging emigrations. It was perhaps the youngest settlement (except Georgia) on the Atlantic; yet it was at least among the foremost in population and prosperity. He remarked, that almost all the general officers of the Pennsylvania line of the late army were foreigners; and no complaint had ever been made against their fidelity or merit. Three of her deputies to the Convention (Mr. R. Morris, Mr. Fitzsimons, and himself) were also not natives. He had no objection to Col. Hamilton's motion, and would withdraw the one made by himself.

Mr. BUTLER was strenuous against admitting foreigners into our public councils.

On the question on Col. Hamilton's motion,—

Connecticut, Pennsylvania, Maryland, Virginia, ay, 4; New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia, no, 7.

On the question, on Mr. Williamson's motion, to insert "nine years," instead of "seven,"—

New Hampshire, South Carolina, Georgia, ay, 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no, 8.

Mr. WILSON renewed the motion for four years instead of seven; and on the question,—

Connecticut, Maryland, Virginia, ay, 3; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, no, 8.

Mr. GOUVERNEUR MORRIS moved to add to the end of the section (article 4, sect. 2,) a proviso that the limitation of seven years should not affect the rights of any person now a citizen.

Mr. MERCER seconded the motion. It was necessary, he said, to prevent a disfranchisement of persons who had become citizens, under the faith and according to the laws and constitution, from their actual level in all respects with natives.

Mr. RUTLEDGE. It might as well be said that all qualifications are disfranchisements, and that to require the age of twenty-five years was a disfranchisement. The policy of the precaution was as great with regard to foreigners now citizens as to those who are to be naturalized in future.

Mr. SHERMAN. The United States have not invited foreigners, nor pledged their faith that they should enjoy equal privileges with native citizens. The individual states alone have done this. The former therefore are at liberty to make any discriminations they may judge requisite.

Mr. GORHAM. When foreigners are naturalized, it would seem as if they stand on an equal footing with natives. He doubted, then, the propriety of giving a retrospective force to the restriction.

Mr. MADISON animadverted on the peculiarity of the doctrine of Mr. Sherman. It was a subtlety by which every national engagement might be evaded. By parity of reason, whenever our public debts or foreign treaties become inconvenient, nothing more would be necessary to relieve us from them than to re-model the Constitution. It was said that the *United States,* as such, have not pledged their faith to the naturalized foreigners, and therefore are not bound. Be it so, and that the states alone are bound. Who are to form the new Constitution by which the condition of that class of citizens is to be made worse than the other class? Are not the states the agents? Will they not be the members of it? Did they not appoint this Convention? Are not they to ratify its proceedings? Will not the new Constitution be their act? If the new Constitution, then, violates the faith pledged to any description of people, will not the makers of it, will not the states, be the violators? To justify the doctrine, it must be said that the states can get rid of the obligation by revising the Constitution, though they could not do it by repealing the law under which foreigners held their privileges. He considered this a matter of real importance. It would expose us to the reproaches of all those who should be affected by it, reproaches which would soon be echoed from the other side of the Atlantic, and would unnecessarily enlist among the adversaries of the reform a very considerable body of citizens. We should moreover reduce every state to the dilemma of rejecting it, or of violating the faith pledged to a part of its citizens.

Mr. GOVERNEUR MORRIS considered the case of persons under twenty-five years of age as very different from that of foreigners. No faith could be pleaded by the former in bar of the regulation. No assurance had ever been given that persons under that age should be in all cases on a level with those above it. But, with regard to foreigners among us, the faith had been pledged that they should enjoy the privileges of citizens. If the restriction as to age had been confined to natives, and had left foreigners under twenty-five years of age eligible in this case, the discrimination would have been an equal injustice on the other side.

Mr. PINCKNEY remarked, that the laws of the states had varied much the terms of naturalization in different parts of America; and contended that the United States could not be bound to respect them on such an occasion as the present. It was a sort of recurrence to first principles.

Col. MASON was struck, not, like Mr. Madison, with the *peculiarity,* but the *propriety,* of the doctrine of Mr. Sherman. The states have formed different qualifications themselves for enjoying different rights of citizenship. Greater caution would be necessary in the outset of the government than afterwards. All the great objects would then be provided for. Every thing would be then set in motion. If persons among us attached to Great Britain should work themselves into our councils, a turn might be given to our affairs, and particularly to our commercial regulations, which might have pernicious consequences. The great houses of British merchants would spare no pains to insinuate the instruments of their views into the government.

Mr. WILSON read the clause in the constitution of Pennsylvania giving to foreigners, after two years' residence, all the rights whatsoever of citizens; combined it with the Article of Confederation making the citizens of one state citizens of all; inferred the obligation Pennsylvania was under to maintain the faith thus pledged to her citizens of foreign birth, and the just complaint which her failure would authorize. He observed, likewise, that the princes and states of Europe would avail themselves of such breach of faith, to deter their subjects from emigrating to the United States.

Mr. MERCER enforced the same idea of a breach of faith.

Mr. BALDWIN could not enter into the force of the arguments against extending the disqualification to foreigners now citizens. The discrimination of the place of birth was not more objectionable than that of age, which all had concurred in the propriety of.

On the question on the proviso of Mr. Gouverneur Morris in favor of foreigners now citizens,—

Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, ay, 5; New Hampshire, Massachusetts, Delaware, North Carolina, South Carolina, Georgia, no, 6.

Mr. CARROLL moved to insert "five" years, instead of "seven," in article 4, sect. 2,—

Connecticut, Maryland, Virginia, ay, 3; New Hampshire, Massachusetts, New Jersey, Delaware, North Carolina, South Carolina, Georgia, no, 7; Pennsylvania, divided.

The section (article 4, sect. 2,) as formerly amended, was then agreed to, *nem. con.*

Mr. WILSON moved that, in article 5, sect. 3, "nine years" be reduced to "seven"; which was disagreed to, and article 5, sect. 3, confirmed by the following vote,—

New Hampshire, Massachusetts, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Connecticut, Pennsylvania, Maryland, no, 3.205

Article 4, sect. 5, being reconsidered,—

Mr. RANDOLPH moved that the clause be altered so as to read: "Bills for raising money for the *purpose of revenue,* or for appropriating the same, shall originate in the House of Representatives; and shall not be so amended or altered by the Senate as to increase or diminish the sum to be raised, or change the mode of levying it, or the object of its appropriation." He would not repeat his reasons but barely remind the members from the smaller states of the compromise by which the larger states were entitled to this privilege.

Col. MASON. This amendment removes all the objections urged against the section as it stood at first. By specifying *purposes of revenue,* it obviated the objection that the section extended to all bills under which money might incidentally arise. By authorizing amendments in the senate, it got rid of the objections that the senate could

not correct errors of any sort, and that it would introduce into the House of Representatives the practice of tacking foreign matter to money bills. These objections being removed, the arguments in favor of the proposed restraint on the Senate ought to have their full force. First, the Senate did not represent the *people,* but the *states,* in their political character. It was improper, therefore, that it should tax the people. The reason was the same against their doing it as it had been against Congress doing it. Secondly, nor was it in any respect necessary, in order to cure the evils of our republican system. He admitted, that notwithstanding the superiority of the republican form over every other, it had its evils. The chief ones were, the danger of the majority oppressing the minority, and the mischievous influence of demagogues. The general government of itself will cure them. As the states will not concur at the same time in their unjust and oppressive plans, the general government will be able to check and defeat them, whether they result from the wickedness of the majority, or from the misguidance of demagogues. Again, the Senate is not, like the House of Representatives, chosen frequently, and obliged to return frequently among the people. They are to be chosen by the states for six years—will probably settle themselves at the seat of government—will pursue schemes for their own aggrandisement—will be able, by wearying out the House of Representatives, and taking advantage of their impatience at the close of a long session, to extort measures for that purpose. If they should be paid, as he expected would be yet determined and wished to be so, out of the national treasury, they will, particularly, extort an increase of their wages. A bare negative was a very different thing from that of originating bills. The practice in England was in point. The House of Lords does not represent nor tax the people, because not elected by the people. If the Senate can originate, they will, in the recess of the legislative sessions, hatch their mischievous projects for their own purposes, and have their money bills cut and dried (to use a common phrase) for the meeting of the House of Representatives. He compared the case to Poyning's law, and signified that the House of Representatives might be rendered, by degrees, like the Parliament of Paris, the mere depository of the decrees of the Senate. As to the compromise, so much had passed on that subject that he would say nothing about it. He did not mean, by what he had said, to oppose the permanency of the Senate. On the contrary, he had no repugnance to an increase of it, nor to allowing it a negative, though the Senate was not, by its present constitution, entitled to it. But, in all events, he would contend that the purse-strings should be in the hands of the representatives of the people.

Mr. WILSON was himself directly opposed to the equality of votes granted to the Senate by its present constitution. At the same time, he wished not to multiply the vices of the system. He did not mean to enlarge on a subject which had been so much canvassed, but would remark, as an insuperable objection against the proposed restriction of money bills to the House of Representatives, that it would be a source of perpetual contentions, where there was no mediator to decide them. The President here could not, like the executive magistrate in England, interpose by a prorogation or dissolution. This restriction had been found pregnant with altercation in every state where the constitution had established it. The House of Representatives will insert other things in money bills, and, by making them conditions of each other, destroy the deliberate liberty of the Senate. He stated the case of a preamble to a money bill sent up by the House of Commons, in the reign of Queen Anne, to the House of Lords, in

which the conduct of the misplaced ministry, who were to be impeached before the lords, was condemned,—the commons thus extorting a premature judgment without any hearing of the parties to be tried, and the House of Lords being thus reduced to the poor and disgraceful expedient of opposing, to the authority of a law, a protest on their journals against its being drawn into precedent. If there was any thing like Poyning's law in the present case, it was in the attempt to vest the exclusive right of originating in the House of Representatives, and so far he was against it. He should be equally so if the right were to be exclusively vested in the Senate. With regard to the purse-strings, it was to be observed that the purse was to have two strings, one of which was in the hands of the House of Representatives, the other in those of the Senate. Both Houses must concur in untying, and of what importance could it be which untied first, which last? He could not conceive it to be any objection to the Senate's preparing the bills, that they would have leisure for that purpose, and would be in the habits of business. War, commerce, and revenue, were the great objects of the general government. All of them are connected with money. The restriction in favor of the House of Representatives would exclude the Senate from originating any important bills whatever.

Mr. GERRY considered this as a part of the plan that would be much scrutinized. Taxation and representation are strongly associated in the minds of the people; and they will not agree that any but their immediate representatives shall meddle with their purses. In short, the acceptance of the plan will inevitably fail, if the Senate be not restrained from originating money bills.

Mr. GOUVERNEUR MORRIS. All the arguments suppose the right to originate and to tax to be exclusively vested in the Senate. The effects commented on may be produced by a negative only in the Senate. They can tire out the other House, and extort their concurrence in favorite measures, as well by withholding their negative as by adhering to a bill introduced by themselves.

Mr. MADISON thought, if the substitute offered by Mr. Randolph for the original section is to be adopted, it would be proper to allow the Senate at least so to amend as to *diminish* the sums to be raised. Why should they be restrained from checking the extravagance of the other House? One of the greatest evils incident to republican government was the spirit of contention and faction. The proposed substitute, which in some respects lessened the objections against the section, had a contrary effect with respect to this particular. It laid a foundation for new difficulties and disputes between the two Houses The word *revenue* was ambiguous. In many acts, particularly in the regulation of trade, the object would be twofold. The raising of revenue would be one of them. How could it be determined which was the primary or predominant one; or whether it was necessary that revenue should be the sole object, in exclusion even of other incidental effects? When the contest was first opened with Great Britain, their power to regulate trade was admitted,—their power to raise revenue rejected. An accurate investigation of the subject afterwards proved that no line could be drawn between the two cases. The words *amend* or *alter* form an equal source of doubt and altercation. When an obnoxious paragraph shall be sent down from the Senate to the House of Representatives, it will be called an origination under the name of an amendment. The Senate may actually couch extraneous matter under that name. In

these cases, the question will turn on the *degree* of connection between the matter and object of the bill, and the alteration or amendment offered to it. Can there be a more fruitful source of dispute, or a kind of dispute more difficult to be settled? His apprehensions on this point were not conjectural. Disputes had actually flowed from this source in Virginia, where the Senate can originate no bill. The words, "so as to *increase* or *diminish* the sum to be raised," were liable to the same objections. In levying indirect taxes, which it seemed to be understood were to form the principal revenue of the new government, the sum to be raised would be increased or diminished by a variety of collateral circumstances influencing the consumption in general,—the consumption of foreign or of domestic articles,—of this or that particular species of articles,—and even by the mode of collection, which may be closely connected with the productiveness of a tax. The friends of the section had argued its necessity from the permanency of the Senate. He could not see how this argument applied. The Senate was not more permanent now than in the form it bore in the original propositions of Mr. Randolph, and at the time when no objection whatever was hinted against its originating money bills. Or if, in consequence of a loss of the present question, a proportional vote in the Senate should be reinstated, as has been urged as the indemnification, the permanency of the Senate will remain the same. If the right to originate be vested exclusively in the House of Representatives, either the Senate must yield, against its judgment, to that House,—in which case the utility of the check will be lost,—or the Senate will be inflexible, and the House of Representatives must adapt its money bill to the views of the Senate; in which case the exclusive right will be of no avail. As to the compromise of which so much had been said, he would make a single observation. There were five states which had opposed the equality of votes in the Senate, viz., Massachusetts, Pennsylvania, Virginia, North Carolina, and South Carolina. As a compensation for the sacrifice extorted from them on this head, the exclusive origination of money bills in the other House had been tendered. Of the five states, a majority, viz., Pennsylvania, Virginia, and South Carolina, have uniformly voted against the proposed compensation, on its own merits, as rendering the plan of government still more objectionable. Massachusetts has been divided. North Carolina alone has set a value on the compensation, and voted on that principle. What obligation, then, can the small states be under to concur, against their judgments, in reinstating the section?

Mr. DICKINSON. Experience must be our only guide. Reason may mislead us. It was not reason that discovered the singular and admirable mechanism of the English constitution. It was not reason that discovered, or ever could have discovered, the odd, and, in the eyes of those who are governed by reason, the absurd mode of trial by jury. Accidents probably produced these discoveries, and experience has given a sanction to them. This is, then, our guide. And has not experience verified the utility of restraining money bills to the immediate representatives of the people? Whence the effect may have proceeded, he could not say,—whether from the respect with which this privilege inspired the other branches of government, to the House of Commons, or from the turn of thinking it gave to the people at large with regard to their rights; but the effect was visible and could not be doubted. Shall we oppose, to this long experience, the short experience of eleven years which we had ourselves on this subject? As to disputes, they could not be avoided any way. If both Houses should originate, each would have a different bill to which it would be attached, and for

which it would contend. He observed, that all the prejudices of the people would be offended by refusing this exclusive privilege to the House of Representatives, and these prejudices should never be disregarded by us when no essential purpose was to be served. When this plan goes forth, it will be attacked by the popular leaders. Aristocracy will be the watchword, the Shibboleth, among its adversaries. Eight states have inserted in their constitutions the exclusive right of originating money bills in favor of the popular branch of the legislature. Most of them, however, allowed the other branch to amend. This, he thought, would be proper for us to do.

Mr. RANDOLPH regarded this point as of such consequence, that, as he valued the peace of this country, he would press the adoption of it. We had numerous and monstrous difficulties to combat. Surely, we ought not to increase them. When the people behold in the Senate the countenance of an aristocracy, and in the President the form at least of a little monarch, will not their alarms be sufficiently raised, without taking from their immediate representatives a right which has been so long appropriated to them? The executive will have more influence over the Senate than over the House of Representatives. Allow the Senate to originate in this case, and that influence will be sure to mix itself in their deliberations and plans. The declaration of war, he conceived, ought not to be in the Senate, composed of twenty-six men only, but rather in the other House. In the other House ought to be placed the origination of the means of war. As to commercial regulations which may involve revenue, the difficulty may be avoided by restraining the definition to bills for the *mere* or *sole* purpose of raising revenue. The Senate will be more likely to be corrupt than the House of Representatives, and should, therefore, have less to do with money matters. His principal object, however, was to prevent popular objections against the plan, and to secure its adoption.

Mr. RUTLEDGE. The friends of this motion are not consistent in their reasoning. They tell us that we ought to be guided by the long experience of Great Britain, and not our own experience of eleven years; and yet they themselves propose to depart from it. The *House of Commons* not only have the exclusive right of originating, but the *Lords* are not allowed to alter or amend a money bill. Will not the people say that this restriction is but a mere tub to the whale? They cannot but see that it is of no real consequence, and will be more likely to be displeased with it, as an attempt to bubble them, than to impute it to a watchfulness over their rights. For his part, he would prefer giving the exclusive right to the Senate, if it was to be given exclusively at all. The Senate, being more conversant in business, and having more leisure, will digest the bills much better, and as they are to have no effect till examined and approved by the House of Representatives, there can be no possible danger. These clauses in the constitutions of the states had been put in through a blind adherence to the British model. If the work was to be done over now, they would be omitted. The experiment in South Carolina, where the Senate cannot originate or amend money bills, has shown that it answers no good purpose, and produces the very bad one of continually dividing and heating the two Houses. Sometimes, indeed, if the matter of the amendment of the Senate is pleasing to the other House, they wink at the encroachment; if it be displeasing, then the Constitution is appealed to. Every session is distracted by altercations on this subject. The practice, now becoming frequent, is

for the Senate not to make formal amendments, but to send down a schedule of the alterations which will procure the bill their assent.

Mr. CARROLL. The most ingenious men in Maryland are puzzled to define the case of money bills, or explain the constitution on that point, though it seemed to be worded with all possible plainness and precision. It is a source of continual difficulty and squabble between the two Houses.

Mr. M'HENRY mentioned an instance of extraordinary subterfuge, to get rid of the apparent force of the constitution.

On the question on the first part of the motion, as to the exclusive originating of money bills in the House of Representatives,—

New Hampshire, Massachusetts, Virginia, (Mr. Blair and Mr. Madison, no; Mr. Randolph, Col. Mason, and Gen. Washington,* ay;) North Carolina, ay, 4; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, no, 7.

On the question on originating by the House of Representatives, and *amending* by the Senate, as reported, article 4, sect. 5.—

New Hampshire, Massachusetts, Virginia, (in the printed Journal, Virginia, no,) North Carolina, ay, 4; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, no, 7.

On the question on the last clause of article 4, sect. 5, viz.,

"No money shall be drawn from the public treasury but in pursuance of *appropriations* that shall originate in the House of Representatives,"

it passed in the negative,—

Massachusetts, ay, 1; New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 10.206

Adjourned.

Tuesday,*August* 14.

In Convention.—Article 6, sect. 9, was taken up.

Mr. PINCKNEY argued that the making the members ineligible to offices was *degrading* to them, and the more improper, as their election into the legislature implied that they had the confidence of the people; that it was *inconvenient,* because the Senate might be supposed to contain the fittest men. He hoped to see that body become a school of public ministers, a nursery of statesmen. That it was *impolitic,* because the legislature would cease to be a magnet to the first talents and abilities. He moved to postpone the section, in order to take up the following proposition, viz.:—

"The members of each House shall be incapable of holding any office under the United States, for which they, or any others for their benefit, receive any salary, fees, or emoluments of any kind; and the acceptance of such office shall vacate their seats respectively."

Gen. MIFFLIN seconded the motion.

Col. MASON ironically proposed to strike out the whole section, as a more effectual expedient for encouraging that exotic corruption which might not otherwise thrive so well in the American soil; for completing that aristocracy which was probably in the contemplation of some among us; and for inviting into the legislative service those generous and benevolent characters who will do justice to each other's merit, by carving out offices and rewards for it. In the present state of American morals and manners, few friends, it may be thought, will be lost to the plan, by the opportunity of giving premiums to a mercenary and depraved ambition.

Mr. MERCER. It is a first principle in political science, that, whenever the rights of property are secured, an aristocracy will grow out of it. Elective governments also necessarily become aristocratic, because the rulers, being few, can and will draw emoluments for themselves from the many. The governments of America will become aristocracies. They are so already. The public measures are calculated for the benefit of the governors, not of the people. The people are dissatisfied, and complain. They change their rulers, and the public measures are changed, but it is only a change of one scheme of emolument to the rulers, for another. The people gain nothing by it, but an addition of instability and uncertainty to their other evils. Governments can only be maintained by *force* or *influence.* The executive has not *force:* deprive him of *influence,* by rendering the members of the legislature ineligible to executive offices, and he becomes a mere phantom of authority. The aristocratic part will not even let him in for a share of the plunder. The legislature must and will be composed of wealth and abilities, and the people will be governed by a junto. The executive ought to have a council being members of both Houses. Without such an influence, the war will be between the aristocracy and the people. He wished it to be between the aristocracy and the executive. Nothing else can protect the people against those speculating legislatures which are now plundering them throughout the United States.

Mr. GERRY read a resolution of the legislature of Massachusetts, passed before the act of Congress recommending the Convention, in which her deputies were instructed not to depart from the rotation established in the fifth article of the Confederation, nor to agree, in any case, to give to the members of Congress a capacity to hold offices under the government. This, he said, was repealed in consequence of the act of Congress, with which the state thought it proper to comply in an unqualified manner. The sense of the state, however, was still the same. He could not think, with Mr. Pinckney, that the disqualification was degrading. Confidence is the road to tyranny. As to ministers and ambassadors, few of them were necessary. It is the opinion of a great many, that they ought to be discontinued on our part, that none may be sent among us; and that source of influence shut up. If the Senate were to appoint ambassadors, as seemed to be intended, they will multiply embassies for their own sakes. He was not so fond of those productions as to wish to establish nurseries for

them. If they are once appointed, the House of Representatives will be obliged to provide salaries for them, whether they approve of the measures or not. If men will not serve in the legislature without a prospect of such offices, our situation is deplorable indeed. If our best citizens are actuated by such mercenary views, we had better choose a single despot at once. It will be more easy to satisfy the rapacity of one than of many. According to the idea of one gentleman, (Mr. Mercer,) our government, it seems, is to be a government of plunder. In that case, it certainly would be prudent to have but one, rather than many, to be employed in it. We cannot be too circumspect in the formation of this system. It will be examined on all sides, and with a very suspicious eye. The people, who have been so lately in arms against Great Britain for their liberties, will not easily give them up. He lamented the evils existing, at present, under our governments, but imputed them to the faults of those in office, not to the people. The misdeeds of the former will produce a critical attention to the opportunities afforded by the new system to like or greater abuses. As it now stands, it is as complete an aristocracy as ever was framed. If great powers should be given to the Senate, we shall be governed in reality by a junto, as has been apprehended. He remarked, that it would be very differently constituted from Congress. In the first place, there will be but two deputies from each state; in Congress there may be seven, and are generally five. In the second place, they are chosen for six years; those of Congress annually. In the third place, they are not subject to recall; those of Congress are. And, finally, in Congress *nine* states are necessary for all great purposes; here eight *persons* will suffice. Is it to be presumed that the people will ever agree to such a system? He moved to render the members of the House of Representatives, as well as of the Senate, ineligible, not only during, but for one year after the expiration of, their terms. If it should be thought that this will injure the legislature, by keeping out of it men of abilities, who are willing to serve in other offices, it may be required, as a qualification for other offices, that the candidate shall have served a certain time in the legislature.

Mr. GOUVERNEUR MORRIS. Exclude the officers of the army and navy, and you form a band having a different interest from, and opposed to, the civil power. You stimulate them to despise and reproach those “talking lords who dare not face the foe.” Let this spirit be roused at the end of a war, before your troops shall have laid down their arms, and, though the civil authority be “intrenched in parchment to the teeth,” they will cut their way to it. He was against rendering the members of the legislature ineligible to offices. He was for rendering them eligible again, after having vacated their seats by accepting office. Why should we not avail ourselves of their services if the people choose to give them their confidence? There can be little danger of corruption, either among the people, or the legislatures, who are to be the electors. If they say, We see their merits, we honor the men, we choose to renew our confidence in them,—have they not a right to give them a preference, and can they be properly abridged of it?

Mr. WILLIAMSON introduced his opposition to the motion, by referring to the question concerning “money bills.” That clause, he said, was dead. Its ghost, he was afraid, would, notwithstanding, haunt us. It had been a matter of conscience with him to insist on it as long as there was hope of retaining it. He had swallowed the vote of rejection with reluctance. He could not digest it. All that was said on the other side

was, that the restriction was not *convenient.* We have now got a House of Lords which is to originate money bills. To avoid another *inconvenience,* we are to have a whole legislature at liberty to cut out offices for one another. He thought a self-denying ordinance for ourselves would be more proper. Bad as the Constitution has been made by expunging the restriction on the Senate concerning money bills, he did not wish to make it worse, by expunging the present section. He had scarcely seen a single corrupt measure in the legislature of North Carolina, which could not be traced up to office-hunting.

Mr. SHERMAN. The Constitution should lay as few temptations as possible in the way of those in power. Men of abilities will increase as the country grows more populous, and as the means of education are more diffused.

Mr. PINCKNEY. No state has rendered the members of the legislature ineligible to offices. In South Carolina, the judges are eligible into the legislature. It cannot be supposed, then, that the motion will be offensive to the people. If the state constitutions should be revised, he believed, restrictions of this sort would be rather diminished than multiplied.

Mr. WILSON could not approve of the section as it stood, and could not give up his judgment to any supposed objections that might arise among the people. He considered himself as acting and responsible for the welfare of millions not immediately represented in this House. He had also asked himself the serious question, what he should say to his constituents, in case they should call upon him to tell them why he sacrificed his own judgment in a case where they authorized him to exercise it. Were he to own to them that he sacrificed it in order to flatter their prejudices, he should dread the retort, “Did you suppose the people of Pennsylvania had not good sense enough to receive a good government?” Under this impression, he should certainly follow his own judgment, which disapproved of the section. He would remark, in addition to the objections urged against it, that, as one branch of the legislature was to be appointed by the legislatures of the states, the other by the people of the states,—as both are to be paid by the states, and to be appointable to state offices,—nothing seemed to be wanting to prostrate the national legislature, but to render its members ineligible to national offices, and by that means take away its power of attracting those talents which were necessary to give weight to the government, and to render it useful to the people. He was far from thinking the ambition which aspired to offices of dignity and trust an ignoble or culpable one. He was sure it was not politic to regard it in that light, or to withhold from it the prospect of those rewards which might engage it in the career of public service. He observed that the state of Pennsylvania, which had gone as far as any state into the policy of fettering power, had not rendered the members of the legislature ineligible to offices of government.

Mr. ELLSWORTH did not think the mere postponement of the reward would be any material discouragement of merit. Ambitious minds will serve two years, or seven years, in the legislature, for the sake of qualifying themselves for other offices. This he thought a sufficient security for obtaining the services of the ablest men in the legislature; although, whilst members, they should be ineligible to public offices.

Besides, merit will be most encouraged when most impartially rewarded. If rewards are to circulate only within the legislature, merit out of it will be discouraged.

Mr. MERCER was extremely anxious on this point. What led to the appointment of this Convention? The corruption and mutability of the legislative councils of the states. If the plan does not remedy these, it will not recommend itself; and we shall not be able, in our private capacities, to support and enforce it; nor will the best part of our citizens exert themselves for the purpose. It is a great mistake to suppose that the paper we are to propose will govern the United States. It is the men whom it will bring into the government, and interest in maintaining it, that are to govern them. The paper will only mark out the mode and the form. Men are the substance, and must do the business. All government must be by force or influence. It is not the king of France, but 200,000 janizaries of power, that govern that kingdom. There will be no such force here; influence, then, must be substituted; and he would ask, whether this could be done, if the members of the legislature should be ineligible to offices of state; whether such a disqualification would not determine all the most influential men to stay at home, and prefer appointments within their respective states.

Mr. WILSON was by no means satisfied with the answer given by Mr. Ellsworth to the argument, as to the discouragement of merit. The members must either go a second time into the legislature, and disqualify themselves, or say to their constituents, “We served you before only from the mercenary view of qualifying ourselves for offices, and, having answered this purpose, we do not choose to be again elected.”

Mr. GOUVERNEUR MORRIS put the case of a war, and the citizen most capable of conducting it happening to be a member of the legislature. What might have been the consequence of such a regulation at the commencement, or even in the course, of the late contest for our liberties?

On the question for postponing, in order to take up Mr. Pinckney’s motion, it was lost.

New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, ay, 5; Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, no, 5; Georgia, divided.

Mr. GOUVERNEUR MORRIS moved to insert, after “office,” “except offices in the army or navy; but, in that case, their offices shall be vacated.”

Mr. BROOM seconds him.

Mr. RANDOLPH had been, and should continue, uniformly opposed to the striking out of the clause, as opening a door for influence and corruption. No arguments had made any impression on him but those which related to the case of war, and a coëxisting incapacity of the fittest commanders to be employed. He admitted great weight in these, and would agree to the exception proposed by Mr. Gouverneur Morris.

Mr. BUTLER and Mr. PINCKNEY urged a general postponement of article 6, sect. 9, till it should be seen what powers would be vested in the Senate, when it would be

more easy to judge of the expediency of allowing the officers of state to be chosen out of that body.

A general postponement was agreed to, *nem. con.*207

Article 6, sect. 10, was then taken up, "that members be paid by their respective states."

Mr. ELLSWORTH said that, in reflecting on this subject, he had been satisfied that too much dependence on the states would be produced by this mode of payment. He moved to strike it out, and insert, "that they should be paid out of the treasury of the United States an allowance not exceeding—dollars per day, or the present value thereof."

Mr. GOUVERNEUR MORRIS remarked, that, if the members were to be paid by the states, it would throw an unequal burden on the distant states, which would be unjust, as the legislature was to be a national assembly. He moved that the payment be out of the national treasury, leaving the quantum to the discretion of the national legislature. There could be no reason to fear that they would overpay themselves.

Mr. BUTLER contended for payment by the states, particularly in the case of the Senate, who will be so long out of their respective states that they will lose sight of their constituents, unless dependent on them for their support.

Mr. LANGDON was against payment by the states. There would be some difficulty in fixing the sum, but it would be unjust to oblige the distant states to bear the expense of their members, in travelling to and from the seat of government.

Mr. MADISON. If the House of Representatives is to be chosen *biennially,* and the Senate to be *constantly* dependent on the legislatures, which are chosen *annually,* he could not see any chance for that stability in the general government, the want of which was a principal evil in the state governments. His fear was, that the organization of the government, supposing the Senate to be really independent for six years, would not effect our purpose. It was nothing more than a combination of the peculiarities of two of the state governments, which, separately, had been found insufficient. The Senate was formed on the model of that of Maryland; the revisionary check, on that of New York. What the effect of a union of these provisions might be, could not be foreseen. The enlargement of the sphere of the government was, indeed, a circumstance which he thought would be favorable, as he had, on several occasions, undertaken to show. He was, however, for fixing, at least, two extremes, not to be exceeded by the national legislature, in the payment of themselves.

Mr. GERRY. There are difficulties on both sides. The observation of Mr. Butler has weight in it. On the other side, the state legislatures may turn out the senators, by reducing their salaries. Such things have been practised.

Col. MASON. It has not yet been noticed that the clause, as it now stands, makes the House of Representatives also dependent on the state legislatures, so that both Houses will be made the instruments of the politics of the states, whatever they may be.

Mr. BROOM could see no danger in trusting the general legislature with the payment of themselves. The state legislatures had this power, and no complaint had been made of it.

Mr. SHERMAN was not afraid that the legislature would make their own wages too high, but too low, so that men ever so fit could not serve, unless they were, at the same time, rich. He thought the best plan would be, to fix a moderate allowance, to be paid out of the national treasury, and let the states make such additions as they might judge fit. He moved that five dollars per day be the sum, any further emoluments to be added by the states.

Mr. CARROLL had been much surprised at seeing this clause in the report. The dependence of both Houses on the state legislatures is complete, especially as the members of the former are eligible to state offices. The states can now say, "If you do not comply with our wishes, we will starve you; if you do, we will reward you." The new government, in this form, was nothing more than a second edition of Congress, in two volumes instead of one, and, perhaps, with very few amendments.

Mr. DICKINSON took it for granted that all were convinced of the necessity of making the general government independent of the prejudices, passions, and improper views, of the state legislatures. The contrary of this was effected by the section, as it stands. On the other hand, there were objections against taking a permanent standard, as wheat, which had been suggested on a former occasion, as well as against leaving the matter to the pleasure of the national legislature. He proposed that an act should be passed, every twelve years, by the national legislature, settling the quantum of their wages. If the general government should be left dependent on the state legislatures, it would be happy for us if we had never met in this room.

Mr. ELLSWORTH was not unwilling himself to trust the legislature with authority to regulate their own wages, but well knew that an unlimited discretion for that purpose would produce strong, though, perhaps, not insuperable objections. He thought changes in the value of money provided for by his motion in the words "or the present value thereof."

Mr. L. MARTIN. As the Senate is to represent the states, the members of it ought to be paid by the states.

Mr. CARROLL. The Senate was to represent and manage the affairs of the whole, and not to be the advocates of state interests. They ought, then, not to be dependent on, nor paid by, the states.

On the question for paying the members of the legislature out of the national treasury,—

New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 9; Massachusetts, South Carolina, no, 2.

Mr. ELLSWORTH moved that the pay be fixed at five dollars, or the present value thereof, per day, during their attendance, and for every thirty miles in travelling to and from Congress.

Mr. STRONG preferred four dollars, leaving the states at liberty to make additions.

On the question for fixing the pay at five dollars,—

Connecticut, Virginia, ay, 2; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, no, 9.

Mr. DICKINSON proposed that the wages of the members of both Houses should be required to be the same.

Mr. BROOM seconded him.

Mr. GORHAM. This would be unreasonable. The Senate will be detained longer from home, will be obliged to remove their families, and, in time of war, perhaps, to sit constantly. Their allowance should certainly be higher. The members of the senates in the states are allowed more than those of the other house.

Mr. DICKINSON withdrew his motion.

It was moved and agreed to amend the section, by adding, “to be ascertained by law.”

The section, (article 6, sect. 10,) as amended, was then agreed to, *nem. con.*208

Adjourned.

Wednesday,*August* 15.

In Convention.—Article 6, sect. 11, was agreed to, *nem. con.*

Article 6, sect. 12, was then taken up.

Mr. STRONG moved to amend the article, so as to read,—

“Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same, and for fixing the salaries of the officers of the government, which shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as in other cases.”

Col. MASON seconds the motion. He was extremely earnest to take this power from the Senate, who, he said, could already sell the whole country by means of treaties.

Mr. GORHAM urged the amendment as of great importance. The Senate will first acquire the habit of preparing money bills, and then the practice will grow into an exclusive right of preparing them.

Mr. GOUVERNEUR MORRIS opposed it, as unnecessary and inconvenient.

Mr. WILLIAMSON. Some think this restriction on the Senate essential to liberty; others think it of no importance. Why should not the former be indulged? He was for an efficient and stable government; but many would not strengthen the Senate, if not restricted in the case of money bills. The friends of the Senate, would, therefore, lose more than they would gain, by refusing to gratify the other side. He moved to postpone the subject, till the powers of the Senate should be gone over.

Mr. RUTLEDGE seconds the motion.

Mr. MERCER should hereafter be against returning to a reconsideration of this section. He contended (alluding to Mr. Mason's observations) that the Senate ought not to have the power of treaties. This power belonged to the executive department; adding, that treaties would not be final, so as to alter the laws of the land, till ratified by legislative authority. This was the case of treaties in Great Britain, particularly the late treaty of commerce with France.

Col. MASON did not say that a treaty would repeal a law; but that the Senate, by means of treaties, might alienate territory, &c., without legislative sanction. The cessions of the British islands in the West Indies, by treaty alone, were an example. If Spain should possess herself of Georgia, therefore, the Senate might by treaty dismember the Union. He wished the motion to be decided now, that the friends of it might know how to conduct themselves.

On the question for postponing sect. 12, it passed in the affirmative.

New Hampshire, Massachusetts, Virginia, North Carolina, South Carolina, Georgia, ay, 6; Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, no, 5.

Mr. MADISON moved the following amendment of article 6, sect. 13:—

"Every bill which shall have passed the two Houses shall, before it becomes a law, be severally presented to the President of the United States, and to the judges of the Supreme Court, for the revision of each. If, upon such revision, they shall approve of it, they shall respectively signify their approbation by signing it; but if, upon such revision, it shall appear improper to either, or both, to be passed into a law, it shall be returned, with the objections against it, to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider the bill; but if, after such reconsideration, two thirds of that House, when either the President or a majority of the judges shall object, or three fourths, where both shall object, shall agree to pass it, it shall, together with the objections, be sent to the other House; by which it shall likewise be reconsidered, and, if approved by two thirds, or three fourths of the other House, as the case may be it shall become a law."

Mr. WILSON seconds the motion.

Mr. PINCKNEY opposed the interference of the judges in the legislative business: it will involve them in parties, and give a previous tincture to their opinions.

Mr. MERCER heartily approved the motion. It is an axiom that the judiciary ought to be separate from the legislative; but equally so, that it ought to be independent of that department. The true policy of the axiom is, that legislative usurpation and oppression may be obviated. He disapproved of the doctrine, that the judges, as expositors of the Constitution, should have authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontrollable.

Mr. GERRY. This motion comes to the same thing with what has been already negatived.

On the question on the motion of Mr. Madison,—

Delaware, Maryland, Virginia, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, North Carolina, South Carolina, Georgia, no, 8.209

Mr. GOUVERNEUR MORRIS regretted that something like the proposed check could not be agreed to. He dwelt on the importance of public credit, and the difficulty of supporting it without some strong barrier against the instability of legislative assemblies. He suggested the idea of requiring three fourths of each House to *repeal* laws where the President should not concur. He had no great reliance on the revisionary power, as the executive was now to be constituted, (elected by Congress.) The legislature will contrive to soften down the President. He recited the history of paper emissions, and the perseverance of the legislative assemblies in repeating them, with all the distressing effects of such measures before their eyes. Were the national legislature formed, and a war was now to break out, this ruinous expedient would be again resorted to, if not guarded against. The requiring three fourths to repeal would, though not a complete remedy, prevent the hasty passage of laws, and the frequency of those repeals which destroy faith in the public, and which are among our greatest calamities.

Mr. DICKINSON was strongly impressed with the remark of Mr. Mercer, as to the power of the judges to set aside the law. He thought no such power ought to exist. He was, at the same time, at a loss what expedient to substitute. The justiciary of Arragon, he observed, became by degrees the lawgiver.

Mr. GOUVERNEUR MORRIS suggested the expedient of an absolute negative in the executive. He could not agree that the judiciary, which was part of the executive, should be bound to say, that a direct violation of the Constitution was law. A control over the legislature might have its inconveniences; but view the danger on the other side. The most virtuous citizens will often, as members of a legislative body, concur in measures which afterwards, in their private capacity, they will be ashamed of. Encroachments of the popular branch of the government ought to be guarded against. The Ephori at Sparta became in the end absolute. The report of the council of censors in Pennsylvania points out the many invasions of the legislative department on the executive, numerous as the latter* is, within the short term of seven years, and in a state where a strong party is opposed to the constitution, and watching every occasion of turning the public resentments against it. If the executive be overturned by the popular branch, as happened in England, the tyranny of one man will ensue. In Rome,

where the aristocracy overturned the throne, the consequence was different. He enlarged on the tendency of the legislative authority to usurp on the executive, and wished the section to be postponed, in order to consider of some more effectual check than requiring two thirds only to overrule the negative of the executive.

Mr. SHERMAN. Can one man be trusted better than all the others, if they all agree? This was neither wise nor safe. He disapproved of judges meddling in politics and parties. We have gone far enough, in forming the negative as it now stands.

Mr. CARROLL. When the negative to be overruled by two thirds only was agreed to, the *quorum* was not fixed. He remarked that, as a majority was now to be the quorum, seventeen in the larger, and eight in the smaller house might carry points. The advantage that might be taken of this seemed to call for greater impediments to improper laws. He thought the controlling power, however, of the executive, could not be well decided, till it was seen how the formation of that department would be finally regulated. He wished the consideration of the matter to be postponed.

Mr. GORHAM saw no end to these difficulties and postponements. Some could not agree to the form of government, before the powers were defined. Others could not agree to the powers till it was seen how the government was to be formed. He thought a majority as large a quorum as was necessary. It was the quorum almost every where fixed in the United States.

Mr. WILSON, after viewing the subject with all the coolness and attention possible, was most apprehensive of a dissolution of the government from the legislature swallowing up all the other powers. He remarked, that the prejudices against the executive resulted from a misapplication of the adage, that the Parliament was the palladium of liberty. Where the executive was really formidable, *king* and *tyrant* were naturally associated in the minds of people; not *legislature* and *tyranny*. But where the executive was not formidable, the two last were most properly associated. After the destruction of the king in Great Britain, a more pure and unmixed tyranny sprang up in the Parliament, than had been exercised by the monarch. He insisted that we had not guarded against the danger on this side, by a sufficient self-defensive power, either to the executive or judiciary department.

Mr. RUTLEDGE was strenuous against postponing, and complained much of the tediousness of the proceedings.

Mr. ELLSWORTH held the same language. We grow more and more skeptical as we proceed. If we do not decide soon, we shall be unable to come to any decision.

The question for postponement passed in the negative,—Delaware and Maryland only being in the affirmative.

Mr. WILLIAMSON moved to change “two thirds of each House” into “three fourths,” as requisite to overrule the dissent of the President. He saw no danger in this, and preferred giving the power to the President alone, to admitting the judges into the business of legislation.

Mr. WILSON seconds the motion; referring to and repeating the ideas of Mr. Carroll.

On this motion for three fourths, instead of two thirds, it passed in the affirmative.

Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, ay, 6; New Hampshire, Massachusetts, New Jersey, Georgia, no, 4; Pennsylvania, divided.

Mr. MADISON, observing that if the negative of the President was confined to *bills,* it would be evaded by acts under the form and name of resolutions, votes, &c., proposed that "or resolve" should be added after "*bill,*" in the beginning of section 13, with an exception as to votes of adjournment, &c. After a short and rather confused conversation on the subject, the question was put and rejected, the votes being as follows:—

Massachusetts, Delaware, North Carolina, ay, 3; New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, no, 8.

"Ten days, (Sundays excepted,)" instead of "*seven,*" were allowed to the President for returning bills with his objections,—New Hampshire and Massachusetts only voting against it.

The thirteenth section of article 6, as amended, was then agreed to.210

Adjourned.

Thursday,*August* 16.

In Convention.—Mr. RANDOLPH, having thrown into a new form the motion putting votes, resolutions, &c., on a footing with bills. renewed it as follows:—

"Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment, and in the cases hereinafter mentioned,) shall be presented to the President for his revision; and, before the same shall have force, shall be approved by him, or, being disapproved by him, shall be repassed by the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill."

Mr. SHERMAN thought it unnecessary, except as to votes taking money out of the treasury, which might be provided for in another place.

On the question as moved by Mr. Randolph, it was agreed to.

New Hampshire, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; New Jersey, no, 1; Massachusetts, not present.

The amendment was made a fourteenth section of article 6.

Article 7, sect. 1, was then taken up.

Mr. L. MARTIN asked what was meant by the committee of detail, in the expression "*duties,*" and "*imposts.*" If the meaning were the same, the former was unnecessary; if different, the matter ought to be made clear.

Mr. WILSON.*Duties* are applicable to many objects to which the word *imposts* does not relate. The latter are appropriated to commerce; the former extends to a variety of objects, as stamp duties, &c.

Mr. CARROLL reminded the Convention of the great difference of interests among the states; and doubts the propriety, in that point of view, of letting a majority be a quorum.

Mr. MASON urged the necessity of connecting with the powers levying taxes, duties, &c., the prohibition in article 6, sect. 4, "that no tax should be laid on exports." He was unwilling to trust to its being done in a future article. He hoped the Northern States did not mean to deny the Southern this security. It would hereafter be as desirable to the former, when the latter should become the most populous. He professed his jealousy for the productions of the Southern, or, as he called them, the staple States. He moved to insert the following amendment:—

"Provided, that no tax, duty, or imposition, shall be laid by the legislature of the United States on articles exported from any state."

Mr. SHERMAN had no objection to the proviso here, other than that it would derange the parts of the report, as made by the committee, to take them in such an order.

Mr. RUTLEDGE. It being of no consequence in what order points are decided, he should vote for the clause as it stood, but on condition that the subsequent part relating to negroes should also be agreed to.

Mr. GOUVERNEUR MORRIS considered such a proviso as inadmissible any where. It was so radically objectionable, that it might cost the whole system the support of some members. He contended that it would not in some cases be equitable to tax imports without taxing exports; and that taxes on exports would be often the most easy and proper of the two.

Mr. MADISON. First, the power of laying taxes on exports is proper in itself; and, as the states cannot with propriety exercise it separately, it ought to be vested in them collectively. Secondly, it might with particular advantage be exercised with regard to articles in which America was not rivalled in foreign markets, as tobacco, &c.; the contract between the French farmers-general and Mr. Morris, stipulating that, if taxes should be laid in America on the export of tobacco, they should be paid by the farmers, showed that it was understood by them, that the price would be thereby raised in America, and consequently the taxes be paid by the European consumer. Thirdly, it would be unjust to the states whose produce was exported by their neighbors, to leave it subject to be taxed by the latter. This was a grievance which had already filled New Hampshire, Connecticut, New Jersey, Delaware, and North Carolina, with loud complaints, as it related to imports, and they would be equally

authorized by taxes by the states on exports. Fourthly, the Southern States, being most in danger and most needing naval protection, could the less complain if the burden should be somewhat heaviest on them. And, finally, we are not providing for the present moment only; and time will equalize the situation of the states in this matter. He was, for these reasons, against the motion.

Mr. WILLIAMSON considered the clause proposed, against taxes on exports, as reasonable and necessary.

Mr. ELLSWORTH was against taxing exports, but thought the prohibition stood in the most proper place, and was against deranging the order reported by the committee.

Mr. WILSON was decidedly against prohibiting general taxes on exports. He dwelt on the injustice and impolicy of leaving New Jersey, Connecticut, &c., any longer subject to the exactions of their commercial neighbors.

Mr. GERRY thought the legislature could not be trusted with such a power. It might ruin the country. It might be exercised partially, raising one and depressing another part of it.

Mr. GOUVERNEUR MORRIS. However the legislative power may be formed, it will, if disposed, be able to ruin the country. He considered the taxing of exports to be in many cases highly politic. Virginia has found her account in taxing tobacco. All countries having peculiar articles tax the exportation of them,—as France her wines and brandies. A tax here on lumber would fall on the West Indies, and punish their restrictions on our trade. The same is true of live stock, and, in some degree, of flour. In case of a dearth in the West Indies, we may extort what we please. Taxes on exports are a necessary source of revenue. For a long time the people of America will not have money to pay direct taxes. Seize and sell their effects, and you push them into revolts.

Mr. MERCER was strenuous against giving Congress power to tax exports. Such taxes are impolitic, as encouraging the raising of articles not meant for exportation. The states had now a right, where their situation permitted, to tax both the imports and the exports of their uncommercial neighbors. It was enough for them to sacrifice one half of it. It had been said, the Southern States had most need of naval protection. The reverse was the case. Were it not for promoting the carrying trade of the Northern States, the Southern States could let the trade go into foreign bottoms, where it would not need our protection. Virginia, by taxing her tobacco, had given an advantage to that of Maryland.

Mr. SHERMAN. To examine and compare the states, in relation to imports and exports, will be opening a boundless field. He thought the matter had been adjusted, and that imports were to be subject, and exports not, to be taxed. He thought it wrong to tax exports, except it might be such articles as ought not to be exported. The complexity of the business in America would render an equal tax on exports impracticable. The oppression of the uncommercial states was guarded against by the power to regulate trade between the states. As to compelling foreigners, that might be

done by regulating trade in general. The government would not be trusted with such a power. Objections are most likely to be excited by considerations relating to taxes and money. A power to tax exports would shipwreck the whole.

Mr. CARROLL was surprised that any objection should be made to an exception of exports from the power of taxation.

It was finally agreed, that the question concerning exports should lie over for the place in which the exception stood in the report.—Maryland alone voting against it.211

Article 7, sect. 1, clause first, was then agreed to,—Mr. Gerry alone answering, no.

The clause for regulating commerce with foreign nations, &c., was agreed to, *nem. con.*

The several clauses—for coining money—for regulating foreign coin—for fixing the standard of weights and measures—were agreed to, *nem. con.*

On the clause, "To establish post-offices,"—

Mr. GERRY moved to add, "and post-roads."

Mr. MERCER seconded; and, on the question,—

Massachusetts, Delaware, Maryland, Virginia, South Carolina, Georgia, ay, 6; New Hampshire, Connecticut, New Jersey, Pennsylvania, North Carolina, no, 5.

Mr. GOUVERNEUR MORRIS moved to strike out "and emit bills on the credit of the United States." If the United States had credit, such bills would be unnecessary; if they had not, unjust and useless.

Mr. BUTLER seconds the motion.

Mr. MADISON. Will it not be sufficient to prohibit the making them a *tender?* This will remove the temptation to emit them with unjust views; and promissory notes, in that shape, may in some emergencies be best.

Mr. GOUVERNEUR MORRIS. Striking out the words will leave room still for notes of a *responsible* minister, which will do all the good without the mischief. The moneyed interest will oppose the plan of government, if paper emissions be not prohibited.

Mr. GORHAM was for striking out without inserting any prohibition. If the words stand, they may suggest and lead to the measure.

Mr. MASON had doubts on the subject. Congress, he thought, would not have the power, unless it were expressed. Though he had a mortal hatred to paper money, yet, as he could not foresee all emergencies, he was unwilling to tie the hands of the

legislature. He observed that the late war could not have been carried on, had such a prohibition existed.

Mr. GORHAM. The power, as far as it will be necessary or safe is involved in that of borrowing.

Mr. MERCER was a friend to paper money, though, in the present state and temper of America, he should neither propose nor approve of such a measure. He was consequently opposed to a prohibition of it altogether. It will stamp suspicion on the government, to deny it a discretion on this point. It was impolitic, also, to excite the opposition of all those who were friends to paper money. The people of property would be sure to be on the side of the plan, and it was impolitic to purchase their further attachment with the loss of the opposite class of citizens.

Mr. ELLSWORTH thought this a favorable moment to shut and bar the door against paper money. The mischiefs of the various experiments which had been made were now fresh in the public mind, and had excited the disgust of all the respectable part of America. By withholding the power from the new government, more friends of influence would be gained to it than by almost any thing else. Paper money can in no case be necessary. Give the government credit, and other resources will offer. The power may do harm, never good.

Mr. RANDOLPH, notwithstanding his antipathy to paper money, could not agree to strike out the words, as he could not foresee all the occasions that might arise.

Mr. WILSON. It will have a most salutary influence on the credit of the United States, to remove the possibility of paper money. This expedient can never succeed whilst its mischiefs are remembered; and, as long as it can be resorted to, it will be a bar to other resources.

Mr. BUTLER remarked, that paper was a legal tender in no country in Europe. He was urgent for disarming the government of such a power.

Mr. MASON was still averse to tying the hands of the legislature *altogether*. If there was no example in Europe, as just remarked, it might be observed, on the other side, that there was none in which the government was restrained on this head.

Mr. READ thought the words, if not struck out, would be as alarming as the mark of the beast in Revelation.

Mr. LANGDON had rather reject the whole plan, than retain the three words, “and emit bills.”

On the motion for striking out,—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia,* North Carolina, South Carolina, Georgia, ay, 9; New Jersey, Maryland, no, 2.

The clause for borrowing money was agreed to, *nem. con.*212

Adjourned.

Friday,*August* 17.

In Convention.—Article 7, sect. 1, was resumed.

On the clause, "to appoint a treasurer by ballot,"—

Mr. GORHAM moved to insert "joint" before "ballot," as more convenient, as well as reasonable, than to require the separate concurrence of the Senate.

Mr. PINCKNEY seconds the motion.

Mr. SHERMAN opposed it, as favoring the larger states.

Mr. READ moved to strike out the clause, leaving the appointment of a treasurer, as of other officers, to the executive. The legislature was an improper body for appointments. Those of the state legislatures were a proof of it. The executive, being responsible, would make a good choice.

Mr. MERCER seconds the motion of Mr. Read.

On the motion for inserting the word "joint" before "ballot,"—

New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 7; Connecticut, New Jersey, Maryland, no, 3.

Col. MASON, in opposition to Mr. Read's motion, desired it might be considered to whom the money would belong; if to the people, the legislature, representing the people, ought to appoint the keepers of it.

On striking out the clause, as amended, by inserting "joint,"—

Pennsylvania, Delaware, Maryland, South Carolina, ay, 4; New Hampshire, Massachusetts, Connecticut, Virginia, North Carolina, Georgia, no, 6.213

The clause, "to constitute inferior tribunals," was agreed to, *nem. con.;* as also the clause, "to make rules as to captures on land and water."

The clause, "to declare the law and punishment of piracies and felonies," &c. &c., being considered,—

Mr. MADISON moved to strike out "and punishment," &c., after the words "to declare the law."

Mr. MASON doubts the safety of it, considering the strict rule of construction in criminal cases. He doubted also the propriety of taking the power, in all these cases, wholly from the states.

Mr. GOUVERNEUR MORRIS thought it would be necessary to extend the authority farther, so as to provide for the punishment of counterfeiting in general. Bills of exchange, for example, might be forged in one state, and carried into another.

It was suggested, by some other member, that *foreign* paper might be counterfeited by citizens, and that it might be politic to provide by national authority for the punishment of it.

Mr. RANDOLPH did not conceive that expunging "the punishment" would be a constructive exclusion of the power. He doubted only the efficacy of the word "declare."

Mr. WILSON was in favor of the motion. Strictness was not necessary in giving authority to enact penal laws, though necessary in enacting and expounding them.

On the question for striking out "and punishment," as moved by Mr. Madison,—

Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 7; New Hampshire, Connecticut, Maryland, no, 3.

Mr. GOUVERNEUR MORRIS moved to strike out "declare the law," and insert "punish" before "piracies;" and on the question,—

New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, ay, 7; Connecticut, Virginia, North Carolina, no, 3.

Mr. MADISON and Mr. RANDOLPH moved to insert "define and" before "punish."

Mr. WILSON thought "felonies" sufficiently defined by common law.

Mr. DICKINSON concurred with Mr. Wilson.

Mr. MERCER was in favor of the amendment.

Mr. MADISON. Felony at common law is vague. It is also defective. One defect is supplied by statute of Anne, as to running away with vessels, which at common law was a breach of trust only. Besides, no foreign law should be a standard, further than it is expressly adopted. If the laws of the states were to prevail on this subject, the citizens of different states would be subject to different punishments for the same offence at sea. There would be neither uniformity nor stability in the law. The proper remedy for all these difficulties was, to vest the power, proposed by the term "define," in the national legislature.

Mr. GOUVERNEUR MORRIS would prefer "*designate*" to "*define,*" the latter being, as he conceived, limited to the preëxisting meaning.

It was said by others to be applicable to the creating of offences also, and therefore suited the case both of felonies and piracies.

The motion of Mr. Madison and Mr. Randolph was agreed to.

Mr. ELLSWORTH enlarged the motion, so as to read,—

"To define and punish piracies and felonies committed on the high seas, counterfeiting the securities and current coin of the United States, and offences against the laws of nations,"—

which was agreed to, *nem. con.*

The clause, "to subdue a rebellion in any state, on the application of its legislature," was next considered.

Mr. PINCKNEY moved to strike out "on the application of its legislature."

Mr. GOUVERNEUR MORRIS seconds.

Mr. L. MARTIN opposed it, as giving a dangerous and unnecessary power. The consent of the state ought to precede the introduction of any extraneous force whatever.

Mr. MERCER supported the opposition of Mr. Martin.

Mr. ELLSWORTH proposed to add, after "legislature," "or executive."

Mr. GOUVERNEUR MORRIS. The executive may possibly be at the head of the rebellion. The general government should enforce obedience in all cases where it may be necessary.

Mr. ELLSWORTH. In many cases, the general government ought not to be able to interpose, unless called upon. He was willing to vary his motion, so as to read, "or without it, when the legislature cannot meet."

Mr. GERRY was against letting loose the myrmidons of the United States on a state, without its own consent. The states will be the best judges in such cases. More blood would have been spilt in Massachusetts, in the late insurrection, if the general authority had intermeddled.

Mr. LANGDON was for striking out, as moved by Mr. PINCKNEY. The apprehension of the national force will have a salutary effect in preventing insurrections.

Mr. RANDOLPH. If the national legislature is to judge whether the state legislature can or cannot meet, that amendment would make the clause as objectionable as the motion of Mr. Pinckney.

Mr. GOUVERNEUR MORRIS. We are acting a very strange part. We first form a strong man to protect us, and at the same time wish to tie his hands behind him. The

legislature may surely be trusted with such a power, to preserve the public tranquillity.

On the motion to add, "or without it, [application,] when the legislature cannot meet," it was agreed to.

New Hampshire, Connecticut, Virginia, South Carolina, Georgia, ay, 5; Massachusetts, Delaware, Maryland, no, 3; Pennsylvania, North Carolina, divided.

Mr. MADISON and Mr. DICKINSON moved to insert, as explanatory, after "state," "against the government thereof." There might be a rebellion against the United States. The motion was agreed to, *nem. con.*

On the clause, as amended,—

New Hampshire, Connecticut, Virginia, Georgia, ay, 4; Delaware, Maryland, North Carolina, South Carolina, no, 4; Massachusetts, (in the printed Journal, Massachusetts, no,) Pennsylvania, absent.

So it was lost.214

On the clause, "to make war,"—

Mr. PINCKNEY opposed the vesting this power in the legislature. Its proceedings were too slow. It would meet but once a year. The House of Representatives would be too numerous for such deliberations. The Senate would be the best depository, being more acquainted with foreign affairs, and most capable of proper resolutions. If the states are equally represented in the Senate, so as to give no advantage to the large states, the power will, notwithstanding, be safe, as the small have their all at stake, in such cases, as well as the large states. It would be singular for one authority to make war, and another peace.

Mr. BUTLER. The objections against the legislature lie, in a great degree, against the Senate. He was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the nation will support it.

Mr. MADISON and Mr. GERRY moved to insert "*declare,*" striking out "*make*" war, leaving to the executive the power to repel sudden attacks.

Mr. SHERMAN thought it stood very well. The executive should be able to repel, and not to commence, war. "Make" is better than "declare," the latter narrowing the power too much.

Mr. GERRY never expected to hear, in a republic, a motion to empower the executive alone to declare war.

Mr. ELLSWORTH. There is a material difference between the cases of making *war* and making *peace.* It should be more easy to get out of war than into it. War, also, is a simple and overt declaration; peace, attended with intricate and secret negotiations.

Mr. MASON was against giving the power of war to the executive, because not safely to be trusted with it; or to the Senate, because not so constructed as to be entitled to it. He was for clogging, rather than facilitating, war; but for facilitating peace. He preferred "*declare*" to "*make.*"

On the motion to insert "*declare,*" in place of "*make,*" it was agreed to.

Connecticut,* Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 8; New Hampshire, no, 1; Massachusetts, absent.

Mr. PINCKNEY'S motion, to strike out the whole clause, was disagreed to, without call of states.

Mr. BUTLER moved to give the legislature the power of peace, as they were to have that of war.

Mr. GERRY seconds him. Eight senators may possibly exercise the power, if vested in that body, and fourteen if all should be present, and may, consequently, give up part of the United States The Senate are more liable to be corrupted by an enemy than the whole legislature.

On the motion for adding "and peace," after "war," it was unanimously negatived.215

Adjourned.

Saturday,*August* 18.

In Convention.—Mr. MADISON submitted, in order to be referred to the committee of detail, the following powers, as proper to be added to those of the general legislature:—

"To dispose of the unappropriated lands of the United States.

"To institute temporary governments for new states arising therein.

"To regulate affairs with the Indians, as well within as without the limits of the United States.

"To exercise, exclusively, legislative authority at the seat of the general government, and over a district around the same not exceeding—square miles, the consent of the legislature of the state or states, comprising the same, being first obtained.

"To grant charters of corporation, in cases where the public good may require them, and the authority of a single state may be incompetent.

"To secure to literary authors their copyrights for a limited time.

"To establish a university.

"To encourage, by premiums and provisions, the advancement of useful knowledge and discoveries.

"To authorize the executive to procure, and hold, for the use of the United States, landed property, for the erection of forts, magazines, and other necessary buildings."

These propositions were referred to the committee of detail which had prepared the report, and, at the same time, the following, which were moved by Mr. PINCKNEY—in both cases unanimously:—

"To fix, and permanently establish, the seat of government of the United States, in which they shall possess the exclusive right of soil and jurisdiction.

"To establish seminaries for the promotion of literature, and the arts and sciences.

"To grant charters of incorporation.

"To grant patents for useful inventions.

"To secure to authors exclusive rights for a certain time.

"To establish public institutions, rewards, and immunities, for the promotion of agriculture, commerce, trades, and manufactures.

"That funds, which shall be appropriated for the payment of public creditors, shall not, during the time of such appropriation, be diverted or applied to any other purpose, and that the committee prepare a clause or clauses for restraining the legislature of the United States from establishing a perpetual revenue.

"To secure the payment of the public debt.

"To secure all creditors, under the new Constitution, from a violation of the public faith, when pledged by the authority of the legislature.

"To grant letters of marque and reprisal.

"To regulate stages on the post-roads."

Mr. MASON introduced the subject of regulating the militia. He thought such a power necessary to be given to the general government. He hoped there would be no standing army in time of peace, unless it might be for a few garrisons. The militia ought, therefore, to be the more effectually prepared for the public defence. Thirteen states will never concur in any one system, if the disciplining of the militia be left in their hands. If they will not give up the power over the whole, they probably will over a part, as a select militia. He moved, as an addition to the propositions just referred to the committee of detail, and to be referred in like manner, "a power to regulate the militia."

Mr. GERRY remarked, that some provision ought to be made in favor of public securities, and something inserted concerning letters of marque, which he thought not included in the power of war. He proposed that these subjects should also go to a committee.

Mr. RUTLEDGE moved to refer a clause, "that funds appropriated to public creditors should not be diverted to other purposes."

Mr. MASON was much attached to the principle, but was afraid such a fetter might be dangerous in time of war. He suggested the necessity of preventing the danger of perpetual revenue, which must, of necessity, subvert the liberty of any country. If it be objected to, on the principle of Mr. Rutledge's motion, that public credit may require perpetual provisions, that case might be excepted, it being declared that, in other cases, no taxes should be laid for a longer term than—years. He considered the caution observed in Great Britain, on this point, as the palladium of public liberty.

Mr. RUTLEDGE'S motion was referred. He then moved that a grand committee be appointed, to consider the necessity and expediency of the United States assuming all the state debts. A regular settlement between the Union and the several states would never take place. The assumption would be just, as the state debts were contracted in the common defence; it was necessary, as the taxes on imports, the only sure source of revenue, were to be given up to the Union; it was politic, as, by disburdening the people of the state debts, it would conciliate them to the plan.

Mr. KING and Mr. PINCKNEY seconded the motion.

Col. MASON interposed a motion, that the committee prepare a clause for restraining perpetual revenue, which was agreed to, *nem. con.*

Mr. SHERMAN thought it would be better to authorize the legislature to assume the state debts, than to say positively it should be done. He considered the measure as just, and that it would have a good effect to say something about the matter.

Mr. ELLSWORTH differed from Mr. Sherman. As far as the state debts ought in equity to be assumed, he conceived that they might and would be so.

Mr. PINCKNEY observed, that a great part of the state debts were of such a nature that, although in point of policy and true equity they ought to be, yet would they not be, viewed in the light of federal expenditures.

Mr. KING thought the matter of more consequence than Mr. Ellsworth seemed to do; and that it was well worthy of commitment. Besides the considerations of justice and policy, which had been mentioned, it might be remarked, that the state creditors, an active and formidable party, would otherwise be opposed to a plan which transferred to the Union the best resources of the states, without transferring the state debts at the same time. The state creditors had generally been the strongest foes to the impost plan. The state debts probably were of greater amount than the federal. He would not say that it was practicable to consolidate the debts, but he thought it would be prudent to have the subject considered by a committee.

On Mr. Rutledge's motion, that a committee be appointed to consider of the assumption, &c., it was agreed to.

Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, Georgia, ay, 6; New Hampshire, New Jersey, Delaware, Maryland, no, 4; Pennsylvania, divided.

Mr. Gerry's motion to provide for public securities, for stages on post-roads, and for letters of marque and reprisal, was committed, *nem. con.*

Mr. KING suggested, that all unlocated lands of particular states ought to be given up, if state debts were to be assumed.

Mr. WILLIAMSON concurred in the idea.216

A grand committee was appointed, consisting of Mr. Langdon, Mr. King, Mr. Sherman, Mr. Livingston, Mr. Clymer, Mr. Dickinson, Mr. M'Henry, Mr. Mason, Mr. Williamson, Mr. C. C. Pinckney, and Mr. Baldwin.

Mr. RUTLEDGE remarked on the length of the session, the probable impatience of the public, and the extreme anxiety of many members of the Convention to bring the business to an end; concluding with a motion, that the Convention meet henceforward precisely at ten o'clock, A. M.; and that, precisely at four o'clock, P. M., the president adjourn the House without motion for the purpose; and that no motion to adjourn sooner be allowed.

On this question,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Pennsylvania, Maryland, no, 2.

Mr. ELLSWORTH observed, that a council had not yet been provided for the President. He conceived there ought to be one. His proposition was, that it should be composed of the president of the Senate, the chief justice, and the ministers as they might be established for the departments of foreign and domestic affairs, war, finance, and marine; who should advise but not conclude the President.

Mr. PINCKNEY wished the proposition to lie over, as notice had been given for a like purpose by Mr. Gouverneur Morris, who was not then on the floor. His own idea was, that the President should be authorized to call for advice, or not, as he might choose. Give him an able council, and it will thwart him; a weak one, and he will shelter himself under their sanction.

Mr. GERRY was against letting the heads of the departments, particularly of finance, have any thing to do in business connected with legislation. He mentioned the chief justice, also, as particularly exceptionable. These men will also be so taken up with other matters, as to neglect their own proper duties.

Mr. DICKINSON urged, that the great appointments should be made by the legislature, in which case they might properly be consulted by the executive, but not if made by the executive himself.217

This subject, by general consent, lay over, and the House proceeded to the clause, "to raise armies."

Mr. GORHAM moved to add, "and support," after "raise." Agreed to, *nem. con.;* and then the clause was agreed to, *nem. con.,* as amended.

Mr. GERRY took notice that there was no check here against standing armies in time of peace. The existing Congress is so constructed, that it cannot of itself maintain an army. This would not be the case under the new system. The people were jealous on this head, and great opposition to the plan would spring from such an omission. He suspected that preparations of force were now making against it. [He seemed to allude to the activity of the governor of New York, at this crisis, in disciplining the militia of that state.] He thought an army dangerous in time of peace, and could never consent to a power to keep up an indefinite number. He proposed that there should not be kept up in time of peace more than—thousand troops. His idea was, that the blank should be filled with two or three thousand.

Instead of "to build and equip fleets," "to provide and maintain a navy," was agreed to, *nem. con.,* as a more convenient definition of the power.

A clause, "to make rules for the government and regulation of the land and naval forces," was added from the existing Articles of Confederation.

Mr. L. MARTIN and Mr. GERRY now regularly moved,—

"Provided, that, in time of peace, the army shall not consist of more than—thousand men."

Gen. PINCKNEY asked, whether no troops were ever to be raised until an attack should be made on us.

Mr. GERRY. If there be no restriction, a few states may establish a military government.

Mr. WILLIAMSON reminded him of Mr. Mason's motion for limiting the appropriation of revenue as the best guard in this case.

Mr. LANGDON saw no room for Mr. Gerry's distrust of the representatives of the people.

Mr. DAYTON. Preparations for war are generally made in time of peace; and a standing force of some sort may, for aught we know, become unavoidable. He should object to no restrictions consistent with these ideas.

The motion of Mr. Martin and Mr. Gerry was disagreed to, *nem. con.*218

Mr. MASON moved, as an additional power,—

"to make laws for the regulation and discipline of the militia of the several states, reserving to the states the appointment of the officers."

He considered uniformity as necessary in the regulation of the militia, throughout the Union.

Gen. PINCKNEY mentioned a case, during the war, in which a dissimilarity in the militia of different states had produced the most serious mischiefs. Uniformity was essential. The states would never keep up a proper discipline of the militia.

Mr. ELLSWORTH was for going as far, in submitting the militia to the general government, as might be necessary: but thought the motion of Mr. Mason went too far. He moved,—

"that the militia should have the same arms and exercise, and be under rules established by the general government when in actual service of the United States; and when states neglect to provide regulations for militia, it should be regulated and established by the legislature of the United States."

The whole authority over the militia ought by no means to be taken away from the states, whose consequence would pine away to nothing after such a sacrifice of power. He thought the general authority could not sufficiently pervade the Union for such a purpose, nor could it accommodate itself to the local genius of the people. It must be vain to ask the states to give the militia out of their hands.

Mr. SHERMAN seconds the motion.

Mr. DICKINSON. We are come now to a most important matter—that of the sword. His opinion was, that the states never would, nor ought to, give up all authority over the militia. He proposed to restrain the general power to one fourth part at a time, which, by rotation, would discipline the whole militia.

Mr. BUTLER urged the necessity of submitting the whole militia to the general authority, which had the care of the general defence.

Mr. MASON had suggested the idea of a select militia. He was led to think that would be, in fact, as much as the general government could advantageously be charged with. He was afraid of creating insuperable objections to the plan. He withdrew his original motion, and moved a power—

"to make laws for regulating and disciplining the militia, not exceeding one tenth part in any one year, and reserving the appointment of officers to the states."

Gen. PINCKNEY renewed Mr. Mason's original motion. For a part to be under the general and a part under the state governments, would be an incurable evil. He saw no room for such distrust of the general government.

Mr. LANGDON seconds Gen. Pinckney's renewal. He saw no more reason to be afraid of the general government than of the state governments. He was more apprehensive of the confusion of the different authorities on this subject, than of either.

Mr. MADISON thought the regulation of the militia naturally appertaining to the authority charged with the public defence. It did not seem, in its nature, to be divisible between two distinct authorities. If the states would trust the general government with a power over the public treasure, they would, from the same consideration of necessity, grant it the direction of the public force. Those who had a full view of the public situation would, from a sense of the danger, guard against it. The states would not be separately impressed with the general situation, nor have the due confidence in the concurrent exertions of each other.

Mr. ELLSWORTH considered the idea of a select militia as impracticable; and if it were not, it would be followed by a ruinous declension of the great body of the militia. The states would never submit to the same militia laws. Three or four shillings, as a penalty, will enforce obedience better in New England, than forty lashes in some other places.

Mr. PINCKNEY thought the power such a one as could not be abused, and that the states would see the necessity of surrendering it. He had, however, but a scanty faith in militia. There must be also a real military force. This alone can effectually answer the purpose. The United States had been making an experiment without it, and we see the consequence in their rapid approaches toward anarchy.*

Mr. SHERMAN took notice that the states might want their militia for defence against invasions and insurrections, and for enforcing obedience to their laws. They will not give up this point. In giving up that of taxation, they retain a concurrent power of raising money for their own use.

Mr. GERRY thought this the last point remaining to be surrendered. If it be agreed to by the Convention, the plan will have as black a mark as was set on Cain. He had no such confidence in the general government as some gentlemen possessed, and believed it would be found that the states have not.

Col. MASON thought there was great weight in the remarks of Mr. Sherman, and moved an exception to his motion, "of such part of the militia as might be required by the states for their own use."

Mr. READ doubted the propriety of leaving the appointment of the militia officers to the states. In some states they are elected by the legislatures; in others, by the people themselves. He thought at least an appointment by the state executives ought to be insisted on.

On the question for committing to the grand committee, last appointed, the latter motion of Col. Mason, and the original one revived by Gen. Pinckney,—

New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Connecticut, New Jersey, no, 2; Maryland, divided.219

Adjourned.

Monday,*August* 20.

In Convention.—Mr. PINCKNEY submitted to the House, in order to be referred to the committee of detail, the following propositions:—

"Each House shall be the judge of its own privileges, and shall have authority to punish by imprisonment every person violating the same, or who, in the place where the legislature may be sitting, and during the time of its session, shall threaten any of its members for any thing said or done in the House; or who shall assault any of them therefor; or who shall assault or arrest any witness or other person ordered to attend either of the Houses, in his way going or returning; or who shall rescue any person arrested by their order.

"Each branch of the legislature, as well as the supreme executive, shall have authority to require the opinions of the Supreme Judicial Court upon important questions of law, and upon solemn occasions.

"The privileges and benefit of the writ of *habeas corpus* shall be enjoyed in this government in the most expeditious and ample manner, and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding—months.

"The liberty of the press shall be inviolably preserved.

"No troops shall be kept up in time of peace, but by consent of the legislature.

"The military shall always be subordinate to the civil power; and no grants of money shall be made by the legislature, for supporting military land forces, for more than one year at a time.

"No soldier shall be quartered in any house, in time of peace, without consent of the owner.

"No person holding the office of President of the United States, a judge of their Supreme Court, secretary for the department of foreign affairs, of finance, of marine, of war, or of—, shall be capable of holding, at the same time, any other office of trust or emolument, under the United States, or an individual state.

"No religious test or qualification shall ever be annexed to any oath of office, under the authority of the United States.

"The United States shall be forever considered as one body corporate and politic in law, and entitled to all the rights, privileges, and immunities, which to bodies corporate do or ought to appertain.

"The legislature of the United States shall have the power of making the great seal, which shall be kept by the President of the United States, or, in his absence, by the president of the Senate, to be used by them as the occasion may require. It shall be called the Great Seal of the United States, and shall be affixed to all laws.

"All commissions and writs shall run in the name of the United States.

"The jurisdiction of the Supreme Court shall be extended to all controversies between the United States and an individual state, or the United States and the citizens of an individual state."

These propositions were referred to the committee of detail, without debate or consideration of them by the House.

Mr. GOUVERNEUR MORRIS, seconded by Mr. PINCKNEY, submitted the following propositions, which were, in like manner, referred to the committee of detail:—

"To assist the President in conducting the public affairs, there shall be a council of state composed of the following officers:—

"1. The chief justice of the Supreme Court, who shall from time to time recommend such alterations of, and additions to, the laws of the United States, as may, in his opinion, be necessary to the due administration of justice; and such as may promote useful learning, and inculcate sound morality throughout the Union. He shall be president of the council, in the absence of the President.

"2. The secretary of domestic affairs, who shall be appointed by the President, and hold his office during pleasure. It shall be his duty to attend to matters of general police, the state of agriculture and manufactures, the opening of roads and navigations, and the facilitating communications through the United States; and he shall from time to time recommend such measures and establishments as may tend to promote those objects.

"3. The secretary of commerce and finance, who shall also be appointed by the President during pleasure. It shall be his duty to superintend all matters relating to the public finances; to prepare and report plans of revenue, and for the regulation of expenditures; and also to recommend such things as may, in his judgment, promote the commercial interests of the United States.

"4. The secretary of foreign affairs, who shall also be appointed by the President during pleasure. It shall be his duty to correspond with all foreign ministers, prepare plans of treaties, and consider such as may be transmitted from abroad; and, generally, to attend to the interests of the United States in their connections with foreign powers.

"5. The secretary of war, who shall also be appointed by the President during pleasure. It shall be his duty to superintend every thing relating to the war department, such as the raising and equipping of troops, the care of military stores, public fortifications, arsenals, and the like; also, in time of war, to prepare and recommend plans of offence and defence.

"6. The secretary of the marine, who shall also be appointed during pleasure. It shall be his duty to superintend every thing relating to the marine department, the public ships, dock-yards, naval stores, and arsenals; also, in the time of war, to prepare and recommend plans of offence and defence.

"The President shall also appoint a secretary of state, to hold his office during pleasure; who shall be secretary to the council of state, and also public secretary to the President. It shall be his duty to prepare all public despatches from the President, which he shall countersign. The President may from time to time submit any matter to the discussion of the council of state, and he may require the written opinions of any one or more of the members. But he shall in all cases exercise his own judgment, and either conform to such opinions, or not, as he may think proper; and every officer above mentioned shall be responsible for his opinion on the affairs relating to his particular department.

"Each of the officers above mentioned shall be liable to impeachment and removal from office, for neglect of duty, malversation, or corruption."

Mr. GERRY moved, "that the committee be instructed to report proper qualifications for the President, and a mode of trying the supreme judges in cases of impeachment."

The clause, "to call forth the aid of the militia," &c., was postponed till report should be made as to the power over the militia, referred yesterday to the grand committee of eleven.

Mr. MASON moved to enable Congress "to enact sumptuary laws." No government can be maintained unless the manners be made consonant to it. Such a discretionary power may do good, and can do no harm. A proper regulation of excises and of trade, may do a great deal; but it is best to have an express provision. It was objected to sumptuary laws, that they are contrary to nature. This was a vulgar error. The love of distinction, it is true, is natural; but the object of sumptuary laws is not to extinguish this principle, but to give it a proper direction.

Mr. ELLSWORTH. The best remedy is to enforce taxes and debts. As far as the regulation of eating and drinking can be reasonable, it is provided for in the power of taxation.

Mr. GOUVERNEUR MORRIS argued that sumptuary laws tended to create a landed nobility, by fixing in the great landholders, and their posterity, their present possessions.

Mr. GERRY. The law of necessity is the best sumptuary law.

On the motion of Mr. Mason as to "sumptuary laws,"—

Delaware, Maryland, Georgia, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, no, 8.

On the clause, "and to make all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested, by this Constitution, in the government of the United States, or any department or officer thereof,"—

Mr. MADISON and Mr. PINCKNEY moved to insert, between "laws" and "necessary," "and establish all offices;" it appearing to them liable to cavil, that the latter was not included in the former.

Mr. GOUVERNEUR MORRIS, Mr. WILSON, Mr. RUTLEDGE, and Mr. ELLSWORTH, urged that the amendment could not be necessary.

On the motion for inserting, "and establish all offices,"—

Massachusetts, Maryland, ay, 2; New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no, 9.

The clause as reported was then agreed to, *nem. con.*

Article 7, sect. 2, concerning treason, was then taken up.

Mr. MADISON thought the definition too narrow. It did not appear to go as far as the statute of Edward III. He did not see why more latitude might not be left to the legislature. It would be as safe as in the hands of state legislatures; and it was inconvenient to bar a discretion which experience might enlighten, and which might be applied to good purposes, as well as be abused.

Mr. MASON was for pursuing the statute of Edward III.

Mr. GOUVERNEUR MORRIS was for giving to the Union an exclusive right to declare what should be treason. In case of a contest between the United States and a particular state, the people of the latter must, under the disjunctive terms of the clause, be traitors to one or other authority.

Mr. RANDOLPH thought the clause defective in adopting the words, "in adhering," only. The British statute adds, "giving them aid and comfort," which had a more extensive meaning.

Mr. ELLSWORTH considered the definition as the same in fact with that of the statute.

Mr. GOUVERNEUR MORRIS. "Adhering" does not go so far as "giving aid and comfort," or the latter words may be restrictive of "adhering." In either case the statute is not pursued.

Mr. WILSON held "giving aid and comfort" to be explanatory, not operative words, and that it was better to omit them.

Mr. DICKINSON thought the addition of "giving aid and comfort" unnecessary and improper, being too vague and extending too far. He wished to know what was meant by the "testimony of two witnesses;" whether they were to be witnesses to the same overt act, or to different overt acts. He thought, also, that proof of an overt act ought to be expressed as essential in the case.

Dr. JOHNSON considered "giving aid and comfort" as explanatory of "adhering," and that something should be inserted in the definition concerning overt acts. He contended that treason could not be both against the United States and individual states, being an offence against the sovereignty, which can be but one in the same community.

Mr. MADISON remarked, that "and," before "in adhering," should be changed into "or;" otherwise both offences, viz., of "levying war," and of "adhering to the enemy," might be necessary to constitute treason. He added that, as the definition here was of treason against *the United States,* it would seem that the individual states would be left in possession of a concurrent power, so far as to define and punish treason particularly against themselves, which might involve double punishment.220

It was moved, that the whole clause be recommitted, which was lost, the votes being equally divided.

New Jersey, Pennsylvania, Maryland, Virginia, Georgia, ay, 5; New Hampshire, Massachusetts, Connecticut, Delaware, South Carolina, no, 5; North Carolina, divided.

Mr. WILSON and Dr. JOHNSON moved, that "or any of them," after "United States," be struck out, in order to remove the embarrassment; which was agreed to, *nem. con.*

Mr. MADISON. This has not removed the embarrassment. The same act might be treason against the United States, as here defined, and against a particular state, according to its laws.

Mr. ELLSWORTH. There can be no danger to the general authority from this, as the laws of the United States are to be paramount.

Dr. JOHNSON was still of opinion there could be no treason against a particular state. It could not, even at present, as the Confederation now stands, the sovereignty being in the Union; much less can it be under the proposed system.

Col. MASON. The United States will have a qualified sovereignty only. The individual states will retain a part of the sovereignty. An act may be treason against a particular state, which is not so against the United States. He cited the rebellion of Bacon, in Virginia, as an illustration of the doctrine.

Dr. JOHNSON. That case would amount to treason against the sovereign,—the supreme sovereign, the United States.

Mr. KING observed, that the controversy relating to treason might be of less magnitude than was supposed, as the legislature might punish capitally under other names than treason.

Mr. GOUVERNEUR MORRIS and Mr. RANDOLPH wished to substitute the words of the British statute, and moved to postpone article 7, sect. 2, in order to consider the following substitute:—

"Whereas it is essential to the preservation of liberty to define precisely and exclusively what shall constitute the crime of treason, it is therefore ordained, declared, and established, that, if a man do levy war against the United States within their territories, or be adherent to the enemies of the United States within the said territories, giving them aid and comfort within their territories or elsewhere, and thereof be provably attainted of open deed, by the people of his condition, he shall be adjudged guilty of treason."

On this question,—

New Jersey, Virginia, ay, 2; Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, no, 8.

It was then moved to strike out "against the United States," after "treason," so as to define treason generally; and on this question,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, ay, 8; Virginia, North Carolina, no, 2.

It was then moved to insert, after "two witnesses," the words "to the same overt act."

Dr. FRANKLIN wished this amendment to take place. Prosecutions for treason were generally virulent, and perjury too easily made use of against innocence.

Mr. WILSON. Much may be said on both sides. Treason may sometimes be practised in such a manner as to render proof extremely difficult, as in a traitorous correspondence with an enemy.

On the question, as to "same overt act,"—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, ay, 8; New Jersey, Virginia, North Carolina, no, 3.

Mr. KING moved to insert, before the word "power," the word "sole," giving the United States the exclusive right to declare the punishment of treason.

Mr. BROOM seconds the motion.

Mr. WILSON. In cases of a general nature, treason can only be against the United States; and in such they should have the sole right to declare the punishment; yet in many cases it may be otherwise. The subject was, however, intricate, and he distrusted his present judgment on it.

Mr. KING. This amendment results from the vote defining treason generally, by striking out "against the United States," which excludes any treason against particular states. These may, however, punish offences, as high misdemeanors.

On the question for inserting the word "sole," it passed in the negative.

New Hampshire, Massachusetts, Pennsylvania, Delaware, South Carolina, ay, 5; Connecticut, New Jersey, Maryland, Virginia, North Carolina, Georgia, no, 6.

Mr. WILSON. The clause is ambiguous now. "Sole" ought either to have been inserted, or "against the United States" to be reinstated.

Mr. KING. No line can be drawn between levying war and adhering to the enemy against the United States and against an individual state. Treason against the latter must be so against the former.

Mr. SHERMAN. Resistance against the laws of the United States, as distinguished from resistance against the laws of a particular state, forms the line.

Mr. ELLSWORTH. The United States are sovereign on one side of the line dividing the jurisdictions—the states on the other. Each ought to have power to defend their respective sovereignties.

Mr. DICKINSON. War or insurrection against a member of the Union must be so against the whole body; but the Constitution should be made clear on this point.

The clause was reconsidered, *nem. con.;* and then Mr. WILSON and Mr. ELLSWORTH moved to reinstate "against the United States," after "treason;" on which question,—

Connecticut, New Jersey, Maryland, Virginia, North Carolina, Georgia, ay, 6; New Hampshire, Massachusetts, Pennsylvania, Delaware, South Carolina, no, 5.

Mr. MADISON was not satisfied with the footing on which the clause now stood. As treason against the United States involves treason against particular states, and *vice versa,* the same act may be twice tried, and punished by the different authorities.

Mr. GOUVERNEUR MORRIS viewed the matter in the same light.

It was moved and seconded to amend the sentence to read,—

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies;"

which was agreed to.

Col. MASON moved to insert the words "giving them aid and comfort," as restrictive of "adhering to their enemies," &c. The latter, he thought, would be otherwise too indefinite. This motion was agreed to,—Connecticut, Delaware, and Georgia only being in the negative.

Mr. L. MARTIN moved to insert, after conviction, &c., "or on confession in open court;" and on the question, (the negative states thinking the words superfluous,) it was agreed to.

New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, ay, 7; Massachusetts, South Carolina, Georgia, no, 3; North Carolina, divided.

Article 7, sect. 2, as amended, was then agreed to, *nem. con.*221

Article 7, sect. 3, was taken up. The words "white and others" were struck out, *nem. con.,* as superfluous.

Mr. ELLSWORTH moved to require the first census to be taken within "three," instead of "six," years from the first meeting of the legislature; and on the question,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, ay, 9; South Carolina, Georgia, no, 2.

Mr. KING asked what was the precise meaning of *direct* taxation. No one answered.

Mr. GERRY moved to add to article 7, sect. 3, the following clause:—

"That, from the first meeting of the legislature of the United States until a census shall be taken, all moneys for supplying the public treasury by direct taxation shall be raised from the several states, according to the number of their representatives respectively in the first branch."

Mr. LANGDON. This would bear unreasonably hard on New Hampshire, and he must be against it.

Mr. CARROLL opposed it. The number of representatives did not admit of a proportion exact enough for a rule of taxation.

Before any question, the House adjourned.

Tuesday,*August* 21.

In Convention.—Gov. Livingston, from the committee of eleven, to whom were referred the propositions respecting the debts of the several states, and also the militia, entered on the eighteenth instant, delivered the following report:—

"The legislature of the United States shall have power to fulfil the engagements which have been entered into by Congress, and to discharge, as well the debts of the United States, as the debts incurred by the several states, during the late war, for the common defence and general welfare.

"To make laws for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by the United States."

Mr. GERRY considered giving the power only, without adopting the obligation, as destroying the security now enjoyed by the public creditors of the United States. He enlarged on the merit of this class of citizens, and the solemn faith which had been pledged under the existing Confederation. If their situation should be changed, as here proposed, great opposition would be excited against the plan. He urged, also, that as the states had made different degrees of exertion to sink their respective debts, those who had done most would be alarmed, if they were now to be saddled with a share of the debts of states which had done least.

Mr. SHERMAN. It means neither more nor less than the Confederation, as it relates to this subject.

Mr. ELLSWORTH moved that the report delivered in by Gov. Livingston should lie on the table; which was agreed to, *nem. con.*

Article 7, sect. 3, was then resumed.

Mr. DICKINSON moved to postpone this, in order to reconsider article 4, sect. 4, and to *limit* the number of representatives to be allowed to the large states. Unless this were done, the small states would be reduced to entire insignificance, and encouragement given to the importation of slaves.

Mr. SHERMAN would agree to such a reconsideration, but did not see the necessity of postponing the section before the House. Mr. Dickinson withdrew his motion.

Article 7, sect. 3, was then agreed to,—ten ayes; Delaware alone no.

Mr. SHERMAN moved to add to section 3 the following clause:—

"And all accounts of supplies furnished, services performed, and moneys advanced, by the several states to the United States, or by the United States to the several states, shall be adjusted by the same rule."

Mr. GOUVERNEUR MORRIS seconds the motion.

Mr. GORHAM thought it wrong to insert this in the Constitution. The legislature will no doubt do what is right. The present Congress have such a power, and are now exercising it.

Mr. SHERMAN. Unless some rule be expressly given, none will exist under the new system.

Mr. ELLSWORTH. Though the contracts of Congress will be binding, there will be no rule for executing them on the states; and one ought to be provided.

Mr. SHERMAN withdrew his motion, to make way for one of Mr. WILLIAMSON, to add to section 3,—

"By this rule the several quotas of the states shall be determined, in settling the expenses of the late war."

Mr. CARROLL brought into view the difficulty that might arise on this subject from the establishment of the Constitution as intended, without the *unanimous* consent of the states.

Mr. Williamson's motion was postponed, *nem. con.*

Article 6, sect. 12, which had been postponed on the 15th of August, was now called for by Col. MASON, who wished to know how the proposed amendment, as to money bills, would be decided, before he agreed to any further points.

Mr. GERRY'S motion of yesterday, "that, previous to a census, direct taxation be proportioned on the states according to the number of representatives," was taken up. He observed, that the principal acts of government would probably take place within that period; and it was but reasonable that the states should pay in proportion to their share in them.

Mr. ELLSWORTH thought such a rule unjust. There was a great difference between the number of representatives and the number of inhabitants, as a rule in this case. Even if the former were proportioned as nearly as possible to the latter, it would be a very inaccurate rule. A state might have one representative only, that had inhabitants enough for one and a half, or more, if fractions could be applied, and so forth. He proposed to amend the motion by adding the words "subject to a final liquidation by the foregoing rule, when a census shall have been taken."

Mr. MADISON. The last appointment of Congress, on which the number of representatives was founded, was conjectural, and meant only as a temporary rule, till a census should be established.

Mr. READ. The requisitions of Congress had been accommodated to the impoverishment produced by the war, and to other local and temporary circumstances.

Mr. WILLIAMSON opposed Mr. Gerry's motion.

Mr. LANGDON was not here when New Hampshire was allowed three members. It was more than her share; he did not wish for them.

Mr. BUTLER contended warmly for Mr. Gerry's motion, as founded in reason and equity.

Mr. Ellsworth's proviso to Mr. Gerry's motion was agreed to, *nem. con.*

Mr. KING thought the power of taxation given to the legislature rendered the motion of Mr. Gerry altogether unnecessary.

On Mr. Gerry's motion, as amended,—

Massachusetts, South Carolina, ay, 2; New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, no, 8; North Carolina, divided.

On the question, "Shall article 6, sect. 12, with the amendment to it, proposed and entered on the 15th inst., as called for by Col. Mason, be now taken up?" it passed in the negative.

New Hampshire, Connecticut, Virginia, Maryland, North Carolina, ay, 5; Massachusetts, New Jersey, Pennsylvania, Delaware, South Carolina, Georgia, no, 6.

Mr. L. MARTIN. The power of taxation is most likely to be criticised by the public. Direct taxation should not be used but in cases of absolute necessity; and then the states will be the best judges of the mode. He therefore moved the following addition to article 7, sect. 3:—

"And whenever the legislature of the United States shall find it necessary that revenue should be raised by direct taxation, having apportioned the same according to the above rule on the several states, requisitions shall be made of the respective states to pay into the Continental treasury their respective quotas, within a time in the said requisitions specified; and in case of any of the states failing to comply with such requisitions, then, and then only, to devise and pass acts directing the mode, and authorizing the collection of the same."

Mr. M'HENRY seconded the motion. There was no debate; and, on the question,—

New Jersey, ay, 1; New Hampshire, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, no, 8; Maryland, divided, (Jenifer and Carroll, no.)222

Article 7, sect. 4, was then taken up.

Mr. LANGDON. By this section, the states are left at liberty to tax exports. New Hampshire, therefore, with other non-exporting states, will be subject to be taxed by the states exporting its produce. This could not be admitted. It seems to be feared that the Northern States will oppress the trade of the Southern. This may be guarded against, by requiring the concurrence of two thirds, or three fourths of the legislature, in such cases.

Mr. ELLSWORTH. It is best as it stands. The power of regulating trade between the states will protect them against each other. Should this not be the case, the attempts of one to tax the produce of another, passing through its hands, will force a direct exportation and defeat themselves. There are solid reasons against Congress taxing exports. First, it will discourage industry, as taxes on imports discourage luxury. Secondly, the produce of different states is such as to prevent uniformity in such taxes. There are indeed but a few articles that could be taxed at all, as tobacco, rice, and indigo; and a tax on these alone would be partial and unjust. Thirdly, the taxing of exports would engender incurable jealousies.

Mr. WILLIAMSON. Though North Carolina has been taxed by Virginia, by a duty on twelve thousand hogsheads of her tobacco through Virginia, yet he would never agree to this power. Should it take place, it would destroy the last hope of the adoption of the plan.

Mr. GOUVERNEUR MORRIS. These local considerations ought not to impede the general interest. There is great weight in the argument, that the exporting states will tax the produce of their uncommercial neighbors. The power of regulating the trade between Pennsylvania and New Jersey will never prevent the former from taxing the latter. Nor will such a tax force a direct exportation from New Jersey. The advantages possessed by a large trading city outweigh the disadvantage of a moderate duty, and will retain the trade in that channel. If no tax can be laid on exports, an embargo cannot be laid, though in time of war such a measure may be of critical importance. Tobacco, lumber, and live stock, are three objects belonging to different states, of which great advantage might be made by a power to tax exports. To these may be added ginseng and masts for ships, by which a tax might be thrown on other nations. The idea of supplying the West Indies with lumber from Nova Scotia is one of the many follies of Lord Sheffield's pamphlet. The state of the country, also, will change, and render duties on exports—as skins, beaver, and other peculiar raw materials—politic in the view of encouraging American manufactures.

Mr. BUTLER was strenuously opposed to a power over exports, as unjust and alarming to the staple states.

Mr. LANGDON suggested a prohibition on the states from taxing the produce of other states exported from their harbors.

Mr. DICKINSON. The power of taxing exports may be inconvenient at present; but it must be of dangerous consequence to prohibit it with respect to all articles, and forever. He thought it would be better to except particular articles from the power.

Mr. SHERMAN. It is best to prohibit the national legislature in all cases. The states will never give up all power over trade. An enumeration of particular articles would be difficult, invidious, and improper.

Mr. MADISON. As we ought to be governed by national and permanent views, it is a sufficient argument for giving the power over exports, that a tax, though it may not be expedient at present, may be so hereafter. A proper regulation of exports may, and

probably will, be necessary hereafter, and for the same purposes as the regulation of imports, viz., for revenue, domestic manufactures, and procuring equitable regulations from other nations. An embargo may be of absolute necessity, and can alone be effectuated by the general authority. The regulation of trade between state and state cannot effect more than indirectly to hinder a state from taxing its own exports, by authorizing its citizens to carry their commodities freely into a neighboring state, which might decline taxing exports, in order to draw into its channel the trade of its neighbors. As to the fear of disproportionate burdens on the more exporting states, it might be remarked that it was agreed, on all hands, that the revenue would principally be drawn from trade, and as only a given revenue would be needed, it was not material whether all should be drawn wholly from imports, or half from those and half from exports. The imports and exports must be pretty nearly equal in every state, and, relatively, the same among the different states.

Mr. ELLSWORTH did not conceive an embargo by the Congress interdicted by this section.

Mr. M'HENRY conceived that power to be included in the power of war.

Mr. WILSON. Pennsylvania exports the produce of Maryland, New Jersey, Delaware, and will, by and by, when the River Delaware is opened, export for New York. In favoring the general power over exports, therefore, he opposed the particular interest of his state. He remarked that the power had been attacked by reasoning which could only have held good in case the general government had been *compelled,* instead of *authorized,* to lay duties on exports. To deny this power is to take from the common government half the regulation of trade. It was his opinion, that a power over exports might be more effectual than that over imports in obtaining beneficial treaties of commerce.

Mr. GERRY was strenuously opposed to the power over exports. It might be made use of to compel the states to comply with the will of the general government, and to grant it any new powers which might be demanded. We have given it more power already than we know how will be exercised. It will enable the general government to oppress the states, as much as Ireland is oppressed by Great Britain.

Mr. FITZSIMONS would be against a tax on exports to be laid immediately, but was for giving a power of laying the tax when a proper time may call for it. This would certainly be the case when America should become a manufacturing country. He illustrated his argument by the duties in Great Britain on wool, &c.

Col. MASON. If he were for reducing the states to mere corporations, as seemed to be the tendency of some arguments, he should be for subjecting their exports, as well as imports, to a power of general taxation. He went on a principle often advanced, and in which he concurred, that a majority, when interested, will oppress the minority. This maxim had been verified by our own legislature [of Virginia.] If we compare the states in this point of view, the eight Northern States have an interest different from the five Southern States, and have, in one branch of the legislature, thirty-six votes against twenty-nine, and in the other in the proportion of eight against five. The

Southern States had therefore ground for their suspicions. The case of exports was not the same with that of imports. The latter were the same throughout the states; the former very different. As to tobacco, other nations do raise it, and are capable of raising it, as well as Virginia, &c. The impolicy of taxing that article had been demonstrated by the experiment of Virginia.

Mr. CLYMER remarked, that every state might reason with regard to its particular productions in the same manner as the Southern States. The Middle States may apprehend an oppression of their wheat, flour, provisions, &c.; and with more reason, as these articles were exposed to a competition in foreign markets not incident to tobacco, rice, &c. They may apprehend also combinations against them between the Eastern and Southern States, as much as the latter can apprehend them between the Eastern and Middle. He moved, as a qualification of the power of taxing exports, that it should be restrained to regulations of trade, by inserting, after the word "duty," article 7, sect. 4, the words "for the purpose of revenue."

On the question on Mr. Clymer's motion,—

New Jersey, Pennsylvania, Delaware, ay, 3; New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 8.

Mr. MADISON, in order to require two thirds of each House to tax exports, as a lesser evil than a total prohibition, moved to insert the words "unless by consent of two thirds of the legislature."

Mr. WILSON seconds; and, on this question, it passed in the negative.

New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, ay, 5; Connecticut, Maryland, Virginia, (Col. Mason, Mr. Randolph, Mr. Blair, no; Gen. Washington, Mr. Madison, ay,) North Carolina, South Carolina, Georgia, no, 6.

On the question on article 7, sect. 4, as far as to "no tax shall be laid on exports," it passed in the affirmative,—

Massachusetts, Connecticut, Maryland, Virginia, (Gen. Washington and Mr. Madison, no,) North Carolina, South Carolina, Georgia, ay, 7; New Hampshire, New Jersey, Pennsylvania, Delaware, no, 4.223

Mr. L. MARTIN proposed to vary article 7, sect. 4, so as to allow a prohibition or tax on the importation of slaves. In the first place, as five slaves are to be counted as three freemen, in the apportionment of representatives, such a clause would leave an encouragement to this traffic. In the second place, slaves weakened one part of the Union, which the other parts were bound to protect; the privilege of importing them was therefore unreasonable. And, in the third place, it was inconsistent with the principles of the revolution, and dishonorable to the American character, to have such a feature in the Constitution.

Mr. RUTLEDGE did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections, and would readily exempt the

other states from the obligation to protect the Southern against them. Religion and humanity had nothing to do with this question. Interest alone is the governing principle with nations. The true question at present is, whether the Southern States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of slaves, which will increase the commodities of which they will become the carriers.

Mr. ELLSWORTH was for leaving the clause as it stands. Let every state import what it pleases. The morality or wisdom of slavery are considerations belonging to the states themselves. What enriches a part enriches the whole, and the states are the best judges of their particular interest. The old Confederation had not meddled with this point; and he did not see any greater necessity for bringing it within the policy of the new one.

Mr. PINCKNEY. South Carolina can never receive the plan if it prohibits the slave trade. In every proposed extension of the powers of Congress, that state has expressly and watchfully excepted that of meddling with the importation of negroes. If the states be all left at liberty on this subject, South Carolina may perhaps, by degrees, do of herself what is wished, as Virginia and Maryland already have done.

Adjourned.

Wednesday,*August* 22.

In Convention.—Article 7, sect. 4, was resumed.

Mr. SHERMAN was for leaving the clause as it stands. He disapproved of the slave trade; yet, as the states were now possessed of the right to import slaves, as the public good did not require it to be taken from them, and as it was expedient to have as few objections as possible to the proposed scheme of government, he thought it best to leave the matter as we find it. He observed, that the abolition of slavery seemed to be going on in the United States, and that the good sense of the several states would probably by degrees complete it. He urged on the Convention the necessity of despatching its business.

Col. MASON. This infernal traffic originated in the avarice of British merchants. The British government constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing states alone, but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves as it did by the tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell, to the commissioners sent to Virginia, to arm the servants and slaves, in case other means of obtaining its submission should fail. Maryland and Virginia, he said, had already prohibited the importation of slaves expressly. North Carolina had done the same in substance. All this would be in vain, if South Carolina and Georgia be at liberty to import. The western people are already calling out for slaves for their new lands, and will fill that country with slaves, if they can be got

through South Carolina and Georgia. Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities. He lamented that some of our eastern brethren had, from a lust of gain, embarked in this nefarious traffic. As to the states being in possession of the right to import, this was the case with many other rights, now to be properly given up. He held it essential, in every point of view, that the general government should have power to prevent the increase of slavery.

Mr. ELLSWORTH, as he had never owned a slave, could not judge of the effects of slavery on character. He said, however, that if it was to be considered in a moral light, we ought to go further, and free those already in the country. As slaves also multiply so fast in Virginia and Maryland, that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary, if we go no further than is urged, we shall be unjust towards South Carolina and Georgia. Let us not intermeddle. As population increases, poor laborers will be so plenty as to render slaves useless. Slavery, in time, will not be a speck in our country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts. As to the danger of insurrections from foreign influence, that will become a motive to kind treatment of the slaves.

Mr. PINCKNEY. If slavery be wrong, it is justified by the example of all the world. He cited the case of Greece, Rome, and other ancient states; the sanction given by France, England, Holland, and other modern states. In all ages, one half of mankind have been slaves. If the Southern States were let alone, they will probably of themselves stop importations. He would himself, as a citizen of South Carolina, vote for it. An attempt to take away the right, as proposed, will produce serious objections to the Constitution, which he wished to see adopted.

Gen. PINCKNEY declared it to be his firm opinion that if himself and all his colleagues were to sign the Constitution, and use their personal influence, it would be of no avail towards obtaining the assent of their constituents. South Carolina and Georgia cannot do without slaves. As to Virginia, she will gain by stopping the importations. Her slaves will rise in value, and she has more than she wants. It would be unequal to require South Carolina and Georgia to confederate on such unequal terms. He said, the royal assent, before the revolution, had never been refused to South Carolina, as to Virginia. He contended, that the importation of slaves would be for the interest of the whole Union. The more slaves, the more produce to employ the carrying trade; the more consumption also; and the more of this, the more revenue for the common treasury. He admitted it to be reasonable that slaves should be dutied like other imports; but should consider a rejection of the clause as an exclusion of South Carolina from the Union.

Mr. BALDWIN had conceived national objects alone to be before the Convention; not such as, like the present, were of a local nature. Georgia was decided on this point.

That state has always hitherto supposed a general government to be the pursuit of the central states, who wished to have a vortex for every thing; that her distance would preclude her from equal advantage; and that she could not prudently purchase it by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives. If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the sect of—, which, he said, was a respectable class of people, who carried their ethics beyond the mere *equality of men,* extending their humanity to the claims of the whole animal creation.

Mr. WILSON observed that, if South Carolina and Georgia were themselves disposed to get rid of the importation of slaves in a short time, as had been suggested, they would never refuse to unite because the importation might be prohibited. As the section now stands, all articles imported are to be taxed. Slaves alone are exempt. This is, in fact, a bounty on that article.

Mr. GERRY thought we had nothing to do with the conduct of the states as to slaves, but ought to be careful not to give any sanction to it.

Mr. DICKINSON considered it as inadmissible, on every principle of honor and safety, that the importation of slaves should be authorized to the states by the Constitution. The true question was, whether the national happiness would be promoted or impeded by the importation; and this question ought to be left to the national government, not to the states particularly interested. If England and France permit slavery, slaves are, at the same time, excluded from both those kingdoms. Greece and Rome were made unhappy by their slaves. He could not believe that the Southern States would refuse to confederate on the account apprehended; especially as the power was not likely to be immediately exercised by the general government.

Mr. WILLIAMSON stated the law of North Carolina on the subject, to wit, that it did not directly prohibit the importation of slaves. It imposed a duty of £5 on each slave imported from Africa; £10 on each from elsewhere; and £50 on each from a state licensing manumission. He thought the Southern States could not be members of the Union, if the clause should be rejected; and that it was wrong to force any thing down not absolutely necessary, and which any state must disagree to.

Mr. KING thought the subject should be considered in a political light only. If two states will not agree to the Constitution, as stated on one side, he could affirm with equal belief, on the other, that great and equal opposition would be experienced from the other states. He remarked on the exemption of slaves from duty, whilst every other import was subjected to it, as an inequality that could not fail to strike the commercial sagacity of the Northern and Middle States.

Mr. LANGDON was strenuous for giving the power to the general government. He could not, with a good conscience, leave it with the states, who could then go on with the traffic, without being restrained by the opinions here given, that they will themselves cease to import slaves.

Gen. PINCKNEY thought himself bound to declare candidly, that he did not think South Carolina would stop her importations of slaves in any short time; but only stop them occasionally, as she now does. He moved to commit the clause, that slaves might be made liable to an equal tax with other imports; which he thought right, and which would remove one difficulty that had been started.

Mr. RUTLEDGE. If the Convention thinks that North Carolina, South Carolina, and Georgia, will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those states will never be such fools as to give up so important an interest. He was strenuous against striking out the section, and seconded the motion of Gen. Pinckney for a commitment.

Mr. GOUVERNEUR MORRIS wished the whole subject to be committed, including the clauses relating to taxes on exports and to a navigation act. These things may form a bargain among the Northern and Southern States.

Mr. BUTLER declared, that he never would agree to the power of taxing exports.

Mr. SHERMAN said it was better to let the Southern States import slaves than to part with them, if they made that a *sine qua non.* He was opposed to a tax on slaves imported, as making the matter worse, because it implied they were *property.* He acknowledged that, if the power of prohibiting the importation should be given to the general government, it would be exercised. He thought it would be its duty to exercise the power.

Mr. READ was for the commitment, provided the clause concerning taxes on exports should also be committed.

Mr. SHERMAN observed, that that clause had been agreed to, and therefore could not be committed.

Mr. RANDOLPH was for committing, in order that some middle ground might, if possible, be found. He could never agree to the clause as it stands. He would sooner risk the Constitution. He dwelt on the dilemma to which the Convention was exposed. By agreeing to the clause, it would revolt the Quakers, the Methodists, and many others in the states having no slaves. On the other hand, two states might be lost to the Union. Let us then, he said, try the chance of a commitment.

On the question for committing the remaining part of sections 4 and 5 of article 7,—

Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 7; New Hampshire, Pennsylvania, Delaware, no, 3; Massachusetts, absent.

Mr. PINCKNEY and Mr. LANGDON moved to commit section 6, as to a navigation act by two thirds of each House.

Mr. GORHAM did not see the propriety of it. Is it meant to require a greater proportion of votes? He desired it to be remembered, that the Eastern States had no

motive to union but a commercial one. They were able to protect themselves. They were not afraid of external danger, and did not need the aid of the Southern States.

Mr. WILSON wished for a commitment, in order to reduce the proportion of votes required.

Mr. ELLSWORTH was for taking the plan as it is. This widening of opinions had a threatening aspect. If we do not agree on this middle and moderate ground, he was afraid we should lose two states, with such others as may be disposed to stand aloof; should fly into a variety of shapes and directions, and most probably into several confederations,—and not without bloodshed.

On the question for committing section 6, as to a navigation act, to a member from each state,—

New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Connecticut, New Jersey, no, 2.

The committee appointed were Messrs. Langdon, King, Johnson, Livingston, Clymer, Dickinson, L. Martin, Madison, Williamson, C. C. Pinckney, and Baldwin.

To this committee were referred also the two clauses, above mentioned, of the 4th and 5th sections of article 7.[224]

Mr. RUTLEDGE, from the committee to whom were referred, on the 18th and 20th instant, the propositions of Mr. Madison and Mr. Pinckney, made the report following:—

"The committee report, that, in their opinion, the following additions should be made to the report now before the Convention, namely:—

"At the end of the first clause of the first section of the seventh article, add, 'for payment of the debts and necessary expenses of the United States; provided that no law for raising any branch of revenue, except what may be specially appropriated for the payment of interest on debts or loans, shall continue in force for more than—years.'

"At the end of the second clause, second section, seventh article, add, 'and with Indians, within the limits of any state, not subject to the laws thereof.'

"At the end of the sixteenth clause of the second section, seventh article, add, 'and to provide, as may become necessary from time to time, for the well managing and securing the common property and general interests and welfare of the United States in such manner as shall not interfere with the government of individual states, in matters which respect only their internal police, or for which their individual authority may be competent.'

"At the end of the first section, tenth article, add, 'he shall be of the age of thirty-five years, and a citizen of the United States, and shall have been an inhabitant thereof for twenty-one years.'

"After the second section, of the tenth article, insert the following as a third section: 'The President of the United States shall have a privy council, which shall consist of the president of the Senate, the speaker of the House of Representatives, the chief justice of the Supreme Court, and the principal officer in the respective departments of foreign affairs, domestic affairs, war, marine, and finance, as such departments of office shall from time to time be established; whose duty it shall be to advise him in matters, respecting the execution of his office, which he shall think proper to lay before them; but their advice shall not conclude him, nor affect his responsibility for the measures which he shall adopt.'

"At the end of the second section of the eleventh article, add, 'the judges of the Supreme Court shall be triable by the Senate, on impeachment by the House of Representatives.'

"Between the fourth and fifth lines of the third section of the eleventh article, after the word 'controversies,' insert, 'between the United States and an individual state, or the United States and an individual person.' "

A motion to rescind the order of the House, respecting the hours of meeting and adjourning, was negatived.

Massachusetts, Pennsylvania, Delaware, Maryland, ay, 4; New Hampshire, Connecticut, New Jersey, Virginia, North Carolina, South Carolina, Georgia, no, 7.

Mr. GERRY and Mr. M'HENRY moved to insert, after the second section, article 7, the clause following, to wit:—

"The legislature shall pass no bill of attainder, nor any *ex post facto* law."*

Mr. GERRY urged the necessity of this prohibition, which, he said, was greater in the national than the state legislature; because, the number of members in the former being fewer, they were on that account the more to be feared.

Mr. GOUVERNEUR MORRIS thought the precaution as to *ex post facto* laws unnecessary, but essential as to bills of attainder.

Mr. ELLSWORTH contended, that there was no lawyer, no civilian, who would not say that *ex post facto* laws were void of themselves. It cannot, then, be necessary to prohibit them.

Mr. WILSON was against inserting any thing in the Constitution as to *ex post facto* laws. It will bring reflections on the Constitution and proclaim that we are ignorant of the first principles of legislation, or are constituting a government that will be so.

The question being divided, the first part of the motion, relating to bills of attainder, was agreed to, *nem. con.*

On the second part, relating to *ex post facto* laws,—

Mr. CARROLL remarked, that experience overruled all other calculations. It had proved that, in whatever light they might be viewed by civilians or others, the state legislatures had passed them, and they had taken effect.

Mr. WILSON. If these prohibitions in the state constitutions have no effect, it will be useless to insert them in this Constitution. Besides, both sides will agree to the principle, but will differ as to its application.

Mr. WILLIAMSON. Such a prohibitory clause is in the constitution of North Carolina; and, though it has been violated, it has done good there, and may do good here, because the judges can take hold of it.

Dr. JOHNSON thought the clause unnecessary, and implying an improper suspicion of the national legislature.

Mr. RUTLEDGE was in favor of the clause.

On the question for inserting the prohibition of *ex post facto* laws,—

New Hampshire, Massachusetts, Delaware, Maryland, Virginia, South Carolina, Georgia, ay, 7; Connecticut, New Jersey, Pennsylvania, no, 3; North Carolina, divided.225

The report of the committee of five, made by Mr. Rutledge, was taken up, and then postponed, that each member might furnish himself with a copy.

The report of the committee of eleven, delivered in and entered on the Journal of the 21st instant, was then taken up; and the first clause, containing the words,—

"The legislature of the United States *shall have power* to fulfil the engagements which have been entered into by Congress,"—

being under consideration,—226

Mr. ELLSWORTH argued, that they were unnecessary. The United States heretofore entered into engagements by Congress, who were their agents. They will hereafter be bound to fulfil them by their new agents.

Mr. RANDOLPH thought such a provision necessary: for, though the United States will be bound, the new government will have no authority in the case, unless it be given to them.

Mr. MADISON thought it necessary to give the authority, in order to prevent misconstruction. He mentioned the attempt made by the debtors to British subjects, to

show that contracts under the old government were dissolved by the revolution, which destroyed the political identity of the society.

Mr. GERRY thought it essential that some explicit provision should be made on this subject, so that no pretext might remain for getting rid of the public engagements.

Mr. GOUVERNEUR MORRIS moved, by way of amendment, to substitute,

"The legislature *shall* discharge the debts, and fulfil the engagements, of the United States."

It was moved to vary the amendment, by striking out "discharge the debts," and to insert "liquidate the claims;" which being negatived, the amendment moved by Mr. Gouverneur Morris was agreed to,—all the states being in the affirmative.227

It was moved and seconded to strike the following words out of the second clause of the report:—

"and the authority of training the militia according to the discipline prescribed by the United States."

Before a question was taken, the House adjourned.

Thursday,*August* 23.

In Convention.—The report of the committee of eleven, made the 21st of August, being taken up, and the following clause being under consideration, to wit:—

"To make laws for organizing, arming, and disciplining the militia, and for governing such parts of them as may be employed in the service of the United States; reserving to the states, respectively, the appointment of the officers, and authority of training the militia according to the discipline prescribed,"—

Mr. SHERMAN moved to strike out the last member, "and authority of training," &c. He thought it unnecessary. The states will have this authority, of course, if not given up.

Mr. ELLSWORTH doubted the propriety of striking out the sentence. The reason assigned applies as well to the other reservation, of the appointment to offices. He remarked, at the same time, that the term "discipline," was of vast extent, and might be so expounded as to include all power on the subject.

Mr. KING, by way of explanation, said, that by *organizing,* the committee meant, proportioning the officers and men—by *arming,* specifying the kind, size, and calibre of arms—and by *disciplining,* prescribing the manual exercise, evolutions, &c.

Mr. SHERMAN withdrew his motion.

Mr. GERRY. This power in the United States, as explained, is making the states drill-sergeants. He had as lief let the citizens of Massachusetts be disarmed, as to take the command from the states, and subject them to the general legislature. It would be regarded as a system of despotism.

Mr. MADISON observed, that "*arming,*" as explained, did not extend to furnishing arms; nor the term "*disciplining,*" to penalties, and courts martial for enforcing them.

Mr. KING added to his former explanation, that *arming* meant not only to provide for uniformity of arms, but included the authority to regulate the modes of furnishing, either by the militia themselves the state governments, or the national treasury; that *laws* for disciplining must involve penalties, and every thing necessary for enforcing penalties.

Mr. DAYTON moved to postpone the paragraph, in order to take up the following proposition:—

"To establish a uniform and general system of discipline for the militia of these states, and to make laws for organizing, arming, disciplining, and governing *such part of them as may be employed in the service of the United States;* reserving to the states, respectively, the appointment of the officers, and all authority over the militia not herein given to the general government."

On the question to postpone, in favor of this proposition, it passed in the negative.

New Jersey, Maryland, Georgia, ay, 3; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, no, 8.

Mr. ELLSWORTH and Mr. SHERMAN moved to postpone the second clause, in favor of the following:—

"To establish a uniformity of arms, exercise, and organization for the militia, and to provide for the government of them when called into the service of the United States."

The object of this proposition was, to refer the plan for the militia to the general government, but to leave the execution of it to the state governments.

Mr. LANGDON said he could not understand the jealousy expressed by some gentlemen. The general and state governments were not enemies to each other, but different institutions for the good of the people of America. As one of the people, he could say, "The national government is mine, the state government is mine. In transferring power from one to the other, I only take out of my left hand what it cannot so well use, and put it into my right hand, where it can be better used."

Mr. GERRY thought it was rather taking out of the right hand and putting it into the left. Will any man say that liberty will be as safe in the hands of eighty or a hundred men, taken from the whole continent, as in the hands of two or three hundred, taken from a single state?

Mr. DAYTON was against so absolute a uniformity. In some states there ought to be a greater proportion of cavalry than in others. In some places, rifles would be most proper; in others, muskets, &c.

Gen. PINCKNEY preferred the clause reported by the committee, extending the meaning of it to the cases of fines, &c.

Mr. MADISON. The primary object is to secure an effectual discipline of the militia. This will no more be done, if left to the states separately, than the requisitions have been hitherto paid by them. The states neglect their militia now, and the more they are consolidated into one nation, the less each will rely on its own interior provisions for its safety, and the less prepare its militia for that purpose; in like manner, as the militia of a state would have been still more neglected than it has been, if each county had been independently charged with the care of its militia. The discipline of the militia is evidently a *national* concern, and ought to be provided for in the *national* Constitution.

Mr. L. MARTIN was confident that the states would never give up the power over the militia; and that, if they were to do so, the militia would be less attended to by the general than by the state governments.

Mr. RANDOLPH asked what danger there could be, that the militia could be brought into the field, and made to commit suicide on themselves. This is a power that cannot, from its nature, be abused, unless, indeed, the whole mass should be corrupted. He was for trammelling the general government whenever there was danger, but here there could be none. He urged this as an essential point, observing, that the militia were every where neglected by the state legislatures, the members of which courted popularity too much to enforce a proper discipline. Leaving the appointment of officers to the states protects the people against every apprehension that could produce murmur.

On the question on Mr. Ellsworth's motion,—

Connecticut, ay; the other ten states, no.

A motion was then made to recommit the second clause, which was negatived.

On the question to agree to the first part of the clause, namely:

"To make laws for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States,"—

New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Connecticut, Maryland, no, 2.

Mr. MADISON moved to amend the next part of the clause, so as to read,—

"reserving to the states, respectively, the appointment of the officers, *under the rank of general officers.*"

Mr. SHERMAN considered this as absolutely inadmissible. He said that, if the people should be so far asleep as to allow the most influential officers of the militia to be appointed by the general government, every man of discernment would rouse them by sounding the alarm to them.

Mr. GERRY. Let us at once destroy the state governments, have an executive for life, or hereditary, and a proper Senate, and then there would be some consistency in giving full powers to the general government: but as the states are not to be abolished, he wondered at the attempts that were made to give powers inconsistent with their existence. He warned the Convention against pushing the experiment too far. Some people will support a plan of vigorous government at every risk; others, of a more democratic cast, will oppose it with equal determination, and a civil war may be produced by the conflict.

Mr. MADISON. As the greatest danger is that of disunion of the states, it is necessary to guard against it by sufficient powers to the common government; and as the greatest danger to liberty is from large standing armies, it is best to prevent them by an effectual provision for a good militia.

On the question to agree to Mr. Madison's motion,—

New Hampshire, South Carolina, Georgia, (in the printed Journal, Georgia, no,) ay, 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no, 8.

On the question to agree to the "reserving to the states the appointment of the officers," it was agreed to, *nem. con.*

On the question on the clause,—

"and the authority of training the militia according to the discipline prescribed by the United States,"—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, North Carolina, ay, 7; Delaware, Virginia, South Carolina, Georgia, no, 4.

On the question to agree to article 7, sect. 7, as reported, it passed, *nem. con.*228

Mr. PINCKNEY urged the necessity of preserving foreign ministers, and other officers of the United States, independent of external influence; and moved to insert, after article 7, sect. 7, the clause following:—

"No person holding any office of trust or profit under the United States shall, without the consent of the legislature, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state,"—

which passed, *nem. con.*

Mr. RUTLEDGE moved to amend article 8, to read as follows:

"This Constitution, and the laws of the United States made in pursuance thereof, and all the treaties made under the authority of the United States, shall be the supreme law of the several states, and of their citizens and inhabitants; and the judges of the several states shall be bound thereby in their decisions, any thing in the constitutions or laws of the several states to the contrary notwithstanding,"

which was agreed to, *nem. con.*

Article 9 being next for consideration,—

Mr. GOUVERNEUR MORRIS argued against the appointment of officers by the Senate. He considered the body as too numerous for that purpose, as subject to cabal, and as devoid of responsibility. If judges were to be tried by the Senate, according to a late report of a committee, it was particularly wrong to let the Senate have the filling of vacancies which its own decrees were to create.

Mr. WILSON was of the same opinion, and for like reasons.

Article 9 being waived, and article 7, sect. 1, being resumed,—

Mr. GOUVERNEUR MORRIS moved to strike the following words out of the eighteenth clause, "enforce treaties," as being superfluous, since treaties were to be "laws,"—which was agreed to, *nem. con.*

Mr. GOUVERNEUR MORRIS moved to alter the first part of the eighteenth clause, so as to read,—

"to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions,"

which was agreed to, *nem. con.*

On the question, then, to agree to the eighteenth clause of article 7, sect. 1, as amended, it passed in the affirmative, *nem. con.*

Mr. CHARLES PINCKNEY moved to add, as an additional power to be vested in the legislature of the United States,—

"to negative all laws passed by the several states, interfering, in the opinion of the legislature, with the general interests and harmony of the Union, provided that two thirds of the members of each House assent to the same."

This principle, he observed, had formerly been agreed to. He considered the precaution as essentially necessary. The objection drawn from the predominance of the large states had been removed by the equality established in the Senate.

Mr. BROOM seconded the proposition.

Mr. SHERMAN thought it unnecessary, the laws of the general government being supreme and paramount to the state laws, according to the plan as it now stands.

Mr. MADISON proposed that it should be committed. He had been, from the beginning, a friend to the principle, but thought the modification might be made better.

Mr. MASON wished to know how the power was to be exercised. Are all laws whatever to be brought up? Is no road nor bridge to be established without the sanction of the general legislature? Is this to sit constantly, in order to receive and revise the state laws? He did not mean, by these remarks, to condemn the expedient, but he was apprehensive that great objections would lie against it.

Mr. WILLIAMSON thought it unnecessary, and, having been already decided, a revival of the question was a waste of time.

Mr. WILSON considered this as the key-stone wanted to complete the wide arch of government we are raising. The power of self-defence had been urged as necessary for the state governments. It was equally necessary for the general government. The firmness of judges is not, of itself, sufficient: Something further is requisite. It will be better to prevent the passage of an improper law, than to declare it void, when passed.

Mr. RUTLEDGE. If nothing else, this alone would damn, and ought to damn, the Constitution. Will any state ever agree to be bound hand and foot in this manner? It is worse than making mere corporations of them, whose by-laws would not be subject to this shackle.

Mr. ELLSWORTH observed, that the power contended for would require, either that all laws of the state legislature should, previously to their taking effect, be transmitted to the general legislature, or be repealable by the latter; or that the state executives should be appointed by the general government, and have a control over the state laws. If the last was meditated, let it be declared.

Mr. PINCKNEY declared, that he thought the state executives ought to be so appointed, with such a control; and that it would be so provided if another Convention should take place.

Mr. GOUVERNEUR MORRIS did not see the utility or practicability of the proposition of Mr. Pinckney, but wished it to be referred to the consideration of a committee.

Mr. LANGDON was in favor of the proposition. He considered it as resolvable into the question, whether the extent of the national Constitution was to be judged of by the general or the state governments.

On the question for commitment, it passed in the negative.

New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, ay, 5; Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, no, 6.

Mr. PINCKNEY then withdrew his proposition.229

The first clause of article 7, sect. 1, being so amended as to read,—

"The legislature *shall* fulfil the engagements and discharge the debts of the United States; and shall have the power to lay and collect taxes, duties, imposts, and excises;"

was agreed to.

Mr. BUTLER expressed his dissatisfaction, lest it should compel payment, as well to the blood-suckers who had speculated on the distresses of others, as to those who had fought and bled for their country. He would be ready, he said, to-morrow, to vote for a discrimination between those classes of people; and gave notice that he would move for a reconsideration.

Article 9, sect. 1, being resumed, to wit;—

"The Senate of the United States shall have power to make treaties, and to appoint ambassadors and judges of the supreme court,—"

Mr. MADISON observed, that the Senate represented the states alone; and that for this, as well as other obvious reasons, it was proper that the President should be an agent in treaties.

Mr. GOUVERNEUR MORRIS did not know that he should agree to refer the making of treaties to the Senate at all but for the present would move to add, as an amendment to the section, after "treaties," the following:—

"But no treaty shall be binding on the United States which is not ratified by law."

Mr. MADISON suggested the inconvenience of requiring a legal *ratification* of treaties of alliance, for the purposes of war, &c., &c.

Mr. GORHAM. Many other disadvantages must be experienced, if treaties of peace and all negotiations are to be previously ratified; and if not previously, the ministers would be at a loss how to proceed. What would be the case in Great Britain, if the king were to proceed in this manner? American ministers must go abroad not instructed by the same authority (as will be the case with other ministers) which is to ratify their proceedings.

Mr. GOUVERNEUR MORRIS. As to treaties of alliance, they will oblige foreign powers to send their ministers here, the very thing we should wish for. Such treaties could not be otherwise made, if his amendment should succeed. In general, he was not solicitous to multiply and facilitate treaties. He wished none to be made with Great Britain, till she should be at war. Then a good bargain might be made with her. So with other foreign powers. The more difficulty in making treaties, the more value will be set on them.

Mr. WILSON. In the most important treaties, the king of Great Britain, being obliged to resort to Parliament for the execution of them, is under the same fetters as the amendment of Mr. Morris will impose on the Senate. It was refused yesterday to permit even the legislature to lay duties on exports. Under the clause without the amendment, the Senate alone can make a treaty requiring all the rice of South Carolina to be sent to some one particular port.

Mr. DICKINSON concurred in the amendment, as most safe and proper, though he was sensible it was unfavorable to the little states, which would otherwise have an *equal* share in making treaties.

Dr. JOHNSON thought there was something of solecism in saying that the acts of a minister with plenipotentiary powers from one body should depend for ratification on another body. The example of the king of Great Britain was not parallel. Full and complete power was vested in him. If the Parliament should fail to provide the necessary means of execution, the treaty would be violated.

Mr. GORHAM, in answer to Mr. Gouverneur Morris, said, that negotiations on the spot were not to be desired by us; especially, if the whole legislature is to have any thing to do with treaties. It will be generally influenced by two or three men, who will be corrupted by the ambassadors here. In such a government as ours, it is necessary to guard against the government itself being seduced.

Mr. RANDOLPH, observing that almost every speaker had made objections to the clause as it stood, moved, in order to a further consideration of the subject, that the motion of Mr. Gouverneur Morris should be postponed; and on this question, it was lost, the states being equally divided.

New Jersey, Pennsylvania, Delaware, Maryland, Virginia, ay, 5; Massachusetts, Connecticut, North Carolina, South Carolina, Georgia, no, 5.

On Mr. Gouverneur Morris's motion,—

Pennsylvania, ay, 1; Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia, no, 8; North Carolina, divided.

The several clauses of article 9, sect. 1, were then separately postponed, after inserting, "and other public ministers," next after "ambassadors."

Mr. MADISON hinted, for consideration, whether a distinction might not be made between different sorts of treaties; allowing the President and Senate to make treaties eventual, and of alliance for limited terms, and requiring the concurrence of the whole legislature in other treaties.230

The first section of article 9, was finally referred, *nem. con.,* to the committee of five, and the House then adjourned.

Friday,*August* 24.

In Convention.—Gov. Livingston, from the committee of eleven, to whom were referred the two remaining clauses of the fourth section, and the fifth and sixth sections of the seventh article, delivered in the following report:—

"Strike out so much of the fourth section as was referred to the committee, and insert 'The migration or importation of such persons as the several states, now existing, shall think proper to admit, shall not be prohibited by the legislature prior to the year 1800; but a tax or duty may be imposed on such migration or importation, at a rate not exceeding the average of the duties laid on imports.'

"The fifth section to remain as in the report.

"The sixth section to be stricken out."

Mr. BUTLER, according to notice, moved that the first clause of article 7, sect. 1, as to the discharge of debts, be reconsidered to-morrow. He dwelt on the division of opinion concerning the domestic debts, and the different pretensions of the different classes of holders.

Gen. PINCKNEY seconded him.

Mr. RANDOLPH wished for a reconsideration, in order to better the expression, and to provide for the case of the state debts as is done by Congress.

On the question for reconsidering,—

Massachusetts, Connecticut, New Jersey, Delaware, Virginia, South Carolina, Georgia, ay, 7; New Hampshire, Maryland, no, 2; Pennsylvania, North Carolina, absent.

And to-morrow assigned for the reconsideration.

The second and third sections of article 9, being taken up,—

Mr. RUTLEDGE said, this provision for deciding controversies between the states was necessary under the Confederation, but will be rendered unnecessary by the national judiciary now to be established; and moved to strike it out.

Dr. JOHNSON seconded the motion.

Mr. SHERMAN concurred. So did Mr. DAYTON.

Mr. WILLIAMSON was for postponing instead of striking out, in order to consider whether this might not be a good provision, in cases where the judiciary were interested, or too closely connected with the parties.

Mr. GORHAM had doubts as to striking out. The judges might be connected with the states being parties. He was inclined to think the mode proposed in the clause would be more satisfactory than to refer such cases to the judiciary.

On the question for postponing the second and third sections, it passed in the negative,—

New Hampshire, North Carolina, Georgia, ay, 3; Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina, no, 7; Pennsylvania, absent.

Mr. WILSON urged the striking out, the judiciary being a better provision.

On the question for striking out the second and third sections of article 9,—

New Hampshire, Connecticut, New Jersey, Delaware, Maryland, Virginia, South Carolina, ay, 8; North Carolina, Georgia, no, 2; Pennsylvania, absent.231

Article 10, sect. 1.

The executive power of the United States shall be vested in a single person. His style shall be 'The President of the United States of America,' and his title shall be 'His Excellency.' He shall be elected by ballot by the legislature. He shall hold his office during the term of seven years; but shall not be elected a second time."

On the question for vesting the power in a *single person,*—it was agreed to, *nem. con.* So also on the *style* and *title.*

Mr. RUTLEDGE moved to insert "joint" before the word "ballot," as the most convenient mode of electing.

Mr. SHERMAN objected to it, as depriving the *states,* represented in the *Senate,* of the negative intended them in that House.

Mr. GORHAM said it was wrong to be considering, at every turn, whom the Senate would represent. The public good was the true object to be kept in view. Great delay and confusion would ensue, if the two Houses should vote separately, each having a negative on the choice of the other.

Mr. DAYTON. It might be well for those not to consider how the Senate was constituted, whose interest it was to keep it out of sight. If the amendment should be agreed to, a joint ballot would in fact give the appointment to one House. He could never agree to the clause with such an amendment. There could be no doubt of the two Houses separately concurring in the same person for President. The importance and necessity of the case would insure a concurrence.

Mr. CARROLL moved to strike out, "by the legislature," and insert "by the people." Mr. WILSON seconded him; and on the question,—

Pennsylvania, Delaware, ay, 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 9.

Mr. BREARLY was opposed to inserting the word "joint." The argument, that the small states should not put their hands into the pockets of the large ones, did not apply in this case.

Mr. WILSON urged the reasonableness of giving the larger states a larger share of the appointment, and the danger of delay from a disagreement of the two Houses. He remarked, also, that the Senate had peculiar powers, balancing the advantage given by a joint ballot in this case to the other branch of the legislature.

Mr. LANGDON. This general officer ought to be elected by the joint and general voice. In New Hampshire, the mode of separate votes by the two Houses was productive of great difficulties. The negative of the Senate would hurt the feelings of the man elected by the votes of the other branch. He was for inserting "joint," though unfavorable to New Hampshire as a small state.

Mr. WILSON remarked that, as the president of the Senate was to be the President of the United States, that body, in cases of vacancy, might have an interest in throwing dilatory obstacles in the way, if its separate concurrence should be required.

Mr. MADISON. If the amendment be agreed to, the rule of voting will give to the largest state, compared with the smallest, an influence as four to one only, although the population is as ten to one. This surely cannot be unreasonable, as the President is to act for the *people,* not for the *states.* The president of the *Senate* also is to be occasionally President of the United States, and by his negative alone can make three fourths of the other branch necessary to the passage of a law. This is another advantage enjoyed by the Senate.

On the question for inserting "joint," it passed in the affirmative,—

New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, ay, 7; Connecticut, New Jersey, Maryland, Georgia, no, 4.

Mr. DAYTON then moved to insert, after the word "legislature," the words, "each state having one vote."

Mr. BREARLY seconded him; and, on the question, it passed in the negative.

Connecticut, New Jersey, Delaware, Maryland, Georgia, ay, 5; New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, no, 6.

Mr. PINCKNEY moved to insert, after the word "legislature," the words,

"to which election a majority of the votes of the members present shall be required."

And, on this question, it passed in the affirmative.

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 10; New Jersey, no, 1.

Mr. READ moved that,

"in case the numbers for the two highest in votes should be equal, then the president of the Senate shall have an additional casting vote,"

which was disagreed to by a general negative.

Mr. GOUVERNEUR MORRIS opposed the election of the President by the legislature. He dwelt on the danger of rendering the executive uninterested in maintaining the rights of his station, as leading to legislative tyranny. If the legislature have the executive dependent on them, they can perpetuate and support their usurpations by the influence of tax-gatherers and other officers, by fleets, armies, &c. Cabal and corruption are attached to that mode of election. So is ineligibility a second time. Hence the executive is interested in courting popularity in the legislature, by sacrificing his executive rights; and then he can go into that body, after the expiration of his executive office, and enjoy there the fruits of his policy. To these considerations he added, that rivals would be continually intriguing to oust the President from his place. To guard against all these evils, he moved that the President

"shall be chosen by electors to be chosen by the people of the several states."

Mr. CARROLL seconded him; and, on the question, it passed in the negative.

Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, ay, 5; New Hampshire, Massachusetts, Maryland, North Carolina, South Carolina, Georgia, no, 6.

Mr. DAYTON moved to postpone the consideration of the two last clauses of article 10, sect. 1, which was disagreed to without a count of the states.

Mr. BROOM moved to refer the two clauses to a committee of a member from each state; and, on the question, it failed, the states being equally divided.

New Jersey, Pennsylvania, Delaware, Maryland, Virginia, ay, 5; New Hampshire, Massachusetts, North Carolina, South Carolina, Georgia, no, 5; Connecticut, divided.

On the question taken on the first part of Mr. Gouverneur Morris's motion, to wit, "shall be chosen by electors," as an abstract question, it failed, the states being equally divided.

New Jersey, Pennsylvania, Delaware, Virginia, ay, 4; New Hampshire, North Carolina, South Carolina, Georgia, no, 4; Connecticut, Maryland, divided; Massachusetts, absent.

The consideration of the remaining clauses of article 10, sect. 1, was then postponed till to-morrow, at the instance of the deputies of New Jersey.232

Article 10, sect. 2, being taken up, the word "information" was transferred, and inserted after "legislature."

On motion of Mr. GOUVERNEUR MORRIS, "he may" was struck out, and "and" inserted before "recommend," in the second clause of article 10, sect. 2, in order to make it the *duty* of the President to recommend, and thence prevent umbrage or cavil at his doing it.

Mr. SHERMAN objected to the sentence,

"and shall appoint officers in all cases not otherwise provided for in this Constitution."

He admitted it to be proper that many officers in the executive department should be so appointed; but contended that many ought not,—as general officers in the army, in time of peace, &c. Herein lay the corruption in Great Britain. If the executive can model the army, he may set up an absolute government; taking advantage of the close of a war, and an army commanded by his creatures. James II. was not obeyed by his officers, because they had been appointed by his predecessors, not by himself. He moved to insert, "or by law," after the word "Constitution."

On motion of Mr. MADISON, "officers" was struck out, and "to offices" inserted, in order to obviate doubts that he might appoint officers without a previous creation of the offices by the legislature.

On the question for inserting "or by law," as moved by Mr. Sherman,—

Connecticut, ay, 1; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, no, 9; North Carolina, absent.

Mr. DICKINSON moved to strike out the words,

"and shall appoint to offices in all cases not otherwise provided for by this Constitution,"

and insert,

"and shall appoint to all offices established by this Constitution, except in cases herein otherwise provided for; and to all offices which may hereafter be created by law."

Mr. RANDOLPH observed, that the power of appointments was a formidable one, both in the executive and legislative hands; and suggested whether the legislature should not be left at liberty to refer appointments, in some cases, to some state authority.

Mr. DICKINSON'S motion passed in the affirmative.

Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, Georgia, ay, 6; New Hampshire, Massachusetts, Delaware, South Carolina, no, 4; North Carolina, absent.

Mr. DICKINSON then moved to annex to his last amendment,

"except where, by law, the appointment shall be vested in the legislatures or executives of the several states."

Mr. RANDOLPH seconded the motion.

Mr. WILSON. If this be agreed to, it will soon be a standing instruction to the state legislatures to pass no law creating offices, unless the appointment be referred to them.

Mr. SHERMAN objected to "legislatures," in the motion, which was struck out by consent of the movers.

Mr. GOUVERNEUR MORRIS. This would be putting it in the power of the states to say, "you shall be viceroys, but we will be viceroys over you."

The motion was negatived without a count of the states.

Ordered, unanimously, that the order respecting the adjournment at four o'clock be repealed, and that in future the House assemble at ten o'clock, and adjourn at three.

Adjourned.

Saturday,*August* 25.

In Convention.—The first clause of article 7, sect. 1, being reconsidered,—

Col. MASON objected to the term "*shall* fulfil the engagements and discharge the debts," &c., as too strong. It may be impossible to comply with it. The creditors should be kept in the same plight. They will, in one respect, be necessarily and properly in a better. The government will be more able to pay them. The use of the term *shall* will beget speculations, and increase the pestilential practice of stock-jobbing. There was a great distinction between original creditors and those who purchased fraudulently of the ignorant and distressed. He did not mean to include those who have bought stock in the open market. He was sensible of the difficulty of drawing the line in this case, but he did not wish to preclude the attempt. Even fair purchasers, at four, five, six, eight, for one, did not stand on the same footing with the first holders, supposing them not to be blamable. The interest they received, even in paper, is equal to their purchase money. What he particularly wished was, to leave the door open for buying up the securities, which he thought would be precluded by the term "shall," as requiring *nominal payment,* and which was not inconsistent with his ideas of public faith. He was afraid, also, the word "*shall*" might extend to all the old continental paper.

Mr. LANGDON wished to do no more than leave the creditors *in statu quo.*

Mr. GERRY said, that, for himself, he had no interest in the question, being not possessed of more of the securities than would, by the interest, pay his taxes. He would observe, however, that, as the public had received the value of the literal amount, they ought to pay that value to somebody. The frauds on *the soldiers* ought to

have been foreseen. These poor and ignorant people could not but part with their securities. There are other creditors, who will part with any thing, rather than be cheated of the capital of their advances. The interest of the states, he observed, was different on this point, some having more, others less, than their proportion of the paper. Hence the idea of a scale for reducing its value had arisen. If the public faith would admit, of which he was not clear, he would not object to a revision of the debt, so far as to compel restitution to the ignorant and distressed, who have been defrauded. As to stock-jobbers, he saw no reason for the censures thrown on them. They keep up the value of the paper. Without them, there would be no market.

Mr. BUTLER said he meant neither to increase nor diminish the security of the creditors.

Mr. RANDOLPH moved to postpone the clause, in favor of the following:—

"All debts contracted, and engagements entered into, by or under the authority of Congress, shall be as valid against the United States, under this Constitution, as under the Confederation."

Dr. JOHNSON. The debts are debts of the United States, of the great body of America. Changing the government cannot change the obligation of the United States, which devolves, of course, on the new government. Nothing was, in his opinion, necessary to be said. If any thing, it should be a mere declaration, as moved by Mr. Randolph.

Mr. GOUVERNEUR MORRIS said, he never had become a public creditor, that he might urge, with more propriety the compliance with public faith. He had always done so, and always would, and preferred the term "*shall,*" as the most explicit. As to *buying up* the debt, the term "*shall*" was not inconsistent with it, if provision be first made for paying the interest; if not, such an expedient was a mere evasion. He was content to say nothing, as the new government would be bound, of course; but would prefer the clause with the term "*shall,*" because it would create many friends to the plan.

On Mr. Randolph's motion,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 10; Pennsylvania, no, 1.233

Mr. SHERMAN thought it necessary to connect with the clause for laying taxes, duties, &c., an express provision for the object of the old debts, &c., and moved to add to the first clause of article 7, sect. 1.

"for the payment of said debts, and for the defraying the expenses that shall be incurred for the common defence and general welfare."

The proposition, as being unnecessary, was disagreed to, Connecticut, alone, being in the affirmative.

The report of the committee of eleven (see Friday, the 24th,) being taken up,—

Gen. PINCKNEY moved to strike out the words, "the year eighteen hundred," as the year limiting the importation of slaves; and to insert the words "the year eighteen hundred and eight."

Mr. GORHAM seconded the motion.

Mr. MADISON. Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonorable to the American character than to say nothing about it in the Constitution.

On the motion, which passed in the affirmative,—

New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina, South Carolina, Georgia, ay, 7; New Jersey, Pennsylvania, Delaware, Virginia, no, 4.

Mr. GOUVERNEUR MORRIS was for making the clause read at once,—

"The importation of slaves into North Carolina, South Carolina, and Georgia, shall not be prohibited, &c."

This, he said, would be most fair, and would avoid the ambiguity by which, under the power with regard to naturalization, the liberty reserved to the states might be defeated. He wished it to be known, also, that this part of the Constitution was a compliance with those states. If the change of language, however, should be objected to by the members from those states, he should not urge it.

Col. MASON was not against using the term "slaves," but against naming North Carolina, South Carolina, and Georgia, lest it should give offence to the people of those states.

Mr. SHERMAN liked a description better than the terms proposed, which had been declined by the old Congress, and were not pleasing to some people.

Mr. CLYMER concurred with Mr. Sherman.

Mr. WILLIAMSON said that, both in opinion and practice, he was against slavery; but thought it more in favor of humanity, from a view of all circumstances, to let in South Carolina and Georgia on those terms, than to exclude them from the Union.

Mr. GOUVERNEUR MORRIS withdrew his motion.

Mr. DICKINSON wished the clause to be confined to the states which had not themselves prohibited the importation of slaves, and, for that purpose, moved to amend the clause, so as to read,—

The importation of slaves into such of the states as shall permit the same shall not be prohibited by the legislature of the United States until the year 1808,"

which was disagreed to, *nem. con.*[*]

The first part of the report was then agreed to, amended, as follows:—

"The migration or importation of such persons as the several states now existing shall think proper to admit shall not be prohibited by the legislature prior to the year 1808."

New Hampshire, Massachusetts, Connecticut, Maryland, North Carolina. South Carolina, Georgia, ay, 7; New Jersey, Pennsylvania, Delaware, Virginia, no, 4.

Mr. BALDWIN, in order to restrain and more explicitly define "the average duty," moved to strike out of the second part the words "average of the duties laid on imports," and insert "common impost on articles not enumerated," which was agreed to, *nem. con.*

Mr. SHERMAN was against this second part, as acknowledging men to be property, by taxing them as such under the character of slaves.

Mr. KING and Mr. LANGDON considered this as the price of the first part.

Gen. PINCKNEY admitted that it was so.

Col. MASON. Not to tax, will be equivalent to a bounty on, the importation of slaves.

Mr. GORHAM thought that Mr. Sherman should consider the duty, not as implying that slaves are property, but as a discouragement to the importation of them.

Mr. GOUVERNEUR MORRIS remarked, that, as the clause now stands, it implies that the legislature may tax freemen imported.

Mr. SHERMAN, in answer to Mr. Gorham, observed, that the smallness of the duty showed revenue to be the object, not the discouragement of the importation.

Mr. MADISON thought it wrong to admit in the Constitution the idea that there could be property in men. The reason of duties did not hold, as slaves are not, like merchandise, consumed, &c.

Col. MASON, in answer to Mr. Gouverneur Morris. The provision, as it stands, was necessary for the case of convicts, in order to prevent the introduction of them.

It was finally agreed, *nem. con.,* to make the clause read,

"but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person;"

and then the second part, as amended, was agreed to.

Article 7, sect. 5, was agreed to, *nem. con.,* as reported.[234]

Article 7, sect. 6, in the report, was postponed.

On motion of Mr. MADISON, seconded by Mr. GOUVERNEUR MORRIS, article 8 was reconsidered, and, after the words "all treaties made," were inserted, *nem. con.,* the words "or which shall be made." This insertion was meant to obviate all doubt concerning the force of treaties preëxisting, by making the words, "all treaties made," to refer to them, as the words inserted would refer to future treaties.

Mr. CARROLL and Mr. L. MARTIN expressed their apprehensions, and the probable apprehensions of their constituents, that, under the power of regulating trade, the general legislature might favor the ports of particular states, by requiring vessels destined to or from other states to enter and clear thereat: as vessels belonging or bound to Baltimore, to enter and clear at Norfolk, &c. They moved the following proposition:

"The legislature of the United States shall not oblige vessels belonging to citizens thereof, or to foreigners, to enter or pay duties or imposts in any other state than in that to which they may be bound, or to clear out in any other than the state in which their cargoes may be laden on board; nor shall any privilege or immunity be granted to any vessel on entering or clearing out, or paying duties or imposts in one state in preference to another."

Mr. GORHAM thought such a precaution unnecessary: and that the revenue might be defeated, if vessels could run up long rivers, through the jurisdiction of different states, without being required to enter, with the opportunity of landing and selling their carges by the way.

Mr. M'HENRY and Gen. PINCKNEY made the following propositions:—

"Should it be judged expedient by the legislature of the United States, that one or more ports for collecting duties or imposts, other than those ports of entrance and clearance already established by the respective states, should be established, the legislature of the United States shall signify the same to the executives of the respective states, ascertaining the number of such ports judged necessary, to be laid by the said executives before the legislatures of the states at their next session; and the legislature of the United States shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any state, except the legislature of such state shall neglect to fix and establish the same during their first session to be held after such notification by the legislature of the United States to the executive of such state.

"All duties, imposts, and excises, prohibitions or restraints, laid or made by the legislature of the United States, shall be uniform and equal throughout the United States."

These several propositions were referred, *nem. con.,* to a committee composed of a member from each state. The committee, appointed by ballot, were—Mr. Langdon,

Mr. Gorham, Mr. Sherman, Mr. Dayton, Mr. Fitzsimons, Mr. Read, Mr. Carroll, Mr. Mason, Mr. Williamson, Mr. Butler, Mr. Few.

On the question now taken on Mr. Dickinson's motion of yesterday, allowing appointments to offices to be referred by the general legislature to "the executives of the several states," as a further amendment to article 10, sect. 2, the votes were,—

Connecticut, Virginia, Georgia, ay, 3; New Hampshire, Massachusetts, Pennsylvania, Delaware, North Carolina, South Carolina, no, 6; Maryland, divided.235

In amendment of the same section, the words, "other public ministers," were inserted after "ambassadors."

Mr. GOUVERNEUR MORRIS moved to strike out of the section, "and may correspond with the supreme executives of the several states," as unnecessary, and implying that he could not correspond with others.

Mr. BROOM seconded him.

On the question,—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Maryland, no, 1.

The clause, "shall receive ambassadors and other public ministers," was agreed to, *nem. con.*

Mr. SHERMAN moved to amend the "power to grant reprieves and pardons" so as to read, "to grant reprieves until the ensuing session of the Senate, and pardons with consent of the Senate."

On the question,—

Connecticut, ay, 1; New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 8.236

The words, "except in cases of impeachment," were inserted, *nem. con.,* after "pardons."

On the question to agree to, "but his pardon shall not be pleadable in bar," it passed in the negative.

New Hampshire, Maryland, North Carolina, South Carolina, ay, 4; Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, Georgia, no, 6.

Adjourned.

Monday,*August* 27.

In Convention.—Article 10, sect. 2, being resumed,—

Mr. L. MARTIN moved to insert the words, "after conviction," after the words, "reprieves and pardons."

Mr. WILSON objected, that pardon before conviction might be necessary, in order to obtain the testimony of accomplices. He stated the case of forgeries, in which this might particularly happen.

Mr. L. MARTIN withdrew his motion.

Mr. SHERMAN moved to amend the clause giving the executive the command of the militia, so as to read,—

"and of the militia of the several states, *when called into the actual service of the United States;*"

and on the question,—

New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, Georgia, ay, 6; Delaware, South Carolina, no, 2; Massachusetts, New Jersey, North Carolina, absent.

The clause for removing the President, on impeachment by the House of Representatives, and conviction in the supreme court, of treason, bribery, or corruption, was postponed, *nem. con.,* at the instance of Mr. GOUVERNEUR MORRIS; who thought the tribunal an improper one, particularly, if the first judge was to be of the privy council.

Mr. GOUVERNEUR MORRIS objected also to the president of the Senate being provisional successor to the President, and suggested a designation of the chief justice.

Mr. MADISON adds, as a ground of objection, that the Senate might retard the appointment of a President, in order to carry points whilst the revisionary power was in the president of their own body; but suggested that the executive powers during a vacancy be administered by the persons composing the council to the President.

Mr. WILLIAMSON suggested that the legislature ought to have power to provide for occasional successors: and moved that the last clause of article 10, sect. 2, relating to a provisional successor to the President, be postponed.

Mr. DICKINSON seconded the postponement, remarking that it was too vague. What is the extent of the term "disability," and who is to be the judge of it?

The postponement was agreed to, *nem. con.*

Col. MASON and Mr. MADISON moved to add to the oath to be taken by the supreme executive,

"and will, to the best of my judgment and power, preserve, protect, and defend, the Constitution of the United States."

Mr. WILSON thought the general provision for oaths of office, in a subsequent place, rendered the amendment unnecessary.

On the question,—

New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, ay, 7; Delaware, no, 1; Massachusetts, New Jersey, North Carolina, absent.

Article 11, being next taken up,

Dr. JOHNSON suggested, that the judicial power ought to extend to equity as well as law; and moved to insert the words, "both in law and equity," after the words "United States," in the first line of the first section.

Mr. READ objected to vesting these powers in the same court.

On the question,

New Hampshire, Connecticut, Pennsylvania, Virginia, South Carolina, Georgia, ay, 6; Delaware, Maryland, no, 2; Massachusetts, New Jersey, North Carolina, absent.

On the question to agree to article 11, sect. 1, as amended, the states were the same as on the preceding question.

Mr. DICKINSON moved, as an amendment to article 11, sect. 2, after the words, "good behavior," the words,

"Provided that they may be removed by the executive on the application by the Senate and House of Representatives."

Mr. GERRY seconded the motion.

Mr. GOUVERNEUR MORRIS thought it a contradiction in terms, to say that the judges should hold their offices during good behavior, and yet be removeable without a trial. Besides, it was fundamentally wrong to subject judges to so arbitrary an authority.

Mr. SHERMAN saw no contradiction or impropriety, if this were made a part of the constitutional regulation of the judiciary establishment. He observed that a like provision was contained in the British statutes.

Mr. RUTLEDGE. If the Supreme Court is to judge between the United States and particular states, this alone is an insuperable objection to the motion.

Mr. WILSON considered such a provision in the British government as less dangerous than here; the House of Lords and House of Commons being less likely to

concur on the same occasions. Chief Justice Holt, he remarked, had *successively* offended, by his independent conduct, both Houses of Parliament. Had this happened at the same time, he would have been ousted. The judges would be in a bad situation, if made to depend on any gust of faction which might prevail in the two branches of our government.

Mr. RANDOLPH opposed the motion, as weakening too much the independence of the judges.

Mr. DICKINSON was not apprehensive that the legislature, composed of different branches, constructed on such different principles, would improperly unite for the purpose of displacing a judge.

On the question for agreeing to Mr. Dickinson's motion, it was negatived.

Connecticut, ay; all the other states present, no.

On the question on article 11, sect. 2, as reported,—

Delaware and Maryland only, no.

Mr. MADISON and Mr. M'HENRY moved to reinstate the words, "increased or," before the word "diminished," in article 11, sect. 2.

Mr. GOUVERNEUR MORRIS opposed it, for reasons urged by him on a former occasion.

Col. MASON contended strenuously for the motion. There was no weight, he said, in the argument drawn from changes in the value of the metals, because this might be provided for by an increase of salaries, so made as not to affect persons in office;—and this was the only argument on which much stress seemed to have been laid.

Gen. PINCKNEY. The importance of the judiciary will require men of the first talents: large salaries will therefore be necessary, larger than the United States can afford in the first instance. He was not satisfied with the expedient mentioned by Col. Mason. He did not think it would have a good effect, or a good appearance, for new judges to come in with higher salaries than the old ones.

Mr. GOUVERNEUR MORRIS said the expedient might be evaded, and therefore amounted to nothing. Judges might resign, and then be reappointed to increased salaries.

On the question,—

Virginia, ay, 1; New Hampshire, Connecticut, Pennsylvania, Delaware, South Carolina, no, 5; Maryland, divided; Massachusetts, New Jersey, North Carolina, Georgia, absent.

Mr. RANDOLPH and Mr. MADISON then moved to add the following words to article 11, sect. 2:—

"nor increased by any act of the legislature which shall operate before the expiration of three years after the passing thereof."

On the question,—

Maryland, Virginia, ay, 2; New Hampshire, Connecticut, Pennsylvania, Delaware, South Carolina, no, 5; Massachusetts, New Jersey, North Carolina, Georgia, absent.237

Article 11, sect. 3, being taken up, the following clause was post poned, viz:—

"to the trial of impeachments of officers of the United States;"—

by which the jurisdiction of the Supreme Court was extended to such cases.

Mr. MADISON and Mr. GOUVERNEUR MORRIS moved to insert, after the word "controversies," the words, "to which the United States shall be a party;" which was agreed to, *nem. con.*

Dr. JOHNSON moved to insert the words, "this Constitution and the," before the word "laws."

Mr. MADISON doubted whether it was not going too far, to extend the jurisdiction of the court generally to cases arising under the Constitution, and whether it ought not to be limited to cases of a judiciary nature. The right of expounding the Constitution, in cases not of this nature, ought not to be given to that department.

The motion of Dr. Johnson was agreed to, *nem. con.,* it being generally supposed, that the jurisdiction given was constructively limited to cases of a judiciary nature.

On motion of Mr. RUTLEDGE, the words, "passed by the legislature," were struck out; and after the words, "United States," were inserted, *nem. con.,* the words, "and treaties made or which shall be made under their authority," conformably to a preceding amendment in another place.

The clause, "in cases of impeachment," was postponed.

Mr. GOUVERNEUR MORRIS wished to know what was meant by the words, "In all the cases before mentioned it [jurisdiction] shall be appellate, with such exceptions," &c.,—whether it extended to matters of fact as well as law, and to cases of common law, as well as civil law.

Mr. WILSON. The committee, he believed, meant facts as well as law, and common as well as civil law. The jurisdiction of the federal court of appeals had, he said, been so construed.

Mr. DICKINSON moved to add, after the word "appellate," the words, "both as to law and fact;" which was agreed to, *nem. con.*

Mr. MADISON and Mr. GOUVERNEUR MORRIS moved to strike out the beginning of the third section, "The jurisdiction of the supreme court," and to insert the words, "the judicial power," which was agreed to, *nem. con.*

The following motion was disagreed to, to wit, to insert,

"In all the other cases beforementioned, the judicial power shall be exercised in such manner as the legislature shall direct."

Delaware, Virginia, ay, 2; New Hampshire, Connecticut, Pennsylvania, Maryland, South Carolina, Georgia, no, 6.

On a question for striking out the last sentence of the third section. "The legislature may assign," &c., it passed, *nem. con.*

Mr. SHERMAN moved to insert, after the words, "between citizens of different states," the words, "between citizens of the same state claiming lands under grants of different states,"—according to the provision in the 9th Article of the Confederation; which was agreed to, *nem. con.*238

Adjourned.

Tuesday,*August* 28.

In Convention.—Mr. SHERMAN, from the committee to whom were referred several propositions on the 25th instant, made the following report; which was ordered to lie on the table:

"That there be inserted, after the 4th clause of the 7th sect.—'Nor shall any regulation of commerce or revenue give preference to the ports of one state over those of another, or oblige vessels bound to or from any state to enter, clear, or pay duties, in another; and all tonnage, duties, imposts, and excises, laid by the legislature, shall be uniform throughout the United States.' "

Article 11, sect. 3, being considered,—it was moved to strike out the words, "it shall be appellate," and to insert the words "the supreme court shall have appellate jurisdiction,"—in order to prevent uncertainty whether "it" referred to the *Supreme Court,* or to the *judicial power.*

On the question,—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Maryland, no, 1; New Jersey, absent.

Sect. 4 was so amended, *nem. con.,* as to read,—

"The trial of all crimes (except in cases of impeachment) shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, then the trial shall be at such place or places as the legislature may direct."

The object of this amendment was, to provide for trial by jury of offences committed out of any state.

Mr. PINCKNEY, urging the propriety of securing the benefit of the *habeas corpus* in the most ample manner, moved, that it should not be suspended but on the most urgent occasions, and then only for a limited time, not exceeding twelve months.

Mr. RUTLEDGE was for declaring the *habeas corpus* inviolate. He did not conceive that a suspension could ever be necessary, at the same time, through all the states.

Mr. GOUVERNEUR MORRIS moved, that

"the privilege of the writ of *habeas corpus* shall not be suspended, unless where, in cases of rebellion or invasion, the public safety may require it."

Mr. WILSON doubted whether in any case a suspension could be necessary, as the discretion now exists with judges, in most important cases, to keep in gaol or admit to bail.

The first part of Mr. Gouverneur Morris's motion, to the word "unless," was agreed to, *nem. con.* On the remaining part,—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, ay, 7; North Carolina, South Carolina, Georgia, no, 3.

The 5th sect. of article 11, was agreed to, *nem. con.*[*]

Article 12 being then taken up,—

Mr. WILSON and Mr. SHERMAN moved to insert, after the words, "coin money," the words, "nor emit bills of credit, nor make any thing but gold and silver coin a tender in payment of debts;" making these prohibitions absolute, instead of making the measures allowable, as in the 13th article, *with the consent of the legislature of the United States.*

Mr. GORHAM thought the purpose would be as well secured by the provision of article 13, which makes the consent of the general legislature necessary; and that, in that mode, no opposition would be excited; whereas, an absolute prohibition of paper money would rouse the most desperate opposition from its partizans.

Mr. SHERMAN thought this a favorable crisis for crushing paper money. If the consent of the legislature could authorize emissions of it, the friends of paper money would make every exertion to get into the legislature in order to license it.

The question being divided,—on the first part, "nor emit bills of credit,"—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, ay, 8; Virginia, no, 1; Maryland, divided.

The remaining part of Mr. Wilson's and Mr. Sherman's motion was agreed to, *nem. con.*239

Mr. KING moved to add, in the words used in the ordinance of Congress establishing new states, a prohibition on the states to interfere in private contracts.

Mr. GOUVERNEUR MORRIS. This would be going too far. There are a thousand laws relating to bringing actions, limitations of actions, &c., which affect contracts. The judicial power of the United States will be a protection in cases within their jurisdiction; and within the state itself a majority must rule, whatever may be the mischief done among themselves.

Mr. SHERMAN. Why then prohibit bills of credit?

Mr. WILSON was in favor of Mr. King's motion.

Mr. MADISON admitted that inconveniences might arise from such a prohibition; but thought on the whole it would be overbalanced by the utility of it. He conceived, however, that a negative on the state laws could alone secure the effect. Evasions might and would be devised by the ingenuity of the legislatures.

Col. MASON. This is carrying the restraint too far. Cases will happen, that cannot be foreseen, where some kind of interference will be proper and essential. He mentioned the case of limiting the period for bringing actions on open account—that of bonds after a certain lapse of time—asking, whether it was proper to tie the hands of the states from making provision in such cases.

Mr. WILSON. The answer to these objections is, that retrospective *interferences* only are to be prohibited.

Mr. MADISON. Is not that already done by the prohibition of *ex post facto* laws, which will oblige the judges to declare such interferences null and void.240

Mr. RUTLEDGE moved, instead of Mr. King's motion, to insert, "nor pass bills of attainder, nor retrospective [in the printed Journal, "*ex post facto,*"] laws."

On which motion,—

New Hampshire, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, ay, 7; Connecticut, Maryland, Virginia, no. 3.

Mr. MADISON moved to insert, after the word "reprisal," (article 12,) the words, "nor lay embargoes." He urged that such acts by the states would be unnecessary, impolitic, and unjust.

Mr. SHERMAN thought the states ought to retain this power, in order to prevent suffering and injury to their poor.

Col. MASON thought the amendment would be not only improper but dangerous, as the general legislature would not sit constantly, and therefore could not interpose at the necessary moments. He enforced his objection by appealing to the necessity of sudden embargoes, during the war, to prevent exports—particularly in the case of a blockade.

Mr. GOUVERNEUR MORRIS considered the provision as unnecessary; the power of regulating trade between state and state, already vested in the general legislature, being sufficient.

On the question,—

Massachusetts, Delaware, South Carolina, ay, 3; New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, no, 8.

Mr. MADISON moved, that the words, "nor lay imposts or duties on imports," be transferred from article 13, where the consent of the general legislature may license the act, into article 12, which will make the prohibition on the states absolute. He observed, that as the states interested in this power, by which they could tax the imports of their neighbors passing through their markets, were a majority, they could give the consent of the legislature, to the injury of New Jersey, North Carolina, &c.

Mr. WILLIAMSON seconded the motion.

Mr. SHERMAN thought the power might safely be left to the legislature of the United States.

Col. MASON observed, that particular states might wish to encourage, by impost duties, certain manufactures, for which they enjoyed natural advantages, as Virginia the manufacture of hemp, &c.

Mr. MADISON. The encouragement of manufactures in that mode requires duties, not only on imports directly from foreign countries, but from the other states in the Union, which would revive all the mischiefs experienced from the want of a general government over commerce.

On the question,—

New Hampshire, New Jersey, Delaware, North Carolina, ay, 4; Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, no, 7.

Article 12, as amended, was then agreed to, *nem. con.*

Article 13, was then taken up.

Mr. KING moved to insert, after the word “imports,” the words, “or exports;” so as to prohibit the states from taxing either; and on this question, it passed in the affirmative.

New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, North Carolina, ay, 6; Connecticut, Maryland, Virginia, South Carolina, Georgia, no, 5.

Mr. SHERMAN moved to add, after the word “exports,” the words, “nor with such consent, but for the use of the United States;” so as to carry the proceeds of all state duties on imports or exports into the common treasury.

Mr. MADISON liked the motion, as preventing all state imposts: but lamented the complexity we were giving to the commercial system.

Mr. GOUVERNEUR MORRIS thought the regulation necessary, to prevent the Atlantic States from endeavoring to tax the Western States, and promote their interest by opposing the navigation of the Mississippi, which would drive the western people into the arms of Great Britain.

Mr. CLYMER thought the encouragement of the western country was suicide on the part of the old states. If the states have such different interests that they cannot be left to regulate their own manufactures without encountering the interests of other states, it is a proof that they are not fit to compose one nation.

Mr. KING was afraid that the regulation moved by Mr. Sherman would too much interfere with the policy of states respecting their manufactures, which may be necessary. Revenue, he reminded the House, was the object of the general legislature.

On Mr. Sherman’s motion,—

New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Massachusetts, Maryland, no, 2.

Article 13, was then agreed to, as amended.

Article 14, was then taken up.

Gen. PINCKNEY was not satisfied with it. He seemed to wish some provision should be included in favor of property in slaves.

On the question on article 14.

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, ay, 9; South Carolina, no, 1; Georgia, divided.

Article 15 being then taken up, the words, “high misdemeanor,” were struck out, and the words, “other crime,” inserted, in order to comprehend all proper cases; it being doubtful whether “high misdemeanor” had not a technical meaning too limited.

Mr. BUTLER and Mr. PINCKNEY moved to require "fugitive slaves and servants to be delivered up like criminals."

Mr. WILSON. This would oblige the executive of the state to do it at the public expense.

Mr. SHERMAN saw no more propriety in the public seizing and surrendering a slave or servant than a horse.

Mr. BUTLER withdrew his proposition, in order that some particular provision might be made, apart from this article.

Article 15, as amended, was then agreed to, *nem. con.*

Adjourned.

Wednesday,*August* 29.

In Convention.—Article 16 being taken up,—

Mr. WILLIAMSON moved to substitute, in place of it, the words of the Articles of Confederation on the same subject. He did not understand precisely the meaning of the article.241

Mr. WILSON and Dr. JOHNSON supposed the meaning to be, that judgments in one state should be the ground of actions in other states; and that acts of the legislatures should be included, for the sake of acts of insolvency, &c.

Mr. PINCKNEY moved to commit article 16, with the following proposition: "To establish uniform laws upon the subject of bankruptcies, and respecting the damages arising on the protest of foreign bills of exchange."

Mr. GORHAM was for agreeing to the article, and committing the proposition.

Mr. MADISON was for committing both. He wished the legislature might be authorized to provide for the *execution* of judgments in other states, under such regulations as might be expedient. He thought that this might be safely done, and was justified by the nature of the Union.

Mr. RANDOLPH said, there was no instance of one nation executing judgments of the courts of another nation. He moved the following proposition:—

"Whenever the act of any state, whether legislative, executive, or judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other states as full proof of the existence of that act; and its operation shall be binding in every other state, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the state wherein the said act was done."

On the question for committing article 16, with Mr. Pinckney's motion,—

Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; New Hampshire, Massachusetts, no, 2.

The motion of Mr. Randolph was also committed, *nem. con.*

Mr. GOUVERNEUR MORRIS moved to commit also the following proposition on the same subject:—

"Full faith ought to be given, in each state, to the public acts, records, and judicial proceedings, of every other state; and the legislature shall, by general laws, determine the proof and effect of such acts, records, and proceedings;"

and it was committed, *nem. con.*

The committee appointed for these references, were—Mr. Rutledge, Mr. Randolph, Mr. Gorham, Mr. Wilson, and Mr. Johnson.242

Mr. DICKINSON mentioned to the House, that, on examining Blackstone's Commentaries, he found that the term "*ex post facto*" related to criminal cases only; that they would not, consequently, restrain the states from retrospective laws in civil cases; and that some further provision for this purpose would be requisite.

Article 7, sect. 6, by the committee of eleven reported to be struck out, (see the 24th inst.,) being now taken up,—

Mr. PINCKNEY moved to postpone the report, in favor of the following proposition:—

"That no act of the legislature for the purpose of regulating the commerce of the United States with foreign powers, among the several states, shall be passed without the assent of two thirds of the members of each House."

He remarked, that there were five distinct commercial interests: 1. The fisheries and West India trade, which belonged to the New England States. 2. The interest of New York lay in a free trade. 3. Wheat and flour, the staples of the two Middle States, (New Jersey and Pennsylvania.) 4. Tobacco, the staple of Maryland and Virginia, and partly of North Carolina. 5. Rice and indigo, the staples of South Carolina and Georgia. These different interests would be a source of oppressive regulations, if no check to a bare majority should be provided. States pursue their interests with less scruple than individuals. The power of regulating commerce was a pure concession on the part of the Southern States. They did not need the protection of the Northern States at present.

Mr. MARTIN seconded the motion.

Gen. PINCKNEY said, it was the true interest of the Southern States to have no regulation of commerce; but, considering the loss brought on the commerce of the

Eastern States by the revolution, their liberal conduct towards the views* of South Carolina, and the interest the weak Southern States had in being united with the strong Eastern States, he thought it proper that no fetters should be imposed on the power of making commercial regulations, and that his constituents, though prejudiced against the Eastern States, would be reconciled to this liberality. He had himself, he said, prejudices against the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever.

Mr. CLYMER. The diversity of commercial interest of necessity creates difficulties which ought not to be increased by unnecessary restrictions. The Northern and Middle States will be ruined, if not enabled to defend themselves against foreign regulations.

Mr. SHERMAN, alluding to Mr. Pinckney's enumeration of particular interests, as requiring a security against abuse of the power, observed, that the diversity was of itself a security; adding, that to require more than a majority to decide a question was always embarrassing, as had been experienced in cases requiring the votes of nine States in Congress.

Mr. PINCKNEY replied, that his enumeration meant the five minute interests. It still left the two great divisions, of northern and southern interests.

Mr. GOUVERNEUR MORRIS opposed the object of the motion, as highly injurious. Preferences to American ships will multiply them, till they can carry the southern produce cheaper than it is now carried. A navy was essential to security, particularly of the Southern States; and can only be had by a navigation act encouraging American bottoms and seamen. In those points of view, then, alone, it is the interest of the Southern States that navigation acts should be facilitated. Shipping, he said, was the worst and most precarious kind of property, and stood in need of public patronage.

Mr. WILLIAMSON was in favor of making two thirds, instead of a majority, requisite, as more satisfactory to the southern people. No useful measure, he believed, had been lost in Congress for want of nine votes. As to the weakness of the Southern States, he was not alarmed on that account. The sickliness of their climate for invaders would prevent their being made an object. He acknowledged that he did not think the motion requiring two thirds necessary in itself; because, if a majority of the Northern States should push their regulations too far, the Southern States would build ships for themselves; but he knew the southern people were apprehensive on this subject, and would be pleased with the precaution.

Mr. SPAIGHT was against the motion. The Southern States could at any time save themselves from oppression, by building ships for their own use.

Mr. BUTLER differed from those who considered the rejection of the motion as no concession on the part of the Southern States. He considered the interest of these and of the Eastern States to be as different as the interests of Russia and Turkey. Being, notwithstanding, desirous of conciliating the affections of the Eastern States, he should vote against requiring two thirds instead of a majority.

Col. MASON. If the government is to be lasting, it must be founded in the confidence and affections of the people; and must be so constructed as to obtain these. The *majority* will be governed by their interests. The Southern States are the *minority* in both Houses. Is it to be expected that they will deliver themselves, bound hand and foot, to the Eastern States, and enable them to exclaim, in the words of Cromwell, on a certain occasion—"the Lord hath delivered them into our hands"?

Mr. WILSON took notice of the several objections, and remarked, that if every peculiar interest was to be secured, *unanimity* ought to be required. The majority, he said, would be no more governed by interest than the minority. It was surely better to let the latter be bound hand and foot, than the former. Great inconveniences had, he contended, been experienced in Congress from the Article of Confederation requiring nine votes in certain cases.

Mr. MADISON went into a pretty full view of the subject. He observed that the disadvantage to the Southern States from a navigation act lay chiefly in a temporary rise of freight, attended, however, with an increase of southern as well as northern shipping—with the emigration of northern seamen and merchants to the Southern States—and with a removal of the existing and injurious retaliations among the states on each other. The power of foreign nations to obstruct our retaliating measures on them, by a corrupt influence would also be less, if a majority should be made competent, than if two thirds of each House should be required to legislate acts in this case. An abuse of the power would be qualified with all these good effects. But he thought an abuse was rendered improbable by the provision of two branches—by the independence of the Senate—by the negative of the executive—by the interest of Connecticut and New Jersey, which were agricultural, not commercial states—by the interior interest, which was also agricultural in the most commercial states—and by the accession of Western States, which would be altogether agricultural. He added, that the Southern States would derive an essential advantage in the general security afforded by the increase of our maritime strength. He stated the vulnerable situation of them all, and of Virginia in particular. The increase of the coasting trade, and of seamen, would also be favorable to the Southern States, by increasing the consumption of their produce. If the wealth of the eastern should in a still greater proportion be augmented, that wealth would contribute the more to the public wants, and be otherwise a national benefit.

Mr. RUTLEDGE was against the motion of his colleague. It did not follow, from a grant of the power to regulate trade, that it would be abused. At the worst, a navigation act could bear hard a little while only on the Southern States. As we are laying the foundation for a great empire, we ought to take a permanent view of the subject, and not look at the present moment only. He reminded the House of the necessity of securing the West India trade to this country. That was the great object, and a navigation act was necessary for obtaining it.

Mr. RANDOLPH said that there were features so odious in the Constitution, as it now stands, that he doubted whether he should be able to agree to it. A rejection of the motion would complete the deformity of the system. He took notice of the argument in favor of giving the power over trade to a majority, drawn from the opportunity

foreign powers would have of obstructing retaliatory measures, if two thirds were made requisite. He did not think there was weight in that consideration. The difference between a majority and two thirds did not afford room for such an opportunity. Foreign influence would also be more likely to be exerted on the President, who could require three fourths by his negative. He did not mean, however, to enter into the merits. What he had in view was merely to pave the way for a declaration—which he might be hereafter obliged to make, if an accumulation of obnoxious ingredients should take place—that he could not give his assent to the plan.

Mr. GORHAM. If the government is to be so fettered as to be unable to relieve the Eastern States, what motive can they have to join in it, and thereby tie their own hands from measures which they could otherwise take for themselves? The Eastern States were not led to strengthen the Union by fear for their own safety. He deprecated the consequences of disunion; but if it should take place, it was the southern part of the continent that had most reason to dread them. He urged the improbability of a combination against the interest of the Southern States, the different situations of the Northern and Middle States being a security against it. It was, moreover, certain, that foreign ships would never be altogether excluded, especially those of nations in treaty with us.

On the question to postpone, in order to take up Mr. Pinckney's motion,—

Maryland, Virginia, North Carolina, Georgia, ay, 4; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina, no, 7.

The report of the committee for striking out sect. 6, requiring two thirds of each House to pass a navigation act, was then agreed to, *nem. con.*

Mr. BUTLER moved to insert, after article 15,—

"If any person bound to service or labor in any of the United States shall escape into another state, he or she shall not be discharged from such service or labor, in consequence of any regulations subsisting in the state to which they escape, but shall be delivered up to the person justly claiming their service or labor;"

which was agreed to, *nem. con.*[243]

Article 17 being then taken up,—

Mr. GOUVERNEUR MORRIS moved to strike out the two last sentences, to wit:—

"If the admission be consented to, the new states shall be admitted on the same terms with the original states. But the legislature may make conditions with the new states, concerning the public debt which shall be then subsisting."

He did not wish to bind down the legislature to admit Western States on the terms here stated.

Mr. MADISON opposed the motion; insisting that the Western States neither would, nor ought to, submit to a union which degraded them from an equal rank with the other states.

Col. MASON. If it were possible by just means to prevent emigrations to the western country, it might be good policy. But go the people will, as they find it for their interest; and the best policy is to treat them with that equality which will make them friends, not enemies.

Mr. GOUVERNEUR MORRIS did not mean to discourage the growth of the western country. He knew that to be impossible. He did not wish, however, to throw the power into their hands.

Mr. SHERMAN was against the motion, and for fixing an equality of privileges by the Constitution.

Mr. LANGDON was in favor of the motion. He did not know but circumstances might arise which would render it inconvenient to admit new states on terms of equality.

Mr. WILLIAMSON was for leaving the legislature free. The existing *small* states enjoy an equality now, and for *that* reason are admitted to it in the Senate. This reason is not applicable to new Western States.

On Mr. Gouverneur Morris's motion, for striking out,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, ay, 9; Maryland, Virginia, no. 2.

Mr. L. MARTIN and Mr. GOUVERNEUR MORRIS moved to strike out of article 17,—

"But to such admission the consent of two thirds of the members present shall be necessary."

Before any question was taken on this motion,244

Mr. GOUVERNEUR MORRIS moved the following proposition, as a substitute for the seventeenth article:—

"New states may be admitted by the legislature into the Union; but no new states shall be erected within the limits of any of the present states, without the consent of the legislature of such state, as well as of the general legislature."

The first part, to "Union," inclusive, was agreed to, *nem con.*

Mr. L. MARTIN opposed the latter part. Nothing, he said, would so alarm the limited states, as to make the consent of the large states, claiming the western lands, necessary to the establishment of new states within their limits. It is proposed to

guaranty the states. Shall Vermont be reduced by force, in favor of the states claiming it? Frankland, and the western county of Virginia, were in a like situation.

On Mr. Gouverneur Morris's motion, to substitute, &c., it was agreed to.

Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 6; New Hampshire, Connecticut, New Jersey, Delaware, Maryland, no, 5.

Article 17 being before the House, as amended,

Mr. SHERMAN was against it. He thought it unnecessary. The Union cannot dismember a state without its consent.

Mr. LANGDON thought there was great weight in the argument of Mr. Luther Martin; and that the proposition substituted by Mr. Gouverneur Morris would excite a dangerous opposition to the plan.

Mr. GOUVERNEUR MORRIS thought, on the contrary, that the small states would be pleased with the regulation, as it holds up the idea of dismembering the large states.

Mr. BUTLER. If new states were to be erected without the consent of the dismembered states, nothing but confusion would ensue. Whenever taxes should press on the people, demagogues would set up their schemes of new states.

Dr. JOHNSON agreed in general with the ideas of Mr. Sherman; but was afraid that, as the clause stood, Vermont would be subjected to New York, contrary to the faith pledged by Congress. He was of opinion that Vermont ought to be compelled to come into the Union.

Mr. LANGDON said, his objections were connected with the case of Vermont. If they are not taken in, and remain exempt from taxes, it would prove of great injury to New Hampshire and the other neighboring states.

Mr. DICKINSON hoped the article would not be agreed to. He dwelt on the impropriety of requiring the small states to secure the large ones in their extensive claims of territory.

Mr. WILSON. When the *majority* of a state wish to divide, they can do so. The aim of those in opposition to the article, he perceived, was that the general government should abet the *minority,* and by that means divide a state against its own consent.

Mr. GOUVERNEUR MORRIS. If the forced division of the states is the object of the new system, and is to be pointed against one or two states, he expected the gentlemen from these would pretty quickly leave us.

Adjourned.

Thursday,*August* 30.

In Convention.—Article 17 being resumed, for a question on it, as amended by Mr. Gouverneur Morris's substitute.

Mr. CARROLL moved to strike out so much of the article as requires the consent of the state to its being divided. He was aware that the object of this prerequisite might be to prevent domestic disturbances; but such was our situation with regard to the crown lands, and the sentiments of Maryland on that subject, that he perceived we should again be at sea, if no guard was provided for the right of the United States to the back lands. He suggested, that it might be proper to provide, that nothing in the Constitution should affect the right of the United States to lands ceded by Great Britain in the treaty of peace; and proposed a commitment to a member from each state. He assured the House, that this was a point of a most serious nature. It was desirable, above all things, that the act of the Convention might be agreed to unanimously. But should this point be disregarded, he believed that all risks would be run by a considerable minority, sooner than give their concurrence.

Mr. L. MARTIN seconded the motion for a commitment.

Mr. RUTLEDGE. Is it to be supposed that the states are to be cut up without their own consent? The case of Vermont will probably be particularly provided for. There could be no room to fear that Virginia or North Carolina would call on the United States to maintain their government over the mountains.

Mr. WILLIAMSON said, that North Carolina was well disposed to give up her western lands; but attempts at compulsion were not the policy of the United States. He was for doing nothing, in the Constitution, in the present case; and for leaving the whole matter *in statu quo.*

Mr. WILSON was against the commitment. Unanimity was of great importance, but not to be purchased by the majority's yielding to the minority. He should have no objection to leaving the case of the new states as heretofore. He knew nothing that would give greater or juster alarm than the doctrine, that a political society is to be torn asunder without its own consent.

On Mr. Carroll's motion for commitment,—

New Jersey, Delaware, Maryland, ay, 3; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 8.

Mr. SHERMAN moved to postpone the substitute for article 17, agreed to yesterday, in order to take up the following amendment:—

"The legislature shall have power to admit other states into the Union; and new states, to be formed by the division or junction of states now in the Union, with the consent of the legislature of such states."

[The first part was meant for the case of Vermont, to secure its admission.]

On the question, it passed in the negative.

New Hampshire, Massachusetts, Connecticut, Pennsylvania, South Carolina, ay, 5; New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, no, 6.

Dr. JOHNSON moved to insert the words, "hereafter formed, or," after the words, "shall be," in the substitute for article 17, [the more clearly to save Vermont, as being already formed into a state, from a dependence on the consent of New York for her admission.] The motion was agreed to—Delaware and Maryland only dissenting.

Mr. GOUVERNEUR MORRIS moved to strike out the word "limits," in the substitute, and insert the word "jurisdiction." [This also was meant to guard the case of Vermont—the jurisdiction of New York not extending over Vermont, which was in the exercise of sovereignty, though Vermont was within the asserted limits of New York.]

On this question,—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, ay, 7; New Jersey, North Carolina, South Carolina, Georgia, no, 4.

Mr. L. MARTIN urged the unreasonableness of forcing and guarantying the people of Virginia beyond the mountains, the western people of North Carolina and Georgia, and the people of Maine, to continue under the states now governing them, without the consent of those states to their separation. Even if they should become the *majority,* the majority of *counties,* as in Virginia, may still hold fast the dominion over them. Again, the majority may place the seat of government entirely among themselves, and for their own convenience; and still keep the injured parts of the states in subjection, under the guaranty of the general government against domestic violence. He wished Mr. Wilson had thought a little sooner of the value of *political* bodies. In the beginning, when the rights of the small states were in question, they were phantoms—ideal beings. Now, when the great states were to be affected, political societies were of a sacred nature. He repeated and enlarged on the unreasonableness of requiring the small states to guaranty the western claims of the large ones. It was said yesterday, by Mr. Gouverneur Morris, that if the large states were to be split to pieces without their consent, their representatives here would take their leave. If the small states are to be required to guaranty them in this manner, it will be found that the representatives of other states will, with equal firmness, take their leave of the Constitution on the table.

It was moved, by Mr. L. MARTIN, to postpone the substituted article, in order to take up the following:—

"The legislature of the United States shall have power to erect new states within as well as without the territory claimed by the several states, or either of them, and admit the same into the Union; provided, that nothing in this Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the late treaty of peace;"

which passed in the negative,—New Jersey, Delaware, and Maryland, only, ay.

On the question to agree to Mr. Gouverneur Morris's substituted article, as amended, in the words following:—

"New states may be admitted by the legislature into the Union; but no new state shall be hereafter formed or erected within the jurisdiction of any of the present states, without the consent of the legislature of such state, as well as of the general legislature,"—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 8; New Jersey, Delaware, Maryland, no, 3.

Mr. DICKINSON moved to add the following clause to the last:—

"Nor shall any state be formed by the junction of two or more states, or parts thereof, without the consent of the legislature of such states, as well as of the legislature of the United States;"

which was agreed to without a count of the votes.

Mr. CARROLL moved to add,—

"Provided, nevertheless, that nothing in this Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the treaty of peace."

This, he said, might be understood as relating to lands not claimed by any particular states; but he had in view also some of the claims of particular states.

Mr. WILSON was against the motion. There was nothing in the Constitution affecting, one way or the other, the claims of the United States; and it was best to insert nothing, leaving every thing on that litigated subject *in statu quo.*

Mr. MADISON considered the claim of the United States as in fact favored by the jurisdiction of the judicial power of the United States over controversies to which they should be parties. He thought it best, on the whole, to be silent on the subject. He did not view the proviso of Mr. Carroll as dangerous; but, to make it neutral and fair, it ought to go farther, and declare that the claims of particular states also should not be affected.

Mr. SHERMAN thought the proviso harmless, especially with the addition suggested by Mr. Madison in favor of the claims of particular states.

Mr. BALDWIN did not wish any undue advantage to be given to Georgia. He thought the proviso proper with the addition proposed. It should be remembered that, if Georgia has gained much by the cession in the treaty of peace, she was in danger during the war of a *uti possedetis.*

Mr. RUTLEDGE thought it wrong to insert a proviso, where there was nothing which it could restrain, or on which it could operate.

Mr. CARROLL withdrew his motion, and moved the following:—

"Nothing in this Constitution shall be construed to alter the claims of the United States, or of the individual states, to the western territory; but all such claims shall be examined into, and decided upon, by the Supreme Court of the United States."

Mr. GOUVERNEUR MORRIS moved to postpone this, in order to take up the following:—

"The legislature shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States, and nothing in this Constitution contained shall be so construed as to prejudice any claims, either of the United States or of any particular state."

The postponement agreed to, *nem. con.*

Mr. L. MARTIN moved to amend the proposition of Mr. Gouverneur Morris, by adding,—

"But all such claims may be examined into, and decided upon, by the Supreme Court of the United States."

Mr. GOUVERNEUR MORRIS. This is unnecessary, as all suits to which the United States are parties are already to be decided by the Supreme Court.

Mr. L. MARTIN. It is proper, in order to remove all doubts on this point.

On the question on Mr. L. Martin's amendatory motion,—

New Jersey, Maryland, ay, 2; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, no, 6.

States not further called, the negatives being sufficient, and the point being given up.245

The motion of Mr. Gouverneur Morris was then agreed to, Maryland alone dissenting.

Article 18 being taken up, the word "foreign" was struck out, *nem. con.,* as superfluous, being implied in the term "invasion."

Mr. DICKINSON moved to strike out "on the application of its legislature, against." He thought it of essential importance to the tranquillity of the United States, that they should in all cases suppress domestic violence, which may proceed from the state legislature itself, or from disputes between the two branches, where such exist.

Mr. DAYTON mentioned the conduct of Rhode Island, as showing the necessity of giving latitude to the power of the United States on this subject.

On the question,—

New Jersey, Pennsylvania, Delaware, ay, 3; New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 8.

On a question for striking out “domestic violence,” and inserting “insurrections,” it passed in the negative.

New Jersey, Virginia, North Carolina, South Carolina, Georgia, ay, 5; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, no, 6.

Mr. DICKINSON moved to insert the words, “or executive,” after the words, “application of its legislature.” The occasion itself, he remarked, might hinder the legislature from meeting.

On this question,—

New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, ay, 8; Massachusetts, Virginia, no, 2; Maryland, divided.

Mr. L. MARTIN moved to subjoin to the last amendment the words, “in the recess of the legislature.” On which question, Maryland only, ay.

On the question on the last clause, as amended,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Delaware, Maryland, no, 2.246

Article 19 was then taken up.

Mr. GOUVERNEUR MORRIS suggested, that the legislature should be left at liberty to call a convention whenever they pleased.

The article was agreed to, *nem. con.*

Article 20 was then taken up. The words “or affirmation,” were added, after “oath.”

Mr. PINCKNEY moved to add to the article,—

“but no religious test shall ever be required as a qualification to any office or public trust under the authority of the United States.”

Mr. SHERMAN thought it unnecessary, the prevailing liberality being a sufficient security against such tests.

Mr. GOUVERNEUR MORRIS and Gen. PINCKNEY approved the motion.

The motion was agreed to, *nem. con.,* and then the whole article.

North Carolina only, no; and Maryland, divided.

Article 21 being then taken up,—

"The ratifications of the conventions of—states shall be sufficient for organizing this Constitution;"—

Mr. WILSON proposed to fill the blank with "seven," that being a majority of the whole number, and sufficient for the commencement of the plan.

Mr. CARROLL moved to postpone the article, in order to take up the report of the committee of eleven (see the 28th of August); and on the question,—

New Jersey, Delaware, Maryland, ay, 3; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 8.

Mr. GOUVERNEUR MORRIS thought the blank ought to be filled in a twofold way, so as to provide for the event of the ratifying states being contiguous, which would render a smaller number sufficient; and the event of their being dispersed, which would require a greater number for the introduction of the government.

Mr. SHERMAN observed that, the states being now confederated by articles which require unanimity in changes, he thought the ratification, in this case, of ten states, at least, ought to be made necessary.

Mr. RANDOLPH was for filling the blank with "nine," that being a respectable majority of the whole, and being a number made familiar by the constitution of the existing Congress.

Mr. WILSON mentioned "eight," as preferable.

Mr. DICKINSON asked, whether the concurrence of Congress is to be essential to the establishment of the system—whether the refusing states in the Confederacy could be deserted—and whether Congress could concur in contravening the system under which they acted.

Mr. MADISON remarked, that if the blank should be filled with "seven," "eight," or "nine," the Constitution, as it stands, might be put in force over the whole body of the people, though less than a majority of them should ratify it.

Mr. WILSON. As the Constitution stands, the states only which ratify can be bound. We must, he said, in this case, go to the original powers of society. The house on fire must be extinguished, without a scrupulous regard to ordinary rights.

Mr. BUTLER was in favor of "nine." He revolted at the idea that one or two states should restrain the rest from consulting their safety.

Mr. CARROLL moved to fill the blank with "the thirteen;" unanimity being necessary to dissolve the existing Confederacy, which had been unanimously established.

Mr. KING thought this amendment necessary; otherwise, as the Constitution now stands, it will operate on the whole, though ratified by a part only.

Adjourned.

Friday,*August* 31.

In Convention.—Mr. KING moved to add to the end of article 21 the words, "between the said states;" so as to confine the operation of the government to the states ratifying it.

On the question,—

Nine states voted in the affirmative; Maryland, no; Delaware, absent.

Mr. MADISON proposed to fill the blank in the article with,

"any seven or more states entitled to thirty-three members at least in the House of Representatives according to the allotment made in the 3d section of article 4."

This, he said, would require the concurrence of a majority of both the states and the people.

Mr. SHERMAN doubted the propriety of authorizing less than all the states to execute the Constitution, considering the nature of the existing Confederation. Perhaps all the states may concur, and on that supposition it is needless to hold out a breach of faith.

Mr. CLYMER and Mr. CARROLL moved to postpone the consideration of article 21, in order to take up the reports of committees not yet acted on. On this question, the states were equally divided.

New Hampshire, Pennsylvania, Delaware, Maryland, Georgia, ay, 5; Massachusetts, New Jersey, Virginia, North Carolina, South Carolina, no, 5; Connecticut, divided.

Mr. GOUVERNEUR MORRIS moved to strike out, "conventions of the," after "ratifications;" leaving the states to pursue their own modes of ratification.

Mr. CARROLL mentioned the mode of altering the constitution of Maryland pointed out therein, and that no other mode could be pursued in that state.

Mr. KING thought that striking out "conventions," as the requisite mode, was equivalent to giving up the business altogether. Conventions alone, which will avoid all the obstacles from the complicated formation of the legislatures, will succeed; and if not positively required by the plan, its enemies will oppose that mode.

Mr. GOUVERNEUR MORRIS said, he meant to facilitate the adoption of the plan, by leaving the modes approved by the several state constitutions to be followed.

Mr. MADISON considered it best to require conventions; among other reasons for this, that the powers given to the general government, being taken from the state governments, the legislatures would be more disinclined than conventions composed in part, at least, of other men; and if disinclined, they could devise modes apparently promoting, but really thwarting, the ratification. The difficulty in Maryland was no greater than in other states, where no mode of change was pointed out by the constitution, and all officers were under oath to support it. The people were, in fact, the fountain of all power, and by resorting to them all difficulties were got over. They could alter constitutions as they pleased. It was a principle in the bills of rights, that first principles might be resorted to.

Mr. M'HENRY said, that the officers of government in Maryland were under oath to support the mode of alteration prescribed by the constitution.

Mr. GORHAM urged the expediency of "conventions;" also Mr. PINCKNEY, for reasons formerly urged on a discussion of this question.

Mr. L. MARTIN insisted on a reference to the state legislatures. He urged the danger of commotions from a resort to the people and to first principles; in which the government might be on one side, and the people on the other. He was apprehensive of no such consequences, however, in Maryland, whether the legislature or the people should be appealed to. Both of them would be generally against the constitution. He repeated also the peculiarity in the Maryland constitution.

Mr. KING observed, that the constitution of Massachusetts was made unalterable till the year 1790; yet this was no difficulty with him. The state must have contemplated a recurrence to first principles, before they sent deputies to this Convention.

Mr. SHERMAN moved to postpone article 21, and to take up article 22; on which question,—

Connecticut, Pennsylvania, Delaware, Maryland, Virginia, ay, 5; New Hampshire, Massachusetts, New Jersey, North Carolina, South Carolina, Georgia, no, 6.

On Mr. Gouverneur Morris's motion, to strike out "conventions of the," it was negatived.

Connecticut, Pennsylvania, Maryland, Georgia, ay, 4; New Hampshire, Massachusetts, New Jersey, Delaware, Virginia, South Carolina, no, 6.

On the question for filling the blank, in article 21, with "thirteen," moved by Mr. CARROLL and Mr. L. MARTIN,—

All the states were no, except Maryland.

Mr. SHERMAN and Mr. DAYTON moved to fill the blank with "ten."

Mr. WILSON supported the motion of Mr. Madison, requiring a majority both of the people and of states.

Mr. CLYMER was also in favor of it.

Col. MASON was for preserving ideas familiar to the people. Nine states had been required in all great cases under the Confederation, and that number was on that account preferable.

On the question for "ten,"—

Connecticut, New Jersey, Maryland, Georgia, ay, 4; New Hampshire, Massachusetts, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, no, 7.

On the question for "nine,"—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Georgia, ay, 8; Virginia, North Carolina, South Carolina, no, 3.

Article 21, as amended, was then agreed to by all the states, Maryland excepted, and Mr. Jenifer being, ay.247

Article 22 was then taken up, to wit:—

"This Constitution shall be laid before the United States, in Congress assembled, for their approbation; and it is the opinion of this Convention that it should be afterwards submitted to a convention chosen in each state, under the recommendation of its legislature, in order to receive the ratification of such convention."

Mr. GOUVERNEUR MORRIS and Mr. PINCKNEY moved to strike out the words, "for their approbation."

On this question,—

New Hampshire, Connecticut, New Jersey, (In the printed Journal, New Jersey, no,) Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, ay, 8; Massachusetts, Maryland, Georgia, no, 3.

Mr. GOUVERNEUR MORRIS and Mr. PINCKNEY then moved to amend the article so as to read,—

"This Constitution shall be laid before the United States, in Congress assembled; and it is the opinion of this Convention, that it should afterwards be submitted to a convention chosen in each state, in order to receive the ratification of such convention; to which end the several legislatures ought to provide for the calling conventions within their respective states as speedily as circumstances will permit."

Mr. GOUVERNEUR MORRIS said his object was to impress in stronger terms the necessity of calling conventions, in order to prevent enemies to the plan from giving it the go-by. When it first appears, with the sanction of this Convention, the people will be favorable to it. By degrees the state officers, and those interested in the state governments, will intrigue, and turn the popular current against it.

Mr. L. MARTIN believed Mr. Morris to be right, that, after a while, the people would be against it, but for a different reason from that alleged. He believed they would not ratify it, unless hurried into it by surprise.

Mr. GERRY enlarged on the idea of Mr. L. Martin, in which he concurred; represented the system as full of vices, and dwelt on the impropriety of destroying the existing Confederation, without the unanimous consent of the parties to it.

On the question on Mr. Gouverneur Morris's and Mr. Pinckney's motion,—

New Hampshire, Massachusetts, Pennsylvania, Delaware, ay, 4; Connecticut. New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 7.

Mr. GERRY moved to postpone article 22.

Col. MASON seconded the motion, declaring that he would sooner chop off his right hand than put it to the Constitution as it now stands. He wished to see some points, not yet decided, brought to a decision, before being compelled to give a final opinion on this article. Should these points be improperly settled, his wish would then be to bring the whole subject before another General Convention.

Mr. GOUVERNEUR MORRIS was ready for a postponement. He had long wished for another Convention, that will have the firmness to provide a vigorous government, which we are afraid to do.

Mr. RANDOLPH stated his idea to be, in case the final form of the Constitution should not permit him to accede to it, that the state conventions should be at liberty to propose amendments, to be submitted to another General Convention, which may reject or incorporate them, as may be judged proper.

On the question for postponing,—

New Jersey, Maryland, North Carolina, ay, 3; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, no, 8.

On the question on article 22, ten states, ay; Maryland, no.

Article 23 being taken up, as far as the words "assigned by Congress," inclusive, was agreed to, *nem. con.,* the blank having been first filled with the word "nine," as of course.

On a motion for postponing the residue of the clause, concerning the choice of the President, &c.,—

Massachusetts, Delaware, Virginia, North Carolina, ay, 4; New Hampshire, Connecticut, New Jersey, Pennsylvania, Maryland, South Carolina, Georgia, no, 7.

Mr. GOUVERNEUR MORRIS then moved to strike out the words "choose the President of the United States, and," this point, of choosing the President, not being yet finally determined; and, on this question,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, (in the printed Journal, South Carolina, no,) Georgia, ay, 9; New Hampshire, no, 1; Maryland, divided.

Article 23, as amended, was then agreed to, *nem. con.*

The report of the grand committee of eleven, made by Mr. Sherman, was then taken up. (See the 28th of August.)

On the question to agree to the following clause, to be inserted after article 7, sect. 4,—

"nor shall any regulation of commerce or revenue give preference to the ports of one state over those of another,"—

agreed to, *nem. con.*

On the clause,—

"or oblige vessels bound to or from any state to enter, clear, or pay duties, in another,"—

Mr. MADISON thought the restriction would be inconvenient, as in the River Delaware, if a vessel cannot be required to make entry below the jurisdiction of Pennsylvania.

Mr. FITZSIMONS admitted that it might be inconvenient but 249248 thought it would be a greater inconvenience, to require vessels bound to Philadelphia to enter below the jurisdiction of the state.

Mr. GORHAM and Mr. LANGDON contended, that the government would be so fettered by this clause as to defeat the good purpose of the plan. They mentioned the situation of the trade of Massachusetts and New Hampshire, the case of Sandy Hook, which is in the state of New Jersey, but where precautions against smuggling into New York ought to be established by the general government.

Mr. M'HENRY said, the clause would not screen a vessel from being obliged to take an officer on board, as a security for due entry, &c.

Mr. CARROLL was anxious that the clause should be agreed to. He assured the House that this was a tender point in Maryland.

Mr. JENIFER urged the necessity of the clause in the same point of view.

On the question for agreeing to it,—

Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 8; New Hampshire, South Carolina, no, 2.

The word “tonnage” was struck out, *nem. con.,* as comprehended in “duties.”

On the question on the clause of the report,—

“and all duties, imposts, and excises, laid by the legislature, shall be uniform throughout the United States,”—

it was agreed to, *nem. con.*[*]

On motion of Mr. SHERMAN, it was agreed to refer such parts of the Constitution as have been postponed, and such parts of reports as have not been acted on, to a committee of a member from each state; the committee, appointed by ballot, being, Mr. Gilman, Mr. King, Mr. Sherman, Mr. Brearly, Mr. Gouverneur Morris, Mr. Dickinson, Mr. Carroll, Mr. Madison, Mr. Williamson, Mr. Butler, and Mr. Baldwin.

Adjourned.

Saturday,*September* 1.

In Convention.—Mr. BREARLY, from the committee of eleven, to which were referred, yesterday, the postponed part of the Constitution, and parts of reports not acted upon, made the following partial report:—

“That, in lieu of article 6, sect. 9, the words following be inserted, viz., ‘The members of each House shall be ineligible to any civil office under the authority of the United States, during the time for which they shall respectively be elected; and no person holding an office under the United States shall be a member of either House during his continuance in office.’ ”

Mr. RUTLEDGE, from the committee to whom were referred sundry propositions, (see 29th of August,) together with article 16, reported that the following additions be made to the report, viz.,

“After the word ‘states,’ in the last line on the margin of the third page, (see the printed report,) add ‘to establish uniform laws on the subject of bankruptcies;’—

“And insert the following as article 16, viz., ‘Full faith and credit ought to be given in each state to the public acts, records, and judicial proceedings, of every other state; and the legislature shall, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect which judgments, obtained in one state, shall have in another.’ ”

After receiving these reports, the House adjourned.

Monday,*September* 3.

In Convention.—Mr. GOUVERNEUR MORRIS moved to amend the report concerning the respect to be paid to acts, records, &c., of one state in other states, (see the 1st of September,) by striking out "judgments obtained in one state shall have in another," and to insert the word "thereof," after the word "effect."

Col. MASON favored the motion, particularly if the "effect" was to be restrained to judgments and judicial proceedings.

Mr. WILSON remarked, that, if the legislature were not allowed to *declare the effect,* the provision would amount to nothing more than what now takes place among all independent nations.

Dr. JOHNSON thought the amendment, as worded, would authorize the general legislature to declare the effect of legislative acts of one state in another state.

Mr. RANDOLPH considered it as strengthening the general objection against the plan, that its definition of the powers of the government was so loose as to give it opportunities of usurping all the state powers. He was for not going farther than the report, which enables the legislature to provide for the effect of *judgments.*

On the amendment, as moved by Mr. Gouverneur Morris,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, North Carolina, South Carolina, ay, 6; Maryland, Virginia, Georgia, no, 3.

On motion of Mr. MADISON, the words "ought to" were struck out, and "shall" inserted; and "shall," between "legislature" and "by general laws," struck out, and "may" inserted, *nem. con.*

On the question to agree to the report, as amended, viz.,

"Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings, of every other state; and the legislature may, by general laws, prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof,"

it was agreed to without a count of the states.250

The clause in the report, "To establish uniform laws on the subject of bankruptcies," being taken up,—

Mr. SHERMAN observed, that bankruptcies were, in some cases, punishable with death by the laws of England, and he did not choose to grant a power by which that might be done here.

Mr. GOUVERNEUR MORRIS said, this was an extensive and delicate subject. He would agree to it, because he saw no danger of abuse of the power by the legislature of the United States.

On the question to agree to the clause, Connecticut alone was in the negative.

Mr. PINCKNEY moved to postpone the report of the committee of eleven, (see the 1st of September,) in order to take up the following:—

"The members of each House shall be incapable of holding any office under the United States for which they, or any other for their benefit, receive any salary, fees, or emoluments, of any kind, and the acceptance of such office shall vacate their seats respectively."

He was strenuously opposed to an ineligibility of members to office, and, therefore, wished to restrain the proposition to a mere incompatibility. He considered the eligibility of members of the legislature to the honorable offices of government as resembling the policy of the Romans, in making the temple of Virtue the road to the temple of Fame.

On this question,—

Pennsylvania, North Carolina, ay, 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Maryland, Virginia, South Carolina, Georgia, no, 8.

Mr. KING moved to insert the word "created" before the word "during." in the report of the committee. This, he said, would exclude the members of the first legislature under the Constitution, as most of the offices would then be created.

Mr. WILLIAMSON seconded the motion. He did not see why members of the legislature should be ineligible to *vacancies* happening during the term of their election.

Mr. SHERMAN was for entirely incapacitating members of the legislature. He thought their eligibility to offices would give too much influence to the executive. He said the incapacity ought, at least, to be extended to cases where salaries should be *increased,* as well as *created,* during the term of the member. He mentioned, also, the expedient by which the restriction could be evaded; to wit, an existing officer might be translated to an office created, and a member of the legislature be then put into the office vacated.

Mr. GOUVERNEUR MORRIS contended that the eligibility of members to office would lessen the influence of the executive. If they cannot be appointed themselves, the executive will appoint their relations and friends, retaining the service and votes of the members for his purpose, in the legislature; whereas the appointment of the members deprives him of such an advantage.

Mr. GERRY thought the eligibility of members would have the effect of opening batteries against good officers, in order to drive them out and make way for members of the legislature.

Mr. GORHAM was in favor of the amendment. Without it, we go farther than has been done in any of the states, or, indeed, any other country. The experience of the

state governments, where there was no such ineligibility, proved that it was not necessary; on the contrary, that the eligibility was among the inducements for fit men to enter into the legislative service.

Mr. RANDOLPH was inflexibly fixed against inviting men into the legislature by the prospect of being appointed to offices.

Mr. BALDWIN remarked, that the example of the states was not applicable. The legislatures there are so numerous, that an exclusion of their members would not leave proper men for offices. The case would be otherwise in the general government.

Col. MASON. Instead of excluding merit, the ineligibility will keep out corruption, by excluding office-hunters.

Mr. WILSON considered the exclusion of members of the legislature as increasing the influence of the executive, as observed by Mr. Gouverneur Morris; at the same time that it would diminish the general energy of the government. He said that the legal disqualification for office would be odious to those who did not wish for office, but did not wish either to be marked by so degrading a distinction.

Mr. PINCKNEY. The first legislature will be composed of the ablest men to be found. The states will select such to put the government into operation. Should the report of the committee, or even the amendment, be agreed to, the great offices, even those of the judiciary department, which are to continue for life, must be filled, while those most capable of filling them will be under a disqualification.

On the question on Mr. King's motion,—

New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, ay, 5; Connecticut, New Jersey, Maryland, South Carolina, Georgia, no, 5.

The amendment being thus lost, by the equal division of the states, Mr. WILLIAMSON moved to insert the words "created, or the emoluments whereof shall have been increased," before the word "during," in the report of the committee.

Mr. KING seconded the motion, and on the question,—

New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, ay, 5; Connecticut, New Jersey, Maryland, South Carolina, no, 4; Georgia, divided.

The last clause, rendering a seat in the legislature, and an office, incompatible, was agreed to, *nem. con.*

The report, as amended and agreed to, is as follows:—

"The members of each House shall be ineligible to any civil office under the authority of the United States, created, or the emoluments whereof shall have been increased, during the time for which they shall respectively be elected. And no person, holding

any office under the United States, shall be a member of either House during his continuance in office.251

Adjourned.

Tuesday,*September* 4.

In Convention.—Mr. BREARLY, from the committee of eleven, made a further partial report, as follows:—

"The committee of eleven, to whom sundry resolution, &c., were referred on the 31st of August, report that, in their opinion, the following additions and alterations should be made to the report before the Convention, viz.:—*

"1. The first clause of article 7, sect. 1, to read as follows: 'the legislature shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States.'

"2. At the end of the second clause of article 7, sect. 1, add, 'and with the Indian tribes.'

"3. In the place of the 9th article, sect. 1, to be inserted: 'The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two thirds of the members present.'

"4. After the word 'excellency,' in sect. 1, article 10, to be inserted: 'He shall hold his office during the term of four years, and, together with the Vice-President chosen for the same term, be elected in the following manner, viz.: Each state shall appoint, in such manner as its legislature may direct, a number of electors equal to the whole number of senators and members of the House of Representatives to which the state may be entitled in the legislature. The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign: and certify, and transmit, sealed, to the seat of the general government, directed to the president of the Senate. The president of the Senate shall, in that house, open all the certificates, and the votes shall be then and there counted. The person having the greatest number of votes shall be the President, if such number be a majority of that of the electors; and if there be more than one who have such a majority, and have an equal number of votes, then the Senate shall immediately choose, by ballot, one of them for President; but if no person have a majority, then, from the five highest on the list, the Senate shall choose, by ballot, the President; and in every case, after the choice of the President, the person having the greatest number of votes shall be Vice-President; but if there should remain two or more who have equal votes, the Senate shall choose from them the Vice-President. The legislature may determine the time of choosing and assembling the electors, and the manner of certifying and transmitting their votes.'

"5. Sect. 2. 'No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of

President; nor shall any person be elected to that office who shall be under the age of thirty-five years, and who has not been, in the whole, at least fourteen years a resident within the United States.'

"6. Sect. 3. 'The Vice-President shall be *ex officio* president of the Senate; except when they sit to try the impeachment of the President; in which case the chief justice shall preside, and excepting, also, when he shall exercise the powers and duties of President; in which case, and in case of his absence, the Senate shall choose a president *pro tempore.* The Vice-President, when acting as president of the Senate, shall not have a vote unless the House be equally divided.'

"7. Sect. 4. 'The President, by and with the advice and consent of the Senate, shall have power to make treaties; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers, judges of the Supreme Court, and all other officers of the United States, whose appointments are not otherwise herein provided for. But no treaty shall be made without the consent of two thirds of the members present.'

"8. After the words 'into the service of the United States,' in sect. 2, article 10, add 'and may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices.'

"9. The latter part of sect. 2, article 10, to read as follows: 'He shall be removed from his office on impeachment by the House of Representatives, and conviction by the Senate, for treason or bribery; and in case of his removal as aforesaid, death, absence, resignation, or inability to discharge the powers or duties of his office, the Vice-President shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed.' "

The first clause of the report was agreed to, *nem. con.*

The second clause was also agreed to, *nem. con.*

The third clause was postponed, in order to decide previously on the mode of electing the President.

The fourth clause was accordingly taken up.

Mr. GORHAM disapproved of making the next highest after the President the Vice-President, without referring the decision to the Senate, in case the next highest should have less than a majority of votes. As the regulation stands, a very obscure man, with very few votes, may arrive at that appointment.

Mr. SHERMAN said the object of this clause of the report of the committee was, to get rid of the ineligibility which was attached to the mode of election by the legislature, and to render the executive independent of the legislature. As the choice of the President was to be made out of the five highest, obscure characters were sufficiently guarded against in that case; and he had no objection to requiring the

Vice-President to be chosen in like manner, where the choice was not decided by a majority in the first instance.

Mr. MADISON was apprehensive that, by requiring both the President and Vice-President to be chosen out of the five highest candidates, the attention of the electors would be turned too much to making candidates, instead of giving their votes in order to a definitive choice. Should this turn be given to the business, the election would, in fact, be consigned to the Senate altogether. It would have the effect, at the same time, he observed, of giving the nomination of the candidates to the largest states.

Mr. GOUVERNEUR MORRIS concurred in, and enforced, the remarks of Mr. Madison.

Mr. RANDOLPH and Mr. PINCKNEY wished for a particular explanation, and discussion, of the reasons for changing the mode of electing the executive.

Mr. GOUVERNEUR MORRIS said, he would give the reasons of the committee, and his own. The first was, the danger of intrigue and faction, if the appointment should be made by the legislature. The next was, the inconvenience of an ineligibility required by that mode, in order to lessen its evils. The third was, the difficulty of establishing a court of impeachments, other than the Senate, which would not be so proper for the trial, nor the other branch, for the impeachment of the President, if appointed by the legislature. In the fourth place, nobody had appeared to be satisfied with an appointment by the legislature. In the fifth place, many were anxious even for an immediate choice by the people. And finally, the sixth reason was, the indispensable necessity of making the executive independent of the legislature. As the electors would vote at the same time throughout the United States, and at so great a distance from each other, the great evil of cabal was avoided. It would be impossible, also, to corrupt them. A conclusive reason for making the Senate, instead of the Supreme Court, the judge of impeachments, was, that the latter was to try the President, after the trial of the impeachment.

Col. MASON confessed that the plan of the committee had removed some capital objections, particularly the danger of cabal and corruption. It was liable, however, to this strong objection, that, nineteen times in twenty, the President would be chosen by the Senate, an improper body for the purpose.

Mr. BUTLER thought the mode not free from objections; but much more so than an election by the legislature, where, as in elective monarchies, cabal, faction, and violence, would be sure to prevail.

Mr. PINCKNEY stated, as objections to the mode, first, that it threw the whole appointment, in fact, into the hands of the Senate Secondly, the electors will be strangers to the several candidates, and, of course, unable to decide on their comparative merits. Thirdly, it makes the executive reëligible, which will endanger the public liberty. Fourthly, it makes the same body of men which will, in fact, elect the President, his judges in case of an impeachment.

Mr. WILLIAMSON had great doubts whether the advantage of reëligibility would balance the objection to such a dependence of the President on the Senate for his reappointment. He thought, at least, the Senate ought to be restrained to the *two* highest on the list.

Mr. GOUVERNEUR MORRIS said, the principal advantage aimed at was, that of taking away the opportunity for cabal. The President may be made, if thought necessary, ineligible, on this as well as on any other mode of election. Other inconveniences may be no less redressed on this plan than any other.

Mr. BALDWIN thought the plan not so objectionable, when well considered, as at first view. The increasing intercourse among the people of the states would render important characters less and less unknown; and the Senate would consequently be less and less likely to have the eventual appointment thrown into their hands.

Mr. WILSON. This subject has greatly divided the House, and will also divide the people out of doors. It is in truth the most difficult of all on which we have had to decide. He had never made up an opinion on it entirely to his own satisfaction. He thought the plan, on the whole, a valuable improvement on the former. It gets rid of one great evil, that of cabal and corruption; and Continental characters will multiply as we more and more coalesce, so as to enable the electors in every part of the Union to know and judge of them. It clears the way, also, for a discussion of the question of reëligibility, on its own merits, which the former mode of election seemed to forbid. He thought it might be better, however, to refer the eventual appointment to the legislature than to the Senate, and to confine it to a smaller number than five of the candidates. The eventual election by the legislature would not open cabal anew, as it would be restrained to certain designated objects of choice; and as these must have had the previous sanction of a number of the states; and if the election be made as it ought, as soon as the votes of the electors are opened, and it is known that no one has a majority of the whole, there can be little danger of corruption. Another reason for preferring the legislature to the Senate in this business was, that the House of Representatives will be so often changed as to be free from the influence and faction to which the permanence of the Senate may subject that branch.

Mr. RANDOLPH preferred the former mode of constituting the executive; but if the change was to be made, he wished to know why the eventual election was referred to the *Senate,* and not to the *legislature?* He saw no necessity for this, and many objections to it. He was apprehensive, also, that the advantage of the eventual appointment would fall into the hands of the states near the seat of government.

Mr. GOUVERNEUR MORRIS said the *Senate* was preferred because fewer could then say to the President, “You owe your appointment to us.” He thought the President would not depend so much on the Senate for his reappointment, as on his general good conduct.

The further consideration of the report was postponed, that each member might take a copy of the remainder of it.

The following motion was referred to the committee of eleven,—to wit, to prepare and report a plan for defraying the expenses of the Convention.252

* Mr. PINCKNEY moved a clause declaring that each House should be judge of the privileges of its own members.

Mr. GOUVERNEUR MORRIS seconded the motion.

Mr. RANDOLPH and Mr. MADISON expressed doubts as to the propriety of giving such a power, and wished for a postponement.

Mr. GOUVERNEUR MORRIS thought it so plain a case, that no postponement could be necessary.

Mr. WILSON thought the power involved, and the express insertion of it needless. It might beget doubts as to the power of other public bodies, as courts, &c. Every court is the judge of its own privileges.

Mr. MADISON distinguished between the power of judging of privileges previously and duly established, and the effect of the motion, which would give a discretion to each House as to the extent of its own privileges. He suggested that it would be better to make provision for ascertaining by *law* the privileges of each House, than to allow each house to decide for itself. He suggested, also, the necessity of considering what privileges ought to be allowed to the executive.

Adjourned.

Wednesday,*September* 5.

In Convention.—Mr. BREARLY, from the committee of eleven, made a further report, as follows:

"1. To add to the clause, 'to declare war,' the words, 'and grant letters of marque and reprisal.'

"2. To add to the clause, 'to raise and support armies,' the words, 'but no appropriation of money to that use shall be for a longer term than two years.'

"3. Instead of sect. 12, article 6, say: 'All bills for raising revenue shall originate in the House of Representatives, and shall be subject to alterations and amendments by the Senate: no money shall be drawn from the treasury, but in consequence of appropriations made by law.'

"4. Immediately before the last clause of sect. 1, article 7, insert, 'To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of the legislature, become the seat of the government of the United States; and to exercise like authority over all places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.'

"5. 'To promote the progress of science and the useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.' "

This report being taken up, the first clause was agreed to, *nem. con.*

To the second clause Mr. GERRY objected, that it admitted of appropriations to an army for two years, instead of one, for which he could not conceive a reason; that it implied there was to be a standing army, which he inveighed against, as dangerous to liberty—as unnecessary even for so great an extent of country as this—and, if necessary, some restriction on the number and duration ought to be provided. Nor was this a proper time for such an innovation. The people would not bear it.

Mr. SHERMAN remarked, that the appropriations were permitted only, not required, to be for two years. As the legislature is to be biennally elected, it would be inconvenient to require appropriations to be for one year, as there might be no session within the time necessary to renew them. He should himself, he said, like a reasonable restriction on the number and continuance of an army in time of peace.

The second clause was then agreed to, *nem. con.*

The third clause Mr. GOUVERNEUR MORRIS moved to postpone. It had been agreed to in the committee on the ground of compromise; and he should feel himself at liberty to dissent from it, if on the whole he should not be satisfied with certain other parts to be settled.

Mr. PINCKNEY seconded the motion.

Mr. SHERMAN was for giving immediate ease to those who looked on this clause as of great moment, and for trusting to their concurrence in other proper measures.

On the question for postponing,—

New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, ay, 9; Massachusetts, Virginia, no, 2.

So much of the fourth clause as related to the seat of government was agreed to, *nem. con.*

On the residue, to wit, "to exercise like authority over all places purchased for forts, &c."—

Mr. GERRY contended that this power might be made use of to enslave any particular state by buying up its territory, and that the strongholds proposed would be a means of awing the state into an undue obedience to the general government.

Mr. KING thought himself the provision unnecessary, the power being already involved; but would move to insert, after the word "purchased," the words, "by the consent of the legislature of the state." This would certainly make the power safe.

Mr. GOUVERNEUR MORRIS seconded the motion, which was agreed to, *nem. con.;* as was then the residue of the clause, as amended.253

The fifth clause was agreed to, *nem. con.*

The following resolution and order being reported from the committee of eleven, to wit:—

"*Resolved,* that the United States in Congress be requested to allow, and cause to be paid, to the secretary and other officers of this Convention, such sums, in proportion to their respective times of service, as are allowed to the secretary and similar officers of Congress."

"Ordered, that the Secretary make out, and transmit to the treasury office of the United States, an account for the said services and for the incidental expenses of this Convention."

The resolution and order were separately agreed to, *nem. con.*

Mr. GERRY gave notice that he should move to reconsider articles 19, 20, 21, 22.

Mr. WILLIAMSON gave like notice as to the article fixing the number of representatives, which he thought too small. He wished, also, to allow Rhode Island more than one, as due to her probable number of people, and as proper to stifle any pretext arising from her absence on the occasion.

The report made yesterday as to the appointment of the executive being then taken up,—

Mr. PINCKNEY renewed his opposition to the mode; arguing, first, that the electors will not have sufficient knowledge of the fittest men, and will be swayed by an attachment to the eminent men of their respective states. Hence, secondly, the dispersion of the votes would leave the appointment with the Senate, and as the President's reappointment will thus depend on the Senate, he will be the mere creature of that body. Thirdly, he will combine with the Senate against the House of Representatives. Fourthly, this change in the mode of election was meant to get rid of the ineligibility of the President a second time, whereby he will become fixed for life under the auspices of the Senate.

Mr. GERRY did not object to this plan of constituting the executive in itself, but should be governed in his final vote by the powers that may be given to the President.

Mr. RUTLEDGE was much opposed to the plan reported by the committee. It would throw the whole power into the Senate. He was also against a reëligibility. He moved to postpone the report under consideration, and take up the original plan of appointment by the legislature, to wit:—

"He shall be elected by joint ballot by the legislature, to which election a majority of the votes of the members present shall be required. He shall hold his office during the term of seven years; but shall not be elected a second-time."

On this motion to postpone,—

North Carolina, South Carolina, ay, 2; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, no, 8; New Hampshire, divided.

Col. MASON admitted that there were objections to an appointment by the legislature, as originally planned. He had not yet made up his mind, but would state his objections to the mode proposed by the committee. First, it puts the appointment, in fact, into the hands of the Senate, as it will rarely happen that a majority of the whole vote will fall on any one candidate; and as the existing President will always be one of the five highest, his reappointment will of course depend on the Senate. Secondly, considering the powers of the President and those of the Senate, if a coalition should be established between these two branches, they will be able to subvert the Constitution. The great objection with him would be removed by depriving the Senate of the eventual election. He accordingly moved to strike out the words, "if such number be a majority of that of the electors."

Mr. WILLIAMSON seconded the motion. He could not agree to the clause without some such modification. He preferred making the highest, though not having a majority of the votes, President, to a reference of the matter to the Senate. Referring the appointment to the Senate lays a certain foundation for corruption and aristocracy.

Mr. GOUVERNEUR MORRIS thought the point of less consequence than it was supposed on both sides. It is probable that a majority of the votes will fall on the same man; as each elector is to give two votes, more than one fourth will give a majority. Besides, as one vote is to be given to a man out of the state, and as this vote will not be thrown away, half the votes will fall on characters eminent and generally known. Again, if the President shall have given satisfaction, the votes will turn on him of course; and a majority of them will reappoint him, without resort to the Senate. If he should be disliked, all disliking him would take care to unite their votes, so as to ensure his being supplanted.

Col. MASON. Those who think there is no danger of there not being a majority for the same person in the first instance, ought to give up the point to those who think otherwise.

Mr. SHERMAN reminded the opponents of the new mode proposed, that if the small States had the advantage in the Senate's deciding among the five highest candidates, the large states would have in fact the nomination of these candidates.

On the motion of Col. Mason,—

Maryland, (in the printed Journal, Maryland, no,) North Carolina, ay; the other nine States, no.

Mr. WILSON moved to strike out “Senate,” and insert the word “legislature.”

Mr. MADISON considered it a primary object, to render an eventual resort to any part of the legislature improbable. He was apprehensive that the proposed alteration would turn the attention of the large states too much to the appointment of candidates, instead of aiming at an effectual appointment of the officer; as the large states would predominate in the legislature, which would have the final choice out of the candidates. Whereas, if the Senate, (in which the small states predominate,) should have the final choice, the concerted effort of the large states would be to make the appointment in the first instance conclusive.

Mr. RANDOLPH. We have, in some revolutions of this plan, made a bold stroke for monarchy. We are now doing the same for an aristocracy. He dwelt on the tendency of such an influence in the Senate over the election of the President, in addition to its other powers, to convert that body into a real and dangerous aristocracy.

Mr. DICKINSON was in favor of giving the eventual election to the legislature, instead of the Senate. It was too much influence to be superadded to that body.

On the question moved by Mr. Wilson,—

Pennsylvania, Virginia, South Carolina, ay, 3; Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, Georgia, no, 7; New Hampshire, divided.

Mr. MADISON and Mr. WILLIAMSON moved to strike out the word “majority,” and insert “one third;” so that the eventual power might not be exercised if less than a majority, but not less than one third, of the electors should vote for the same person.

Mr. GERRY objected, that this would put it in the power of three or four states to put in whom they pleased.

Mr. WILLIAMSON. There are seven states which do not contain one third of the people. If the Senate are to appoint, less than one sixth of the people will have the power.

On the question,—

Virginia, North Carolina, ay; the other nine states, no.

Mr. GERRY suggested, that the eventual election should be made by six senators and seven representatives, chosen by joint ballot of both Houses.

Mr. KING observed, that the influence of the small states in the Senate was somewhat balanced by the influence of the large states in bringing forward the candidates,* and also by the concurrence of the small states in the committee in the clause vesting the exclusive origination of money bills in the House of Representatives.

Col. MASON moved to strike out the word "five," and insert the word "three," as the highest candidates for the Senate to choose out of.

Mr. GERRY seconded the motion.

Mr. SHERMAN would sooner give up the plan. He would prefer seven or thirteen.

On the question moved by Col. Mason and Mr. Gerry,—

Virginia, North Carolina, ay; nine states, no,

Mr. SPAIGHT and Mr. RUTLEDGE moved to strike out "five," and insert "thirteen;" to which all the states disagreed, except North Carolina and South Carolina.

Mr. MADISON and Mr. WILLIAMSON moved to insert, after "electors," the words, "who shall have balloted;" so that the non-voting electors, not being counted, might not increase the number necessary as a majority of the whole to decide the choice without the agency of the Senate.

On this question,—

Pennsylvania, Maryland, Virginia, North Carolina, ay, 4; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, South Carolina, Georgia, no, 7.

Mr. DICKINSON moved, in order to remove ambiguity from the intention of the clause, as explained by the vote, to add, after the words, "if such number be a majority of the whole number of the electors," the word "appointed."

On this motion,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, ay, 9; Virginia, North Carolina, no, 2.

Col. MASON. As the mode of appointment is now regulated, he could not forbear expressing his opinion that it is utterly inadmissible. He would prefer the government of Prussia to one which will put all power into the hands of seven or eight men, and fix an aristocracy worse than absolute monarchy.

The words, "and of their giving their votes," being inserted, on motion for that purpose, after the words, "the legislature may determine the time of choosing and assembling the electors,"—

The House adjourned.

Thursday,*September* 6.

In Convention.—Mr. KING and Mr. GERRY moved to insert, in the fourth clause of the report (see the 4th of Sept., page 507,) after the words, "may be entitled in the legislature," the words following:—

"But no person shall be appointed an elector who is a member of the legislature of the United States, or who holds any office of profit or trust under the United States;"

which passed, *nem. con.*

Mr. GERRY proposed, as the President was to be elected by the Senate out of the five highest candidates, that, if he should not at the end of his term be reëlected by a majority of the electors, and no other candidate should have a majority, the eventual election should be made by the legislature. This, he said, would relieve the President from his particular dependence on the Senate for his continuance in office.

Mr. KING liked the idea, as calculated to satisfy particular members and promote unanimity, and as likely to operate but seldom.

Mr. READ opposed it; remarking, that if individual members were to be indulged, alterations would be necessary to satisfy most of them.

Mr. WILLIAMSON espoused it, as a reasonable precaution against the undue influence of the Senate.

Mr. SHERMAN liked the arrangement as it stood, though he should not be averse to some amendments. He thought, he said, that if the legislature were to have the eventual appointment, instead of the Senate, it ought to vote in the case by states,—in favor of the small states, as the large states would have so great an advantage in nominating the candidates.

Mr. GOUVERNEUR MORRIS thought favorably of Mr. Gerry's proposition. It would free the President from being tempted, in naming to offices, to conform to the will of the Senate, and thereby virtually give the appointments to office to the Senate.

Mr. WILSON said, that he had weighed carefully the report of the committee for remodelling the constitution of the executive; and, on combining it with other parts of the plan, he was obliged to consider the whole as having a dangerous tendency to aristocracy; as throwing a dangerous power into the hands of the Senate. They will have, in fact, the appointment of the President, and, through his dependence on them, the virtual appointment to offices; among others, the officers of the judiciary department. They are to make treaties; and they are to try all impeachments. In allowing them thus to make the executive, and judiciary appointments, to be the court of impeachments, and to make treaties which are to be laws of the land, the legislative, executive and judiciary powers are all blended in one branch of the government. The power of making treaties involves the case of subsidies; and here, as an additional evil, foreign influence is to be dreaded. According to the plan as it now stands, the President will not be the man of the people, as he ought to be; but the minion of the Senate. He cannot even appoint a tide-waiter without the Senate. He had always thought the Senate too numerous a body for making appointments to office. The Senate will, moreover, in all probability, be in constant session. They will have high salaries. And with all these powers, and the President in their interest, they will depress the other branch of the legislature, and aggrandize themselves in proportion.

Add to all this, that the Senate, sitting in conclave, can, by holding up to their respective states various and improbable candidates, contrive so to scatter their votes, as to bring the appointment of the President ultimately before themselves. Upon the whole, he thought the new mode of appointing the President, with some amendments, a valuable improvement; but he could never agree to purchase it at the price of the ensuing parts of the report, nor befriend a system of which they make a part.

Mr. GOUVERNEUR MORRIS expressed his wonder at the observations of Mr. Wilson, so far as they preferred the plan in the printed report to the new modification of it before the House; and entered into a comparative view of the two, with an eye to the nature of Mr. Wilson's objections to the last. By the first, the Senate, he observed, had a voice in appointing the President out of all the citizens of the United States; by this they were limited to five candidates, previously nominated to them, with a probability of being barred altogether by the successful ballot of the electors. Here, surely, was no increase of power. They are now to appoint judges, nominated to them by the President. Before, they had the appointment without any agency whatever of the President. Here, again, was surely no additional power. If they are to make treaties, as the plan now stands, the power was the same in the printed plan. If they are to try impeachments, the judges must have been triable by them before. Wherein, then, lay the dangerous tendency of the innovations to establish an aristocracy in the Senate? As to the appointment of officers, the weight of sentiment in the House was opposed to the exercise of it by the President alone; though it was not the case with himself. If the Senate would act as was suspected, in misleading the states into a fallacious disposition of their votes for a President, they would, if the appointment were withdrawn wholly from them, make such representations in their several states where they have influence, as would favor the object of their partiality.

Mr. WILLIAMSON, replying to Mr. Morris, observed, that the aristocratic complexion proceeds from the change in the mode of appointing the President, which makes him dependent on the Senate.

Mr. CLYMER said, that the aristocratic part, to which he could never accede, was that, in the printed plan, which gave the Senate the power of appointing to offices.

Mr. HAMILTON said, that he had been restrained from entering into the discussions, by his dislike of the scheme of government in general; but as he meant to support the plan to be recommended, as better than nothing, he wished in this place to offer a few remarks. He liked the new modification, on the whole, better than that in the printed report. In this, the President was a monster, elected for seven years, and ineligible afterwards; having great powers in appointments to office; and continually tempted, by this constitutional disqualification, to abuse them in order to subvert the government. Although he should be made reëligible, still, if appointed by the legislature, he would be tempted to make use of corrupt influence to be continued in office. It seemed peculiarly desirable, therefore, that some other mode of election should be devised. Considering the different views of different states, and the different districts, northern, middle, and southern, he concurred with those who thought that the votes would not be concentered, and that the appointment would consequently, in the present mode, devolve on the Senate. The nomination to offices

will give great weight to the President. Here, then, is a mutual connection and influence, that will perpetuate the President, and aggrandize both him and the Senate. What is to be the remedy? He saw none better than to let the highest number of ballots, whether a majority or not, appoint the President. What was the objection to this? Merely that too small a number might appoint. But as the plan stands, the Senate may take the candidate having the smallest number of votes, and make him President.

Mr. SPAIGHT and Mr. WILLIAMSON moved to insert "seven," instead of "four" years, for the term of the President.*

On this motion,—

New Hampshire, Virginia, North Carolina, ay, 3; Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, South Carolina, Georgia, no, 8.

Mr. SPAIGHT and Mr. WILLIAMSON then moved to insert "six," instead of "four."

On which motion,—

North Carolina, South Carolina, ay, 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, no, 9.

On the term "four," all the States were ay, except North Carolina, no.

On the question on the fourth clause in the report, for appointing the President by electors, down to the words, "entitled in the legislature," inclusive,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, ay, 9; North Carolina, South Carolina, no, 2.

It was moved that the electors meet at the seat of the general government; which passed in the negative,—North Carolina only being, ay.

It was then moved to insert the words, "under the seal of the state," after the word "transmit," in the fourth clause of the report; which was disagreed to; as was another motion to insert the words, "and who shall have given their votes," after the word "appointed," in the fourth clause of the report, as added yesterday on motion of Mr. Dickinson.

On several motions, the words "in presence of the Senate and House of Representatives," were inserted after the word "counted;" and the word, "immediately," before the word "choose;" and the words, "of the electors," after the word "votes."

Mr. SPAIGHT said, if the election by electors is to be crammed down, he would prefer their meeting altogether, and deciding finally without any reference to the Senate; and moved, "that the electors meet at the seat of the general government."

Mr. WILLIAMSON seconded the motion; on which all the states were in the negative, except North Carolina.

On motion, the words, "But the election shall be on the same day throughout the United States," were added after the words, "transmitting their votes."

New Hampshire, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Massachusetts, New Jersey, Delaware, no, 3.

On the question on the sentence in the fourth clause, "if such number be a majority of that of the electors appointed,"—

New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, South Carolina, Georgia, ay, 8; Pennsylvania, Virginia, North Carolina, no, 3.

On a question on the clause referring the eventual appointment of the President to the Senate,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, ay, 7; North Carolina, no. (Here the call ceased.)

Mr. MADISON made a motion requiring two thirds at least of the Senate to be present at the choice of a President.

Mr. PINCKNEY seconded the motion.

Mr. GORHAM thought it a wrong principle to require more than a majority in any case. In the present, it might prevent for a long time any choice of a President.

On the question moved by Mr. Madison and Mr. Pinckney,—

New Hampshire, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 6; Connecticut, New Jersey, Pennsylvania, Delaware, no, 4; Massachusetts, absent.

Mr. WILLIAMSON suggested, as better than an eventual choice by the Senate, that this choice should be made by the legislature, voting *by states* and not *per capita.*

Mr. SHERMAN suggested, "the House of Representatives," as preferable to "the legislature;" and moved, accordingly, to strike out the words, "The Senate shall immediately choose," &c., and insert,—

"The House of Representatives shall immediately choose by ballot one of them for President, the members from each state having one vote."

Col. MASON liked the latter mode best, as lessening the aristocratic influence of the Senate.

On the motion of Mr. Sherman,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 10; Delaware, no, 1.

Mr. GOUVERNEUR MORRIS suggested the idea of providing that, in all cases, the President in office should not be one of the five candidates; but be only reëligible in case a majority of the electors should vote for him. [This was another expedient for rendering the President independent of the legislative body for his continuance in office.]

Mr. MADISON remarked, that, as a majority of members would make a quorum in the House of Representatives, it would follow from the amendment of Mr. Sherman, giving the election to a majority of states, that the President might be elected by two states only, Virginia and Pennsylvania, which have eighteen members if these states alone should be present.

On a motion, that the eventual election of President, in case of an equality of the votes of the electors, be referred to the House of Representatives,—

New Hampshire, Massachusetts, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 7; New Jersey, Delaware, Maryland, no, 3.

Mr. KING moved to add to the amendment of Mr. Sherman,—

"But a quorum for this purpose shall consist of a member or members from two thirds of the states, and also of a majority of the whole number of the House of Representatives."

Col. MASON liked it, as obviating the remark of Mr. Madison.

The motion, as far as "states," inclusive, was agreed to. On the residue, to wit,—

"and also of a majority of the whole number of the House of Representatives,"

it passed in the negative.

Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, ay, 5; New Hampshire, New Jersey, Delaware, Maryland, South Carolina, Georgia, no, 6.254

The report relating to the appointment of the executive stands, as amended, as follows:—

"He shall hold his office during the term of four years; and, together with the Vice-President, chosen for the same term, be elected in the following manner:—

"Each state shall appoint, in such manner as its legislature may direct, a number of electors equal to the whole number of senators and members of the House of Representatives, to which the state may be entitled in the legislature.

"But no person shall be appointed an elector who is a member of the legislature of the United States, or who holds any office of profit or trust under the United States.

"The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the general government, directed to the president of the Senate.

"The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted.

"The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; the representation from each state having one vote. But if no person have a majority, then from the five highest on the list the House of Representatives shall, in like manner, choose by ballot the President. In the choice of a President by the House of Representatives, a quorum shall consist of a member or members from two thirds of the states, [* and the concurrence of a majority of all the states shall be necessary to such choice.] And in every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them the Vice-President.

"The legislature may determine the time of choosing the electors, and of their giving their votes; and the manner of certifying and transmitting their votes; but the election shall be on the same day throughout the United States."

Adjourned.

Friday,*September* 7.

In Convention.—The mode of constituting the executive being resumed,—

Mr. RANDOLPH moved to insert, in the first section of the report made yesterday, the following:—

"The legislature may declare by law what officer of the United States shall act as President, in case of the death, resignation, or disability of the President and Vice-President; and such officer shall act accordingly, until the time of electing a President shall arrive."

Mr. MADISON observed that this, as worded, would prevent a supply of the vacancy by an intermediate election of the President, and moved to substitute, "until such disability be removed, or a President shall be elected."*

Mr. GOUVERNEUR MORRIS seconded the motion; which was agreed to.

It seemed to be an objection to the provision, with some, that, according to the process established for choosing the executive, there would be difficulty in effecting it at other than the fixed periods; with others, that the legislature was restrained in the temporary appointment to "*officers*" of the *United States.* They wished it to be at liberty to appoint others than such.

On the motion of Mr. Randolph, as amended, it passed in the affirmative.

New Jersey, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, ay, 6; Massachusetts, Connecticut, Delaware, North Carolina, no, 4; New Hampshire, divided.

Mr. GERRY moved,—

"that, in the election of President by the House of Representatives, no state shall vote by less than three members; and where that number may not be allotted to a state, it shall be made up by its senators; and a concurrence of a majority of all the states shall be necessary to make such choice."

Without some such provision, five individuals might possibly be competent to an election, these being a majority of two thirds of the existing numbers of states, and two thirds being a quorum for this business.

Mr. MADISON seconded the motion.

Mr. READ observed, that the states having but one member only in the House of Representatives would be in danger of having no vote at all in the election: the sickness or absence either of the representative, or one of the senators, would have that effect.

Mr. MADISON replied, that if one member of the House of Representatives should be left capable of voting for the state, the states having one representative only would still be subject to that danger. He thought it an evil, that so small a number, at any rate, should be authorized to elect. Corruption would be greatly facilitated by it. The mode itself was liable to this further weighty objection—that the representatives of a *minority* of the people might reverse the choice of a *majority* of the *states* and of the *people.* He wished some cure for this inconvenience might yet be provided.

Mr. GERRY withdrew the first part of his motion; and, on the question on the second part, viz., "and a concurrence of a majority of all the states shall be necessary to make such choice," to follow the words "a member or members from two thirds of the states," it was agreed to, *nem. con.*255

The second section, (see the 4th of September, page 507,) requiring that the President should be a natural-born citizen, &c., and have been resident for fourteen years, and be thirty-five years of age, was agreed to, *nem. con.*

The third section, "The Vice-President shall be, *ex officio,* president of the Senate," being then considered,—

Mr. GERRY opposed this regulation. We might as well put the President himself at the head of the legislature. The close intimacy that must subsist between the President and Vice-President makes it absolutely improper. He was against having any Vice-President.

Mr. GOUVERNEUR MORRIS. The Vice-President then will be the first heir-apparent that ever loved his father. If there should be no Vice-President, the president of the Senate would be temporary successor, which would amount to the same thing.

Mr. SHERMAN saw no danger in the case. If the Vice-President were not to be president of the Senate, he would be without employment; and some member, by being made president, must be deprived of his vote, unless when an equal division of votes might happen in the Senate, which would be but seldom.

Mr. RANDOLPH concurred in the opposition to the clause.

Mr. WILLIAMSON observed, that such an officer as Vice-President was not wanted. He was introduced merely for the sake of a valuable mode of election, which required two to be chosen at the same time.

Col. MASON thought the office of Vice-President an encroachment on the rights of the Senate; and that it mixed too much the legislative and the executive, which, as well as the judiciary department, ought to be kept as separate as possible. He took occasion to express his dislike of any reference whatever of the power to make appointments to either branch of the legislature. On the other hand, he was averse to vest so dangerous a power in the President alone. As a method for avoiding both, he suggested that a privy council, of six members, to the President, should be established, to be chosen for six years by the Senate,—two out of the eastern, two out of the middle, and two out of the southern quarters of the Union,—and to go out in rotation, two every second year; the concurrence of the Senate to be required only in the appointment of ambassadors, and in making treaties, which are more of a legislative nature. This would prevent the constant sitting of the Senate, which he thought dangerous, as well as keep the department separate and distinct. It would also save the expense of constant sessions of the Senate. He had, he said, always considered the Senate as too unwieldy and expensive for appointing officers, especially the smallest, such as tide-waiters, &c. He had not reduced his idea to writing, but it could be easily done, if it should be found acceptable.

On the question, Shall the Vice-President be, *ex officio,* president of the Senate?—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, ay, 8; New Jersey, Maryland, no, 2; North Carolina, absent.

The other parts of the same section were then agreed to.

The fourth section, to wit,—

"The President, by and with the advice and consent of the Senate, shall have power to make treaties,"

&c., was then taken up.

Mr. WILSON moved to add, after the word "Senate," the words "and House of Representatives." As treaties, he said, are to have the operation of laws, they ought to have the sanction of laws also. The circumstance of secrecy in the business of treaties formed the only objection; but this, he thought, so far as it was inconsistent with obtaining the legislative sanction, was outweighed by the necessity of the latter.

Mr. SHERMAN thought the only question that could be made was, whether the power could be safely trusted to the Senate. He thought it could; and that the necessity of secrecy in the case of treaties forbade a reference of them to the whole legislature.

Mr. FITZSIMONS seconded the motion of Mr. Wilson; and, on the question,—

Pennsylvania, ay, 1; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 10.

The first sentence, as to making treaties, was then agreed to, *nem. con.*

On the clause, "He shall nominate," &c.,—"appoint ambassadors," &c.,—

Mr. WILSON objected to the mode of appointing, as blending a branch of the legislature with the executive. Good laws are of no effect, without a good executive; and there can be no good executive without a responsible appointment of officers to execute. Responsibility is in a manner destroyed by such an agency of the Senate. He would prefer the council proposed by Col. Mason, provided its advice should not be made obligatory on the President.

Mr. PINCKNEY was against joining the Senate in these appointments, except in the instances of ambassadors, who, he thought, ought not to be appointed by the President.

Mr. GOUVERNEUR MORRIS said, that, as the President was to nominate, there would be responsibility; and as the Senate was to concur, there would be security. As Congress now make appointments, there is no responsibility.

Mr. GERRY. The idea of responsibility in the nomination to offices is chimerical. The President cannot know all characters, and can therefore always plead ignorance.

Mr. KING. As the idea of a council, proposed by Col. Mason, has been supported by Mr. Wilson, he would remark, that most of the inconveniences charged on the Senate are incident to a council of advice. He differed from those who thought the Senate would sit constantly. He did not suppose it was meant that all the minute officers were to be appointed by the Senate, or any other original source, but by the higher officers of the departments to which they belong. He was of opinion, also, that the people would be alarmed at an unnecessary creation of new corps, which must increase the expense as well as influence of the government.

On the question on these words in the clause, viz.,

"He shall nominate, and, by and with the advice and consent of the Senate, shall appoint, ambassadors, and other public ministers and consuls, and judges of the Supreme Court,"—

it was agreed to, *nem. con.,* the insertion of "and consuls" having first taken place.

On the question on the following words, "and all other officers of the United States,"—

New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 9; Pennsylvania, South Carolina, no, 2.

On motion of Mr. SPAIGHT, that

"the President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of the next session of the Senate,"

it was agreed to, *nem. con.*256

The fourth section,—

"The President, by and with the advice and consent of the Senate, shall have power to make treaties; *but no treaty shall be made without the consent of two thirds of the members present,*"—

being considered, and the last clause being before the House,—

Mr. WILSON thought it objectionable to require the concurrence of two thirds, which puts it into the power of a minority to control the will of a majority.

Mr. KING concurred in the objection; remarking that, as the executive was here joined in the business, there was a check which did not exist in Congress, where the concurrence of two thirds was required.

Mr. MADISON moved to insert, after the word "treaty," the words "except treaties of peace;" allowing these to be made with less difficulty than other treaties. It was agreed to, *nem. con.*

Mr. MADISON then moved to authorize a concurrence of two thirds of the Senate to make treaties of peace, without the concurrence of the President. The President, he said, would necessarily derive so much power and importance from a state of war, that he might be tempted, if authorized, to impede a treaty of peace.

Mr. BUTLER seconded the motion.

Mr. GORHAM thought the security unnecessary, as the means of carrying on the war would not be in the hands of the President, but of the legislature.

Mr. GOUVERNEUR MORRIS thought the power of the President in this case harmless; and that no peace ought to be made without the concurrence of the President, who was the general guardian of the national interests.

Mr. BUTLER was strenuous for the motion, as a necessary security against ambitious and corrupt Presidents. He mentioned the late perfidious policy of the stadtholder in Holland, and the artifices of the Duke of Marlborough to prolong the war of which he had the management.

Mr. GERRY was of opinion that in treaties of peace a greater rather than a less proportion of votes was necessary, than in other treaties. In treaties of peace the dearest interests will be at stake, as the fisheries, territories, &c. In treaties of peace, also, there is more danger, to the extremities of the continent, of being sacrificed, than on any other occasion.

Mr. WILLIAMSON thought that treaties of peace should be guarded at least by requiring the same concurrence as in other treaties.

On the motion of Mr. Madison and Mr. Butler,—

Maryland, South Carolina, Georgia, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, no, 8.

On the part of the clause concerning treaties, amended by the exception as to treaties of peace,—

New Hampshire, Massachusetts, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, ay, 8; New Jersey, Pennsylvania, Georgia, no, 3.

The clause,—

“and may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices,”

being before the House,—

Col. MASON* said, that, in rejecting a council to the President, we were about to try an experiment on which the most despotic government had never ventured. The grand seignior himself had his divan. He moved to postpone the consideration of the clause, in order to take up the following:—

“That it be an instruction to the committee of the states to prepare a clause or clauses for establishing an executive council, as a council of state for the President of the United States; to consist of six members, two of which from the Eastern, two from the Middle, and two from the Southern States; with a rotation and duration of office similar to those of the Senate; such council to be appointed by the legislature, or by the Senate.”

Dr. FRANKLIN seconded the motion. We seemed, he said, too much to fear cabals in appointments by a number, and to have too much confidence in those of single persons. Experience showed that caprice, the intrigues of favorites and mistresses, were nevertheless the means most prevalent in monarchies. Among instances of abuse in such modes of appointment, he mentioned the many bad governors appointed in Great Britain for the colonies. He thought a council would not only be a check on a bad President, but be a relief to a good one.

Mr. GOUVERNEUR MORRIS. The question of a council was considered in the committee, where it was judged that the President, by persuading his council to concur in his wrong measures, would acquire their protection for them.

Mr. WILSON approved of a council, in preference to making the Senate a party to appointments.

Mr. DICKINSON was for a council. It would be a singular thing, if the measures of the executive were not to undergo some previous discussion before the President.

Mr. MADISON was in favor of the instruction to the committee proposed by Col. Mason.

The motion of Col. Mason was negatived,—

Maryland, South Carolina, Georgia, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, no, 8.

On the question for authorizing the President to call for the opinions of the heads of departments, in writing, it passed in the affirmative, New Hampshire only being no.*

The clause was then unanimously agreed to.

Mr. WILLIAMSON and Mr. SPAIGHT moved,

“that no treaty of peace affecting territorial rights should be made without the concurrence of two thirds of the members of the Senate present.”

Mr. KING. It will be necessary to look out for securities for some other rights, if this principle be established; he moved to extend the motion to “all present rights of the United States.”

Adjourned.

Saturday,*September* 8.

In Convention.—The last report of the committee of eleven (see the 4th of September) was resumed.

Mr. KING moved to strike out the exception of treaties of peace from the general clause requiring two thirds of the Senate for making treaties.

Mr. WILSON wished the requisition of two thirds to be struck out altogether. If the majority cannot be trusted, it was a proof, as observed by Mr. Gorham, that we were not fit for one society.

A reconsideration of the whole clause was agreed to.

Mr. GOUVERNEUR MORRIS was against striking out the exception of treaties of peace. If two thirds of the Senate should be required for peace, the legislature will be unwilling to make war for that reason, on account of the fisheries, or the Mississippi, the two great objects of the Union. Besides, if a majority of the Senate be for peace, and are not allowed to make it, they will be apt to effect their purpose in the more disagreeable mode of negativing the supplies for the war.

Mr. WILLIAMSON remarked, that treaties are to be made in the branch of the government where there may be a majority of the states, without a majority of the people. Eight men may be a majority of a quorum, and should not have the power to decide the conditions of peace. There would be no danger that the exposed states, as South Carolina or Georgia, would urge an improper war for the western territory.

Mr. WILSON. If two thirds are necessary to make peace, the minority may perpetuate war, against the sense of the majority.

Mr. GERRY enlarged on the danger of putting the essential rights of the Union in the hands of so small a number as a majority of the Senate, representing perhaps not one fifth of the people. The Senate will be corrupted by foreign influence.

Mr. SHERMAN was against leaving the rights established by the treaty of peace, to the Senate; and moved to annex a proviso, that no such rights should be ceded without the sanction of the legislature.

Mr. GOUVERNEUR MORRIS seconded the ideas of Mr. Sherman.

Mr. MADISON observed, that it had been too easy, in the present Congress, to make treaties, although nine states were required for the purpose.

On the question for striking out “except treaties of peace,”—

New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 8; New Jersey, Delaware, Maryland, no, 3.

Mr. WILSON and Mr. DAYTON moved to strike out the clause requiring two thirds of the Senate for making treaties; on which,—

Delaware, ay, 1; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 9; Connecticut, divided.

Mr. RUTLEDGE and Mr. GERRY moved that,—

"no treaty shall be made without the consent of two thirds of all the members of the Senate:"

according to the example in the present Congress.

Mr. GORHAM. There is a difference in the case, as the President's consent will also be necessary in the new government.

On the question,—

North Carolina, South Carolina, Georgia, ay, 3; New Hampshire, Massachusetts, Mr. Gerry, ay,) Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, no, 8.

Mr. SHERMAN moved that,—

"no treaty shall be made without a majority of the whole number of the Senate."

Mr. GERRY seconded him.

Mr. WILLIAMSON. This will be less security than two thirds, as now required.

Mr. SHERMAN. It will be less embarrassing.

On the question, it passed in the negative.

Massachusetts, Connecticut, Delaware, South Carolina, Georgia, ay, 5; New Hampshire, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, no, 6.

Mr. MADISON moved that a quorum of the Senate consist of two thirds of all the members.

Mr. GOUVERNEUR MORRIS. This will put it in the power of one man to break up a quorum.

Mr. MADISON. This may happen to any quorum.

On the question, it passed in the negative.

Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 5; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, no, 6.257

Mr. WILLIAMSON and Mr. GERRY moved,—

"that no treaty should be made without previous notice to the members, and a reasonable time for their attending."

On the question, all the states, no; except North Carolina, South Carolina, and Georgia, ay.

On a question on the clause of the report of the committee of eleven, relating to treaties by two thirds of the Senate, all the states were ay; except Pennsylvania, New Jersey, and Georgia, no.258

Mr. GERRY moved that,—

"no officer shall be appointed but to offices created by the Constitution or by law."

This was rejected as unnecessary.

Massachusetts, Connecticut, New Jersey, North Carolina, Georgia, ay, 5; New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, no, 6.

The clause referring to the Senate the trial of impeachments against the President, for treason and bribery, was taken up.

Col. MASON. Why is the provision restrained to treason and bribery only? Treason, as defined in the Constitution, will not reach many great and dangerous offences. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason, as above defined. As bills of attainder, which have saved the British constitution, are forbidden, it is the more necessary to extend the power of impeachments. He moved to add, after "bribery," "or maladministration." Mr. GERRY seconded him.

Mr. MADISON. So vague a term will be equivalent to a tenure during pleasure of the Senate.

Mr. GOUVERNEUR MORRIS. It will not be put in force, and can do no harm. An election of every four years will prevent maladministration.

Col. MASON withdrew "maladministration," and substituted other high crimes and misdemeanors against the state."

On the question, thus altered,—

New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, South Carolina, (in the printed Journal, South Carolina, no,) Georgia, ay, 8; New Jersey, Pennsylvania, Delaware, no, 3.

Mr. MADISON objected to a trial of the President by the Senate, especially as he was to be impeached by the other branch of the legislature; and for any act which might be called a misdemeanor. The President under these circumstances was made improperly dependent. He would prefer the Supreme Court for the trial of impeachments; or, rather, a tribunal of which that should form a part.

Mr. GOUVERNEUR MORRIS thought no other tribunal than the Senate could be trusted. The Supreme Court were too few in number, and might be warped or corrupted. He was against a dependence of the executive on the legislature, considering the legislative tyranny the great danger to be apprehended; but there could

be no danger that the Senate would say untruly, on their oaths, that the President was guilty of crimes or facts, especially as in four years he can be turned out.

Mr. PINCKNEY disapproved of making the Senate the court of impeachments, as rendering the President too dependent on the legislature. If he opposes a favorite law, the two Houses will combine against him, and, under the influence of heat and faction, throw him out of office.

Mr. WILLIAMSON thought there was more danger of too much lenity, than of too much rigor, towards the President, considering the number of cases in which the Senate was associated with the President.

Mr. SHERMAN regarded the Supreme Court as improper to try the President, because the judges would be appointed by him.

On motion by Mr. MADISON, to strike out the words "by the Senate," after the word "conviction,"—

Pennsylvania, Virginia, ay, 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, no, 9.

In the amendment of Col. Mason, just agreed to, the word "state," after the words "misdemeanors against," was struck out; and the words "United States" unanimously inserted, in order to remove ambiguity.

On the question to agree to the clause, as amended,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 10; Pennsylvania, no, 1.

On motion, the following,—

"The Vice-President, and other civil officers of the United States, shall be removed from office on impeachment and conviction, as aforesaid,"—

was added to the clause on the subject of impeachments.

The clause of the report made on the 5th of September, and postponed, was taken up, to wit:—

"All bills for raising revenue shall originate in the House of Representatives, and shall be subject to alterations and amendments by the Senate. No money shall be drawn from the treasury but in consequence of appropriations made by law."

It was moved to strike out the words "and shall be subject to alterations and amendments by the Senate;" and insert the words used in the constitution of Massachusetts on the same subject, viz., "but the Senate may propose or concur with amendments, as in other bills;" which was agreed to, *nem. con.*

On the question on the first part of the clause, "all bills for raising revenue shall originate in the House of Representatives,"* —

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Delaware, Maryland, no, 2.

Mr. GOUVERNEUR MORRIS moved to add to the third clause of the report made on the 4th of September, the words, "and every member shall be on oath;" which being agreed to, and a question taken on the clause so amended, viz.

"The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two thirds of the members present, and every member shall be on oath,"—

New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, ay, 9; Pennsylvania, Virginia, no, 2.

Mr. GERRY repeated his motion above made, on this day, in the form following:—

"The legislature shall have the sole right of establishing offices not heretofore provided for;"

which was again negatived,—Massachusetts, Connecticut, and Georgia, only, being ay.

Mr. M'HENRY observed, that the President had not yet been any where authorized to convene the Senate, and moved to amend article 10, sect. 2, by striking out the words "He may convene them [the legislature] on extraordinary occasions;" and inserting, "He may convene both or either of the Houses on extraordinary occasions." This, he added, would also provide for the case of the Senate being in session at the time of convening the legislature.

Mr. WILSON said, he should vote against the motion, because it implied that the Senate might be in session when the legislature was not, which he thought improper.

On the question,—

New Hampshire, Connecticut, New Jersey, Delaware, Maryland, North Carolina, Georgia, ay, 7; Massachusetts, Pennsylvania, Virginia, South Carolina, no, 4.

A committee was then appointed by ballot to revise the style of, and arrange, the articles which had been agreed to by the House. The committee consisted of Mr. Johnson, Mr. Hamilton, Mr. Gouverneur Morris, Mr. Madison, and Mr. King.

Mr. WILLIAMSON moved that, previous to this work of the committee, the clause relating to the number of the House of Representatives should be reconsidered, for the purpose of increasing the number.

Mr. MADISON seconded the motion.

Mr. SHERMAN opposed it. He thought the provision on that subject amply sufficient.

Col. HAMILTON expressed himself with great earnestness and anxiety in favour of the motion. He avowed himself a friend to a vigorous government, but would declare, at the same time, he held it essential that the popular branch of it should be on a broad foundation. He was seriously of opinion, that the House of Representatives was on so narrow a scale as to be really dangerous, and to warrant a jealousy in the people for their liberties. He remarked, that the connection between the President and Senate would tend to perpetuate him, by corrupt influence. It was the more necessary, on this account, that a numerous representation in the other branch of the legislature should be established.

On the motion of Mr. WILLIAMSON to reconsider, it was negatived.*

Pennsylvania, Delaware, Maryland, Virginia, North Carolina, ay, 5; New Hampshire, Massachusetts, Connecticut, New Jersey, South Carolina, Georgia, no, 6.

Adjourned.

Monday,*September* 10.

In Convention.—Mr. GERRY moved to reconsider article 19, viz.:—

"On the application of the legislatures of two thirds of the states in the Union, for an amendment of this Constitution, the legislature of the United States shall call a convention for that purpose."

(See the 6th of August,—p. 381.)

This Constitution, he said, is to be paramount to the state constitutions. It follows, hence, from this article, that two thirds of the states may obtain a convention, a majority of which can bind the Union to innovations that may subvert the state constitutions altogether. He asked whether this was a situation proper to be run into.

Mr. HAMILTON seconded the motion; but, he said, with a different view from Mr. Gerry. He did not object to the consequences stated by Mr. Gerry. There was no greater evil in subjecting the people of the United States to the major voice, than the people of a particular state. It had been wished by many, and was much to have been desired, that an easier mode of introducing amendments had been provided by the Articles of the Confederation. It was equally desirable now, that an easy mode should be established for supplying defects which will probably appear in the new system. The mode proposed was not adequate. The state legislatures will not apply for alterations, but with a view to increase their own powers. The national legislature will be the first to perceive, and will be most sensible to, the necessity of amendments; and ought also to be empowered, whenever two thirds of each branch should concur, to call a convention. There could be no danger in giving this power, as the people would finally decide in the case.

Mr. MADISON remarked on the vagueness of the terms, "call a convention for the purpose," as sufficient reason for reconsidering the article. How was a convention to be formed?—by what rule decide?—what the force of its acts?

On the motion of Mr. Gerry, to reconsider,—

Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; New Jersey, no, 1; New Hampshire, divided.

Mr. SHERMAN moved to add to the article,—

"or the legislature may propose amendments to the several states for their approbation; but no amendments shall be binding until consented to by the several states."

Mr. GERRY seconded the motion.

Mr. WILSON moved to insert "two thirds of" before the words "several states;" on which amendment to the motion of Mr. Sherman,—

New Hampshire, Pennsylvania, Delaware, Maryland, Virginia, ay, 5; Massachusetts, Connecticut, New Jersey, North Carolina, South Carolina, Georgia, no, 6.

Mr. WILSON then moved to insert "three fourths of" before "the several states;" which was agreed to, *nem. con.*

Mr. MADISON moved to postpone the consideration of the amended proposition, in order to take up the following:—

"The legislature of the United States, whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the legislatures of the several states, shall propose amendments to this Constitution, which shall be valid, to all intents and purposes, as part thereof, when the same shall have been ratified by three fourths, at least, of the legislatures of the several states, or by conventions in three fourths thereof, as one or the other mode of ratification may be proposed by the legislature of the United States."

Mr. HAMILTON seconded the motion.

Mr. RUTLEDGE said he never could agree to give a power by which the articles relating to slaves might be altered by the states not interested in that property, and prejudiced against it. In order to obviate this objection, these words were added to the proposition:*

"provided that no amendments, which may be made prior to the year 1808, shall in any manner affect the fourth and fifth sections of the seventh article."

The postponement being agreed to,—

On the question on the proposition of Mr. Madison and Mr. Hamilton, as amended,—

Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 9; Delaware, no, 1; New Hampshire, divided.259

Mr. GERRY moved to reconsider articles 21 and 22; from the latter of which "for the approbation of Congress," had been struck out. He objected to proceeding to change the government without the approbation of Congress, as being improper, and giving just umbrage to that body. He repeated his objections, also, to an annulment of the Confederation with so little scruple or formality.

Mr. HAMILTON concurred with Mr. Gerry as to the indecorum of not requiring the approbation of Congress. He considered this as a necessary ingredient in the transaction. He thought it wrong, also, to allow nine states, as provided by article 21, to institute a new government on the ruins of the existing one. He would propose, as a better modification of the two articles, (21 and 22,) that the plan should be sent to Congress, in order that the same, if approved by them, may be communicated to the state legislatures, to the end that they may refer it to state conventions; each legislature declaring that, if the convention of the state should think the plan ought to take effect among nine ratifying states, the same should take effect accordingly.

Mr. GORHAM. Some states will say that nine states shall be sufficient to establish the plan; others will require unanimity for the purpose, and the different and conditional ratifications will defeat the plan altogether.

Mr. HAMILTON. No convention convinced of the necessity of the plan will refuse to give it effect, on the adoption by nine states. He thought this mode less exceptionable than the one proposed in the article, while it would attain the same end.

Mr. FITZSIMONS remarked, that the words "for their approbation" had been struck out in order to save Congress from the necessity of an act inconsistent with the Articles of Confederation, under which they held their authority.

Mr. RANDOLPH declared, if no change should be made in this part of the plan, he should be obliged to dissent from the whole of it. He had, from the beginning, he said, been convinced that radical changes in the system of the Union were necessary. Under this conviction, he had brought forward a set of republican propositions, as the basis and outline of a reform. These republican propositions had, however, much to his regret, been widely, and, in his opinion, irreconcilably departed from. In this state of things, it was his idea, and he accordingly meant to propose, that the state conventions should be at liberty to offer amendments to the plan; and that these should be submitted to a second General Convention, with full power to settle the Constitution finally. He did not expect to succeed in this proposition, but the discharge of his duty in making the attempt would give quiet to his own mind.

Mr. WILSON was against a reconsideration for any of the purposes which had been mentioned.

Mr. KING thought it would be more respectful to Congress, to submit the plan generally to them, than in such a form as expressly and necessarily to require their approbation or disapprobation. The assent of nine states he considered as sufficient; and that it was more proper to make this a part of the Constitution itself, than to provide for it by a supplemental or distinct recommendation.

Mr. GERRY urged the indecency and pernicious tendency of dissolving, in so slight a manner, the solemn obligations of the Articles of Confederation. If nine out of thirteen can dissolve the compact, six out of nine will be just as able to dissolve the new one hereafter.

Mr. SHERMAN was in favor of Mr. King's idea of submitting the plan generally to Congress. He thought nine states ought to be made sufficient; but that it would be better to make it a separate act, and in some such form as that intimated by Col. Hamilton, than to make it a particular article of the Constitution.

On the question for reconsidering the two articles, 21 and 22,—

Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 7; Massachusetts, Pennsylvania, South Carolina, no, 3; New Hampshire, divided.

Mr. HAMILTON then moved to postpone article 21, in order to take up the following, containing the ideas he had above expressed, viz.:—

"*Resolved,* That the foregoing plan of a Constitution be transmitted to the United States in Congress assembled, in order that, if the same shall be agreed to by them, it may be communicated to the legislatures of the several states, to the end that they may provide for its final ratification, by referring the same to the consideration of a convention of deputies in each state, to be chosen by the people thereof; and that it be recommended to the said legislatures, in their respective acts for organizing such convention, to declare that, if the said convention shall approve of the said Constitution, such approbation shall be binding and conclusive upon the state; and further, that if the said convention shall be of opinion that the same, upon the assent of any nine states thereto, ought to take effect between the states so assenting, such opinion shall thereupon be also binding upon such a state, and the said Constitution shall take effect between the states assenting thereto."

Mr. GERRY seconded the motion.

Mr. WILSON. This motion being seconded, it is necessary now to speak freely. He expressed in strong terms his disapprobation of the expedient proposed, particularly the suspending the plan of the Convention on the approbation of Congress. He declared it to be worse than folly, to rely on the concurrence of the Rhode Island members of Congress in the plan. Maryland had voted, on this floor, for requiring the unanimous assent of the thirteen states to the proposed change in the federal system. New York has not been represented for a long time past in the Convention. Many individual deputies from other states have spoken much against the plan. Under these circumstances, can it be safe to make the assent of Congress necessary? After

spending four or five months in the laborious and arduous task of forming a government for our country, we are ourselves throwing insuperable obstacles in the way of its success.

Mr. CLYMER thought that the mode proposed by Mr. Hamilton would fetter and embarrass Congress as much as the original one, since it equally involved a breach of the Articles of Confederation.

Mr. KING concurred with Mr. Clymer. If Congress can accede to one mode, they can to the other. If the approbation of Congress be made necessary, and they should not approve, the state legislatures will not propose the plan to conventions; or if the states themselves are to provide that nine states shall suffice to establish the system, that provision will be omitted, every thing will go into confusion, and all our labor be lost.

Mr. RUTLEDGE viewed the matter in the same light with Mr. King.

On the question to postpone, in order to take up Col. Hamilton's motion,—

Connecticut, ay, 1; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 10.

A question being then taken on the article 21, in was agreed to unanimously.

Col. HAMILTON withdrew the remainder of the motion to postpone article 22; observing that his purpose was defeated by the vote just given.

Mr. WILLIAMSON and Mr. GERRY moved to reinstate the words "for the approbation of Congress," in article 22; which was disagreed to, *nem. con.*260

Mr. RANDOLPH took this opportunity to state his objections to the system. They turned on the Senate's being made the court of impeachment for trying the executive—on the necessity of three fourths instead of two thirds of each House to overrule the negative of the President—on the smallness of the number of the representative branch—on the want of limitation to a standing army—on the general clause concerning necessary and proper laws—on the want of some particular restraint on navigation acts—on the power to lay duties on exports—on the authority of the general legislature to interpose on the application of the *executives* of the states—on the want of a more definite boundary between the general and state legislatures, and between the general and state judiciaries—on the unqualified power of the President to pardon treasons—on the want of some limit to the power of the legislature in regulating their own compensations. With these difficulties in his mind, what course, he asked, was he to pursue? Was he to promote the establishment of a plan which he verily believed would end in tyranny? He was unwilling, he said, to impede the wishes and judgment of the Convention, but he must keep himself free, in case he should be honored with a seat in the convention of his state, to act according to the dictates of his judgment. The only mode in which his embarrassment could be removed was that of submitting the plan to Congress, to go from them to the state legislatures, and from these to state conventions, having power to adopt, reject, or amend; the process to close with another General Convention, with full power to

adopt or reject the alterations proposed by the state conventions, and to establish finally the government. He accordingly proposed a resolution to this effect.261

Dr. FRANKLIN seconded the motion.

Col. MASON urged and obtained that the motion should lie on the table for a day or two, to see what steps might be taken with regard to the parts of the system objected to by Mr. Randolph.

Mr. PINCKNEY moved,—

"that it be an instruction to the committee for revising the style and arrangement of the articles agreed on, to prepare an address to the people, to accompany the present Constitution, and to be laid, with the same, before the United States in Congress."

* The motion itself was referred to the committee, *nem. con.*

* Mr. RANDOLPH moved to refer to the committee, also, a motion relating to pardons in cases of treason; which was agreed to, *nem. con.*

Adjourned.

Tuesday,*September* 11.

In Convention.—The report of the committee of style and arrangement not being made, and being waited for,—

The House adjourned.

Wednesday,*September* 12.

In Convention.—Dr. JOHNSON, from the committee of style, &c., reported a digest of the plan, of which printed copies were ordered to be furnished to the members. He also reported a letter to accompany the plan to Congress.

REPORT.*

[Here follows a copy of the Constitution.]

LETTER.

"We have now the honor to submit to the consideration of the United States in Congress assembled that Constitution which has appeared to us the most advisable.

"The friends of our country have long seen and desired, that the power of making war, peace, and treaties; that of levying money and regulating commerce; and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union. But the impropriety of delegating such extensive trust to one body of men is evident. Thence results the necessity of a

different organization. It is obviously impracticable, in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty, to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstances, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved. And on the present occasion this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests.

"In all our deliberations on this subject, we kept steadily in our view that which appeared to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the Convention to be less rigid in points of inferior magnitude than might have been otherwise expected. And thus the Constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession, which the peculiarity of our political situation rendered indispensable.

"That it will meet the full and entire approbation of every state is not, perhaps, to be expected. But each will doubtless consider, that, had her interest alone been consulted, the consequences might have been particularly disagreeable and injurious to others. That it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish."

Mr. WILLIAMSON moved to reconsider the clause requiring three fourths of each House to overrule the negative of the President, in order to strike out three fourths and insert two thirds. He had, he remarked, himself proposed three fourths instead of two thirds; but he had since been convinced that the latter proportion was the best. The former puts too much in the power of the President.

Mr. SHERMAN was of the same opinion; adding, that the states would not like to see so small a minority, and the President, prevailing over the general voice. In making laws, regard should be had to the sense of the people who are to be bound by them; and it was more probable that a single man should mistake or betray this sense, than the legislature.

Mr. GOUVERNEUR MORRIS. Considering the difference between the two proportions numerically, it amounts, in one House, to two members only; and in the other, to not more than five—according to the numbers of which the legislature is at first to be composed. It is the interest, moreover, of the distant states, to prefer three fourths, as they will be oftenest absent, and need the interposing check of the President. The excess, rather than the deficiency, of laws was to be dreaded. The example of New York shows that two thirds is not sufficient to answer the purpose.

Mr. HAMILTON added his testimony to the fact, that two thirds in New York had been ineffectual, either where a popular object, or a legislative faction, operated; of which he mentioned some instances.

Mr. GERRY. It is necessary to consider the danger on the other side also. Two thirds will be a considerable, perhaps a proper, security. Three fourths puts too much in the power of a few men. The primary object of the revisionary check of the President is, not to protect the general interest, but to defend his own department. If three fourths be required, a few senators, having hopes from the nomination of the President to offices, will combine with him, and impede proper laws. Making the Vice-President speaker increases the danger.

Mr. WILLIAMSON was less afraid of too few than of too many laws. He was, most of all, afraid that the repeal of bad laws might be rendered too difficult, by requiring three fourths to overcome the dissent of the President.

Col. MASON had always considered this as one of the most exceptionable parts of the system. As to the numerical argument of Mr. Gouverneur Morris, little arithmetic was necessary to understand that three fourths was more than two thirds, whatever the numbers of the legislature might be. The example of New York depended on the real merits of the laws. The gentlemen citing it had, no doubt, given their own opinions. But, perhaps, there were others of opposite opinions, who could equally paint the abuses on the other side. His leading view was, to guard against too great an impediment to the repeal of laws.

Mr. GOUVERNEUR MORRIS dwelt on the danger to the public interest, from the instability of laws, as the most to be guarded against. On the other side, there could be little danger. If one man in office will not consent where he ought, every fourth year another can be substituted. This term was not too long for fair experiments. Many good laws are not tried long enough to prove their merit. This is often the case with new laws opposed to old habits. The inspection laws of Virginia and Maryland, to which all are now so much attached, were unpopular at first.

Mr. PINCKNEY was warmly in opposition to three fourths, as putting a dangerous power in the hands of a few senators, headed by the President.

Mr. MADISON. When three fourths was agreed to, the President was to be elected by the legislature, and for seven years. He is now to be elected by the people, and for four years. The object of the revisionary power is twofold,—first, to defend the executive rights; secondly, to prevent popular or factious injustice. It was an important principle, in this and in the state constitutions, to check legislative injustice and encroachments. The experience of the states had demonstrated that their checks are insufficient. We must compare the danger from the weakness of two thirds with the danger from the strength of three fourths. He thought, on the whole, the former was the greater. As to the difficulty of repeals, it was probable that, in doubtful cases, the policy would soon take place of limiting the duration of laws, so as to require renewal, instead of repeal.

The reconsideration being agreed to,—

On the question to insert two thirds, in place of three fourths,—

Connecticut, New Jersey, Maryland, (Mr. M'Henry, no,) North Carolina, South Carolina, Georgia, ay, 6; Massachusetts, Pennsylvania, Delaware, Virginia, (Gen. Washington, Mr. Blair, Mr. Madison, no; Col. Mason, Mr. Randolph, ay,) no, 4; New Hampshire, divided.

Mr. WILLIAMSON observed to the House, that no provision was yet made for juries in civil cases, and suggested the necessity of it.

Mr. GORHAM. It is not possible to discriminate equity cases from those in which juries are proper. The representatives of the people may be safely trusted in this matter.

Mr. GERRY urged the necessity of juries to guard against corrupt judges. He proposed that the committee last appointed should be directed to provide a clause for securing the trial by juries.

Col. MASON perceived the difficulty mentioned by Mr. Gorham. The jury cases cannot be specified. A general principle laid down, on this and some other points, would be sufficient. He wished the plan had been prefaced with a bill of rights, and would second a motion, if made for the purpose. It would give great quiet to the people, and, with the aid of the state declarations, a bill might be prepared in a few hours.

Mr. GERRY concurred in the idea, and moved for a committee to prepare a bill of rights.

Col. MASON seconded the motion.

Mr. SHERMAN was for securing the rights of the people, where requisite. The state declarations of rights are not repealed by this Constitution, and, being in force, are sufficient. There are many cases, where juries are proper, which cannot be discriminated. The legislature may be safely trusted.

Col. MASON. The laws of the United States are to be paramount to state bills of rights.

On the question for a committee to prepare a bill of rights,—

New Hampshire, Connecticut, New Jersey, Pennsylvania, Delaware, ay, 5; Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 5; Massachusetts, absent.[262]

The clause relating to exports being reconsidered, at the instance of Col. MASON, who urged that the restrictions on the states would prevent the incidental duties necessary for the inspection and safe [263] keeping of their produce, and be ruinous to the staple states, as he called the five Southern States, he moved as follows:—

"provided, nothing herein contained shall be construed to restrain any state from laying duties upon exports for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses in keeping the commodities in the care of public officers, before exportation."

In answer to a remark which he anticipated, to wit, that the states could provide for these expenses by a tax in some other way he stated the inconvenience of requiring the planters to pay a tax before the actual delivery for exportation.

Mr. MADISON seconded the motion. It would, at least, be harmless, and might have the good effect of restraining the states to *bona fide* duties for the purpose, as well as of authorizing explicitly such duties; though, perhaps, the best guard against an abuse of the power of the states on this subject was the right in the general government to regulate trade between state and state.

Mr. GOUVERNEUR MORRIS saw no objection to the motion. He did not consider the dollar per hogshead laid on tobacco, in Virginia, as a duty on exportation, as no drawback would be allowed on tobacco taken out of the warehouse for internal consumption.

Mr. DAYTON was afraid the proviso would enable Pennsylvania to tax New Jersey, under the idea of inspection duties, of which Pennsylvania would judge.

Mr. GORHAM and Mr. LANGDON thought there would be no security, if the proviso should be agreed to, for the states exporting through other states, against these oppressions of the latter. How was redress to be obtained, in case duties should be laid beyond the purpose expressed?

Mr. MADISON. There will be the same security as in other cases. The jurisdiction of the Supreme Court must be the source of redress. So far, only, had provision been made by the plan against injurious acts of the states. His own opinion was, that this was insufficient. A negative on the state laws alone could meet all the shapes which these could assume. But this had been overruled.

Mr. FITZSIMONS. Incidental duties on tobacco and flour never have been, and never can be, considered as duties on exports.

Mr. DICKINSON. Nothing will save the states in the situation of New Hampshire, New Jersey, Delaware, &c., from being oppressed by their neighbors, but requiring the assent of Congress to inspection duties. He moved that this assent should accordingly be required.

Mr. BUTLER seconded the motion. Adjourned.

Thursday,*September* 13.

In Convention.—Col. MASON. He had moved, without success, for a power to make sumptuary regulations. He had not yet lost sight of his object. After descanting on the extravagance of our manners, the excessive consumption of foreign superfluities, and

the necessity of restricting it, as well with economical as republican views, he moved that a committee be appointed, to report articles of association for encouraging, by the advice, the influence, and the example, of the members of the Convention, economy, frugality, and American manufactures.

Dr. JOHNSON seconded the motion, which was, without debate, agreed to, *nem. con.,* and a committee appointed, consisting of Col. Mason, Dr. Franklin, Mr. Dickinson, Dr. Johnson, and Mr. Livingston.*

Col. MASON renewed his proposition of yesterday, on the subject of inspection laws, with an additional clause, giving to Congress a control over them, in case of abuse, as follows:—

"Provided, that no state shall be restrained from imposing the usual duties on produce exported from such state, for the sole purpose of defraying the charges of inspecting, packing, storing, and indemnifying the losses on such produce while in the custody of public officers; but all such regulations shall, in case of abuse, be subject to the revision and control of Congress."

There was no debate, and, on the question,—

New Hampshire, Massachusetts, Connecticut, Maryland, Virginia, North Carolina, Georgia, ay, 7; Pennsylvania, Delaware, South Carolina, no, 3.264

The report from the committee of style and arrangement was taken up, in order to be compared with the articles of the plan, as agreed to by the House, and referred to the committee, and to receive the final corrections and sanction of the Convention.

Article 1, sect. 2. On motion of Mr. RANDOLPH, the word "servitude" was struck out, and "service" unanimously† inserted, the former being thought to express the condition of slaves, and the latter the obligations of free persons.

Mr. DICKINSON and Mr. WILSON moved to strike out "and direct taxes" from article 1, sect. 2, as improperly placed in a clause relating merely to the constitution of the House of Representatives.

Mr. GOUVERNEUR MORRIS. The insertion here was in consequence of what had passed on this point; in order to exclude the appearance of counting the negroes in the *representation.* The including of them may now be referred to the object of direct taxes, and incidentally only to that of representation.

On the motion to strike out "and direct taxes" from this place,—

New Jersey, Delaware, Maryland, ay, 3; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, no, 8.

Article 1, sect. 7,—

"If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him," &c.

Mr. MADISON moved to insert, between "after" and "it," in article 1, sect. 7, the words "the day on which," in order to prevent a question whether the day on which the bill be presented ought to be counted, or not, as one of the ten days.

Mr. RANDOLPH seconded the motion.

Mr. GOUVERNEUR MORRIS. The amendment is unnecessary. The law knows no fractions of days.

A number of members being very impatient, and calling for the question,—

Pennsylvania, Maryland, Virginia, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, North Carolina, South Carolina, Georgia, no, 8.

Dr. JOHNSON made a further report from the committee of style, &c., of the following resolutions, to be substituted for articles 22 and 23:265

"*Resolved,* That the preceding Constitution be laid before the United States in Congress assembled; and that it is the opinion of this Convention, that it should afterwards be submitted to a convention of delegates chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention assenting to and ratifying the same should give notice thereof to the United States in Congress assembled.

"*Resolved,* That it is the opinion of this Convention, that as soon as the conventions of nine states shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the states which shall have ratified the same; and a day on which the electors should assemble to vote for the President; and the time and place for commencing proceedings under this Constitution: that, after such publication, the electors should be appointed, and the senators and representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the secretary of the United States in Congress assembled: that the senators and representatives should convene at the time and place assigned; that the senators should appoint a president for the sole purpose of receiving, opening, and counting the votes for President, and that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution."266

Adjourned.

Friday,*September* 14.

In Convention.—The report of the committee of style and arrangement being resumed,—

Mr. WILLIAMSON moved to reconsider, in order to increase the number of representatives fixed for the first legislature. His purpose was to make an addition of one half generally to the number allotted to the respective states; and to allow two to the smallest states.

On this motion,—

Pennsylvania, Delaware, Maryland, Virginia, North Carolina, ay, 5; New Hampshire, Massachusetts, Connecticut, New Jersey, South Carolina, Georgia, no, 6.

Article 1, sect. 3, the words "by lot"* were struck out, *nem. con.,* on motion of Mr. MADISON, that some rule might prevail in the rotation that would prevent both the members from the same state from going out at the same time.

"*Ex officio*" struck out of the same section, as superfluous, *nem. con.;* and "or affirmation," after "oath," inserted,—also unanimously.

Mr. RUTLEDGE and Mr. GOUVERNEUR MORRIS moved,—

"that persons impeached be suspended from their offices until they be tried and acquitted."

Mr. MADISON. The President is made too dependent already on the legislature by the power of one branch to try him in consequence of an impeachment by the other. This intermediate suspension will put him in the power of one branch only. They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate.

Mr. KING concurred in the opposition to the amendment.

On the question to agree to it,—

Connecticut, South Carolina, Georgia, ay, 3; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no, 8.

Article 1, sect. 4, "except as to the places of choosing senators," was added, *nem. con.,* to the end of the first clause, in order to exempt the seats of government in the states from the power of Congress.

Article 1, sect. 5,—

"Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy."

Col. MASON and Mr. GERRY moved to insert, after the word "parts," the words "of the proceedings of the Senate," so as to require publication of all the proceedings of the House of Representatives.

It was intimated, on the other side, that cases might arise where secrecy might be necessary in both Houses. Measures preparatory to a declaration of war, in which the House of Representatives was to concur, were instanced.

On the question, it passed in the negative.

Pennsylvania, Maryland, North Carolina, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Virginia, Georgia, no, 7; South Carolina, divided.

Mr. BALDWIN observed, that the clause, article 1, sect. 6, declaring, that no member of Congress,

"during the time for which he was elected, shall be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time,"

would not extend to offices *created by the Constitution,* and the salaries of which would be created, *not increased,* by Congress at their first session. The members of the first Congress, consequently, might evade the disqualification in this instance. He was neither seconded nor opposed, nor did any thing further pass on the subject.

Article 1, sect. 8. The Congress "may by joint ballot appoint a treasurer."

Mr. RUTLEDGE moved to strike out this power, and let the treasurer be appointed in the same manner with other officers.

Mr. GORHAM and Mr. KING said, that the motion, if agreed to, would have a mischievous tendency. The people are accustomed and attached to that mode of appointing treasurers, and the innovation will multiply objections to the system.

Mr. GOUVERNEUR MORRIS remarked, that if the treasurer be not appointed by the legislature, he will be more narrowly watched, and more readily impeached.

Mr. SHERMAN. As the two Houses appropriate money, it is best for them to appoint the officer who is to keep it; and to appoint him as they make the appropriation, not by joint, but several votes.

Gen. PINCKNEY. The treasurer is appointed by joint ballot in South Carolina. The consequence is, that bad appointments are made, and the legislature will not listen to the faults of their own officer.

On the motion to strike out,—

New Hampshire, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, Georgia, ay, 8; Massachusetts, Pennsylvania, Virginia, no, 3.

Article 1, sect. 8, the words,

"but all such duties, imposts, and excises, shall be uniform throughout the United States,"

were unanimously annexed to the power of taxation.

On the clause,

"to define and punish piracies and felonies on the high seas, and punish offences against the law of nations,"—

Mr. GOUVERNEUR MORRIS moved to strike out "punish" before the words "offences against the law of nations," so as to let these be *definable,* as well as punishable, by virtue of the preceding member of the sentence.

Mr. WILSON hoped the alteration would by no means be made. To pretend to *define* the law of nations, which depended on the authority of all the civilized nations of the world, would have a look of arrogance that would make us ridiculous.

Mr. GOUVERNEUR MORRIS. The word *define* is proper when applied to *offences* in this case; the law of nations being often too vague and deficient to be a rule.

On the question to strike out the word "punish," it passed in the affirmative.

New Hampshire, Connecticut, New Jersey, Delaware, North Carolina, South Carolina, ay, 6; Massachusetts, Pennsylvania, Maryland, Virginia, Georgia, no, 5.

Dr. FRANKLIN* moved to add, after the words "post roads," article 1, sect. 8, a power "to provide for cutting canals where deemed necessary."

Mr. WILSON seconded the motion.

Mr. SHERMAN objected. The expense, in such cases, will fall on the United States, and the benefit accrue to the places where the canals may be cut.

Mr. WILSON. Instead of being an expense to the United States, they may be made a source of revenue.

Mr. MADISON suggested an enlargement of the motion, into a power,

"to grant charters of incorporation where the interest of the United States might require, and the legislative provisions of individual states may be incompetent."

His primary object was, however, to secure an easy communication between the states, which the free intercourse now to be opened seemed to call for. The political obstacles being removed, a removal of the natural ones, as far as possible, ought to follow.

Mr. RANDOLPH seconded the proposition.

Mr. KING thought the power unnecessary.

Mr. WILSON. It is necessary to prevent *a state* from obstructing the *general* welfare.

Mr. KING. The states will be prejudiced and divided into parties by it. In Philadelphia and New York, it will be referred to the establishment of a bank, which has been a subject of contention in those cities. In other places, it will be referred to mercantile monopolies.

Mr. WILSON mentioned the importance of facilitating, by canals, the communication with the western settlements. As to banks, he did not think, with Mr. King, that the power, in that point of view, would excite the prejudices and parties apprehended. As to mercantile monopolies, they are already included in the power to regulate trade.

Col. MASON was for limiting the power to the single case of canals. He was afraid of monopolies of every sort, which he did not think were by any means already implied by the Constitution, as supposed by Mr. Wilson.

The motion being so modified as to admit a distinct question, specifying and limited to the case of canals,—

Pennsylvania, Virginia, Georgia, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, North Carolina, South Carolina, no, 8.

The other part fell, of course, as including the power rejected.

Mr. MADISON and Mr. PINCKNEY then moved to insert, in the list of powers vested in Congress, a power

"to establish a university, in which no preferences or distinctions should be allowed on account of religion."

Mr. WILSON supported the motion.

Mr. GOUVERNEUR MORRIS. It is not necessary. The exclusive power at the seat of government will reach the object.

On the question,—

Pennsylvania, Virginia, North Carolina, South Carolina, ay, 4; New Hampshire, Massachusetts, New Jersey, Delaware. Maryland, Georgia, no, 6; Connecticut, divided, (Dr. Johnson, ay; Mr. Sherman, no.)

Col. MASON, being sensible that an absolute prohibition of standing armies in time of peace might be unsafe, and wishing, at the same time, to insert something pointing out and guarding against the danger of them, moved to preface the clause, (article 1, sect. 8,) "to provide for organizing, arming, and disciplining the militia," &c., with the words,

"and that the liberties of the people may be better secured against the danger of standing armies in time of peace."

Mr. RANDOLPH seconded the motion.

Mr. MADISON was in favor of it. It did not restrain Congress from establishing a military force in time of peace, if found necessary; and as armies in time of peace are allowed, on all hands, to be an evil, it is well to discountenance them by the Constitution, as far as will consist with the essential power of the government on that head.

Mr. GOUVERNEUR MORRIS opposed the motion, as setting a dishonorable mark of distinction on the military class of citizens.

Mr. PINCKNEY and Mr. BEDFORD concurred in the opposition.

On the question,—

Virginia, Georgia, ay, 2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, no, 9.

Col. MASON moved to strike out from the clause, (article 1, sect. 9,) "no bill of attainder, nor any *ex post facto* law, shall be passed," the words "nor any *ex post facto* law." He thought it not sufficiently clear that the prohibition meant by this phrase was limited to cases of a criminal nature; and no legislature ever did or can altogether avoid them in civil cases.

Mr. GERRY seconded the motion; but with a view to extend the prohibition to "civil cases," which he thought ought to be done.

On the question, all the states were, no.

Mr. PINCKNEY and Mr. GERRY moved to insert a declaration, "that the liberty of the press should be inviolably observed."

Mr. SHERMAN. It is unnecessary. The power of Congress does not extend to the press.

On the question, it passed in the negative.

Massachusetts, Maryland, Virginia, South Carolina, ay, 4; New Hampshire, (In the printed Journal, New Hampshire, ay,) Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, Georgia, no, 7.

Article 1, sect. 9. "No capitation tax shall be laid, unless," &c.

Mr. READ moved to insert after "capitation," the words "or other direct tax." He was afraid that some liberty might otherwise be taken to saddle the states with a

readjustment, by this rule, of past requisitions of Congress; and that his amendment, by giving another cast to the meaning, would take away the pretext.

Mr. WILLIAMSON seconded the motion, which was agreed to.

On motion of Col. MASON, the words "or enumeration" were inserted after, as explanatory of, "census,"—Connecticut and South Carolina, only, no.

At the end of the clause, "no tax or duty shall be laid on articles exported from any state," was added the following amendment, conformably to a vote on the 31st of August, (p. 502,) viz.:—

No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another."

Col. MASON moved a clause requiring, "that an account of the public expenditures should be annually published."

Mr. GERRY seconded the motion.

Mr. GOUVERNEUR MORRIS urged that this would be impossible in many cases.

Mr. KING remarked, that the term expenditures went to every minute shilling. This would be impracticable. Congress might, indeed, make a monthly publication, but it would be in such general statements as would afford no satisfactory information.

Mr. MADISON proposed to strike out "annually" from the motion, and insert "from time to time," which would enjoin the duty of frequent publications, and leave enough to the discretion of the legislature. Require too much, and the difficulty will beget a habit of doing nothing. The Articles of Confederation require half-yearly publications on this subject. A punctual compliance being often impossible, the practice has ceased altogether.

Mr. WILSON seconded and supported the motion. Many operations of finance cannot be properly published at certain times.

Mr. PINCKNEY was in favor of the motion.

Mr. FITZSIMONS. It is absolutely impossible to publish expenditures in the full extent of the term.

Mr. SHERMAN thought "from time to time," the best rule to be given. "Annually" was struck out, and those words inserted, *nem. con.*

The motion of Col. Mason, so amended, was then agreed to, *nem. con.,* and added after "appropriations by law," as follows:—

"and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

The first clause of article 1, sect. 10, was altered so as to read,—

"No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility."

Mr. GERRY entered into observations inculcating the importance of public faith, and the propriety of the restraint put on the states from impairing the obligation of contracts; alleging that Congress ought to be laid under the like prohibitions. He made a motion to that effect. He was not seconded.

Adjourned.

Saturday,*September* 15.

In Convention.—Mr. CARROLL reminded the House that no address to the people had yet been prepared. He considered it of great importance that such a one should accompany the Constitution. The people had been accustomed to such, on great occasions, and would expect it on this. He moved that a committee be appointed for the special purpose of preparing an address.

Mr. RUTLEDGE objected, on account of the delay it would produce, and the impropriety of addressing the people before it was known whether Congress would approve and support the plan. Congress, if an address be thought proper, can prepare as good a one. The members of the Convention can, also, explain the reasons of what has been done to their respective constituents.

Mr. SHERMAN concurred in the opinion that an address was both unnecessary and improper.

On the motion of Mr. Carroll,—

Pennsylvania, Delaware, Maryland, Virginia, ay, 4; New Hampshire, Masachusetts, Connecticut, New Jersey, South Carolina, Georgia, no, 6; North Carolina, absent. (In the printed journal, North Carolina, no; South Carolina, omitted.)

Mr. LANGDON. Some gentlemen have been very uneasy that no increase of the number of representatives has been admitted. It has, in particular, been thought that one more ought to be allowed to North Carolina. He was of opinion that an additional one was due both to that state and to Rhode Island; and moved to reconsider for that purpose.

Mr. SHERMAN. When the committee of eleven reported the appointments, five representatives were thought the proper share of North Carolina. Subsequent information, however, seemed to entitle that state to another.

On the motion to reconsider,—

New Hampshire, Connecticut, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 8; Massachusetts, New Jersey, no, 2; Pennsylvania, divided.

Mr. LANGDON moved to add one member to each of the representations of North Carolina and Rhode Island.

Mr. KING was against any change whatever, as opening the door for delays. There had been no official proof that the numbers of North Carolina are greater than before estimated; and he never could sign the Constitution, if Rhode Island is to be allowed two members, that is, one fourth of the number allowed to Massachusetts, which will be known to be unjust.

Mr. PINCKNEY urged the propriety of increasing the number of representatives allowed to North Carolina.

Mr. BEDFORD contended for an increase in favor of Rhode Island, and of Delaware also.

On the question for allowing two representatives to Rhode Island, it passed in the negative.

New Hampshire, Delaware, Maryland, North Carolina, Georgia, ay, 5; Massachusetts, Connecticut, New Jersey, Pennsylvania, Virginia, South Carolina, no, 6.

On the question for allowing six to North Carolina, it passed in the negative.

Maryland, Virginia, North Carolina, South Carolina, Georgia, ay, 5; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, no, 6.

Article 1, sect. 10, (the second paragraph,)

"No state shall, without the consent of Congress, lay imposts or duties on imports or exports; nor with such consent, but to the use of the treasury of the United States."

In consequence of the proviso moved by Col. Mason, and agreed to on the 13th of Sept., (page 540,) this part of the section was laid aside in favor of the following substitute, viz.:—

"No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress."

On the motion to strike out the last part,—

"and all such laws shall be subject to the revision and control of the Congress,"

it passed in the negative.

Virginia, North Carolina, Georgia, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Delaware, Maryland, South Carolina, no, 7; Pennsylvania, divided.

The substitute was then agreed to, Virginia alone being in the negative.

The remainder of the paragraph being under consideration, viz.,—

"nor keep troops nor ships of war in time of peace, nor enter into any agreement or compact with another state, nor with any foreign power, nor engage in any war, unless it shall be actually invaded by enemies, or the danger of invasion be so imminent as not to admit of delay until Congress can be consulted,"—

Mr. M'HENRY and Mr. CARROLL moved, that

"No state shall be restrained from laying duties of tonnage for the purpose of clearing harbors and erecting light-houses."

Col. MASON, in support of this, explained and urged the situation of the Chesapeake, which peculiarly required expenses of this sort.

Mr. GOUVERNEUR MORRIS. The states are not restrained from laying tonnage, as the Constitution now stands. The exception proposed will imply the contrary, and will put the states in a worse condition than the gentleman (Col. Mason) wishes.

Mr. MADISON. Whether the states are now restrained from laying tonnage duties, depends on the extent of the power "to regulate commerce." These terms are vague, but seem to exclude this power of the states. They may certainly be restrained by treaty. He observed, that there were other objects for tonnage duties, as the support of seamen, &c. He was more and more convinced that the regulation of commerce was in its nature indivisible, and ought to be wholly under one authority.

Mr. SHERMAN. The power of the United States to regulate trade, being supreme, can control interferences of the state regulations, when such interferences happen; so that there is no danger to be apprehended from a concurrent jurisdiction.

Mr. LANGDON insisted that the regulation of tonnage was an essential part of the regulation of trade, and that the states ought to have nothing to do with it.

On motion "that no state shall lay any duty on tonnage without the consent of Congress,"—

New Hampshire, Massachusetts, New Jersey, Delaware, Maryland, South Carolina ay, 6; Pennsylvania, Virginia, North Carolina, Georgia, no, 4; Connecticut, divided.

The remainder of the paragraph was then remoulded and passed, as follows, viz.,—

"No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually inveded, or in such imminent danger as will not admit of delay."

Article 2, sect. 1, (the sixth paragraph,) the words "or the period for choosing another President arrive," were changed into "or a President shall be elected," conformably to a vote of the 7th of September.

Mr. RUTLEDGE and Dr. FRANKLIN moved to annex to the end of the seventh paragraph of article 2, sect. 1,—

"and he (the President) shall not receive, within that period, any other emolument from the United States or any of them."

On which question,—

New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, South Carolina, Georgia, ay, 7; Connecticut, New Jersey, Delaware, North Carolina, no, 4.

Article 2, sect. 2,—

"He shall have power to grant reprieves and pardons for offences against the United States," &c.

Mr. RANDOLPH moved to except "cases of treason." The prerogative of pardon in these cases was too great a trust. The President may himself be guilty. The traitors may be his own instruments.

Col. MASON supported the motion.

Mr. GOUVERNEUR MORRIS had rather there should be no pardon for treason, than let the power devolve on the legislature.

Mr. WILSON. Pardon is necessary for cases of treason, and is best placed in the hands of the executive. If he be himself a party to the guilt, he can be impeached and prosecuted.

Mr. KING thought it would be inconsistent with the constitutional separation of the executive and legislative powers, to let the prerogative be exercised by the latter. A legislative body is utterly unfit for the purpose. They are governed too much by the passions of the moment. In Massachusetts, one assembly would have hung all the insurgents in that state: the next was equally disposed to pardon them all. He suggested the expedient of requiring the concurrence of the Senate in acts of pardon.

Mr. MADISON admitted the force of objections to the legislature, but the pardon of treasons was so peculiarly improper for the President, that he should acquiesce in the transfer of it to the former, rather than leave it altogether in the hands of the latter. He

would prefer to either an association of the Senate, as a council of advice, with the President.

Mr. RANDOLPH could not admit the Senate into a share of the power. The great danger to liberty lay in a combination between the President and that body.

Col. MASON. The Senate has already too much power. There can be no danger of too much lenity in legislative pardons, as the Senate must concur; and the President moreover can require two thirds of both Houses.

On the motion of Mr. Randolph,—

Virginia, Georgia, ay, 2; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, no, 8; Connecticut, divided.

Article 2, sect. 2, (the second paragraph,) To the end of this Mr. GOUVERNEUR MORRIS moved to annex,—

"but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments."

Mr. SHERMAN seconded the motion.

Mr. MADISON. It does not go far enough, if it be necessary at all. Superior officers below heads of departments ought in some cases to have the appointment of the lesser officers.

Mr. GOUVERNEUR MORRIS. There is no necessity. Blank commissions can be sent.

On the motion,—

New Hampshire, Connecticut, New Jersey, Pennsylvania, North Carolina, ay, 5; Massachusetts, Delaware, Virginia, South Carolina, Georgia, no, 5; Maryland, divided.

The motion being lost, by an equal division of votes, it was urged that it be put a second time, some such provision being too necessary to be omitted; and, on a second question, it was agreed to, *nem. con.*

Article 2, sect. 1. The words, "and not *per capita.*" were struck out as superfluous; and the words, "by the representatives," also, as improper, the choice of President being in another mode, as well as eventually by the House of Representatives.

Article 2, sect. 2. After the words "officers of the United States whose appointments are not otherwise provided for," were added the words "and which shall be established by law."

Article 3, sect. 2, (the third paragraph,) Mr. PINCKNEY and Mr. GERRY moved to annex to the end, "and a trial by jury shall be preserved as usual in civil cases."

Mr. GORHAM. The constitution of juries is different in different states, and the trial itself is *usual* in different cases, in different states.

Mr. KING urged the same objections.

Gen. PINCKNEY also. He thought such a clause in the Constitution would be pregnant with embarrassments.

The motion was disagreed to, *nem. con.*

Article 4, sect. 2, (the third paragraph,) the term "legally" was struck out; and the words "under the laws thereof," inserted after the word "state," in compliance with the wish of some who thought the term *legal* equivocal, and favoring the idea that slavery was legal in a moral view.

Article 4, sect. 3,—

"New States may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress."

Mr. GERRY moved to insert, after, "or parts of states," the words "or a state and part of a state;" which was disagreed to by a large majority; it appearing to be supposed that the case was comprehended in the words of the clause as reported by the committee.

Article 4, sect. 4. After the word "executive," were inserted the words "when the legislature cannot be convened."

Article 5.

"The Congress, whenever two thirds of both Houses shall deem necessary, or on the application of two thirds of the legislatures of the several states, shall propose, amendments to this Constitution, which shall be valid to all intents and purposes as part thereof, when the same shall have been ratified by three fourths at least of the legislatures of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: provided, that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of article 1."

Mr. SHERMAN expressed his fears that three fourths of the states might be brought to do things fatal to particular states; as abolishing them altogether, or depriving them of their equality in the Senate. He thought it reasonable that the proviso in favor of the states importing slaves should be extended, so as to provide that no state should be affected in its internal police, or deprived of its equality in the Senate.

Col. MASON thought the plan of amending the Constitution exceptionable and dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, and in the second ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the government should become oppressive, as he verily believed would be the case.

Mr. GOUVERNEUR MORRIS and Mr. GERRY moved to amend the article, so as to require a convention on application of two thirds of the states.

Mr. MADISON did not see why Congress would not be as much bound to propose amendments applied for by two thirds of the states, as to call a convention on the like application. He saw no objection, however, against providing for a convention for the purpose of amendments, except only that difficulties might arise as to the form, the quorum, &c., which in constitutional regulations ought to be as much as possible avoided.

The motion of GOUVERNEUR MORRIS and Mr. GERRY was agreed to, *nem. con.*

Mr. SHERMAN moved to strike out of article 5, after "legislatures," the words, "of three fourths," and so after the word "conventions," leaving future conventions to act in this matter, like the present convention, according to circumstances.

On this motion,—

Massachusetts, Connecticut, New Jersey, ay, 3; Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 7; New Hampshire, divided.

Mr. GERRY moved to strike out the words, "or by conventions in three fourths thereof." On which motion,—

Connecticut, ay, 1; New Hampshire, Massachusetts, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 10.

Mr. SHERMAN moved, according to his idea above expressed, to annex to the end of the article a further proviso,—

"that no state shall, without its consent, be affected in its internal police, or deprived of its equal suffrage in the senate."

Mr. MADISON. Begin with these special provisos, and every state will insist on them, for their boundaries, exports, &c.

On the motion of Mr. Sherman,—

Connecticut, New Jersey, Delaware, ay, 3; New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 8.

Mr. SHERMAN then moved to strike out article 5 altogether.

Mr. BREARLY seconded the motion; on which,—

Connecticut, New Jersey, ay, 2; New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, no, 8; Delaware, divided.

Mr. GOUVERNEUR MORRIS moved to annex a further proviso,—

"that no state, without its consent, shall be deprived of its equal suffrage in the Senate."

This motion, being dictated by the circulating murmurs of the small states, was agreed to without debate, no one opposing it, or, on the question, saying no.

Col. MASON, expressing his discontent at the power given to Congress, by a bare majority, to pass navigation acts, which he said would not only enhance the freight, (a consequence he did not so much regard,) but would enable a few rich merchants in Philadelphia, New York, and Boston, to monopolize the staples of the Southern States, and reduce their value perhaps fifty per cent., moved a further proviso,—

"that no law in the nature of a navigation act be passed before the year 1808, without the consent of two thirds of each branch of the legislature."

On which motion,—

Maryland, Virginia, Georgia, ay, 3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, South Carolina, no, 7; North Carolina, absent.

Mr. RANDOLPH, animadverting on the indefinite and dangerous power given by the Constitution to Congress, expressing the pain he felt at differing from the body of the Convention on the close of the great and awful subject of their labors, and anxiously wishing for some accommodating expedient which would relieve him from his embarrassments, made a motion importing,

"that amendments to the plan might be offered by the state conventions, which should be submitted to, and finally decided on by, another General Convention."

Should this proposition be disregarded, it would, he said, be impossible for him to put his name to the instrument. Whether he should oppose it afterwards, he would not then decide; but he would not deprive himself of the freedom to do so in his own state, if that course should be prescribed by his final judgment.

Col. MASON seconded and followed Mr. RANDOLPH in animadversions on the dangerous power and structure of the government, concluding that it would end either in monarchy or a tyrannical aristocracy—which, he was in doubt,—but one or other, he was sure. This Constitution had been formed without the knowledge or idea of the people. A second Convention will know more of the sense of the people, and be able to provide a system more consonant to it. It was improper to say to the people, take this or nothing. As the Constitution now stands, he could neither give it his support or

vote in Virginia; and he could not sign here what he could not support there. With the expedient of another Convention, as proposed, he could sign.

Mr. PINCKNEY. These declarations, from members so respectable, at the close of this important scene, give a peculiar solemnity to the present moment. He descanted on the consequences of calling forth the deliberations and amendments of the different states, on the subject of government at large. Nothing but confusion and contrariety will spring from the experiment. The states will never agree in their plans, and the deputies to a second Convention, coming together under the discordant impressions of their constituents, will never agree. Conventions are serious things, and ought not to be repeated. He was not without objections, as well as others, to the plan. He objected to the contemptible weakness and dependence of the executive. He objected to the power of a majority, only, of Congress, over commerce. But, apprehending the danger of a general confusion, and an ultimate decision by the sword, he should give the plan his support.

Mr. GERRY stated the objections which determined him to withhold his name from the Constitution: 1, the duration and reëligibility of the Senate; 2, the power of the House of Representatives to conceal their Journals; 3, the power of Congress over the places of election; 4, the unlimited power of Congress over their own compensation; 5, that Massachusetts has not a due share of representatives allotted to her; 6, that three fifths of the blacks are to be represented, as if they were freemen; 7, that under the power over commerce, monopolies may be established; 8, the Vice-President being made head of the Senate. He could, however, he said, get over all these, if the rights of the citizens were not rendered insecure—first, by the general power of the legislature to make what laws they may please to call "necessary and proper;" secondly, to raise armies and money without limit; thirdly, to establish a tribunal without juries, which will be a Star Chamber as to civil cases. Under such a view of the Constitution, the best that could be done, he conceived, was to provide for a second General Convention.267

On the question, on the proposition of Mr. Randolph, all the states answered, no.

On the question to agree to the Constitution, as amended, all the states, ay.

The Constitution was then ordered to be engrossed, and the House adjourned.

Monday,*September* 17.

In Convention.—The engrossed Constitution being read,—Dr. FRANKLIN rose with a speech in his hand, which he had reduced to writing for his own convenience, and which Mr. Wilson read in the words following:—

"Mr. President:—I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them. For, having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions, even on important subjects, which I once thought right, but found to be otherwise. It is therefore that, the older I grow, the more

apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men, indeed, as well as most sects in religion, think themselves in possession of all truth, and that wherever others differ from them, it is so far error. Steele, a Protestant, in a dedication, tells the Pope, that the only difference between our churches, in their opinions of the certainty of their doctrines, is, 'the Church of Rome is infallible, and the Church of England is never in the wrong.' But though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain French lady, who, in a dispute with her sister, said, 'I don't know how it happens, sister, but I meet with nobody but myself that is always in the right—*il n'y a que moi qui a toujours raison.*'

"In these sentiments, sir, I agree to this Constitution, with all its faults, if they are such; because I think a general government necessary for us, and there is no form of government, but what may be a blessing to the people if well administered; and believe further, that this is likely to be well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other. I doubt, too, whether any other Convention we can obtain may be able to make a better Constitution. For, when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded, like those of the builders of Babel; and that our states are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats. Thus I consent, sir, to this Constitution, because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors I sacrifice to the public good. I have never whispered a syllable of them abroad. Within these walls they were born, and here they shall die. If every one of us, in returning to our constituents, were to report the objections he has had to it, and endeavor to gain partisans in support of them, we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting naturally in our favor among foreign nations, as well as among ourselves, from our real or apparent unanimity. Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on opinion—on the general opinion of the goodness of the government, as well as of the wisdom and integrity of its governors. I hope, therefore, that for our own sakes, as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the conventions) wherever our influence may extend, and turn our future thoughts and endeavors to the means of having it well administered.

"On the whole, sir, I cannot help expressing a wish that every member of the Convention, who may still have objections to it, would with me, on this occasion, doubt a little of his own infallibility, and, to make manifest our unanimity, put his name to this instrument." He then moved that the Constitution be signed by the members, and offered the following as a convenient form, viz.:—

"Done in Convention by the unanimous consent of *the states* present, the 17th of September, &c. In witness whereof, we have hereunto subscribed our names."

This ambiguous form had been drawn up by Mr. Gouverneur Morris, in order to gain the dissenting members, and put into the hands of Dr. Franklin, that it might have the better chance of success.

Mr. GORHAM said, if it was not too late, he could wish, for the purpose of lessening objections to the Constitution, that the clause, declaring that "the number of representatives shall not exceed one for every forty thousand," which had produced so much discussion, might be yet reconsidered, in order to strike out "forty thousand," and insert "thirty thousand." This would not, he remarked, establish that as an absolute rule, but only give Congress a greater latitude, which could not be thought unreasonable.

Mr. KING and Mr. CARROLL seconded and supported the ideas of Mr. Gorham.

When the president rose, for the purpose of putting the question, he said, that, although his situation had hitherto restrained him from offering his sentiments on questions depending in the House, and, it might be thought, ought now to impose silence on him, yet he could not forbear expressing his wish that the alteration proposed might take place. It was much to be desired that the objections to the plan recommended might be made as few as possible. The smallness of the proportion of representatives had been considered, by many members of the Convention an insufficient security for the rights and, interests of the people. He acknowledged that it had always appeared to himself among the exceptionable parts of the plan; and, late as the present moment was for admitting amendments, he thought this of so much consequence, that it would give him much satisfaction to see it adopted.

No opposition was made to the proposition of Mr. Gorham, and it was agreed to unanimously.

On the question to agree to the Constitution, enrolled, in order to be signed, it was agreed to, all the *states* answering, ay.

Mr. RANDOLPH then rose, and, with an allusion to the observations of Dr. Franklin, apologized for his refusing to sign the Constitution, notwithstanding the vast majority and venerable names that would give sanction to its wisdom and its worth. He said, however, that he did not mean by this refusal to decide that he should oppose the Constitution without doors. He meant only to keep himself free to be governed by his duty, as it should be prescribed by his future judgment. He refused to sign, because he thought the object of the Convention would be frustrated by the alternative which it presented to the people. Nine states will fail to ratify the plan, and confusion must ensue. With such a view of the subject he ought not, he could not, by pledging himself to support the plan, restrain himself from taking such steps as might appear to him most consistent with the public good.

Mr. GOUVERNEUR MORRIS said, that he too had objections, but, considering the present plan as the best that was to be attained, he should take it with all its faults. The majority had determined in its favor, and by that determination he should abide. The moment this plan goes forth, all other considerations will be laid aside, and the great question will be, shall there be a national government, or not? and this must take place, or a general anarchy will be the alternative. He remarked that the signing, in the form proposed, related only to the fact that *the states* present were unanimous.

Mr. WILLIAMSON suggested that the signing should be confined to the letter accompanying the Constitution to Congress, which might perhaps do nearly as well, and would be found satisfactory to some members* who disliked the Constitution. For himself, he did not think a better plan was to be expected, and had no scruples against putting his name to it.

Mr. HAMILTON expressed his anxiety that every member should sign. A few characters of consequence, by opposing, or even refusing to sign the Constitution, might do infinite mischief, by kindling the latent sparks that lurk under an enthusiasm in favor of the Convention which may soon subside. No man's ideas were more remote from the plan than his own were known to be; but is it possible to deliberate between anarchy, and convulsion, on one side, and the chance of good to be expected from the plan, on the other?

Mr. BLOUNT said, he had declared that he would not sign so as to pledge himself in support of the plan, but he was relieved by the form proposed, and would, without committing himself, attest the fact that the plan was the unanimous act of the states in Convention.

Dr. FRANKLIN expressed his fears, from what Mr. Randolph had said, that he thought himself alluded to in the remarks offered this morning to the House. He declared that, when drawing up that paper, he did not know that any particular member would refuse to sign his name to the instrument, and hoped to be so understood. He possessed a high sense of obligation to Mr. Randolph for having brought forward the plan in the first instance, and for the assistance he had given in its progress; and hoped that he would yet lay aside his objections, and, by concurring with his brethren, prevent the great mischief which the refusal of his name might produce.

Mr. RANDOLPH could not but regard the signing in the proposed form, as the same with signing the Constitution. The change of form, therefore, could make no difference with him. He repeated that, in refusing to sign the Constitution, he took a step which might be the most awful of his life; but it was dictated by his conscience, and it was not possible for him to hesitate,—much less, to change. He repeated also his persuasion, that the holding out this plan, with a final alternative to the people of accepting or rejecting it *in toto,* would really produce the anarchy and civil convulsions which were apprehended from the refusal of individuals to sign it.

Mr. GERRY described the painful feelings of his situation, and the embarrassments under which he rose to offer any further observations on the subject which had been

finally decided. Whilst the plan was depending, he had treated it with all the freedom he thought it deserved. He now felt himself bound, as he was disposed, to treat it with the respect due to the act of the Convention. He hoped he should not violate that respect in declaring, on this occasion, his fears that a civil war may result from the present crisis of the United States. In Massachusetts, particularly, he saw the danger of this calamitous event. In that state there are two parties, one devoted to democracy—the worst, he thought, of all political evils; the other as violent in the opposite extreme. From the collision of these, in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary, for this and other reasons, that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties. As it had been passed by the Convention, he was persuaded it would have a contrary effect. He could not, therefore, by signing the Constitution, pledge himself to abide by it at all events. The proposed form made no difference with him. But if it were not otherwise apparent, the refusals to sign should never be known from him. Alluding to the remarks of Dr. Franklin, he could not, he said, but view them as levelled at himself and the other gentlemen who meant not to sign.

Gen. PINCKNEY. We are not likely to gain many converts by the ambiguity of the proposed form of signing. He thought it best to be candid, and let the form speak the substance. If the meaning of the signers be left in doubt, his purpose would not be answered. He should sign the Constitution with a view to support it with all his influence, and wished to pledge himself accordingly.

Dr. FRANKLIN. It is too soon to pledge ourselves, before Congress and our constituents shall have approved the plan.

Mr. INGERSOLL did not consider the signing, either as a mere attestation of the fact or as pledging the signers to support the Constitution at all events; but as a recommendation of what, all things considered, was the most eligible.

On the motion of Dr. Franklin,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, ay, 10; South Carolina, divided.*

Mr. KING suggested that the Journals of the Convention should be either destroyed, or deposited in the custody of the president. He thought, if suffered to be made public, a bad use would be made of them by those who would wish to prevent the adoption of the Constitution.

Mr. WILSON preferred the second expedient. He had at one time liked the first best; but as false suggestions may be propagated, it should not be made impossible to contradict them.

A question was then put on depositing the Journals, and other papers of the Convention, in the hands of the president; on which,—

New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, South Carolina, Georgia, ay, 10; Maryland,† no, 1.

The president, having asked what the Convention meant should be done with the Journals, &c., whether copies were to be allowed to the members, if applied for, it was resolved, *nem. con.,* "that he retain the Journal and other papers, subject to the order of Congress, if ever formed under the Constitution."

The members then proceeded to sign the Constitution, as finally amended, as follows:—

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Sect 1. All legislative powers, herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sect 2. The House of Representatives shall be composed of members chosen, every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Sect. 3. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen, by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The Vice-President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president *pro tempore,* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Sect. 4. The times, places, and manner, of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

Sect. 5. Each House shall be the judge of the elections, returns, and qualifications, of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the

attendance of absent members, in such manner, and under such penalties, as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Each House shall keep a Journal of its proceedings, and, from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one fifth of those present, be entered on the Journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Sect. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to or returning from the same; and for any speech or debate in either House they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person, holding any office under the United States, shall be a member of either House during his continuance in office.

Sect. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and, if approved by two thirds of that House, it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment,) shall be

presented to the President of the United States, and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sect. 8. The Congress shall have power—

* To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:

To borrow money on the credit of the United States:

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post-offices and post-roads:

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the Supreme Court:

To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces:

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States—reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress:

To exercise exclusive legislation, in all cases whatsoever, over such district, (not exceeding ten miles square,) as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings:—and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Sect. 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

No bill of attainder, or *ex post facto* law, shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties, in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Sect. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

Sect. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress; but no senator or representative, or person holding any office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But, in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors, shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President, neither

shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive, within that period, any other emolument from the United States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation:—

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend, the Constitution of the United States."

Sect. 2. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur: and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Sect. 3. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and, in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall

receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

Sect. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Sect. 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Sect. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

Sect. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

Sect. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state; and the Congress may, by general laws,

prescribe the manner in which such acts, records, and proceedings, shall be proved, and the effect thereof.

Sect. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.

Sect. 3. New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress.

The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory, or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Sect. 4. The United States shall guaranty to every state in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution; or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year 1808 shall, in any manner, affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath, or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in Convention, by the unanimous consent of the states present, the 17th day of September, in the year of our Lord 1787, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE.	CONNECTICUT.
John Langdon,	William Samuel Johnson,
Nicholas Gilman.	Roger Sherman.
MASSACHUSETTS.	
Nathaniel Gorham,	NEW YORK.
Rufus King.	Alexander Hamilton.
NEW JERSEY.	MARYLAND.
William Livingston,	James M'Henry,
David Brearly,	Daniel of St. Thomas Jenifer,
William Patterson,	Daniel Carroll.
Jonathan Dayton.	VIRGINIA.
PENNSYLVANIA.	John Blair,
Benjamin Franklin,	James Madison, Jr.
Thomas Mifflin,	
Robert Morris,	NORTH CAROLINA.
George Clymer,	William Blount,
Thomas Fitzsimons,	Richard Dobbs Spaight,
Jared Ingersoll,	Hugh Williamson.
James Wilson,	SOUTH CAROLINA.
Gouverneur Morris.	John Rutledge,
DELAWARE.	Charles Cotesworth Pinckney,
George Read,	Charles Pinckney,
Gunning Bedford, Jr.,	Pierce Butler.
John Dickinson,	GEORGIA.
Richard Bassett,	William Few,
Jacob Broome.	Abraham Baldwin.

Attest:

WILLIAM JACKSON, *Secretary.*

The Constitution being signed by all the members, except Mr. Randolph, Mr. Mason, and Mr. Gerry, who declined giving it the sanction of their names, the Convention dissolved itself by an adjournment *sine die.*269

Whilst the last members were signing, Dr. FRANKLIN, looking towards the president's chair, at the back of which a rising sun happened to be painted, observed to a few members near him, that painters had found it difficult to distinguish, in their art, a rising from a setting sun. "I have," said he, "often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the president, without being able to tell whether it was rising or setting; but now, at length, I have the happiness to know that it is a rising, and not a setting sun."

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LETTERS

WRITTEN AFTER THE ADJOURNMENT OF THE FEDERAL CONVENTION.

TO GENERAL WASHINGTON.

New York,*September* 30, 1787.

Dear Sir,—

I found, on my arrival here, that certain ideas, unfavorable to the act of the Convention, which had created difficulties in that body, had made their way into Congress. They were patronized chiefly by Mr. R. H. Lee, and Mr. Dane, of Massachusetts. It was first urged, that, as the new Constitution was more than an alteration of the Articles of Confederation, under which Congress acted, and even subverted those Articles altogether, there was a constitutional impropriety in their taking any positive agency in the work. The answer given was, that the resolution of Congress in February had recommended the Convention as the best means of obtaining a firm *national government;* that, as the powers of the Convention were defined, by their commissions, in nearly the same terms with the powers of Congress given by the Confederation on the subject of alterations, Congress were not more restrained from acceding to the new plan, than the Convention were from proposing it. If the plan was within the powers of the Convention, it was within those of Congress; if beyond those powers, the same necessity which justified the Convention would justify Congress; and a failure of Congress to concur in what was done would imply, either that the Convention had done wrong in exceeding their powers, or that the government proposed was in itself liable to insuperable objections; that such an inference would be the more natural, as Congress had never scrupled to recommend measures foreign to their constitutional functions, whenever the public good seemed to require it; and had in several instances, particularly in the establishment of the new western governments, exercised assumed powers of a very high and delicate nature, under motives infinitely less urgent than the present state of our affairs, if any faith were due to the representations made by Congress themselves, echoed by twelve states in the Union, and confirmed by the general voice of the people. An attempt was made, in the next place, by R. H. L., to amend the act of the Convention before it should go forth from Congress. He proposed a Bill of Rights, provision for juries in civil cases, and several other things corresponding with the ideas of Col. Mason. He was supported by Mr. Melancthon Smith, of this state. It was contended, that Congress had an undoubted right to insert amendments, and that it was their duty to make use of it in a case where the essential guards of liberty had been omitted. On the other side, the right of Congress was not denied, but the inexpediency of exerting it was urged on the following grounds;—first, that every circumstance indicated that the introduction of Congress as a party to the reform was intended by the states merely as

a matter of form and respect; secondly, that it was evident, from the contradictory objections which had been expressed by the different members who had animadverted on the plan, that a discussion of its merits would consume much time, without producing agreement even among its adversaries; thirdly, that it was clearly the intention of the states that the plan to be proposed should be the act of the Convention, with the assent of Congress, which could not be the case, if alterations were made, the Convention being no longer in existence to adopt them; fourthly, that as the act of the Convention, when altered, would instantly become the mere act of Congress, and must be proposed by them as such, and of course be addressed to the legislatures, not conventions of the states, and require the ratification of thirteen instead of nine states, and as the unaltered act would go forth to the states directly from the Convention, under the auspices of that body, some states might ratify the one and some the other of the plans, and confusion and disappointment be the least evils that would ensue. These difficulties, which at one time threatened a serious division in Congress, and popular alterations, with the yeas and nays on the Journals, were at length fortunately terminated by the following resolution: "Congress having received the report of the Convention lately assembled in Philadelphia, Resolved *unanimously,* that the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the Convention made and provided in that case." Eleven states were present—the absent ones, Rhode Island and Maryland. A more direct approbation would have been of advantage in this and some other states, where stress will be laid on the agency of Congress in the matter, and a handle be taken by adversaries of any ambiguity on the subject. With regard to Virginia and some other states, reserve on the part of Congress will do no injury. The circumstance of unanimity must be favorable every where.

The general voice of this city seems to espouse the new Constitution. It is supposed, nevertheless, that the party in power is strongly opposed to it. The country must finally decide, the sense of which is as yet wholly unknown. As far as Boston and Connecticut have been heard from, the first impression seems to be auspicious. I am waiting with anxiety for the echo from Virginia, but with very faint hopes of its corresponding with my wishes.

TO EDMUND RANDOLPH.

New York,*October* 21, 1787.

Dear Sir,—

We hear that opinions are various in Virginia on the plan of the Convention. I have received, within a few days, a letter from the chancellor, by which I find that he gives it his approbation; and another from the president of William and Mary, which, though it does not absolutely reject the Constitution, criticises it pretty freely. The newspapers in the Northern and Middle States begin to teem with controversial publications. The attacks seem to be principally levelled against the organization of the government, and the omission of the provisions contended for in favor of the

press, and juries, &c. A new combatant, however, with considerable address and plausibility, strikes at the foundation. He represents the situation of the United States to be such as to render any government improper and impracticable which forms the states into one nation, and is to operate directly on the people. Judging from the newspapers, one would suppose that the adversaries were the most numerous and the most earnest. But there is no other evidence that it is the fact. On the contrary, we learn that the Assembly of New Hampshire, which received the Constitution on the point of their adjournment, were extremely pleased with it. All the information from Massachusetts denotes a favorable impression there. The legislature of Connecticut have unanimously recommended the choice of a convention in that state, and Mr. Baldwin, who is just from the spot, informs me, that, from present appearances, the opposition will be inconsiderable; that the Assembly, if it depended on them, would adopt the system almost unanimously; and that the clergy and all the literary men are exerting themselves in its favor. Rhode Island is divided; the majority being violently against it. The temper of this state cannot yet be fully discerned. A strong party is in favor of it. But they will probably be outnumbered, if those whose numbers are not yet known should take the opposite side. New Jersey appears to be zealous. Meetings of the people in different counties are declaring their approbation, and instructing their representatives. There will probably be a strong opposition in Pennsylvania. The other side, however, continue to be sanguine. Dr. Carroll, who came hither lately from Maryland, tells me, that the public voice there appears at present to be decidedly in favor of the Constitution. Notwithstanding all these circumstances, I am far from considering the public mind as fully known, or finally settled on the subject. They amount only to a strong presumption that the general sentiment in the Eastern and Middle States is friendly to the proposed system at this time.

TO THOMAS JEFFERSON.

[EXTRACT.]

New York,*October* 24, 1787.

Dear Sir,—

When the plan of the Constitution proposed by the Convention came before Congress for their sanction, a very serious effort was made by R. H. Lee and Mr. Dane, from Massachusetts, to embarrass it. It was first contended, that Congress could not properly give any positive countenance to a measure which had for its object the subversion of the Constitution under which they acted. This ground of attack failing, the former gentleman urged the expediency of sending out the plan with amendments, and proposed a number of them corresponding with the objections of Col. Mason. This experiment had still less effect. In order, however, to obtain unanimity, it was necessary to couch the resolution in very moderate terms.

TO GENERAL WASHINGTON.

[EXTRACT.]

New York,*October* 28, 1787.

Dear Sir,—

The mail of yesterday brought me your favor of the 22d instant. The communications from Richmond give me as much pleasure as they exceed my expectations. As I find by a letter from a member of the Assembly, however, that Col. Mason has not got down, and it appears that Mr. Henry is not at bottom a friend, I am not without fears that their combined influence and management may yet create difficulties. There is one consideration which I think ought to have some weight in the case, over and above the intrinsic inducements to embrace the Constitution, and which I have suggested to some of my correspondents. There is at present a very strong probability that nine states at least will pretty speedily concur in establishing it. What will become of the tardy remainder? They must be either left, as outcasts from the society, to shift for themselves, or be compelled to come in, or must come in of themselves when they will be allowed no credit for it. Can either of these situations be as eligible as a prompt and manly determination to support the Union, and share its common fortunes?

My last stated pretty fully the information which had arrived here from different quarters, concerning the proposed Constitution. I recollect nothing that is now to be added, further than that the Assembly of Massachusetts, now sitting, certainly gives it a friendly reception. I enclose a Boston paper, by which it appears that Gov. Hancock has ushered it to them in as propitious a manner as could have been required.

Mr. Charles Pinckney's character is, as you observe, well marked by the publications which I enclosed. His printing the secret paper at this time could have no motive but the appetite for expected praise; for the subject to which it relates has been dormant a considerable time, and seems likely to remain so.

TO EDMUND RANDOLPH.

New York,*November* 18, 1787.

Dear Sir,—

I have not, since my arrival, collected any additional information concerning the progress of the Federal Constitution. I discovered no evidence, on my journey through New Jersey, that any opposition whatever would be made in that state. The Convention of Pennsylvania is to meet on Tuesday next. The members returned, I was told by several persons, reduced the adoption of the plan in that state to absolute certainty, and by a greater majority than the most sanguine advocates had calculated.

One of the counties, which had been set down by all on the list of opposition, had elected deputies of known attachment to the Constitution.

I do not find that a single state is represented except Virginia, and it seems very uncertain when a Congress will be made. There are individual members present from several states; and the attendance of this and the neighboring states may, I suppose, be obtained, when it will produce a quorum.

TO EDMUND RANDOLPH.

New York,*December* 2, 1787.

[extract.]

Dear Sir,—

No recent indications of the views of the states as to the Constitution have come to my knowledge. The elections in Connecticut are over, and, as far as the returns are known, a large majority are friendly to it. Dr. Johnson says, it will be pretty certainly adopted; but there will be opposition. The power of taxing any thing but imports appears to be the most popular topic among the adversaries. The convention of Pennsylvania is sitting. The result there will not reach you first through my hands. The divisions on preparatory questions, as they are published in the newspapers, show that the party in favor of the Constitution have forty-four or forty-five *versus* twenty-two or twenty-four, or thereabouts.

The enclosed paper contains two numbers of the Federalist. This paper was begun about three weeks ago, and proposes to go through the subject. I have not been able to collect all the numbers, since my return from Philadelphia, or I would have sent them to you. I have been the less anxious, as I understand the printer means to make a pamphlet of them, when I can give them to you in a more convenient form. You will probably discover marks of different pens. I am not at liberty to give you any other key than that I am in myself for a few numbers, and that one besides myself was a member of the Convention.270

TO THOMAS JEFFERSON.

New York,*December* 20, 1787.

[extract.]

Dear Sir,—

Since the date of my other letter, the convention of Delaware have unanimously adopted the new Constitution. That of Pennsylvania has adopted it by a majority of 46 against 23. That of New Jersey is sitting, and will adopt pretty unanimously. These

are all the conventions that have met. I hear, from North Carolina, that the Assembly there is well disposed.

TO GENERAL WASHINGTON.

New York,*December* 20, 1787.

[extract.]

Dear Sir,—

I was favored on Saturday with your letter of the 7th instant, along with which was covered the printed letter of Col. R. H. Lee to the governor. [See p. 503, Vol. I. *Elliot's Debates.*] It does not appear to me to be a very formidable attack on the new Constitution; unless it should derive an influence from the names of the correspondents, which its intrinsic merits do not entitle it to. He is certainly not perfectly accurate in the statement of all his facts; and I should infer, from the tenor of the objections in Virginia, that his plan of an executive would hardly be viewed as an amendment of that of the Convention. It is a little singular that three of the most distinguished advocates for amendments, and who expect to unite the thirteen states in their project, appear to be pointedly at variance with each other on one of the capital articles of the system. Col. Lee proposes, hat the President should choose a council of eleven, and, with their advice, have the appointment of all officers. Col. Mason's proposition is, that a council of six should be appointed by the Congress. What degree of power he would confide to it, I do not know. The idea of the governor is, that there should be a plurality of coequal heads, distinguished probably by other peculiarities in the organization. It is pretty certain that some others, who make a common cause with them in the general attempt to bring about alterations, differ still more from them than they do from each other; and that they themselves differ as much on some other great points as on the constitution of the executive.

You did not judge amiss of Mr. Jay. The paragraph affirming a change in his opinion of the plan of the Convention, was an arrant forgery. He has contradicted it in a letter to Mr. J. Vaughan, which has been printed in the Philadelphia gazettes. Tricks of this sort are not uncommon with the enemies of the new Constitution. Col. Mason's objections were, as I am told, published in Boston, mutilated of that which pointed at the regulation of commerce. Dr. Franklin's concluding speech, which you will meet with in one of the papers herewith enclosed, is both mutilated and adulterated, so as to change both the form and spirit of it.

The Philadelphia papers will have informed you of the result of the convention of that state. New Jersey is now in convention, and has probably by this time adopted the Constitution. Gen. Irvine, of the Pennsylvania delegation, who is just arrived here, and who conversed with some of the members at Trenton, tells me that great unanimity reigns in the convention.

Connecticut, it is pretty certain, will decide also in the affirmative by a large majority. So, it is presumed, will New Hampshire; though her convention will be a little later than could be wished. There are not enough of the returns in Massachusetts known for a final judgment of the probable event in that state. As far as the returns are known, they are extremely favorable; but as they are chiefly from the maritime parts of the state, they are a precarious index of the public sentiment. I have good reason to believe that if you are in correspondence with any gentleman in that quarter, and a proper occasion should offer for an explicit communication of your good wishes for the plan, so as barely to warrant an explicit assertion of the fact, that it would be attended with valuable effects. I barely drop the idea. The circumstances on which the propriety of it depends are best known to you, as they will be best judged of by yourself. The information from North Carolina gave me great pleasure. We have nothing from the states south of it.271

TO EDMUND RANDOLPH.

New York,*January* 10, 1788.

Dear Sir,—

I received two days ago your favor of December 27, enclosing a copy of your letter to the Assembly. I have read it with attention, and I can add with pleasure, because the spirit of it does as much honor to your candor, as the general reasoning does to your abilities. Nor can I believe that in this quarter the opponents of the Constitution will find encouragement in it. You are already aware that your objections are not viewed in the same decisive light by me that they are by you. I must own that I differ still more from your opinion, that a prosecution of the experiment of a second Convention will be favorable, even in Virginia, to the object which I am sure you have at heart. It is to me apparent that, had your duty led you to throw your influence into the opposite scale, it would have given it a decided and unalterable preponderance; and that Mr. Henry would either have suppressed his enmity, or been baffled in the policy which it has dictated. It appears also that the grounds taken by the opponents in different quarters forbid any hope of concord among them. Nothing can be farther from your views than the principles of different sets of men who have carried on their opposition under the respectability of your name. In this state, the party adverse to the Constitution notoriously meditate either a dissolution of the Union, or protracting it by patching up the Articles of Confederation. In Connecticut and Massachusetts, the opposition proceeds from that part of the people who have a repugnance in general to good government, or to any substantial abridgment of state powers, and a part of whom, in Massachusetts, are known to aim at confusion, and are suspected of wishing a reversal of the revolution. The minority in Pennsylvania, as far as they are governed by any other views than an habitual opposition to their rivals, are manifestly averse to some essential ingredients in a national government. You are better acquainted with Mr. Henry's politics than I can be; but I have for some time considered him as no further concurring in the plan of amendments than as he hopes to render it subservient to his real designs. Viewing the matter in this light, the inference with me is unavoidable that, were a second trial to be made, the friends of a good constitution for

the Union would not only find themselves not a little differing from each other as to the proper amendments, but perplexed and frustrated by men who had objects totally different. A second Convention would, of course, be formed under the influence, and composed in a great measure of the members, of the opposition in the several states. But were the first difficulties overcome, and the Constitution reëdited with amendments, the event would still be infinitely precarious. Whatever respect may be due to the rights of private judgment, (and no man feels more of it than I do,) there can be no doubt that there are subjects to which the capacities of the bulk of mankind are unequal, and on which they must and will be governed by those with whom they happen to have acquaintance and confidence. The proposed Constitution is of this description. The great body of those who are both for and against it must follow the judgment of others, not their own. Had the Constitution been framed and recommended by an obscure individual, instead of a body possessing public respect and confidence, there cannot be a doubt that, although it would have stood in the identical words, it would have commanded little attention from most of those who now admire its wisdom. Had yourself, Col. Mason, Col. R. H. Lee, Mr. Henry, and a few others, seen the Constitution in the same light with those who subscribed it, I have no doubt that Virginia would have been as zealous and unanimous, as she is now divided, on the subject. I infer from these considerations, that, if a government be ever adopted in America, it must result from a fortunate coincidence of leading opinions, and a general confidence of the people in those who may recommend it. The very attempt at a second Convention strikes at the confidence in the first; and the existence of a second, by opposing influence to influence, would in a manner destroy an effectual confidence in either, and give a loose rein to human opinions,—which must be as various and irreconcilable concerning theories of government, as doctrines of religion,—and give opportunities to designing men, which it might be impossible to counteract.

The Connecticut convention has probably come to a decision before this; but the event is not known here. It is understood that a great majority will adopt the Constitution. The accounts from Massachusetts vary extremely, according to the channels through which they come. *It is said* that S. Adams, who has hitherto been reserved, begins to make open declaration of his hostile views. His influence is not great, but this step argues an opinion that he can calculate on a considerable party. It is said here, and, I believe, on good ground, that North Carolina has postponed her convention till July, in order to have the previous example of Virginia. Should North Carolina fall into Mr. Henry's politics, which does not appear to me improbable, it will endanger the Union more than any other circumstance that could happen. My apprehensions of this danger increase every day. The multiplied inducements, at this moment, to the local sacrifices necessary to keep the states together, can never be expected to coincide again, and they are counteracted by so many unpropitious circumstances, that their efficacy can with difficulty be confided in. I have no information from South Carolina, or Georgia, on which any certain opinion can be formed of the temper of those states. The prevailing idea has been, that both of them would speedily and generally embrace the Constitution. It is impossible, however, that the example of Virginia and North Carolina should not have an influence on their politics. I consider every thing, therefore, problematical from Maryland southward.

We have no Congress yet. The number of states on the spot does not exceed five. It is probable that a quorum will now be soon made. A delegate from New Hampshire is expected, which will make up a representation from that state. The termination of the Connecticut convention will set her delegates at liberty, and the meeting of the Assembly of this state will fill the vacancy which has some time existed in her delegation.272

TO EDMUND RANDOLPH.

New York,*January* 27, 1788.

Dear Sir,—

A Congress was made, for the first time, on Monday last, and our friend C. Griffin placed in the chair. There was no competition in the case, which you will wonder at, as Virginia has so lately supplied a president. New Jersey did not like it, I believe, very well, but acquiesced.

I postponed writing by the last mail, in hopes of being able, by this, to acquaint you with the probable result of the convention of Massachusetts. It appears, however, that the prospect continues too equivocal to justify a conjecture on the subject. The representations vary somewhat, but they all tend to excite, rather than diminish, anxiety. Mr. Gerry had been introduced to a seat, for the purpose of stating facts. On the arrival of the discussion at the article concerning the Senate, he signified, without being called on, that he had important information to communicate on that subject. Mr. Dana and several others remarked on the impropriety of Mr. Gerry's conduct. Gerry rose to justify. Others opposed it as irregular. A warm conversation arose, and continued till the adjournment; after which a still warmer one took place between Gerry and Dana. The members gathered around them, took sides as they were for or against the Constitution, and strong symptoms of confusion appeared. At length, however, they separated. It was expected that the subject would be renewed in the convention the next morning. This was the state of things when the post came off.

In one of the papers enclosed, you will find your letter to the Assembly reviewed by some critic of this place. I can form no guess who he is. I have seen another attack grounded on a comparative view of your objections, Col. Mason's, and Mr. Gerry's. This was from Philadelphia. I have not the paper, or I would add it.273

TO GENERAL WASHINGTON.

New York,*February* 3, 1788.

Dear Sir,—

Another mail has arrived from Boston without terminating the conflict between our hopes and fears. I have a letter from Mr. King, of the 27th, which, after dilating

somewhat on the ideas in his former letters, concludes with the following paragraph: "We have avoided every question which would have shown the division of the House. Of consequence, we are not positive of the numbers on each side. By the last calculation we made on our side, we were doubtful whether we exceeded them, or they us, in numbers. They, however, say that they have a majority of eight or twelve against us. We by no means despair." Another letter of the same date, from another member, gives the following picture: "Never was there an assembly in this state in possession of greater ability and information than the present convention; yet I am in doubt whether they will approve the Constitution. There are, unhappily, three parties opposed to it—first, all men who are in favor of paper money and tender laws,—these are, more or less, in every part of the state; secondly, all the late insurgents and their abettors,—in the three great western counties they are very numerous; we have, in the convention, eighteen or twenty who were actually in Shay's army; thirdly, a great majority of the members from the Province of Maine. Many of them and their constituents are only squatters on other people's land, and they are afraid of being brought to account; they also think, though erroneously, that their favorite plan, of being a separate state, will be defeated. Add to these the honest doubting people, and they make a powerful host. The leaders of this party are—Mr. Widgery, Mr. Thomson, and Mr. Nasson, from the Province of Maine; Dr. Taylor, from the county of Worcester; and Mr. Bishop, from the neighborhood of Rhode Island. To manage the cause against them are the present and late governors, three judges of the Supreme Court, fifteen members of the Senate, twenty from among the most respectable of the clergy, ten or twelve of the first characters at the bar, judges of probate, high sheriffs of counties, and many other respectable people, merchants, &c., Generals Heath, Lincoln, Brooks, and others of the late army. With all this ability in support of the cause, I am pretty well satisfied we shall lose the question, unless we can take off some of the opposition by amendments. I do not mean such as are to be made conditions of the ratification, but recommendations only. Upon this plan I flatter myself we may possibly get a majority of twelve or fifteen, if not more."

The legislature of this state has voted a convention on the 17th of June.[274]

TO EDMUND RANDOLPH.

New York,*March* 3, 1788.

Dear Sir,—

The convention of New Hampshire have disappointed the general expectation. They have not rejected the Constitution, but they have adjourned without adopting it. It was found that, on a final question, there would be a majority of three or four in the negative; but in this number were included some who, with instructions from their towns against the Constitution, had been proselyted by the discussions. These, concurring with the federalists in the adjournment, carried it by fifty-seven against forty-seven, if I am rightly informed as to the numbers. The second meeting is not to be till the last week in June. I have inquired of the gentlemen from that quarter, what particularly recommended so late a day, supposing it might refer to the times fixed by

New York and Virginia. They tell me it was governed by the intermediate annual elections and courts. If the opposition in that state be such as they are described, it is not probable that they pursue any sort of plan, more than that of Massachusetts. This event, whatever cause may have produced it, or whatever consequences it may have in New Hampshire, is no small check to the progress of the business. The opposition here, which are unquestionably hostile to every thing beyond the *federal* principle, will take new spirits. The event in Massachusetts had almost extinguished their hopes. That in Pennsylvania will, probably, be equally encouraged.275

TO EDMUND RANDOLPH.

[EXTRACT.]

New York,*July* 2, 1788.

Dear Sir,—

There are public letters just arrived from Jefferson. The contents are not yet known. His private letters to me and others refer to his public for political news. *I find that he is becoming more and more a friend to the new Constitution, his objections being gradually dispelled by his own further reflections on the subject. He particularly renounces his opinion concerning the expediency of a ratification by nine, and a repeal by four, states, considering the mode pursued by Massachusetts as the only rational one, but disapproving some of the alterations recommended by that state.* He will see still more room for disapprobation *in the recommendation* of other states. The defects of the Constitution which he continues to criticise are, the omission of a bill of rights, and of the principle of rotation, at least in the executive department.276

TO EDMUND RANDOLPH.

New York,*July* 16, 1788.

Dear Sir,—

The enclosed papers will give you the latest intelligence from Poughkeepsie. It seems by no means certain what the result there will be. Some of the most sanguine calculate on a ratification. The best informed apprehend some clog that will amount to a condition. The question is made peculiarly interesting in this place, by its connection with the question relative to the place to be recommended for the meeting of the first Congress under the new government.

Thirteen states are at present represented. A plan for setting this new machine in motion has been reported some days, but will not be hurried to a conclusion. Having been but a little time here, I am not yet fully in the politics of Congress.

TO EDMUND RANDOLPH.

New York,*July* 22, 1788.

Dear Sir,—

The enclosed papers will give you a view of the business in the convention at Poughkeepsie. It is not as yet certain that the ratification will take any final shape that can make new York immediately a member of the new Union. The opponents cannot come to that point without yielding a complete victory to the federalists, which must be a severe sacrifice of their pride. It is supposed, too, that *some* of them would not be displeased at seeing a bar to the pretensions of this city to the first meeting of the new government. On the other side, the zeal for an unconditional ratification is not a little increased by contrary wishes.

TO EDMUND RANDOLPH.

[EXTRACT.]

New York,*August* 22, 1788.

Dear Sir,—

I have your favor of the 13th. The effect of Clinton's circular letter in Virginia does not surprise me. It is a signal of concord and hope to the enemies of the Constitution every where, and will, I fear, prove extremely dangerous. Notwithstanding your own remarks on the subject, I cannot but think that an *early* convention will be an unadvised measure. It will evidently be the offspring of party and passion, and will, probably, for that reason alone, be the parent of error and public injury. It is pretty clear that a majority of the people of the Union are in favor of the Constitution as it stands, or at least are not dissatisfied with it in that form; or, if this be not the case, it is at least clear that a greater proportion unite in that system than are likely to unite in any other theory. Should radical alterations take place, therefore, they will not result from the deliberate sense of the people, but will be obtained by management, or extorted by menaces, and will be a real sacrifice of the public will, as well as of the public good, to the views of individuals, and perhaps the ambition of state legislatures.*

TO EDMUND RANDOLPH.

[EXTRACT.]

New York,*September* 24, 1788.

Dear Sir,—

I have been favored with yours of the 12th instant. The picture it gives of the state of our country is the more distressing as it seems to exceed all the known resources for immediate relief. Nothing, in my opinion, can give the desired facility to the discharge of debts, but a reëstablishment of that confidence which will at once make the creditor more patient, and open to the solvent debtor other means than bringing his property to market. How far the new government will produce these effects, cannot yet be decided. But the utmost success that can be hoped from it will leave in full force the causes of intermediate embarrassment. The additional pressure apprehended from British debts, is an evil also for which I perceive at present no certain remedy. As far, however, as the favorable influence of the new government may extend, that may be one source of alleviation. It may be expected also that the British creditors will feel several motives to indulgence. And I will not suppress a hope that the new government will be both able and willing to effect something by negotiation. Perhaps it might not be amiss for the Assembly to prepare the way by some act or other, for drawing the attention of the first session of the Congress to this subject. The possession of the posts by Great Britain, after the removal of the grounds of her complaint by the provision in the new Constitution with regard to the treaty, will justify a renewal of our demands, and an interference in favor of American citizens on whom the performance of the treaty on our side depends.

TO EDMUND RANDOLPH.

New York,*October* 17, 1788.

Dear Sir,—

I have a letter from Mr. Jefferson, but it contains nothing of much consequence. His public letters, to which it refers, have not yet been communicated from the office of foreign affairs. Through other authentic channels, I learn that the States-General will pretty certainly be convened in May next. The efficacy of that cure for the public maladies will depend materially on the mode in which the deputies may be selected, which appears to be not yet settled. There is good reason also to presume that, as the spirit which at present agitates the nation has been in a great measure caught from the American revolution, so the result of the struggle there will be not a little affected by the character which liberty may receive from the experiment now on foot here. The tranquil and successful establishment of a great reform, by the reason of the community, must give as much force to the doctrines urged on one side, as a contrary event would do to the policy maintained on the other.

As Col. Carrington will be with you before this gets to hand, I leave it with him to detail all matters of a date previous to his departure. Of a subsequent date I recollect nothing worth adding. I requested him also to confer with you in full confidence on the appointments to the Senate and House of Representatives, so far as my friends may consider me in relation to either. He is fully possessed of my real sentiments, and will explain them more conveniently than can be done on paper. I mean not to decline

an agency in launching the new government, if such should be assigned me, in one of the Houses, and I prefer the House of Representatives, chiefly because, if I can render any service there, it can only be to the public, and not, even in imputation, to myself. At the same time my preference, I own, is somewhat founded on the supposition, that the arrangements for the popular elections may secure me against any competition which would require, on my part, any step that would speak a solicitude which I do not feel, or have the appearance of a spirit of electioneering, which I despise.

TO EDMUND RANDOLPH.

New York,*November* 2, 1788.

Dear Sir,—

I received yesterday your favor of the 23d ultimo. The first countenance of the Assembly corresponds with the picture which my imagination had formed of it. The views of the greater part of the opposition to the federal government have, ever since the Convention, been regarded by me as permanently hostile, and likely to produce every effort that might endanger or embarrass it.

My last letter, with Col. Carrington's communications, to which it referred, will have sufficiently explained my sentiments with regard to the legislative service under the new Constitution. My first wish is, to see the government put into quiet and successful operation, and to afford any service that may be acceptable from me for that purpose. My second wish, if that were to be consulted, would prefer, for reasons formerly hinted, an opportunity of contributing that service in the House of Representatives, rather than in the Senate, provided the opportunity be attainable from the spontaneous suffrage of the constituents. Should the real friends of the 277 Constitution think this preference inconsistent with any primary object, as Col. Carrington tells me is the case with some who are entitled to peculiar respect, and view my renouncing it as of any material consequence, I shall not hesitate to comply. You will not infer, from the freedom with which these observations are made, that I am in the least unaware of the probability that, whatever my inclinations or those of my friends may be, they are likely to be of little avail in the present case. I take it for certain that a clear majority of the Assembly are enemies to the government, and I have no reason to suppose that I can be less obnoxious than others on the opposite side. An election into the Senate, therefore, can hardly come into question. I know, also, that a good deal will depend on the arrangements for the election of the other branch, and that much may depend, moreover, on the steps to be taken by the candidates, which will not be taken by me. Here again, therefore, there must be great uncertainty, if not improbability, of my election. With these circumstances in view, it is impossible that I can be the dupe of false calculations, even if I were in other cases disposed to indulge them. I trust it is equally impossible for the result, whatever it may be, to rob me of any reflections which enter into the internal fund of comfort and happiness. Popular favor or disfavor is no criterion of the character maintained with those whose esteem an honorable ambition must court: much less can it be a criterion of that maintained with one's self. And when the spirit of party directs the public voice, it must be a little mind, indeed,

that can suffer in its own estimation, or apprehend danger of suffering in that of others.

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APPENDIX TO THE DEBATES IN THE FEDERAL CONVENTION.

No. 1.

See page 125.

Letter From James M. Varnum, Of Rhode Island, To The President Of The Convention, Enclosing The Subjoined Communication, From Certain Citizens Of Rhode Island, To The Federal Convention.

Note.—The following letter from Rhode Island to the Convention was intended to have been delivered by Gen. Varnum, who had, however, left Philadelphia before its arrival. On his return to Rhode Island, he wrote the letter enclosing it.

Newport,*June* 18, 1787.

Sir,—

The enclosed address, of which I presume your Excellency has received a duplicate, was returned to me, from New York, after my arrival in this state. I flattered myself that our legislature, which convened on Monday last, would have receded from the resolution therein referred to, and have complied with the recommendation of Congress in sending delegates to the Federal Convention. The upper House, or governor and council, embraced the measure; but it was negatived in the House of Assembly by a large majority, notwithstanding that the greatest exertions were made to support it.

Being disappointed in their expectations, the minority in the administration, and all the worthy citizens of this state whose minds are well informed, regretting the peculiarities of their situation, place their fullest confidence in the wisdom and moderation of the national council, and indulge the warmest hopes of being favorably considered in their deliberations. From these deliberations they anticipate a political system which must finally be adopted, and from which will result the safety, the honor, and the happiness, of the United States.

Permit me, sir, to observe, that the measures of our present legislature do not exhibit the real character of the state. They are equally reprobated and abhorred by gentlemen of the learned professions, by the whole mercantile body, and by most of the respectable farmers and mechanics. The majority of the administration is composed of a licentious number of men, destitute of education, and many of them void of principle. From anarchy and confusion they derive their temporary consequence; and

this they endeavor to prolong by debauching the minds of the common people, whose attention is wholly directed to the abolition of debts, public and private. With these are associated the disaffected of every description, particularly those who were unfriendly during the war. Their paper money system, founded in oppression and fraud, they are determined to support at every hazard; and, rather than relinquish their favorite pursuit, they trample upon the most sacred obligations. As a proof of this, they refused to comply with a requisition of Congress for repealing all laws repugnant to the treaty of peace with Great Britain, and urged, as their principal reason, that it would be calling in question the propriety of their former measures.

These may be attributed partly to the extreme freedom of our constitution, and partly to the want of energy in the Federal Union; and it is greatly to be apprehended that they cannot speedily be removed, but by uncommon and very serious exertions. It is fortunate, however, that the wealth and resources of this state are chiefly in possession of the well-affected, and that they are entirely devoted to the public good.

I Have The Honor Of Being, Sir,
With The Greatest Veneration And Esteem,
Your Excellency'S Very Obedient And
Most Humble Servant,*

His Excellency, Gen. Washington.

Letter From Certain Citizens Of Rhode Island To The Federal Convention, Enclosed In The Preceding.

Providence,*May* 11, 1787.

Gentlemen,—

Since the legislature of this state have finally declined sending delegates to meet you in Convention, for the purposes mentioned in the resolve of Congress of the 21st February, 1787, the merchants, tradesmen, and others, of this place, deeply affected with the evils of the present unhappy times, have thought proper to communicate in writing their approbation of your meeting, and their regret that it will fall short of a complete representation of the Federal Union.

The failure of this state was owing to the non-concurrence of the upper House of Assembly with a vote passed in the lower House, for appointing delegates to attend the said Convention, at their session holden at Newport, on the first Wednesday of the present month.

It is the general opinion here, and, we believe, of the well-informed throughout this state, that full power for the regulation of the commerce of the United States, both foreign and domestic, ought to be vested in the national council, and that effectual

arrangements should also be made for giving operation to the present powers of Congress in their requisitions for national purposes.

As the object of this letter is chiefly to prevent any impression unfavorable to the commercial interest of the state from taking place in our sister states, from the circumstance of our being unrepresented in the present national Convention, we shall not presume to enter into any detail of the objects we hope your deliberations will embrace and provide for, being convinced they will be such as have a tendency to strengthen the union, promote the commerce, increase the power, and establish the credit, of the United States.

The result of your deliberations, tending to these desirable purposes, we still hope may finally be approved and adopted by this state, for which we pledge our influence and best exertions.

[* This will be delivered you by the Hon. James M. Varnum, Esq., who will communicate (with your permission) in person, more particularly, our sentiments on the subject-matter of our address.]

In behalf of the merchants, tradesmen, &c., we have the honor, &c. &c.

(Signed)

John Brown,	John Jinkes,
Joseph Nightingale,	Welcome Arnold,
Levi Hall,	William Russell,
Philip Allen,	Jeremiah Olney,
Paul Allen,	William Barton,
Jabez Bowen,	Thomas Lloyd Halsey,
Nicholas Brown,	*Committee.*

The Honorable the Chairman of the General Convention, Philadelphia.

No. 2.

See page 129.

Note Of Mr. Madison To The Plan Of Charles Pinckney, May 29, 1787.

The length of the document laid before the Convention, and other circumstances, having prevented the taking of a copy at the time, that which is inserted in the debates was taken from the paper furnished to the secretary of state, and contained in the Journal of the Convention, published in 1819; which, it being taken for granted that it was a true copy, was not then examined. The coincidence in several instances between that and the Constitution, as adopted, having attracted the notice of others, was at length suggested to mine. On comparing the paper with the Constitution in its

final form, or in some of its stages, and with the propositions and speeches of Mr. Pinckney in the Convention, it was apparent that considerable error had crept into the paper, occasioned possibly by the loss of the document laid before the Convention, (neither that nor the resolution offered by Mr. Patterson being among the preserved papers,) and by a consequent resort for a copy to the rough draught, in which erasures and interlineations, following what passed in the Convention, might be confounded, in part at least, with the original text, and, after a lapse of more than thirty years, confounded also in the memory of the author.

There is in the paper a similarity in some cases, and an identity in others, with details, expressions, and definitions, the results of critical discussions and modification in the Convention, that could not have been anticipated.

Examples may be noticed in Article VIII. of the paper; which is remarkable also for the circumstance, that, whilst it specifies the functions of the President, no provision is contained in the paper for the election of such an officer, nor indeed for the appointment of any executive magistracy, notwithstanding the evident purpose of the author to provide an *entire* plan of a federal government.

Again, in several instances where the paper corresponds with the Constitution, it is at variance with the ideas of Mr. Pinckney, as decidedly expressed in his propositions, and in his arguments, the former in the Journal of the Convention, the latter in the report of its debates. Thus, in Article VIII. of the paper, provision is made for removing the President by impeachment, when it appears that, in the Convention, on the 20th of July, he was opposed to any impeachability of the executive magistrate. In Article III., it is required that all money bills shall originate in the first branch of the legislature; which he strenuously opposed on the 8th of August, and again on the 11th of August. In Article V., members of each House are made ineligible to, as well as incapable of holding, any office under the Union, &c., as was the case at one stage of the Constitution,—a disqualification highly disapproved and opposed by him on the 14th of August.

A still more conclusive evidence of error in the paper is seen in Article III., which provides, as the Constitution does, that the first branch of the legislature shall be chosen by the people of the several states; whilst it appears that, on the 6th of June, according to previous notice, too, a few days only after the draught was laid before the Convention, its author opposed that mode of choice, urging and proposing, in place of it, an election by the legislatures of the several states.

The remarks here made, though not material in themselves, were due to the authenticity and accuracy aimed at in this record of the proceedings of a public body so much an object, sometimes, of curious research, as at all times of profound interest.*

No. 3.

Project Communicated By Mr. E. Randolph, July 10, *As An Accommodating Proposition To Small States.*

See page 317.

I. *Resolved,* That in the second branch each state have one vote in the following cases:

1. In granting exclusive rights to ports.

2. In subjecting vessels or seamen of the United States to tonnage duties, or other impositions.

3. In regulating the navigation of rivers.

4. In regulating the rights to be enjoyed by citizens of one state in the other states.

5. In questions arising in the guaranty of territory.

6. In declaring war, or taking measures for subduing a rebellion.

7. In regulating corn.

8. In establishing and regulating the post-office.

9. In the admission of new states into the Union.

10. In establishing rules for the government of the militia.

11. In raising a regular army.

12. In the appointment of the executive.

13. In fixing the seat of government.

That in all other cases the right of suffrage be proportioned according to an equitable rule of representation.

II. That, for the determination of certain important questions in the second branch, a greater number of votes than a mere majority be requisite.

III. That the people of each state ought to retain the perfect right of adopting, from time to time, such forms of republican government as to them may seem best, and of making all laws not contrary to the Articles of Union; subject to the supremacy of the general government in those instances only in which that supremacy shall be expressly declared by the Articles of the Union.

IV. That, although every negative given to the law of a particular state shall prevent its operation, any state may appeal to the national judiciary against a negative; and that such negative, if adjudged to be contrary to the powers granted by the Articles of the Union, shall be void.

V. That any individual, conceiving himself injured or oppressed by the partiality or injustice of a law of any particular state, may resort to the national judiciary, who may adjudge such law to be void, if found contrary to the principles of equity and justice.

No. 4.

Note To Speech Of Mr. Madison Of August 7, 1787, *On The Right Of Popular Suffrage.*

See page 387.

As appointments for the general government here contemplated will, in part, be made by the state governments, all the citizens in states where the right of suffrage is not limited to the holders of property will have an indirect share of representation in the general government. But this does not satisfy the fundamental principle, that men cannot be justly bound by laws in making which they have no part. Persons and property being both essential objects of government, the most that either can claim is such a structure of it as will leave a reasonable security for the other. And the most obvious provision, of this double character, seems to be that of confining to the holders of property—the object deemed least secure in popular governments—the right of suffrage for one of the two legislative branches. This is not without example among us; as well as other constitutional modifications, favoring the influence of property in the government. But the United States have not reached the stage of society in which conflicting feelings of the class with, and the class without, property, have the operation natural to them in countries fully peopled. The most difficult of all political arrangements is that of so adjusting the claims of the two classes as to give security to each, and to promote the welfare of all. The federal principle, which enlarges the sphere of power without departing from the elective basis of it, and controls in various ways the propensity in small republics to rash measures, and the facility of forming and executing them, will be found the best expedient yet tried for solving the problem.

Second Note To Speech Of Mr. Madison Of August 7, 1787.

These observations (see Debates in the Convention of 1787, August 7) do not convey the speaker's more full and matured view of the subject, which is subjoined. He felt too much at the time the example of Virginia.

The right of suffrage is a fundamental article in republican constitutions. The regulation of it is, at the same time, a task of peculiar delicacy. Allow the right exclusively to property, and the rights of persons may be oppressed. The feudal polity alone sufficiently proves it. Extend it equally to all, and the rights of property, or the

claims of justice, may be overruled by a majority without property, or interested in measures of injustice. Of this, abundant proof is afforded by other popular governments: and is not without examples in our own, particularly in the laws impairing the obligation of contracts.

In civilized communities, property, as well as personal rights, is an essential object of the laws, which encourage industry by securing the enjoyment of its fruits,—that industry from which property results, and that enjoyment which consists, not merely in its immediate use, but in its posthumous destination to objects of choice and of kindred or affection.

In a just and a free government, therefore, the rights both of property and of persons ought to be effectually guarded. Will the former be so in case of a universal and equal suffrage? Will the latter be so in case of a suffrage confined to the holders of property?

As the holders of property have at stake all the other rights common to those without property, they may be the more restrained from infringing, as well as the less tempted to infringe, the rights of the latter. It is nevertheless certain that there are various ways in which the rich may oppress the poor; in which property may oppress liberty; and that the world is filled with examples. It is necessary that the poor should have a defence against the danger.

On the other hand, the danger to the holders of property cannot be disguised, if they be underfended against a majority without property. Bodies of men are not less awayed by interest than individuals, and are less controlled by the dread of reproach and the other motives felt by individuals. Hence the liability of the rights of property, and of the impartiality of laws affecting it, to be violated by legislative majorities having an interest, real or supposed, in the injustice: hence agrarian laws, and other levelling schemes: hence the cancelling or evading of debts, and other violations of contracts. We must not shut our eyes to the nature of man, nor to the light of experience. Who would rely on a fair decision from three individuals, if two had an interest in the case opposed to the rights of the third? Make the number as great as you please, the impartiality will not be increased, nor any further security against injustice be obtained, than what may result from the greater difficulty of uniting the willa of a greater number. In all governments there is a power which is capable of oppressive exercise. In monarchies and aristocracies, oppression proceeds from a want of sympathy and responsibility in the government towards the people. In popular governments, the danger lies in an undue sympathy among individuals composing a majority, and a want of responsibility in the majority to the minority. The characteristic excellence of the political system of the United States arises from a distribution and organization of its powers, which, at the same time that they secure the dependence of the government on the will of the nation, provide better guards than are found in any other popular government against interested combinations of a majority against the rights of a minority.

The United States have a precious advantage, also, in the actual distribution of property, particularly the landed property, and in the universal hope of acquiring

property. This latter peculiarity is among the happiest contrasts in their situation to that of the old world, where no anticipated change in this respect can generally inspire a like sympathy with the rights of property. There may be at present a majority of the nation who are even freeholders, or the heirs or aspirants to freeholds, and the day may not be very near when such will cease to make up a majority of the community. But they cannot always so continue. With every admissible subdivision of the arable lands, a populousness not greater than that of England or France will reduce the holders to a minority. And whenever the majority shall be without landed or other equivalent property, and without the means or hope of acquiring it, what is to secure the rights of property against the danger from an equality and universality of suffrage, vesting complete power over property in hands without a share in it—not to speak of a danger in the mean time from a dependence of an increasing number on the wealth of a few? In other countries this dependence results—in some from the relations between landlords and tenants, in others both from that source and from the relations between wealthy capitalists and indigent laborers. In the United States, the occurrence must happen from the last source; from the connection between the great capitalists in manufactures and commerce, and the numbers employed by them. Nor will accumulations of capital for a certain time be precluded by our laws of descent and of distribution; such being the enterprise inspired by free institutions, that great wealth in the hands of individuals and associations may not be unfrequent. But it may be observed, that the opportunities may be diminished, and the permanency defeated, by the equalizing tendency of our laws.

No free country has ever been without parties, which are a natural offspring of freedom. An obvious and permanent division of every people is into the owners of the soil and the other inhabitants. In a certain sense, the country may be said to belong to the former. If each landholder has an exclusive property in his share, the body of landholders have an exclusive property in the whole. As the soil becomes subdivided, and actually cultivated by the owners, this view of the subject derives force from the principle of natural law which vests in individuals an exclusive right to the portions of ground with which they have incorporated their labor and improvements. Whatever may be the rights of others, derived from their birth in the country, from their interest in the highways and other tracts left open for common use, as well as in the national edifices and monuments, from their share in the public defence, and from their concurrent support of the government, it would seem unreasonable to extend the right so far as to give them, when become the majority, a power of legislation over the landed property without the consent of the proprietors. Some shield against the invasion of their rights would not be out of place in a just and provident system of government. The principle of such an arrangement has prevailed in all governments where peculiar privileges or interests, held by a part, were to be secured against violation, and in the various associations where pecuniary or other property forms the stake. In the former case, a defensive right has been allowed; and if the arrangement be wrong, it is not in the defence, but in the kind of privilege to be defended. In the latter case, the shares of suffrage allotted to individuals have been, with acknowledged justice, apportioned more or less to their respective interests in the common stock.

These reflections suggest the expediency of such a modification of government as would give security to the part of the society having most at stake, and being most exposed to danger. These modifications present themselves.

1. *Confining* the right of suffrage to freeholders, and to such as hold an equivalent property, convertible of course into freeholds. The objection to this regulation is obvious. It violates the vital principle of free government, that those who are to be bound by laws ought to have a voice in making them. And the violation would be more strikingly unjust as the law-makers become the minority. The regulation would be as unpropitious, also, as it would be unjust. It would engage the numerical and physical force in a constant struggle against the public authority, unless kept down by a standing army fatal to all parties.

2. Confining the right of suffrage for one branch to the holders of property, and for the other branch to those without property. This arrangement, which would give a mutual defence where there might be mutual danger of encroachment, has an aspect of equality and fairness. But it would not be in fact either equal or fair, because the rights to be defended would be unequal, being on one side those of property as well as of persons, and on the other those of persons only. The temptation, also, to encroach, though in a certain degree mutual, would be felt more strongly on one side than on the other. It would be more likely to beget an abuse of the legislative negative, in extorting concessions at the expense of property, than the reverse. The division of the state into two classes, with distinct and independent organs of power, and without any intermingled agency whatever, might lead to contests and antipathies not dissimilar to those between the patricians and plebeians at Rome.

3. Confining the right of electing one branch of the legislature to freeholders, and admitting all others to a common right with holders of property in electing the other branch. This would give a defensive power to the holders of property, and to the class also without property, when becoming a majority of electors, without depriving them in the mean time of a participation in the public councils. If the holders of property would thus have a twofold share of representation, they would have at the same time a twofold stake in it—the rights of property as well as of persons, the twofold object of political institutions. And if no exact and safe equilibrium can be introduced, it is more reasonable that a preponderating weight should be allowed to the greater interest than to the lesser. Experience alone can decide how far the practice in this case would accord with the theory. Such a distribution of the right of suffrage was tried in New York, and has been abandoned,—whether from experienced evils, or party calculations, may possibly be a question. It is still on trial in North Carolina,—with what practical indications, is not known. It is certain that the trial, to be satisfactory, ought to be continued for no inconsiderable period; until, in fact, the non-freeholders should be the majority.

4. Should experience or public opinion require an equal and universal suffrage for each branch of the government, such as prevails generally in the United States, a resource favorable to the right of the landed and other property, when its possessors become the minority, may be found in an enlargement of the election districts for one branch of the legislature, and a prolongation of its period of service. Large districts

are manifestly favorable to the election of persons of general respectability, and of probable attachment to the rights of property, over competitors depending on the personal solicitation practicable on a contracted theatre. And, although an ambitious candidate, of personal distinction, might occasionally recommend himself to popular choice by espousing a popular though unjust object, it might rarely happen to many districts at the same time. The tendency of a longer period of service would be to render the body more stable in its policy, and more capable of stemming popular currents taking a wrong direction, till reason and justice could regain their ascendency.

5. Should even such a modification as the last be deemed inadmissible, and universal suffrage, and very short periods of election, within contracted spheres, be required for each branch of the government, the security for the holders of property, when the minority, can only be derived from the ordinary influence possessed by property, and the superior information incident to its holders; from the popular sense or justice, enlightened and enlarged by a diffusive education; and from the difficulty of combining and effectuating unjust purposes throughout an extensive country,—a difficulty essentially distinguishing the United States, and even most of the individual states, from the small communities, where a mistaken interest, or contagious passion, could readily unite a majority of the whole, under a factious leader, in trampling on the rights of the minor party.

Under every view of the subject, it seems indispensable that the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them. And if the only alternative be between an equal and universal right of suffrage for each branch of the government and a confinement of the *entire* right to a part of the citizens, it is better that those having the greater interest at stake—namely, that of property and persons both—should be deprived of half their share in the government, than that those having the lesser interest—that of personal rights only—should be deprived of the whole.

Third Note On The Same Subject, During The Virginia Convention For Amending The Constitution Of The State, 1829—30.

The right of suffrage being of vital importance, and approving an extension of it to housekeepers and heads of families, I will suggest a few considerations which govern my judgment on the subject.

Were the Constitution on hand to be adapted to the present circumstances of our country, without taking into view the changes which time is rapidly producing, an unlimited extension of the right would probably vary little the character of our public councils or measures. But, as we are to prepare a system of government for a period which it is hoped will be a long one, we must look to the prospective changes in the condition and composition of the society on which it is to act.

It is a law of nature, now well understood, that the earth, under a civilized cultivation, is capable of yielding subsistence for a large surplus of consumers beyond those having an immediate interest in the soil; a surplus which must increase with the increasing improvements in agriculture, and the labor-saving arts applied to it. And it is a lot of humanity, that of this surplus a large proportion is necessarily reduced, by a competition for employment, to wages which afford them the bare necessaries of life. The proportion being without property, or the hope of acquiring it, cannot be expected to sympathize sufficiently with its rights, to be safe depositaries of power over them.

What is to be done with this unfavored class of the community? If it be, on one hand, unsafe to admit them to a full share of political power, it must be recollected, on the other, that it cannot be expedient to rest a republican government on a portion of society having a numerical and physical force excluded from and liable to be turned against it, and which would lead to a standing military force, dangerous to all parties, and to liberty itself.

This view of the subject makes it proper to embrace, in the partnership of power, every description of citizens having a sufficient stake in the public order and the stable administration of the laws; and particularly the housekeeper and heads of families; most of whom, “having given hostages to fortune,” will have given them to their country also.

This portion of the community, added to those who, although not possessed of a share of the soil, are deeply interested in other species of property, and both of them added to the territorial proprietors, who in a certain sense may be regarded as the owners of the country itself, form the safest basis of free government. To the security for such a government, afforded by these combined numbers, may be further added the political and moral influence emanating from the actual possession of authority, and a just and beneficial exercise of it.

It would be happy if a state of society could be found or framed, in which an equal voice in making the laws might be allowed to every individual bound to obey them. But this is a theory which, like most theories, confessedly requires limitations and modifications. And the only question to be decided, in this as in other cases, turns on the particular degree of departure, in practice, required by the essence and object of the theory itself.

It must not be supposed that a crowded state of population, of which we have no example, and which we know only by the image reflected from examples elsewhere, is too remote to claim attention.

The ratio of increase in the United States shows that the present

12 millions will,	in 25 years,	be 24 millions.
24 millions will,	50 years,	48 millions.
48 millions will,	75 years,	96 millions.
96 millions will,	100 years,	192 millions.

There may be a gradual decrease of the rate of increase; but it will be small as long as the agriculture shall yield its abundance. Great Britain has doubled her population in the last 50 years, notwithstanding its amount in proportion to its territory at the commencement of that period; and Ireland is a much stronger proof of the effect of an increasing product of food in multiplying the consumers.

How far this view of the subject will be affected by the republican laws of descent and distribution, in equalizing the property of the citizens, and in reducing to the minimum mutual surpluses for mutual supplies, cannot be inferred from any direct and adequate experiment. One result would seem to be a deficiency of the capital for the expensive establishments which facilitate labor and cheapen its products, on one hand, and, on the other, of the capacity to purchase the costly and ornamental articles consumed by the wealthy alone, who must cease to be idlers and become laborers; another, the increased mass of laborers added to the production of necessaries, by the withdrawal, for this object, of a part of those now employed in producing luxuries, and the addition to the laborers from the class of present consumers of luxuries. To the effect of these changes, intellectual, moral, and social, the institutions and laws of the country must be adapted, and it will require for the task all the wisdom of the wisest patriots.

Supposing the estimate of the growing population of the United States to be nearly correct, and the extent of their territory to be eight or nine hundred millions of acres, and one fourth of it to consist of inarable surface; there will, in a century or little more, be nearly as crowded a population in the United States as in Great Britain or France; and if the present constitution, [of Virginia,] with all its flaws, has lasted more than half a century, it is not an unreasonable hope that an amended one will last more than a century.

If these observations be just, every mind will be able to develop and apply them.

No. 5.

Copy Of A Paper Communicated To James Madison By Col. Hamilton, About The Close Of The Convention In Philadelphia, 1787, *Which, He Said, Delineated The Constitution Which He Would Have Wished To Be Proposed By The Convention. He Had Stated The Principles Of It In The Course Of The Deliberations.*

Note.—The caption, as well as the copy of the following paper, is in the hand-writing of Mr. Madison, and the whole manuscript, and the paper on which it is written, corresponds with the debates in the Convention with which it was preserved. The document was placed in Mr. Madison's hands for preservation by Col. Hamilton, who regarded it as a permanent evidence of his opinion on the subject. But as he did not express his intention, at the time, that the original should be kept, Mr. Madison returned it, informing him that he had retained a copy. It appears, however, from a

communication of the Rev. Dr. Mason to Dr. Eustis, (see letter of Dr. Eustis to J. Madison, 28th April, 1819,) that the original remained among the papers left by Col. Hamilton.

In a letter to Mr. Pickering, dated Sept. 16, 1803, (see Pitkin's History, Vol. 2, p. 259—60) Col. Hamilton was under the erroneous impression that this paper limited the duration of the presidential term to three years. This instance of the fallibility of Col. Hamilton's memory, as well as his erroneous distribution of the numbers of the "Federalists," among the different writers for that work, it has been the lot of Mr. Madison to rectify; and it became incumbent, in the present instance, from the contents of the plan having been seen by others, (previously as well as subsequently to the publication of Col. Hamilton's letter,) that it, also, should be published.

The people of the United States of America do ordain and establish this Constitution for the government of themselves and their posterity:—

Article I.—Sec. 1. The legislative power shall be vested in two distinct bodies of men, one to be called the Assembly, the other the Senate, subject to the negative hereinafter mentioned.

Sec. 2. The executive power, with the qualifications hereinafter specified, shall be vested in a President of the United States.

Sec. 3. The supreme judicial authority, except in the cases otherwise provided for in this Constitution, shall be vested in a court, to be called the *Supreme Court,* to consist of not less than six nor more than twelve judges.

Art. II.—Sec. 1. The Assembly shall consist of persons to be called representatives, who shall be chosen, except in the first instance, by the free male citizens and inhabitants of the several states comprehended in the Union, all of whom, of the age of twenty-one years and upwards, shall be entitled to an equal vote.

Sec. 2. But the first Assembly shall be chosen in the manner prescribed in the last Article, and shall consist of one hundred members; of whom New Hampshire shall have five; Massachusetts, thirteen; Rhode Island, two; Connecticut, seven; New York, nine; New Jersey, six; Pennsylvania, twelve; Delaware, two; Maryland, eight; Virginia, sixteen; North Carolina, eight; South Carolina, eight; Georgia, four.

Sec. 3. The legislature shall provide for the future elections of representatives, apportioning them in each state, from time to time, as nearly as may be to the number of persons described in the fourth section of the seventh article, so as that the whole number of representatives shall never be less than one hundred, nor more than—hundred. There shall be a census taken for this purpose within three years after the first meeting of the legislature, and within every successive period of ten years. The term for which representatives shall be elected shall be determined by the legislature, but shall not exceed three years. There shall be a general election at least once in three years, and the time of service of all the members in each assembly shall

begin (except in filling vacancies) on the same day, and shall always end on the same day.

Sec. 4. Forty members shall make a House sufficient to proceed to business, but their number may be increased by the legislature, yet so as never to exceed a majority of the whole number of representatives.

Sec. 5. The Assembly shall choose its president the other officers; shall judge of the qualifications and elections of its own members; punish them for improper conduct in their capacity of representatives, not extending to life or limb; and shall exclusively possess the power of impeachment, except in the case of the President of the United States; but no impeachment of a member of the Senate shall be by less than two thirds of the representatives present.

Sec. 6. Representatives may vote by proxy; but no representative present shall be proxy for more than one who is absent.*

Sec. 7. Bills for raising revenue, and bills for appropriating moneys for the support of fleets and armies, and for paying the salaries of the officers of government, shall originate in the Assembly; but may be altered and amended by the Senate.

Sec. 8. The acceptance of an office under the United States by a representative shall vacate his seat in the Assembly.

Art. III.—Sec. 1. The Senate shall consist of persons to be chosen, except in the first instance, by electors elected for that purpose by the citizens and inhabitants of the several states comprehended in the Union, who shall have, in their own right, or in the right of their wives, an estate in land, for not less than life, or a term of years, whereof, at the time of giving their votes, there shall be at least fourteen years unexpired.

Sec. 2. But the first Senate shall be chosen in the manner prescribed in the last article; and shall consist of forty members, to be called senators; of whom New Hampshire shall have—; Massachusetts,—; Rhode Island,—; Connecticut,—; New York,—; New Jersey,—; Pennsylvania,—; Delaware,—; Maryland,—; Virginia,—; North Carolina,—South Carolina,—; Georgia,—.

Sec. 3. The legislature shall provide for the future elections of senators, for which purpose the states, respectively, which have more than one senator, shall be divided into convenient districts, to which the senators shall be apportioned. A state having but one senator, shall be itself a district. On the death, resignation, or removal from officer of a senator, his place shall be supplied by a new election in the district from which he came. Upon each election there shall be not less than six, nor more than twelve, electors chosen in a district.

Sec. 4. The number of senators shall never be less than forty, nor shall any state, if the same shall not hereafter be divided, ever have less than the number allotted to it in the second section of this article; but the legislature may increase the whole number of senators, in the same proportion to the whole number of representatives, as forty is to

one hundred; and such increase beyond the present number shall be apportioned to the respective states in a ratio to the respective numbers of their representatives.

Sec. 5. If states shall be divided, or if a new arrangement of the boundaries of two or more states shall take place, the legislature shall apportion the number of senators (in elections succeeding such division or new arrangement) to which the constituent parts were entitled according to the change of situation, having regard to the number of persons described in the fourth section of the seventh article.

Sec. 6. The senators shall hold their places during good behavior, removable only by conviction, on impeachment, for some crime or misdemeanor. They shall continue to exercise their offices, when impeached, until a conviction shall take place. Sixteen senators attending in person shall be sufficient to make a House to transact business; but the legislature may increase this number, yet so as never to exceed a majority of the whole number of senators. The senators may vote by proxy, but no senator who is present shall be proxy for more than two who are absent.

Sec. 7. The Senate shall choose its president and other officers; shall judge of the qualifications and elections of its members; and shall punish them for improper conduct in their capacity of senators; but such punishment shall not extend to life or limb, nor to expulsion. In the absence of their president they may choose a temporary president. The president shall only have a casting vote when the House is equally divided.

Sec. 8. The Senate shall exclusively possess the power of declaring war. No treaty shall be made without their advice and consent; which shall also be necessary to the appointment of all officers except such for which a different provision is made in this Constitution.

Art. IV.—Sec. 1. The President of the United States of America (except in the first instance) shall be elected in the manner following: The judges of the Supreme Court shall, within sixty days after a vacancy shall happen, cause public notice to be given, in each state, of such vacancy; appointing therein three several days for the several purposes following—to wit, a day for commencing the election of electors for the purposes hereinafter specified, to be called the first electors, which day shall not be less than forty, nor more than sixty days, after the day of the publication of the notice in each state; another day for the meeting of the electors, not less [than] forty, nor more than ninety, days from the day for commencing their election; another day for the meeting of electors to be chosen by the first electors, for the purpose hereinafter specified, and to be called the second electors, which day shall be not less than forty, nor more than sixty, days after the day for the meeting of the first electors.

Sec. 2. After notice of a vacancy shall have been given, there shall be chosen in each state a number of persons, as the first electors in the preceding section mentioned, equal to the whole number of the representatives and senators of such state in the legislature of the United States; which electors shall be chosen by the citizens of such state having an estate of inheritance, or for three lives, in land, or a clear personal estate of the value of one thousand Spanish milled dollars of the present standard.

Sec. 3. These first electors shall meet, in their respective states, at the time appointed, at one place, and shall proceed to vote by ballot for a President, who shall not be one of their own number, unless the legislature upon experiment should hereafter direct otherwise. They shall cause two lists to be made of the name or names of the person or persons voted for, which they, or the major part of them, shall sign and certify. They shall then proceed each to nominate, openly, in the presence of the others, two persons as for second electors; and out of the persons who shall have the four highest numbers of nominations, they shall afterwards by ballot, by plurality of votes, choose two who shall be the second electors, to each of whom shall be delivered one of the lists before mentioned. These second electors shall not be any of the persons voted for as President. A copy of the same list, signed and certified in like manner, shall be transmitted by the first electors to the seat of the government of the United States, under a sealed cover directed to the president of the Assembly; which, after the meeting of the second electors, shall be opened for the inspection of the two Houses of the legislature.

Sec. 4. The second electors shall meet precisely on the day appointed, and not on another day, at one place. The chief justice of the Supreme Court, or, if there be no chief justice, the judge senior in office in such court, or, if there be no one judge senior in office, some other judge of that court, by the choice of the rest of the judges, or of a majority of them, shall attend at the same place, and shall preside at the meeting, but shall have no vote. Two thirds of the whole number of the electors shall constitute a sufficient meeting for the execution of their trust. At this meeting the lists delivered to the respective electors shall be produced and inspected; and if there be any person who has a majority of the whole number of votes given by the first electors, he shall be the President of the United States; but if there be no such person, the second electors so met shall proceed to vote by ballot, for one of the persons named in the lists, who shall have the three highest numbers of the votes of the first electors; and if upon the first or any succeeding ballot, on the day of their meeting, either of those persons shall have a number of votes equal to a majority of the whole number of second electors chosen, he shall be the President. But if no such choice be made on the day appointed for the meeting, either by reason of the non-attendance of the second electors, or their not agreeing, or any other matter, the person having the greatest number of votes of the first electors shall be the President.

Sec. 5. If it should happen that the chief justice or some other judge of the Supreme Court should not attend in due time, the second electors shall proceed to the execution of their trust without him.

Sec. 6. If the judges should neglect to cause the notice required by the first section of this article to be given within the time therein limited, they may nevertheless cause it to be afterwards given; but their neglect, if wilful, is hereby declared to be an offence for which they may be impeached, and, if convicted, they shall be punished as in other cases of conviction on impeachment.

Sec. 7. The legislature shall, by permanent laws, provide such further regulations as may be necessary for the more orderly election of the President, not contravening the provisions herein contained.

Sec. 8. The President, before he shall enter upon the execution of his office, shall take an oath, or affirmation, faithfully to execute the same, and to the utmost of his judgment and power to protect the rights of the people, and preserve the Constitution inviolate. This oath, or affirmation, shall be administered by the president of the Senate for the time being, in the presence of both Houses of the legislature.

Sec. 9. The Senate and the Assembly shall always convene in session on the day appointed for the meeting of the second electors, and shall continue sitting till the President take the oath, or affirmation, of office. He shall hold his place during good be havior,* removable only by conviction upon impeachment for some crime or misdemeanor.

Sec. 10. The President, at the beginning of every meeting of the legislature, as soon as they shall be ready to proceed to business, shall convene them together at the place where the Senate shall sit, and shall communicate to them all such matters as may be necessary for their information, or as may require their consideration. He may by message, during the session, communicate all other matters which may appear to him proper. He may, whenever, in his opinion, the public business shall require it, convene the Senate and Assembly, or either of them, and may prorogue them for a time not exceeding forty days at one prorogation; and if they should disagree about their adjournment, he may adjourn them to such time as he shall think proper. He shall have a right to negative all bills, resolutions, or acts, of the two Houses of the legislature about to be passed into laws. He shall take care that the laws be faithfully executed. He shall be the commander-in-chief of the army and navy of the United States, and of the militia within the several states, and shall have the direction of war when commenced; but he shall not take the actual command, in the field, of an army, without the consent of the Senate and Assembly. All treaties, conventions, and agreements with foreign nations, shall be made by him, by and with the advice and consent of the Senate. He shall have the appointment of the principal or chief officers of each of the departments of war, naval affairs, finance, and foreign affairs; and shall have the nomination, and by and with the consent of the Senate, the appointment of all other officers to be appointed under the authority of the United States, except such for whom different provision is made by this Constitution; and provided that this shall not be construed to prevent the legislature from appointing, by name in their laws, persons to special and particular trusts created in such laws; nor shall be construed to prevent principals in offices merely ministerial from constituting deputies. In the recess of the Senate he may fill vacancies in offices, by appointments to continue in force until the end of the next session of the Senate. And he shall commission all officers. He shall have power to pardon all offences, except treason, for which he may grant reprieves, until the opinion of the Senate and Assembly can be had; and, with their concurrence, may pardon the same.

Sec. 11. He shall receive a fixed compensation for his services, to be paid to him at stated times, and not to be increased nor diminished during his continuance in office.

Sec. 12. If he depart out of the United States without the consent of the Senate and Assembly, he shall thereby abdicate his office.

Sec. 13. He may be impeached for any crime or misdemeanor by the two Houses of the legislature, two thirds of each House concurring; and, if convicted, shall be removed from office. He may be afterwards tried and punished in the ordinary course of law. His impeachment shall operate as a suspension from office until the determination thereof.

Sec. 14. The president of the Senate shall be Vice-President of the United States. On the death, resignation, or impeachment, removal from office, or absence from the United States, of the President thereof, the Vice-President shall exercise all the powers by this Constitution vested in the President, until another shall be appointed, or until he shall return within the United States, if his absence was with the consent of the Senate and Assembly.

Art. V.—Sec. 1. There shall be a chief justice of the Supreme Court, who, together with the other judges thereof, shall hold the office during good behavior, removable only by conviction on impeachment for some crime or misdemeanor. Each judge shall have a competent salary, to be paid to him at stated times, and not to be diminished during his continuance in office.

The Supreme Court shall have original jurisdiction in all causes in which the United States shall be a party; in all controversies between the United States and a particular state, or between two or more states, except such as relate to a claim of territory between the United States and one or more states, which shall be determined in the mode prescribed in the sixth article, in all cases affecting foreign ministers, consuls, and agents; and an appellate jurisdiction, both as to law and fact, in all cases which shall concern the citizens of foreign nations; in all questions between the citizens of different states; and in all others in which the fundamental rights of this Constitution are involved, subject to such exceptions as are herein contained, and to such regulations as the legislature shall provide.

The judges of all courts which may be constituted by the legislature shall also hold their places during good behavior, removable only by conviction, on impeachment, for some crime or misdemeanor; and shall have competent salaries, to be paid at stated times, and not to be diminished during their continuance in office; but nothing herein contained shall be construed to prevent the legislature from abolishing such courts themselves.

All crimes, except upon impeachment, shall be tried by a jury of twelve men; and if they shall have been committed within any state, shall be tried within such state; and all civil causes arising under this Constitution, of the like kind with those which have been heretofore triable by jury in the respective states, shall in like manner be tried by jury; unless in special cases the legislature shall think proper to make different provision; to which provision the concurrence of two thirds of both Houses shall be necessary.

Sec. 2. Impeachments of the President and Vice-President of the United States, members of the Senate, the governors and presidents of the several states, the principal or chief officers of the departments enumerated in the tenth section of the

fourth article, ambassadors, and other like public ministers, the judges of the Supreme Court, generals, and admirals of the navy, shall be tried by a court to consist of the judges of the Supreme Court, and the chief justice, or first or senior judge of the superior court of law in each state, of whom twelve shall constitute a court. A majority of the judges present may convict. All other persons shall be tried, on impeachment, by a court to consist of the judges of the Supreme Court and six senators drawn by lot; a majority of whom may convict.

Impeachments shall clearly specify the particular offence for which the party accused is to be tried, and judgment on conviction, upon the trial thereof, shall be, either removal from office singly, or removal from office and disqualification for holding any future office, or place of trust; but no judgment on impeachment shall prevent prosecution and punishment in the ordinary course of law; provided, that no judge concerned in such conviction shall sit as judge on the second trial. The legislature may remove the disabilities incurred by conviction on impeachment.

Art. VI.—Controversies about the right of territory between the United States and particular states shall be determined by a court to be constituted in manner following: The state or states claiming in opposition to the United States, as parties, shall nominate a number of persons, equal to double the number of the judges of the Supreme Court for the time being, of whom none shall be citizens by birth of the states which are parties, nor inhabitants thereof when nominated, and of whom not more than two shall have their actual residence in one state. Out of the persons so nominated, the Senate shall elect one half, who, together with the judges of the Supreme Court, shall form the court. Two thirds of the whole number may hear and determine the controversy, by plurality of voices. The states concerned may, at their option, claim a decision by the Supreme Court only. All the members of the court hereby instituted shall, prior to the hearing of the cause, take an oath, impartially, and according to the best of their judgments and consciences, to hear and determine the controversy.

Art. VII.—Sec. 1. The legislature of the United States shall have power to pass all laws which they shall judge necessary to the common defence and general welfare of the Union. But no bill, resolution, or act, of the Senate and Assembly shall have the force of a law until it shall have received the assent of the President, or of the Vice-President when exercising the powers of the President; and if such assent shall not have been given within ten days after such bill, resolution, or other act, shall have been presented to him for that purpose, the same shall not be a law. No bill, resolution, or other act, not assented to, shall be revived in the same session of the legislature. The mode of signifying such assent shall be by signing the bill, act, or resolution, and returning it, so signed, to either House of the legislature.

Sec. 2. The enacting style of all laws shall be, “Be it enacted by the people of the United States of America.”

Sec. 3. No bill of attainder shall be passed, nor any *ex post facto* law; nor shall any title of nobility be granted by the United States, or by either of them; nor shall any person holding an office or place of trust under the United States, without the

permission of the legislature, accept any present, emolument, office, or title, from a foreign prince or state. Nor shall any religious sect, or denomination, or religious test for any office or place, be ever established by law.

Sec. 4. Taxes on lands, houses, and other real estate, and capitation taxes, shall be proportioned, in each state, by the whole number of free persons, except Indians not taxed, and by three fifths of all other persons.

Sec. 5. The two Houses of the legislature may, by joint ballot, appoint a treasurer of the United States. Neither House, in the session of both Houses, without the consent of the other, shall adjourn for more than three days at a time. The senators and representatives, in attending, going to, and coming from, the session of their respective Houses, shall be privileged from arrest, except for crimes, and breaches of the peace. The place of meeting shall always be at the seat of government, which shall be fixed by law.

Sec. 6. The laws of the United States, and the treaties which have been made under the Articles of the Confederation, and which shall be made under this Constitution, shall be the supreme law of the land, and shall be so construed by the courts of the several states.

Sec. 7. The legislature shall convene at least once in each year; which, unless otherwise provided for by law, shall be on the first Monday in December.

Sec. 8. The members of the two Houses of the legislature shall receive a reasonable compensation for their services, to be paid out of the treasury of the United States, and ascertained by law. The law for making such provision shall be passed with the concurrence of the first assembly, and shall extend to succeeding assemblies; and no succeeding assembly shall concur in an alteration of such provision so as to increase its own compensation; but there shall be always a law in existence for making such provision.

Art. VIII.—Sec. 1. The governor or president of each state shall be appointed under the authority of the United States, and shall have a right to negative all laws about to be passed in the state of which he shall be governor or president, subject to such qualifications and regulations as the legislature of the United States shall prescribe. He shall in other respects have the same powers only which the constitution of the state does, or shall, allow to its governor or president, except as to the appointment of officers of the militia.

Sec. 2. Each governor or president of a state shall hold his office until a successor be actually appointed, unless he die or resign, or be removed from office by conviction on impeachment. There shall be no appointment of such governor or president in the recess of the Senate.

The governors and presidents of the several states, at the time of the ratification of this Constitution, shall continue in office in the same manner and with the same powers as if they had been appointed pursuant to the first section of this article.

The officers of the militia in the several states may be appointed under the authority of the United States; the legislature whereof may authorize the governors or presidents of states to make such appointments, with such restrictions as they shall think proper.

Art. IX.—Sec. 1. No person shall be eligible to the office of President of the United States, unless he be now a citizen of one of the states, or hereafter be born a citizen of the United States.

Sec. 2. No person shall be eligible as a senator or representative unless, at the time of his election, he be a citizen and inhabitant of the state in which he is chosen; provided, that he shall not be deemed to be disqualified by a temporary absence from the state.

Sec. 3. No person entitled by this Constitution to elect, or to be elected, President of the United States, or a senator or representative in the legislature thereof, shall be disqualified but by the conviction of some offence for which the law shall have previously ordained the punishment of disqualification. But the legislature may by law provide that persons holding offices under the United States, or either of them, shall not be eligible to a place in the Assembly or Senate, and shall be during their continuance in office suspended from sitting in the Senate.

Sec. 4. No person having an office or place of trust under the United States, shall without permission of the legislature, accept any present, emolument, office, or title from any foreign prince or state.

Sec. 5. The citizens of each state shall be entitled to the rights, privileges, and immunities of citizens in every other state; and full faith and credit shall be given, in each state, to the public acts, records, and judicial proceedings of another.

Sec. 6. Fugitives from justice from one state, who shall be found in another, shall be delivered up, on the application of the state from which they fled.

Sec. 7. No new state shall be erected within the limits of another, or by the junction of two or more states, without the concurrent consent of the legislatures of the United States, and of the states concerned. The legislature of the United States may admit new states into the Union.

Sec. 8. The United States are hereby declared to be bound to guaranty to each state a republican form of government; and to protect each state as well against domestic violence as foreign invasion.

Sec. 9. All treaties, contracts, and engagements of the United States of America, under the Articles of Confederation and Perpetual Union, shall have equal validity under this Constitution.

Sec. 10. No state shall enter into a treaty, alliance, or contract with another, or with a foreign power, without the consent of the United States.

Sec. 11. The members of the legislature of the United States and of each state, and all officers, executive and judicial, of the one and of the other, shall take an oath, or affirmation, to support the Constitution of the United States.

Sec. 12. This Constitution may receive such alterations and amendments as may be proposed by the legislature of the United States, with the concurrence of two thirds of the members of both Houses, and ratified by the legislatures of, or by conventions of deputies chosen by the people in two thirds of the states composing the Union.

Art. X.—This Constitution shall be submitted to the consideration of conventions in the several states, the members whereof shall be chosen by the people of such states, respectively, under the direction of their respective legislatures. Each convention which shall ratify the same, shall appoint the first representatives and senators from such state according to the rule prescribed in the—section of the—article. The representatives so appointed shall continue in office for one year only. Each convention so ratifying shall give notice thereof to the Congress of the United States, transmitting at the same time a list of the representatives and senators chosen. When the Constitution shall have been duly ratified, Congress shall give notice of a day and place for the meeting of the senators and representatives from the several states; and when these, or a majority of them, shall have assembled according to such notice, they shall by joint ballot, by plurality of votes, elect a President of the United States; and the Constitution thus organized shall be carried into effect.

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REFERENCES.

[*]The proceedings of grand committees, though often rendered particularly important by the freedom and fulness of discussion, make no part of the Journal, except in the reported result.

[*]This proposed to require the states to value the land, and return the valuations to Congress.

[*]Mr. Hamilton was most strenuous on this point. Mr. Wilson also favored the idea; Mr. Madison also, but restrained, in some measure, by the declared sense of Virginia: Mr. Gorham, and several others, also, but wishing previous experience.

[*]Drawn by Colonel Hamilton.

[*]The papers just read, from Virginia, complained of her inability, without mentioning an inequality. This was deemed a strange assertion.

[*]This remark was imprudent, and injurious to the cause which it was meant to serve. This influence was the very source of jealousy which rendered the states averse to a revenue under collection, as well as appropriation of Congress. All the members of Congress who concurred in any degree, with the states in this jealousy, smiled at the disclosure. Mr. Bland, and still more Mr. Lee, who were of this number, took notice, in private conversation, that Mr. Hamilton had let out the secret.

[*]He was apprehensive that a tax on land according to its quantity, not value, as had been recommended by Mr. Morris, was in contemplation.

[*]A poll-tax to be qualified by rating blacks somewhat lower than whites; a land-tax, by considering the value of land in each state to be in an inverse proportion of its quantity to the number of people; and apportioning on the aggregate quantity in each state accordingly, leaving the state at liberty to make a distributive apportionment on its several districts on a like or any other equalizing principle.

[†]Mr. Hamilton told Mr. Madison, privately, that M. de Marbois, speaking of the treaty, asked him emphatically whether there were not some articles which required animadversion. Mr. H. did not, at the time, know what was alluded to. He now supposed the allusion to be to some article supposed to be inconsistent with the treaty with France; particularly the article referring to the select articles of the latter, instead of the whole; which article, Mr. Adams informed Congress, had been satisfactory to the Duke de la Vauguyon.

[*]He supposed that sum due, by the United States, to citizens of Pennsylvania, for loans.

[*]Mr. DYER ludicrously proposed, as a proviso to the scheme of referring the valuation to the states, “that each of the states should cheat equally.”

[*]This was an oblique allusion to Mr. Lee, whose enmity to the French was suspected by him &c.

[*]Virginia—Mr. Jones, Mr. Madison, Mr. Bland, no; Mr. Lee, Mr. Mercer, ay.

[*]The result proved that mildness was the soundest policy—the legislature, in consequence, having declared the law under which the goods were seized to be void, as contradictory to the Federal Constitution. Some of the members, in conversation, said that, if Congress had declared the law to be void, the displeasure of the legislature might possibly have produced a different issue.

[*]Among other reasons, privately weighing with him, he had observed that many of the most respectable people of America supposed the preservation of the Confederacy essential to secure the blessings of the revolution, and permanent funds for discharging debts essential to the preservation of union. A disappointment to this class would certainly abate their ardor, and, in a critical emergency, might incline them to prefer some political connection with Great Britain, as a necessary cure for our internal instability. Again, without permanent and general funds, he did not conceive that the danger of convulsions from the army could be effectually obviated. Lastly, he did not think that any thing would be so likely to prevent disputes among the states, with the calamities consequent on them. The states were jealous of each other, each supposing itself to be, on the whole, a creditor to the others. The Eastern States, in particular, thought themselves so with regard to the Southern States. (See Mr. Gorham, in the debates of this day.) If general funds were not introduced, it was not likely the balances would ever be discharged, even if they should be liquidated. The consequence would be a rupture of the confederacy. The Eastern States would, at sea, be powerful and rapacious; the Southern, opulent and weak. This would be a temptation; the demands on the Southern States would be an occasion; reprisals would be instituted; foreign and would be called in by, first, the weaker, then the stronger side; and, finally, both be made subservient to the wars and politics of Europe.

[*]He had in view the following objects: First, the abatements proposed by Mr. HAMILTON Second, a transfer, into the common mass of expenses, of all the separate expenses incuried by the states in their particular defence. Third, an acquisition to the United States of the vacant territory. The plan, thus extended, would affect the interest of the states as follows, viz.: New Hampshire would approve the establishment of a general revenue, as tending to support the Confederacy, to remove causes of future contention, and to secure her trade against separate taxation from the states through which it is carried on. She would also approve of a share in the vacant territory. Having never been much invaded by the enemy, her interest would be opposed to the abatements and throwing all the separate expenditures into the common mass. The discharge of the public debts from the common treasury would not be required by her interest, the loans of her citizens being under her proportion. See the statement of them.

Massachusetts is deeply interested in the discharge of the public debts. The expedition to Penobscot alone interests her, she supposes, in making a common mass of expenses; her interest is opposed to abatements; the other would not peculiarly affect her.

Rhode Island, as a weak state, is interested in a general revenue, as tending to support the Confederacy, and prevent future contentions; but against it, as tending to deprive her of the advantage, afforded by her situation, of taxing the commerce of the contiguous states. As tending to discharge, with certainty, the public debts, her proportion of loans interest her rather against it. Having been the seat of war for a considerable time, she might not, perhaps, be opposed to abatements on that account. The exertions for her defence having been *previously* sanctioned, it is presumed in most instances she would be opposed to making a common mass of expenses. In the acquisition of vacant territory, she is deeply and anxiously interested.

Connecticut is interested in a general revenue, as tending to protect her commerce from separate taxation from New York and Rhode Island, and somewhat as providing for loan-office creditors. Her interest is opposed to abatements, and to a common mass of expenses. Since the condemnation of her title to her western claims, she may, perhaps, consider herself as interested in the acquisition of the vacant lands. In other respects, she would not be peculiarly affected.

New York is exceedingly attached to a general revenue, as tending to support the Confederacy, and prevent future contests among the states. Although her citizens are not lenders beyond the proportion of the state, yet individuals of great weight are deeply interested in provision for public debts. In abatements New York is also deeply interested; in making a common mass, also, interested; and since the acceptance of her cession, interested in those of other states.

New Jersey is interested, as a smaller state, in a general revenue, as tending to support the Confederacy, and to prevent future contests, and to guard her commerce against the separate taxation of Pennsylvania and New York. The loans of her citizens are not materially disproportionate. Although this state has been much the theatre of the war, she would not perhaps, be interested in abatements. Having had a previous sanction for particular expenditures, her interest would be opposed to a common mass. In the vacant territory, she is deeply and anxiously interested.

Pennsylvania is deeply interested in a general revenue, the loans of her citizens amounting to more than one third of that branch of the public debt. As far as a general impost on trade would restrain her from taxing the trade of New Jersey, it would be against her interest. She is interested against abatements, and against a common mass, her expenditures having been always previously sanctioned. In the vacant territory she is also interested.

Delaware is interested, by her weakness, in a general revenue, as tending to support the Confederacy and future tranquillity of the states; but, materially, by the credits of her citizens. Her interest is opposed to abatements, and to a common mass. To the vacant territory she is firmly attached.

Maryland having never been the seat of war, and her citizens being creditors below her proportion, her interest lies against a general revenue, otherwise than as she is interested, in common with others, in the support of the Confederacy and tranquillity of the United States; but against abatements, and against a common mass. The vacant lands are a favorite object to her.

Virginia, in common with the Southern States, as likely to enjoy an opulent and defenceless trade, is interested in a general revenue, as tending to secure to her the protection of the Confederacy against the maritime superiority of the Eastern States; but against it, as tending to discharge loan-office debts, and to deprive her of the occasion of taxing North Carolina. She is deeply interested in abatements, and essentially so in a common mass; not only her eccentric expenditures being enormous, but many of her necessary ones having received no previous or subsequent sanction. Her cession of territory would be considered as a sacrifice.

North Carolina is interested in a general revenue, as tending to insure the protection of the Confederacy against the maritime superiority of the Eastern States, and to guard her trade from separate taxation by Virginia and South Carolina. The loans of her citizens are inconsiderable. In abatements, and in a common mass, she is essentially interested. In the article of territory, she would have to make a sacrifice.

South Carolina is interested, as a weak and exposed state, in a general revenue, as tending to secure to her the protection of the Confederacy against enemies of *every* kind, and as providing for the public creditors, her citizens being not only loan-office creditors beyond her proportion, but having immense unliquidated demands against the United States. As restraining her power over the commerce of North Carolina, a general revenue is opposed to her interests. She is also materially interested in abatements, and in a common mass. In the article of territory, her sacrifice would be inconsiderable.

Georgia, as a feeble and opulent frontier state, is peculiarly interested in a general revenue, as tending to support the Confederacy. She is also interested in it somewhat by the creditors of her citizens. In abatements she is also interested, and in a common mass essentially so. In the article of territory, she would make an important sacrifice.

To make this plan still more complete, for the purpose of removing all present complaints, and all occasions of future contests, it may be proper to include in it a recommendation to the states to rescind the rule of apportioning pecuniary burdens according to the value of the land, and to substitute that of numbers, reckoning two slaves as equal to one freeman.

STATE OF THE LOAN-OFFICE DEBT	*Specie Dollars.*
New Hampshire	336,579 58 7
Massachusetts	2,361,866 66 5
Rhode Island	699,725 37 4
Connecticut	1,270,115 30 0
New York	919,729 57 5
New Jersey	658,883 69 0
Pennsylvania	3,948,904 14 4
Delaware	65,820 13 7
Maryland	410,218 30 0
Virginia	313,741 82 5
North Carolina	113,341 11 1
South Carolina	90,442 10 1
Georgia	

This, it is to be observed, is only the list of loan-office debts. The unliquidated debts, and liquidated debts of other denominations due to individuals, will vary inexpressibly the relative quantum of credits of the several states. It is to be further observed, that this only shows the original credits, transfers having been constant; heretofore they have flowed into Pennsylvania Other states may hereafter have an influx.

[*]In the draft, as laid before the committee by— —, in the tenth paragraph, the word “reasonable” before the word “expenses” was not inserted: but to the paragraph was added, “provided that this allowance shall not be extended to any expenses which shall be declared, by nine votes in Congress, to be manifestly unreasonable.” In other respects the original draft was unaltered, except that a former resolution of Congress, in the words of the ninth paragraph was incorporated by the secretary before it went to the press.

[*]The other exception, as to the cards, and the wire for making them, &c., was struck out unanimously, on the motion of Mr. Clark; being considered as no longer necessary, and contrary to the general policy of encouraging necessary manufactures among ourselves.

[†]This was meant to guard against a construction that they were to take effect when peace should be agreed on by those powers, and the latter be *ready* to sign, although the former should be restrained until the other parties should be ready for signing.

[*]The committee who reported the instruction were Mr. Carroll, Mr. Jones, Mr. Witherspoon, Mr. Sullivan, and Mr. Matthews. Mr. Witherspoon was particularly prominent throughout.

[†]Messrs. Bland, Lee, and Rutledge.

[‡]Mr. Rutledge, who framed, in the committee, the first draft of the declaration made in September last, and the instruction about the same time. This was considerably altered, but not in that respect.

[*]Alluding, probably, to the intercepted letter from M. de Marbois.

[†]This construction of the instructions was palpably wrong.

[*]Another cause mentined was the large balance of specie in favor of the northern powers during the war.

[*]This day not noted in the Journal, as in some other instances

[*]His dissent was founded on his construction of the treaty, as stated in a paper handed to Mr. Madison at the time. The following is a copy:—

"The words *such treaty* are relative.

"The antecedents must either be the 'treaty proposed to be concluded between the crown of Great Britain and the United States' or 'the terms of peace to be agreed upon between Great Britain and France.'

"Let us see how it will read if we understand it in the first sense. The articles are 'to be inserted, and to constitute the *treaty of peace* proposed to be concluded between the crown of Great Britain and the United States; but *which treaty* is not to be concluded (until terms of peace shall be agreed upon between Great Britain and France, and) until his Britannic Majesty shall be ready to conclude *such treaty* accordingly.'

"The words included in the parenthesis may in this case be omitted, and then the sentence will have no meaning.

"But if the words *such treaty* are construed as relative to the words *terms of peace,* the meaning will be plain; and if *terms of peace* have been agreed upon between France and Britain, then the *contingency* has happened on which the *proposed treaty* between America and Britain was to take effect."[‡]

[*]From 1783, till this period. Mr. Madison was not a member.

[*]From this it may be inferred that he does not regard France as favorable to the claims of Spain touching the Mississippi.

[*]Drawn by J. Madison, passed the House of Delegates November 9th, the Senate November 23d—and deputies appointed December 4th, 1786.

[*]The letters of Wm. Grayson, March 22d, 1786, and of James Monroe, April 28th, 1786, (both then members,) to Mr. Madison, state that a proposition for such a convention had been made.

[*]A letter of Mr. Grayson to Mr. Madison, March 22d, 1786, relating the conduct of New Jersey, states this fact.

[†]See the Journal of her legislature.

[*]The nomination came with particular grace from Pennsylvania, as Dr. Franklin alone could have been thought of as a competitor. The doctor was himself to have made the nomination of General Washington, but the state of the weather and of his health confined him to his house.

[*]Previous to the arrival of a majority of the states, the rule by which they ought to vote in the Convention had been made a subject of conversation among the members present. It was pressed by Gouverneur Morris, and favored by Robert Morris and others from Pennsylvania, that the large states should unite in firmly refusing to the small states an equal vote, as unreasonable, and as enabling the small states to negative every good system of government, which must, in the nature of things, be founded on a violation of that equality. The members from Virginia, conceiving that such an attempt might beget fatal altercations between the large and small states, and that it would be easier to prevail on the latter, in the course of the deliberations, to give up their equality for the sake of an effective government, than, on taking the field of discussion, to disarm themselves of the right, and thereby throw themselves on the mercy of the larger states, discountenanced and stifled the project.

[†]For the letter, see Appendix, No. 1.

[*]This abstract of the speech was furnished to James Madison by Mr. Randolph, and is in his hand-writing.

[*]See Appendix, No. 2, for notes on Mr. Pinckney’s plan.

[*]This question is omitted in the printed Journal, and the votes applied to the succeeding one, instead of the votes as here stated.

[*]This hint was probably meant *in terrorem* to the smaller states of New Jersey and Delaware. Nothing was said in reply to it.

[*]It will throw light on this discussion to remark, that an election by the state legislatures involved a surrender of the principle insisted on by the large states, and dreaded by the small ones—namely, that of a proportional representation in the Senate. Such a rule would make the body too numerous, as the smallest state must elect one member at least.

[*]It is probable the votes here turned chiefly on the idea that if the salaries were not here provided for, the members would be paid by their respective states.

[*]This plan had been concerted among the deputations, or members thereof, from Connecticut, New York, New Jersey, Delaware, and perhaps Mr. Martin, from Maryland, who made with them a common cause, though on different principles. Connecticut and New York were against a departure from the principle of the

Confederation, wishing rather to add a few new powers to Congress than to substitute a national government. The states of New Jersey and Delaware were opposed to a national government, because its patrons considered a proportional representation of the states as the basis of it. The eagerness displayed by the members opposed to a national government, from these different motives, began now to produce serious anxiety for the result of the Convention. Mr. Dickinson said to Mr. Madison, "You see the consequence of pushing things too far. Some of the members from the small states wish for two branches in the general legislature, and are friends to a good national government; but we would sooner submit to foreign power than submit to be deprived, in both branches of the legislature, of an equality of suffrage, and thereby be thrown under the domination of the larger states."

[*]This copy of Mr. Patterson's propositions varies in a few clauses from that in the printed Journal furnished from the papers of Mr. Brearly, a colleague of Mr. Patterson. A confidence is felt, notwithstanding, in its accuracy. That the copy in the Journal is not entirely correct, is shown by the ensuing speech of Mr. Wilson, (June 16,) in which he refers to the mode of removing the executive "by impeachment and conviction" as a feature in the Virginia plan forming one of its contrasts to that of Mr. Patterson, which proposed a removal "on application of a majority of the executives of the states." In the copy printed in the Journal, the two modes are combined in the same clause; whether through inadvertence, or as a contemplated amendment, does not appear.

[*]The speech introducing the plan, as above taken down and written out, was seen by Mr. Hamilton, who approved its correctness, with one or two verbal changes, which were made as he suggested. The explanatory observations which did not immediately follow were to have been furnished by Mr. H., who did not find leisure at the time to write them out, and they were not obtained. Judge Yates, in his notes, appears to have consolidated the explanatory with the introductory observations of Mr. Hamilton (under date of June 19th, a typographical error.) It was in the former, Mr. Madison observed, that Mr. Hamilton, in speaking of popular governments, however modified, made the remark attributed to him by Judge Yates, that they were "*but pork still, with a little change of sauce.*"

[*]It appeared that Massachusetts concurred, not because they thought the state treasury ought to be substituted; but because they thought nothing should be said on the subject, in which case it would silently devolve on the national treasury to support the national legislature.

[*]The residue of this speech was not furnished, like the above, by Mr. Pinckney.

[*]It must be kept in view that the largest states, particularly Pennsylvania and Virginia, always considered the choice of the second branch by the state legislatures as opposed to a proportional representation, to which they were attached as a fundamental principle of just government. The smaller states, who had opposite views, were reinforced by the members from the large states most anxious to secure the importance of the state governments.

[*]*Quære,* whether Connecticut should not be, no, and Delaware, ay. J. M.

[*]From this date he was absent till the 13th of August.

[*]He had just returned from New York, having left the Convention a few days after it commenced business.

[*]This report was founded on a motion in the committee made by Dr. Franklin. It was barely acquiesced in by the members from the states opposed to an equality of votes in the second branch, and was evidently considered by the members on the other side as a gaining of their point. A motion was made by Mr. Sherman, (who acted in the place of Mr. Ellsworth, who was kept away by indisposition,) in the committee, to the following effect, "that each state should have an equal vote in the second branch; provided that no decision therein should prevail unless the majority of states concurring should also comprise a majority of the inhabitants of the United States." This motion was not much deliberated on, or approved, in the committee. A similar proviso had been proposed, in the debates on the Articles of Confederation, in 1777, to the articles giving certain powers to "nine states." See Journals of Congress for 1777, page 462.

[*]He was at that time president of the state of Pennsylvania.

[*]Several votes were given here in the affirmative, or were divided, because another final question was to be taken on the whole report.

[*]They were then to have been a rule of taxation only.

[†]Mr. Carroll said, in explanation of the vote of Maryland, that he wished the *phraseology* to be so altered as to obviate, if possible, the danger which had been expressed of giving umbrage to the Eastern and Middle States.

[*]His object probably was to provide for such cases as an enlargement of Delaware by annexing to it the peninsula on the east side of the Chesapeake.

[*]See the paper, in the Appendix, communicated by Mr. Randolph to J. Madison, July 10, No. 3.

[*]The probable object of this motion was merely to enforce the argument against the reeligibility of the executive magistrate, by holding out a tenure during good behavior, as the alternative for keeping him independent of the legislature.

[†]The view here taken of the subject was meant to aid in parrying the animadversions likely to fall on the motion of Dr. M'Clurg, for whom J. M. had a particular regard. The doctor, though possessing talents of the highest order, was modest, and unaccustomed to exert them in public debate.

[*]This vote is not to be considered as any certain index of opinion, as a number in the affirmative probably had it chiefly in view to alarm those attached to a dependence of the executive on the legislature, and thereby facilitate some final

arrangement of a contrary tendency. The avowed friends of an executive "during good behavior" were not more than three or four, nor is it certain they would have adhered to such a tenure.

An independence of the three great departments of each other, as far as possible, and the responsibility of all to the will of the community, seemed to be generally admitted as the true basis of a well-constructed government.

[†]There was no debate on this motion. The apparent object of many in the affirmative was to secure the reëligibility by shortening the term, and of many in the negative to embarrass the plan of referring the appointment and dependence of the executive to the legislature.

[*]This might possibly be meant as a caricature of the previous motions, in order to defeat the object of them.

[*]The object was to lessen the eagerness on one side for, and the opposition on the other to, the share of representation claimed by the Southern States on account of the negroes.

[*]See Appendix, No. 4, page viii., for notes.

[*]He disapproved, and, till now, voted against the exclusive privilege. He gave up his judgment, he said, because it was not of very material weight with him, and was made an essential point with others, who, if disappointed, might be less cordial in other points of real weight.

[*]The executive consisted at that time of about twenty members

[*]This vote in the affirmative by Virginia was occasioned by the acquiescence of Mr. Madison, who became satisfied that striking out the words would not disable the government from the use of public notes, as far as they could be safe and proper; and would only cut off the pretext for a *paper currency,* and particularly for making the bills *a tender,* either for public or private debts.

[*]Connecticut voted in the negative; but, on the remark, by Mr. King, that "*make*" war might be understood to "conduct" it, which was an executive function, Mr. Ellsworth gave up his objection, and the vote was changed to *ay.*

[*]This had reference to the disorders, particularly, that had occurred in Massachusetts, which had called for the interposition of the federal troops.

[*]The proceedings on this motion, involving the two questions on attainders and *ex post facto* laws, are not so fully stated in the printed Journal.

[*]In the printed Journals, Connecticut, Virginia, and Georgia voted in the affirmative.

[*]The vote on this section, as stated in the printed Journal, is not unanimous: the statement here is probably the right one.

[*]He meant the permission to import slaves. An understanding on the two subjects of *navigation* and *slavery,* had taken place between those parts of the Union, which explains the vote on the motion depending, as well as the language of General Pinckney and others.

[*]In the printed Journal, New Hampshire and South Carolina entered in the negative.

[*]This is an exact copy. The variations in that in the printed Journal are occasioned by its incorporation of subsequent amendments. This remark is applicable to other cases.

[*]This motion is not contained in the printed Journal.

[*]This explains the compromise alluded to by Mr. Gouverneur Morris. Col. Mason, Mr. Gerry, and other members from large states, set great value on this privilege of originating money bills. Of this the members from the small states, with some from the large states, who wished a high-mounted government, endeavoured to avail themselves, by making that privilege the price of arrangements in the Constitution favorable to the small states, and to the elevation of the government.

[*]An ineligibility would have followed (though it would seem from the vote, not in the opinion of all) this prolongation of the term.

[*]This clause was not inserted on this day, but on the 7th of September. See page 521.

[*]In the printed Journal, this amendment is put into the original motion.

[*]In the printed Journal, Mr. Madison is erroneously substituted for Col. Mason.

[*]Not so stated in the printed Journal; but conformable to the result afterwards appearing.

[*]This was a conciliatory vote, the effect of the compromise formerly alluded to See note, p. 514.

[*]This motion and vote are entered on the printed Journal of the ensuing morning.

[*]The printed Journal makes the succeeding proviso as to the fourth and fifth sections of the seventh article, moved by Mr. Rutledge, part of the proposition of Mr. Madison.

[*]These motions are not entered in the printed Journal.

[*]A literal copy of the printed report follows. The copy in the printed Journals contains some immaterial alterations subsequently made in the House. The copy of

the Constitution is omitted, as that instrument, *as signed,* on the 17th September, is inserted at large hereafter.

[*]This motion, and appointment of the committee, do not appear in the printed Journal. No report was made by the committee.

[†]See page 372 of the printed Journal.

[*]"By lot" had been reinstated from the report of the committee of five, made on the 6th of August, as a correction of the printed report by the committee of style, &c. See page, 377.

[*]This motion by Dr. Franklin not stated in the printed Journal, as are some other motions.

[*]This was the only occasion on which the President entered at all into the discussions of the Convention.

He alluded to Mr. Blount for one.

[*]Gen. Pinckney and Mr. Butler disliked the equivocal form of signing, and on that account voted in the negative.

[†]This negative of Maryland was occasioned by the language of the instructions to the deputies of that state, which required them to report to the state the *proceedings* of the Convention.

[*]That "To lay and collect taxes, duties, imposts, and excises," ought not to be a separate clause from "to pay the debts," &c., see, in the printed Journal of the Convention, the report of the committee of eleven, September 4th; also copy of the draft of the Constitution as it stood September 12th, printed by the Convention for the use of the members, now in the department of state; also copy of the Constitution, as agreed to and signed, printed in sheets at the close of the Convention. The proviso, "but all duties, imposts, and excises, shall be uniform," &c., by its immediate reference, suggests the same view of the text.268

[*]The circular letter of Gov. Clinton will be found in Elliot's Debates, vol. 2, page 387. See, also, Washington's Writings, vol. 9, page 419.

[*]The signing was omitted through inadvertence, but the letter was from Gen. Varnum.

[*]This paragraph was in the letter enclosed by Gen. Varnum, but not in the duplicate alluded to by his letter.

[*]Striking discrepancies will be found on a comparison of his plan as furnished to Mr. Adams, and the view given of that which was laid before the Convention, in a pamphlet published by, Francis Childs, at New York, shortly after the close of the Convention. The title of the pamphlet is, "Observations on the plan of government

submitted to the Federal Convention on the twenty-eighth of May, 1789, by Charles Pinckney," &c. A copy is preserved among the "Select Tracts," in the library of the Historical Society of New York. But what conclusively proves that the choice of the House of Representatives by the people could not have been the choice in the lost paper, is a letter from Mr. Pinckney to James Madison, of the 28th of March, 1789, now on his files, in which he emphatically adheres to a choice by the state legislatures. The following is an extract: "Are you not, to use a full expression, abundantly convinced that the theoretical nonsense of an election of the members of Congress by the people, in the first instance, is clearly and practically wrong—that it will in the end be the means of bringing our councils into contempt—and that the legislatures [of the states] are the only proper judges of who ought to be elected?"

[*]Query,—to provide for distant states.

[*]See editorial note at the beginning of this plan.

[Note 1, page 4.]Washington's Writings, vol. 8, p. 541.

Public Journals of Congress, 8th November, 1782, vol. 4, p. 103.

[Note 3, page 8.]See Debates below, p. 14.

[Gentlemen,]—Application having been made to the legislature for instructions on the important subject of dispute subsisting between the states of New York, New Hampshire, and the people on the New Hampshire Grants, styling themselves the state of Vermont, which is under the consideration of Congress, they are of opinion, (as far as they have documents to direct their inquiry,) that as the competency of Congress was deemed full and complete at the passing of the resolutions of the 7th and 20th of August, 1781, (each of those states having made an absolute reference of the dispute to their final arbitrament,) those acts may be supposed to be founded on strict justice and propriety, nine states having agreed to the measure, and that great regard ought to be had to every determination of Congress, where no new light is thrown upon the subject, or weighty matters occur to justify a reversion of such their decision; and more especially, as it appears that the people on the New Hampshire Grants have, by an act of their legislature, on the 22d of February last, in every instance complied with the preliminaries stated as conditional to such guaranty.

"The legislature, taking up this matter upon general principles, are further of opinion, that Congress, considered as the sovereign guardians of the United States, ought at all times to prefer the general safety of the common cause to the particular separate interest of any individual state, and when circumstances may render such a measure expedient, it ought certainly to be adopted.

"The legislature know of no disposition in Congress to attempt to reduce the said people to allegiance by force; but should that be the case, they will not consent to the sending any military force into the said territory to subdue the inhabitants to the obedience and subjection of the state or states that claim their allegiance.

"They disclaim every idea of imbruing their hands in the blood of their fellow-citizens, or entering into a civil war among themselves, at all times; but more especially at so critical a period as the present, conceiving such a step to be highly impolitic and dangerous.

"You are, therefore, instructed to govern yourselves in the discussion of this business by the aforesaid opinions, as far as they may apply thereto."

[Note 5, page 10.]Public Journals of Congress, 3d December, 1782, vol. 4, p. 110.

Secret Journal of Congress, (Foreign Affairs,) 3d December, 1782, vol. 3, p. 255.

Diplomatic Correspondence, (First Series,) 2d December, 1782, vol. 11, p. 282.

Public Journals of Congress, 5th December, 1782, vol. 4, p. 112.

Washington's Writings, vol. 8, p. 382.

See Debates below, p. 12.

[Note 6, page 11.]Public Journals of Congress, 4th December, 1782, vol. 4, p. 111.

Minutes of Assembly of Pennsylvania for 1782, pp. 663, 672, 675, 733: the Memorials appear at large in the Minutes.

[Note 7, page 16.]Public Journals of Congress, 6th December, 1782, vol. 4, p. 114; 12th December, 1782, vol. 4, p. 118; 18th December, 1782, vol. 4, p. 120; 20th December, 1782, vol. 4, p. 123; 31st December, 1782, vol. 4, p. 127; 2d January, 1783, vol. 4, p. 128; 14th January, 1783, vol. 4, p. 142.

Secret Journals of Congress, (Domestic Affairs,) 3d January, 1783, vol. 1, p. 246.

Diplomatic Correspondence, (First Series,) 4th January, 1783, vol. 11, p. 291.

The Providence Gazette, 2d November, 1782; the Boston Gazette, 10th November, 1782.

See Debates below, pp. 20, 80.

[Note 8, page 19.]Diplomatic Correspondence, (First Series,) 12th October, 1782, vol. 4, p. 25; 18th September, 1782, vol. 8, p. 125; 13th October, 1782, vol. 8, p. 128; vol. 8, pp. 163, 208; 4th January, 1783, vol. 8, p. 215; 10th July, 1783, vol. 7, p. 67; 22d July, 1783, vol. 4, p. 138.

Life of John Jay, vol. 1, pp. 145, 490.

North American Review, vol. 30, No. 66, p. 17; vol. 33, No. 73, p. 475.

See Debates below, p. 77.

[Note 9, page 26.]Secret Journals of Congress, (Domestic Affairs,) 17th January, 1783, vol. 1, p. 253.

[Note 10, page 27.]The first of these letters is dated "23d September, 1782;" Diplomatic Correspondence, (First Series,) 23d September, 1782, vol. 6, p. 416; 8th October, 1782, vol. 6, p. 432.

Public Journals of Congress, 23d January, 1783, vol. 4, p. 144.

Secret Journals of Congress, (Foreign Affairs,) 23d January, 1783, vol. 3, p. 289. See Debates below, pp. 27, 38.

[Note 11, page 29.]Public Journals of Congress, 24th January, 1783, vol. 4, p. 151; 20th February, 1783, vol. 4, p. 165.

Public Journals of Congress, 30th January, 1783, vol. 4, p. 153.

Diplomatic Correspondence, (First Series,) 24th January, 1783, vol. 12, p. 325.

[Note 12, page 31.]Public Journals of Congress, 25th January, 1783, vol. 4, p. 152.

[Note 13, page 49.]Public Journals of Congress, 6th February, 1783, vol. 4, p. 157; 12th to 17th February, 1783, vol. 4, p. 160 to 164; 25th February, 1783, vol. 4, p. 166; 10th March, 1783, vol. 4, p. 173. See Debates below, pp. 50, 51.

[Note 14, page 62.]See Debates below, p. 80.

There is, in the Archives of the Department of State, No. 137, a collection of the letters and reports of Mr. Morris, from 1781 to 1784, in four large folio volumes.

[Note 15, page 66.]Diplomatic Correspondence, (First Series,) 4th December, 1782, vol. 4, p. 46; vol. 6, p. 464; 12th December, 1782, vol. 8, p. 214; 14th December, 1782, vol. 10, p. 117; 24th December, 1782, vol. 2, p. 484; 30th December, 1782, vol. 11, p. 146.

Franklin's Works, (Sparks's edition,) vol. 9, pp. 435, 457.

See Debates below, 26th March, 1783, p. 76.

Life of Gouverneur Morris, vol. 1, pp. 244, 248.

[Note 16, page 67.]See Diplomatic Correspondence, (First Series,) 17th March, 1783, vol. 12, p. 339.

[Note 17, page 73.]Public Journals of Congress, 25th January, 1783, vol. 4, p. 152; 25th February, 1783, vol. 4, p. 166; 22d March, 1783, vol. 4, p. 178; 29th April, 1783,

vol. 4, p. 206.

Diplomatic Correspondence, (First Series,) 15th October, 1782, vol. 12, p. 279; 17th October, 1782, vol. 12, p. 283; 21st October, 1782, vol. 12, p. 286; 10th January, 1783, vol. 10, p. 20; 15th May, 1783, vol. 12, p. 362.

Secret Journals of Congress, (Domestic Affairs,) 20th February, 1783, vol. 1, p. 254.

Washington's Writings, 20th October, 1782, vol. 8, p. 353; 14th December, 1782, vol. 8, p. 369; 30th January, 1783, vol. 8, p. 376; 4th March, 1783, vol. 4, p. 388; 12th March, 1783, vol. 8, pp. 392, 393; 18th March, 1783, vol. 8, p. 396; 18th March, 1783, vol. 8, p. 400; 19th March, 1783, vol. 8, p. 403.

Life of General Greene, vol. 2, chap. 19.

Life of Gouverneur Morris, vol. 1, chap. 15, p. 250.

[Note 18, page 74.]Diplomatic Correspondence, (First Series,) 5th February, 1783, vol. 10, p. 28.

Secret Journal of Congress, (Foreign Affairs,) 24th March, 1783, vol. 3, p. 320.

[Note 19, page 77.]See Debates above, p. 19.

Secret Journals of Congress, (Foreign Affairs,) 6th to 15th June, 1781, vol. 2, p. 424 to 426; 24th September to 4th October, 1782, vol. 3, p. 218 to 250; 3d January, 1783, vol. 3, p. 269; vol. 3, p. 338.

Diplomatic Correspondence, (First Series,) vol. 4, p. 55 to 58; p. 84; p. 137; p. 163; p. 339; vol. 6, pp. 445, 467; vol. 7, pp. 63, 67; vol. 10, pp. 75, 98, 106, 115, 119, 130, 138; vol. 11, pp. 155, 309.

Franklin's Works, (Sparks's edition,) vol. 9, p. 452.

[Note 20, page 78.]Compare Public Journals of Congress, 20th March, 1783, vol. 4, p. 175, and 18th April, 1783, vol. 4, p. 190.

[Note 21, page 80.]Public Journals of Congress, 29th March, 1783, vol. 4, p. 181.

See Debates above, p. 62.

[Note 22, page 80.]See Debates above, p. 16.

In the Archives of the Department of State, No. 64, (being a volume containing the official letters of the governors of Rhode Island addressed to Congress,) this letter and the resolutions of the legislature will be found.

[Note 23, page 81.]Public Journals of Congress, 24th March, 1783, vol. 4, p. 179.

Diplomatic Correspondence, (First Series,) vol. 11, p. 318.

Almon's Remembrancer, vol. 15, pp. 365, 366.

[Note 24, page 81.]See below, p. 117.

Journals of the Legislature of Massachusetts, 13th February, 1783.

Journals of the Legislature of New York, 8th, 10th, and 11th March, 1783.

Journals of the Legislature of New Hampshire, 1st March, 1783.

[Note 25, page 82.]See Debates below, p. 83.

[Note 26, page 82.]Washington's Writings, 30th March, 1783, vol. 8, p. 409.

Life of Greene, vol. 2, p. 391.

[Note 27, page 83.]See Debates above, pp. 78, 82.

[Note 28, page 84.]Public Journals of Congress, 11th April, 1783, vol. 4, p. 186.

Diplomatic Correspondence, (First Series,) 10th April, 1783, vol. 11, p. 328; 12th April, 1783, vol. 11, p. 334.

[Note 29, page 85.]Diplomatic Correspondence, (First Series,) 27th December, 1782, vol. 8, p. 402; 21st April, 1783, vol. 11, p. 335; 1st May, 1783, vol. 8, p. 436.

Secret Journals of Congress, (Foreign Affairs,) 21st May, 1783, vol. 3, p. 344.

[Note 30, page 86.]Secret Journals of Congress, (Foreign Affairs,) 15th April, 1783, vol. 3, p. 327.

[Note 31, page 86.]Public Journals of Congress, 16th April, 1783, vol. 4, p. 188.

[Note 32, page 87.]The following references will exhibit the principal proceedings of the Congress of the Confederation on the subjects of a general revenue and cessions of public land: Public Journals of Congress, 6th September, 1780, vol. 3, p. 516; 1st February, 1781, vol. 3, p. 571; 3d February, 1781, vol. 3, p. 572; 7th February, 1781, vol. 3, p. 574; 1st March, 1781, vol. 3, p. 582; 15th March, 1781, vol. 3, p. 594; 22d March, 1781, vol. 3, p. 600; 16th July, 1781, vol. 3, p. 646; 4th October, 1781, vol. 3, p. 674; 20th February, 1782, vol. 3, p. 721; 1st July, 1782, vol. 4, p. 43; 16th December, 1782, vol. 4, p. 119; 24th December, 1782, vol. 4, p. 126; 30th January, 1783, vol. 4, p. 154; 6th February, 1783, vol. 4, p. 157; 20th and 21st March, 1783, vol. 4, p. 174; 28th March, 1783, vol. 4, p. 180; 1st April, 1783, vol. 4, p. 182; 17th and 18th April, 1783, vol. 4, p. 190; 24th April, 1783, vol. 4, p. 194; 27th and 30th April, 1784, vol. 4, pp. 389, 392; 20th June, 1783, vol. 4, p. 230; 11th September,

1783, vol. 4, pp. 262, 265; 1st March, 1784, vol. 4, p. 342; 18th and 19th April, 1785, vol. 4, p. 501; 23d May, 1785, vol. 4, p. 525; 3d, 7th, and 15th February, 1786, vol. 4, pp. 614, 618; 3d March, 1786, vol. 4, p. 621; 7th July, 1786, vol. 4, p. 661; 27th July, 1786, vol. 4, p. 669; 29th September, 1786, vol. 4, p. 702; 23d October, 1786, vol. 4, p. 715; 15th July, 1788, vol. 4, p. 834.

Elliot's Debates, vol. 1, p. 92.

[Note 33, page 87.]Public Journals of Congress, 23d April, 1783, vol. 4, p. 193.

Washington's Writings, 18th April, 1783, vol. 8, p. 423.

[Note 34, page 88.]Secret Journals of Congress, (Foreign Affairs,) 5th May, 1783, vol. 3, p. 342.

[Note 35, page 88.]This resolution does not appear on the Public Journals of Congress till 7th August, 1783, vol. 4, p. 251.

[Note 36, page 88.]See Public Journals of Congress, 7th May, 1783, vol. 4, p. 220.

[Note 37, page 88.]See Debates below, p. 90.

Public Journals of Congress, 8th May, 1783, vol. 4, p. 220.

Washington's Writings, 6th May, 1783, vol. 8, p. 430; Appendix, No. IX.

Diplomatic Correspondence, (First Series,) 14th April, 1783, vol. 11, p. 335; 27th January, 1780, vol. 7, p. 199; 18th February, 1780, vol. 9, p. 21.

There is in the Archives of the Department of State, No. 50, a volume of correspondence of Oliver Pollock, containing that with the committee on Foreign Affairs, in reference to the policy of Spain.

[Note 38, page 88.]See Debates below, 30th May, 1783, p. 90.

[Note 39, page 88.]See Debates below, p. 90.

[Note 40, page 89.]See Debates below, 30th May, p. 90.

Public Journals of Congress, 9th August, 1783, vol. 4, p. 252.

[Note 41, page 89.]Secret Journals of Congress, (Foreign Affairs,) 21st and 22d May, 1783, vol. 3, p. 344 to 354.

[Note 42, page 90.]Public Journals of Congress, 23th May, 1783, vol. 4, p. 224.

Washington's Writings, 7th June, 1783, vol. 8, p. 438.

[Note 43, page 90.]Secret Journals of Congress, (Foreign Affairs,) 30th May, 1783, vol. 3, pp. 355, 361.

Public Journals of Congress, 30th May, 1783, vol. 4, p. 224.

[Note 44, page 90.]Public Journals of Congress, 4th June, 1783, vol. 4, p. 226; 4th July, 1783, vol. 4, p. 235.

Diplomatic Correspondence, (First Series,) 18th July, 1783, vol. 12, p. 380.

[Note 45, page 91.]These instructions are printed in the Public Journals of Congress, 20th June, 1783, vol. 4, p. 231.

[Note 46, page 91.]Secret Journals of Congress, (Foreign Affairs,) 12th June, 1783, vol. 3, p. 366.

[Note 47, page 91.]See Debates below, pp. 92, 93.

[Note 48, page 91.]Public Journals of Congress, 17th June, 1783, vol. 4, p. 228.

[Note 49, page 93.]Public Journals of Congress, 20th June, 1785, vol. 4, p. 230.

See Debates above, p. 87, and references there.

[Note 50, page 94.]See Debates above, p. 92.

Public Journals of Congress, 21st June, 1783, vol. 4, p. 231; 1st July, 1783, vol. 4, p. 232; 28th July, 1783, vol. 4, p. 240; 28th August, 1783, vol. 4, p. 257.

Diplomatic Correspondence, (Second Series,) vol. 1, p. 9 to 46.

Washington's Writings, 24th June, 1783, vol. 8, p. 454.

There is in the Archives of the Department of State, No. 38, a volume containing the letters and papers on this subject.

[Note 51, page 96.]Public Journals of Congress, 9th March, 1787, vol. 4, p. 725.

Washington's Writings, vol. 9, pp. 207, 235, 249.

Bradford's History of Massachusetts, vol. 2, p. 300; Minot's History of the Insurrection in Massachusetts.

[Note 52, page 96.]Public Journals of Congress, 21st February, 1787, vol. 4, p. 723.

[Note 53, page 97.]See Correspondence below, p. 106.

[Note 54, page 98.]See Debates below, pp. 100, 102, and Correspondence, p. 107.

[Note 55, page 99.]Public Journals of Congress, 21st March, 1787, vol. 4, p. 730; 13th April, 1787, vol. 4, p. 735.

[Note 56, page 101.]Diplomatic Correspondence, (Second Series,) vol. 6, pp. 207 to 228.

[Note 57, page 102.]Public Journals of Congress, 3d May, 1787, vol. 4, p. 741.

Secret Journals of Congress, (Foreign Affairs,) 3d May, 1787, vol. 4, p. 343.

[Note 58, page 103.]See Correspondence below, p. 103.

Secret Journals of Congress, (Foreign Affairs,) vol. 4, p. 339.

[Note 60, page 105.]Public Journals of Congress, 31st August, 1786, vol. 4, p. 689.

[Note 61, page 106.]Public Journals of Congress, 21st February, 1787, vol. 4, p. 723.

[Note 62, page 110.]Franklin's Works, (Sparks's edition,) vol. 3, p. 22; vol. 7, p. 83.

Life of William Livingston, p. 99, and Appendix.

Pitkin's History of the United States, vol. 1, pp. 142, 429.

[Note 63, page 110.]American Archives, (Fourth Series,) vol. 1, p. 893.

Mr. Madison has omitted to notice here the Congress which met at New York in October, 1765.

Massachusetts State Papers, vol. 1, p. 35.

Franklin's Works, (Sparks's edition,) vol. 7, p. 298.

Political Writings of John Dickinson, vol. 1, p. 91.

Marshall's History of the Colonies, chap. 13.

Pitkin's History of the United States, vol. 1, p. 178.

[Note 64, page 110.]Franklin's Works, (Sparks's edition,) vol. 5, p. 94.

Secret Journals of Congress, (Domestic Affairs, 21st July, 1775, vol. 1, p. 283.

[Note 65, page 110.]Secret Journals of Congress, (Domestic Affairs,) 12th July, 1776, vol. 1, p. 290.

[Note 66, page 111.]Secret Journals of Congress, (Domestic Affairs,) vol. 1, pp. 290 to 367.

[Note 67, page 111.]Secret Journals of Congress, (Domestic Affairs,) vol. 1, p. 448.

Public Journals of Congress, vol. 3, p. 586.

[Note 68, page 113.]Secret Journals of Congress, 20th August, 1776 to 15th November, 1777, vol. 1, pp. 304 to 349; 17th November, 1777, vol. 1, p. 362; 22d June to 25th June, 1778, vol. 1, pp. 368 to 386; vol. 1, pp. 421 to 446.

Public Journals of Congress, 10th July, 1778, vol. 2, p. 619.

Story's Commentaries on the Constitution, vol. 1, pp. 214, 228.

[Note 69, page 114.]For the proceedings of the Legislature of Virginia, 30th November, 1785; 1st December, 1785; 21st January, 1786; see Elliot's Debates, vol. 1, pp. 113, 116. The last resolution, as there given, varies somewhat from that quoted by Mr. Madison.

Journal of the Senate of Maryland, November, 1784, p. 42.

Journal of the House of Delegates of Maryland, November, 1784, pp. 103, 105, 107, 113, 121, 125; November, 1785, pp. 7, 10, 11, and 20.

Washington's Writings, 18th January, 1784, vol. 9, p. 11.

Life of John Jay, 16th March, 1786, vol. 1, p. 242.

Marshall's Life of Washington, vol. 5, p. 90.

Story's Commentaries on the Constitution, vol. 1, p. 252.

[Note 70, page 116.]Laws of the United States, (edition of 1815,) vol. 1, p. 55.

Elliot's Debates, vol. 1, p. 116.

Journal of the Senate of New York, 5th May, 1786, p. 103.

Minutes of the Assembly of Pennsylvania, 21st March, 1786, p. 227.

Journal of the Assembly of New Jersey, 20th March, 1786, p. 72; 9th November, 1786, p. 28; 20th November, 1786, p. 62; 24th November, 1786, p. 36.

[Note 71, page 117.]Public Journals of Congress, 15th February, 1786, vol. 4, p. 618.

Journal of the Federal Convention, p. 36.

Journals of the Senate of Virginia, 23d November and 4th December, 1786.

Journals of the House of Delegates of Virginia, 9th November and 4th December, 1786.

[Note 72, page 117.]"A Dissertation on the Political Union and Constitution of the Thirteen United States of North America, Philadelphia, 1783." This pamphlet was republished in a volume of Political Essays by Pelatiah Webster, Philadelphia, 1791.

[Note 73, page 118.]See Debates above, p. 81, and references at note 24.

Journal of the Senate of New York, 19th July, 1782, p. 87; 20th July, 1782.

[Note 74, page 118.]There is a letter of this date to Mr. Madison, though not on the subject here referred to, in the Life of Richard Henry Lee, vol. 2, p. 51. Mr. Lee was elected president of Congress on the 30th November, 1784.

Mr. Webster's proposal was contained in a pamphlet published in the winter of 1784-5, entitled, "Sketches of American Policy;" Life of Noah Webster, in the National Portrait Gallery, p. 4.

[Note 75, page 120.]Public Journals of Congress, 15th February, 1786, vol. 4, p. 618; 3d March, 1786, vol. 4, p. 621; 14th August, 1786, vol. 4, p. 682; 22d August, 1786, vol. 4, p. 683; 23d October, 1786, vol. 4, p. 715; 21st February, 1787, vol. 4, p. 723.

American Museum, vol. 1, p. 270; vol. 3, p. 554.

Life of John Jay, vol. 1, p. 255.

Story's Commentaries on the Constitution, vol. 1, book 2, chap. 4.

North American Review, vol. 25, p. 249.

[Note 76, page 121.]See Correspondence above, p. 107.

The letter of Mr. Madison to Gen. Washington of 16th April, 1787, will be found in Washington's Writings, vol. 9, p. 516, Appendix, No. III.

[Note 77, page 121.]See Debates below, 8th June, 1787, p. 170; 19th June, 1787, p. 208; 17th July, 1787, p. 321; 23d August, 1787, p. 467.

Journal of the Federal Convention, 31st May, 1787, p. 87; 8th June, 1787, p. 107; 19th June, 1787, p. 136; 17th July, 1787, p. 183, 23d August, 1787, p. 281.

North American Review, vol. 25, pp. 264, 265, 266.

[Note 78, page 121.]See Correspondence above, p. 107; Debates below, p. 126.

[Note 79, page 124.]Journal of the Federal Convention, p. 33.

Laws of Delaware, 3d February, 1787, vol. 1, p. 892.

[Note 80, page 134.]See Yates's Minutes, 30th May, 1787; Elliot, vol. 1, p. 391.

[Note 81, page 135.]It is stated in Yates's Minutes, that the state of New Jersey was not represented in the Convention till this day. No vote of that state appears previously on the Journal.

[Note 82, page 137.]See Debates below, 2d June, 1787, p. 149; 21st June, 1787, p. 223; 7th August, 1787, p. 388; 8th August, 1787, p. 388.

Jefferson's Works, vol. 2, p. 273.

[Note 83, page 139.]See Debates below, 2d June, 1787, p. 148; 7th June, 1787, p. 169.

[Note 84, page 141.]See Debates below, 4th June, 1787, p. 150; 13th June, 1787, p. 190; 15th June, 1787, p. 192; 16th June, 1787, p. 197, 24th August, 1787, p. 471.

Jefferson's Works, vol. 4, pp. 160, 161.

The Federalist, No. 70.

Debates in the Convention of North Carolina, 26th July, 1788, Elliot, vol. 4, p. 104.

[Note 85, page 143.]See Debates below, 13th June, 1787, p. 190; 19th July, 1787, p. 339; 24th July, 1787, p. 358; 26th July, 1787, p. 369; 6th August, 1787, p. 380; 4th September, 1787, p. 507; 6th September, 1787, p. 518.

The Federalist, No. 71.

Story's Commentaries on the Constitution, vol. 3, p. 291.

[Note 86, page 144.]See Debates below, 13th June, 1787, p. 190, 19th July, 1787, p. 338; 24th July, 1787, p. 358; 6th August, 1787, p. 380; 24th August, 1787, p. 471; 4th September, 1787, p. 507; 6th September, 1787, p. 516.

Debates in the Convention of Virginia, 18th June, 1788, Elliot, vol. 3, pp. 488, 496.

Debates in the Convention of North Carolina, 26th July, 1788, Elliot, vol. 4, p. 105.

Debates in the Convention of Pennsylvania, 11th December, 1787, Elliot, vol. 2, p. 511.

[Note 87, page 147.]See Debates below, 13th June, 1787, p. 190; 6th August, 1787, p. 380.

The Federalist, No. 73.

[Note 88, page 149.]See Debates below, 13th June, 1787, p. 190; 18th July, 1787, p. 331; 26th July, 1787, p. 376; 6th August, 1787, p. 380; 4th September, 1787, p. 507; 8th September, 1787, p. 528.

The Federalist, No. 65.

Debates in the Convention of North Carolina, 24th July, 1788, Elliot, vol. 4, p. 32; 25th July, 1788, Elliot, vol. 4, p. 43; 28th July, 1788, Elliot, vol. 4, p. 113.

[Note 89, page 151.]See Debates above, p. 141, and references at note 84.

[Note 90, page 154.]See Debates below, 6th June, 1787, p. 164; 13th June, 1787, p. 190, 21st July, 1787, p. 344; 6th August, 1787, p. 378, 15th August, 1787, p. 428.

The Federalist, No. 51; No. 73.

Debates in the Convention of Pennsylvania, 1st December, 1787, Elliot, vol. 2, p. 447; 4th December, 1787, Elliot, vol. 4, p. 429.

[Note 91, page 155.]See Debates above, p. 128, where the original resolution is given, as already containing a clause nearly the same as this amendment. The resolution of Mr. Randolph, as printed in the Journal of the Federal Convention, p. 63, does not contain the clause given by Mr. Madison.

[Note 92, page 156.]See Debates below, 13th June, 1787, pp. 188, 190; 18th July, 1787, p. 327; 21st July, 1787, p. 349; 26th July, 1787, p. 376; fth August, 1787, p. 379; 4th September, 1787, p. 507; 7th September, 1787, p. 523.

[Note 93, page 158.]See Debates below, 12th June, 1787, p. 183; 13th June, 1787, p. 190; 23d July, 1787, p. 352; 26th July, 1787, p. 376; 6th August, 1787, p. 381; 31st August, 1787, p. 499; 10th September, 1787, p. 533; 16th September, 1787, p. 552.

The Federalist, No. 43.

[Note 94, page 160.]See Debates below, 18th July, 1787, p. 331.

The Federalist, No. 81.

[Note 95, page 164.]See Debates above, p. 137, and references at note 82.

[Note 96, page 166.]See Debates above, p. 154, and references at note 90.

[Note 97, page 170.]See Debates above, p. 138, and references at note 83.

[Note 98, page 174.]See Introduction above, p. 121, and references at note 77.

[Note 99, page 175.]See Debates above, p. 144, and references at note 86.

North Carolina voted in the negative. Journal of the Federal Convention, 9th June, 1787, p. 110.

[Note 100, page 181.]See Debates above, p. 137, and references at note 82.

[Note 101, page 182.]See Debates above, p. 138, and references at note 83.

[Note 102, page 182.]See Debates below, 13th June, 1787, p. 190; 26th July, 1787, p. 376; 6th August, 1787, p. 381; 30th August, 1787, p. 498; 10th September, 1787, p. 530; 15th September, 1787, p. 551.

Debates in the Convention of Massachusetts, 30th January, 1788, Elliot, vol. 2, p. 115; 1st February, 1788, Elliot, vol. 2, p. 138; 5th February, 1788, Elliot, vol. 2, p. 155.

Debates in the Convention of Virginia, 4th June, 1788, Elliot, vol. 3, p. 25; 5th June, 1788, Elliot, vol. 3, p. 48; 6th June, 1788, Elliot, vol. 3, pp. 88, 94; 10th June, 1788, Elliot, vol. 3, p. 194; 25th June, 1788, Elliot, vol. 3, pp. 630, 636, 647, 650.

Debates in the Convention of North Carolina, 29th July, 1788, Elliot, vol. 4, p. 176.

[Note 103, page 183.]See Debates below, 23d July, 1787, p. 352; 26th July, 1787, p. 376; 6th August, 1787, p. 381; 30th August, 1787, p. 498.

Debates in the Convention of Connecticut, 9th January, 1788, Elliot, vol. 2, p. 202.

Debates in the Convention of New York, 7th July, 1788, Elliot, vol. 2, p. 409.

Debates in the Convention of North Carolina, 30th July, 1788, Elliot, vol. 4, p. 196.

Debates in Congress, 6th of May, 1789, Elliot, vol. 4, p. 342.

[Note 104, page 183.]See Debates above, p. 158, and references at note 93.

Journal of the Federal Convention, p. 114.

[Note 105, page 184.]See Debates below, 13th June, 1787, p. 189; 21st June, 1787, p. 224; 26th July, 1787, p. 375; 6th August, 1787, p. 377.

Debates in the Convention of Massachusetts, 14th January, 1788, Elliot, vol. 2, p. 4; 15th January, 1788, Elliot, vol. 2, pp. 5 to 21.

Debates in the Convention of New York, 21st June, 1788, Elliot, vol. 2, p. 241.

Debates in the Convention of Pennsylvania, 4th December, 1787, Elliot, vol. 2, p. 464; 11th December, 1787, Elliot, vol. 2, p. 532.

Debates in the Convention of Virginia, 4th June, 1788, Elliot, vol. 3, p. 14.

Debates in the Convention of North Carolina, 24th July, 1788, Elliot, vol. 4; p. 26.

The Federalist, No. 52; No. 53.

[Note 106, page 185.]See Debates below, 22d June, 1787, p. 226; 23d June, 1787, p. 230; 26th June, 1787, p. 245; 26th July, 1787, pp. 374, 375; 6th August, 1787, pp. 377, 378; 8th August, 1787, p. 388; 10th August, 1787, p. 402; 13th August, 1787, p. 411; 14th August, 1787, p. 420; 1st September, 1787, p. 503; 3d September, 1787, p. 504.

Debates in the Convention of Massachusetts, 17th January, 1788, Elliot, vol. 2, p. 35; 21st January, 1788, Elliot, vol. 2, p. 52.

Debates in the Convention of Virginia, 14th June, 1788, Elliot, vol. 3, p. 367; 27th June, 1788, Elliot, vol. 3, p. 661.

Letter of Edmund Randolph, Elliot, vol. 1, p. 491.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1788, Elliot, vol. 1, p. 365.

The Federalist, No. 52; No. 55; No. 56.

[Note 107, page 187.]See Debates below, 13th June, 1787, p. 190; 18th June, 1787, p. 205; 25th June, 1787, p. 241; 26th June, 1787, p. 241; 26th July, 1787, p. 375; 6th August, 1787, p. 377; 9th August, 1787, p. 397.

Debates in the Convention of Massachusetts, 19th January, 1788, Elliot, vol. 2, p. 44.

Debates in the Convention of New York, 24th June, 1788, Elliot, vol. 2, p. 287; 25th June, 1788, Elliot, vol. 2, p. 309.

Debates in the Convention of North Carolina, 25th July, 1788, Elliot, vol. 4, p. 37.

North American Review, vol. 25, pp. 263, 265, 266.

[Note 108, page 188.]See Debates below, 13th June, 1787, p. 190; 15th June, 1787, p. 192; 18th June, 1787, p. 205; 18th July, 1787, p. 331; 26th July, 1787, p. 376; 6th August, 1787, p. 379; 27th August, 1787, p. 481; 28th August, 1787, p. 483.

Debates in the Convention of Massachusetts, 30th January, 1788, Elliot, vol. 2, p. 111.

Debates in the Convention of Virginia, 18th June, 1788, Elliot, vol. 3, p. 517; 20th June, 1788, Elliot, vol. 3, p. 531; 21st June, 1788, Elliot, vol. 3, p. 563; 23d June,

1788, Elliot, vol. 3, p. 577.

Debates in the Convention of North Carolina, 28th July, 1788, Elliot, vol. 4, p. 136; 29th July, 1788, Elliot, vol. 4, p. 153.

Debates in the Convention of Pennsylvania, 7th December, 1787, Elliot, vol. 2, p. 486; 11th December, 1787, Elliot, vol. 2, p. 515.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1788, Elliot, vol. 1, p. 370.

Objections of George Mason to the Federal Constitution, Elliot, vol. 1, p. 495.

Report of James Madison to the Legislature of Virginia, 7th January, 1800, Elliot, vol. 4, pp. 548, 563.

The Federalist, Nos. 80 to 83.

Story's Commentaries on the Constitution, vol. 3, pp. 499 to 651.

[Note 109, page 189.]In the Journal of the Federal Convention, p. 121, the vote of Pennsylvania is given in the negative.

The remarks of Mr. Butler, on this motion, as reported in Yates's Minutes, are somewhat different, Elliot, vol. 1, p. 409.

See Debates below, 5th July, 1787, p. 273; 6th July, 1787, p. 282; 16th July, 1787, p. 316; 26th July, 1787, p. 375; 6th of August, 1787, p. 377; 8th August, 1787, p. 394; 9th August, 1787, pp. 395, 396; 11th August, 1787, p. 410; 13th August, 1787, p. 414; 14th August, 1787, p. 422; 15th August, 1787, p. 428; 5th September, 1787, pp. 510, 511; 8th September, 1787, p. 529.

Debates in the Convention of Virginia, 14th June, 1788, Elliot, vol. 3, p. 375.

Objections of George Mason, one of the Delegates from Virginin, Elliot, vol. 1, p. 494.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1788, Elliot, vol. 1, 336.

[Note 110, page 190.]These resolutions will be found in the Journal of the Federal Convention, 19th June, 1787, p. 134. There are verbal differences in the first, fourth, seventh, eighth, ninth, tenth, eleventh, thirteenth, fifteenth, and nineteenth resolutions.

[Note 111, page 193.]Journal of Federal Convention, 15th June, 1787, p. 123.

In the copy here given, the two following resolutions, stated in the Journal to have been offered by Mr. Patterson with the rest, are entirely omitted.

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

"*Resolved,* That provision ought to be made for hearing and deciding upon all disputes arising between the United States and as individual state, respecting territory."

[Note 112, page 197.]Stated in Yates's Minutes to Gen. Charles C. Pinckney, Elliot, vol. 1, p. 415.

[Note 113, page 198.]These speeches of Mr. Lansing, Mr. Patterson, Mr. Wilson, and Mr. Randolph, are very fully reported in Yates's Minutes of this day's debate. See Elliot, vol. 1, pp. 410 to 417.

See also Mr. Martin's statement in regard to the debate on Mr. Patterson's resolutions in his Address to the Legislature of Maryland, 27th January, 1788, Elliot, vol. 1, p. 349.

[Note 114, page 205.]See Appendix, No. V., p. 584, for "Copy of a paper communicated to James Madison by Col. Hamilton, about the close of the Convention in Philadelphia, 1787, which, he said, delineated the Constitution which he would have wished to be proposed by the Convention."

Yates's Minutes, 18th June, 1787, Elliot, vol. 1, p. 417.

Debates in the Convention of New York, 20th June, 1788, Elliot, vol. 2, p. 230; 21st June, 1788, Elliot, vol. 2, pp. 251, 262; 24th June, 1788, Elliot, vol. 2, p. 300; 25th June, 1788, Elliot, vol. 2, p. 315; 27th June, 1788, Elliot, vol. 2, p. 347; 28th June, 1788, Elliot, vol. 2, pp. 356, 360.

[Note 115, page 210.]Thomas M'Kean represented the state of Delaware in the Congress of the Confederation from 1774 to 1783, and was chief justice of Pennsylvania from 1777 to 1799.

On the 2d February, 1782, Thomas M'Kean and Samuel Wharton, citizens of Pennsylvania, and Philemon Dickinson, a citizen of New Jersey, were elected delegates to Congress for the state of Delaware.

[Note 116, page 211.]The report of this speech by Mr. Yates will be found in Elliot, vol. 1, p. 423.

Debates in the Convention of Virginia, 7th June, 1788, Elliot, vol. 3, p. 129.

[Note 117, page 211.]A few remarks of Mr. Dickinson on this motion, which are omitted by Mr. Madison, are given in Yates's Minutes, Elliot, vol. 1, p. 425.

[Note 118, page 213.]Yates's Minutes, Elliot, vol. 1, p. 425.

Debates in the Convention of Massachusetts, 21st January, 1788, Elliot, vol. 2, p. 54.

[Note 119, page 214.]See Debates in the Convention of New York, 23d June, 1788, Elliot, vol. 2, p. 273; 24th June, 1788, Elliot, vol. 2, p. 303.

The Federalist, No. 17, p. 87.

[Note 120, page 216.]Letter from Mr. Yates and Mr. Lansing to the governor of New York, containing their reasons for not subscribing the Federal Constitution, Elliot, vol. 1, p. 480.

[Note 121, page 217.]Yates's Minutes, 20th June, 1787, Elliot, vol. 1, p. 427.

Debates in the Convention of Virginia, 11th June, 1788, Elliot, vol. 3, p. 269.

[Note 122, page 218.]Yates's Minutes, 20th June, 1787, Elliot, vol. 1, p. 429.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1787, Elliot, vol. 1, p. 349.

[Note 123, page 219.]Yates's Minutes, 20th June, 1787, Elliot, vol. 1, p. 429.

[Note 124, page 220.]Yates's Minutes, 20th June, 1788, Elliot, vol. 1, p. 430.

Debates in the Convention of Pennsylvania, 26th November, 1787, Elliot, vol. 2, p. 422; 1st December, 1787, Elliot, vol. 2, pp. 445, 446, 447.

[Note 125, page 221.]Debates in the Convention of Pennsylvania, 28th October, 1787, Elliot, vol. 2, pp. 438, 439, 450.

[Note 126, page 223.]See Debates below, p. 250.

Debates in the Convention of Virginia, 7th June, 1788, Elliot, vol. 3, p. 131.

The Federalist, Nos. 45, 46.

Judge Baldwin's Views of the Constitution, pp. 6, 20.

[Note 127, page 224.]See Debates above, p. 137, and references at note 82.

[Note 128, page 226.]See Debates above, p. 184, and references at note 105.

[Note 129, page 228.]The remarks of Mr. Hamilton and Mr. Ellsworth are given rather more fully in Yates's Minutes; and there are some observations of Mr. Wilson on this motion, which are not noticed by Mr. Madison. Elliot, vol. 1, p. 435.

[Note 130, page 228.]Moved by Mr. Mason, Yates's Minutes, 22d June, 1787, Elliot, vol. 1, p. 436.

[Note 131, page 228.]See Debates above, p. 186, and references at note 106.

[Note 132, page 229.]See Debates above, p. 186, and references at note 106.

[Note 133, page 230.]The debate on this motion is more fully reported in Yates's Minutes, 22d June, 1787, Elliot, vol. 1, p. 436.

See Debates above, at p. 186, and references at note 106.

See also Debates below, pp. 230 to 233.

[Note 134, page 230.]See Debates above, p. 186, and references at note 106.

[Note 135, page 230.]Mr. Mason's remarks on this motion are omitted. See Yates's Minutes, 23d June, 1787, Elliot, vol. 1, p. 440.

[Note 136, page 230.]These remarks, and those of Mr. Mason, are reported more fully in Yates's Minutes, Elliot, vol. 1, pp. 439, 440.

[Note 137, page 233.]See Debates above, p. 186, and references at note 106.

[Note 138, page 238.]The residue is reported in Yates's Minutes, 25th June, 1787, Elliot, vol. 1, p. 444.

[Note 139, page 240.]See Debates above, p. 139, and references at note 83.

[Note 140, page 241.]Mr. Madison's remarks on this motion are omited. See Yates's Minutes, 25th June, 1787, Elliot, vol. 1, p. 447.

[Note 141, page 242.]These remarks of Gen. Pinckney are reported more fully, and somewhat differently, in Yates's Minutes, 26th June, 1787, Elliot, vol. 1, p. 448.

[Note 142, page 243.]See the report of this debate in Yates's Minutes, Elliot, vol. 1, pp. 448, 454.

[Note 143, page 245.]See Debates above, p. 187, and references at note 107.

[Note 144, page 247.]See Debates above, 12th June, 1787, p. 187; 13th June, 1787, p. 190; 26th July, 1787, p. 375.

See also references at note 106.

[Note 145, page 247.]In the Journal of the Federal Convention this vote is thus given: Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, ay, 6; Massachusetts, New York, New Jersey, South Carolina, Georgia, no, 5.

[Note 146, page 248.]See Debates above, 12th June, 1787, p. 187; 13th June, 1787, p. 190; 26th July, 1787, p. 375.

See references at note 106, p. 186.

The propositions of Dr. Franklin, given below, in the debates of the 30th June, 1787, p. 266, are stated in his works to have been offered on this day, the 26th June.

Franklin's Works, (Sparks's edition,) vol. 5, p. 142.

[Note 147, page 249.]This speech of Mr. Martin is reported more fully in Yates's Minutes, 27th and 28th June, 1787, Elliot, vol. 1, pp. 453 to 457.

[Note 148, page 253.]See Debates above, p. 223, and references at note 126.

[Note 149, page 253.]An explanatory remark of Mr. Martin, in reply will be found in Yates's Minutes, Elliot, vol. 1, p. 459.

[Note 150, page 253.]Some remarks of Mr. Madison in reply to Mr. Sherman, not here given, will be found in Yates's Minutes, Elliot, vol. 1, p. 459.

[Note 151, page 255.]Franklin's Works, (Sparks's edition,) vol. 5, p. 153.

Note by Dr. Franklin: "The Convention, except three or four persons, thought prayers unnecessary."

[Note 152, page 258.]See Debates above, p. 223, and references at note 126.

Story's Commentaries on the Constitution, vol. 2, p. 175.

[Note 153, page 259.]This speech is very fully reported in Yates's Minutes, Elliot, vol. 1, p. 461.

[Note 154, page 261.]The remarks of Mr. Madison, at some length, on this resolution, and here omitted, will be found in Yates's Minutes, Elliot, vol. 1, p. 465.

[Note 155, page 261.]The law of New Hampshire, appointing delegates, passed on the 27th June; Messrs. Langdon, Pickering, Gillman, and West, were chosen: on the 23d July, Messrs. Langdon and Gillman took their seats; Messrs. Pickering and West never attended.

Journal of the Federal Convention, pp. 17, 196.

[Note 156, page 264.]These speeches of Mr. Wilson and Mr. Ellsworth are very fully reported in Yates's Minutes, Elliot vol. 1, pp. 466, 469.

[Note 157, page 268.]The propositions of Dr. Franklin, offered in the course of this debate, are given in his works, with remarks different from those here reported; they are also stated to have been offered on the 26th June. Franklin's Works, (Sparks's

edition,) vol. 5, p. 142.

This speech of Mr. Bedford is reported somewhat more fully in Yates's Minutes, Elliot, vol. 1, p. 471.

[Note 158, page 273.]See the remarks of Mr. Morris and Mr. Randolph in Yates's Minutes, Elliot, vol. 1, pp. 475 to 476.

[Note 159, page 273.]A report of the proceedings in this Grand Committee on the 3d July, 1787, will be found in Yates's Minutes, Elliot, vol. 1, p. 477.

[

States.	*Quota of Tax.*	*Delegates.*
Virginia,	512,974	16
Massachusetts Bay,	448,854	14
Pennsylvania,	410,378	12¾
Maryland,	283,034	8¾
Connecticut,	264,182	8
New York,	256,486	8
North Carolina,	218,012	6¾
South Carolina,	192,366	6
New Jersey,	166,716	5
New Hampshire,	105,416	3¼
Rhode Island,	64,636	2
Delaware,	44,886	1¼
Georgia,	32,060	1
	3,000,000	90

[Note 161, page 284.]See Debates above, p. 189, and references at note 109.

[Note 162, page 287.]See Debates above, 11th June, 1787, p. 182; 19th June, 1787, p. 211, 25th June, 1787, p. 238; 28th June, 1787, p. 253; 29th June, 1787, p. 257; 5th July, 1787, p. 274.

See Debates below, 14th July, 1787, p. 311; 16th July, 1787, p. 317; 9th August, 1787, p. 397.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1787, Elliot, vol. 1, p. 348.

[Note 163, page 291.]New York, no; in the Journal of the Federal Convention, 10th July, 1787, p. 166.

[Note 164, page 292.]New York, no; in the Journal of the Federal Convention, 10th July, 1787, p. 166.

[Note 165, page 293.]See Debates below, 16th July, 1787, p. 316; 20th July, 1787, p. 339; 26th July, 1787, p. 375; 6th August, 1787, p. 377; 20th August, 1787, p. 451; 21st August, 1787, p. 452.

Debates in the Convention of Massachusetts, 17th January, 1788; Elliot, vol. 2, p. 36.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1788, Elliot, vol. 1, p. 357.

Debates in the Convention of New York, 23d June, 1788; Elliot, vol. 2, p. 274.

The Federalist, No. 55, p. 312.

[Note 166, page 293.]This resolution is somewhat different, as given in the Journal of the Federal Convention, 10th July, 1787, p. 167.

[Note 167, page 295.]This resolution is somewhat different, as given in the Journal of the Federal Convention, 11th July, 1787, p. 168.

[Note 168, page 306.]See Debates above, 11th June, 1787, p. 181; 13th June, 1787, p. 190, 5th July, 1787, p. 273, 9th July, 1787, p. 288; 10th July, 1787, p. 293; 11th July, 1787, p. 295.

See Debates below, 13th July, 1787, p. 307; 16th July, 1787, p. 316; 20th July, 1787, p. 375; 6th August, 1787, p. 379; 8th August, 1787, p. 391; 21st August, 1787, p. 453; 17th September, 1787, p. 555.

Debates in the Convention of Massachusetts, 17th January, 1788, Elliot, vol. 2, p. 32; 18th January, 1788, Elliot, vol. 2, p. 40.

Debates in the Convention of New York, 20th June, 1788, Elliot, vol. 2, pp. 226, 236; 21st June, 1788, Elliot, vol. 2, pp. 242, 252; 23d June, 1788, Elliot, vol. 2, p. 270.

Debates in the Convention of Virginia, 4th June, 1788, Elliot, vol. 3, pp. 11, 30; 6th June, 1788, Elliot, vol. 3, p. 99; 7th June, 1788, Elliot, vol. 3, pp. 110, 124; 11th June, 1788, Elliot, vol. 3, p. 247; 12th June, 1788, Elliot, vol. 3, p. 320.

Public Journals of Congress, 17th February, 1783, vol. 4, p. 162; 18th April, 1783, vol. 4, p. 190; 27th September, 1785, vol. 4, p. 587; 5th April, 1792, vol. 1, p. 563.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1787, Elliot, vol. 1, pp. 348, 363.

Objections of George Mason to the Federal Constitution, Elliot, vol. 1, p. 494.

Letter of Messrs. Yates and Lansing to the Legislature of New York, Elliot, vol. 1, p. 481.

The Federalist, No. 36; No. 54; No. 55; and No. 58.

Address of the Minority of the Convention of Pennsylvania to their Constituents, American Museum, vol. 2, pp. 547, 551.

Letter of Richard Henry Lee, 16th October, 1787, Elliot, vol. 1, p. 503.

Debates in Congress, 14th August, 1789, Gales and Seaton, (First Series,) vol. 1, p. 749; 21st August, 1789, vol. 1, p. 802.

Jefferson's Works, vol. 4, p. 466.

Story's Commentaries on the Constitution, vol. 2, p. 147.

[Note 169, page 310.]There are some verbal variations between the resolution, as given here, and that in the Journal of the Convention, p. 177.

[Note 170, page 317.]See Debates above, pp. 287, 306, and references at notes 162 and 168.

[Note 171, page 317.]See Debates above, 29th May, 1787, p. 127; 31st May, 1789, p. 139; 13th June, 1787, p. 190.

See Debates below, 17th July, 1787, p. 319; 6th August, 1787, p. 378.

[Note 172, page 320.]See Debates above, p. 174, and references at note 98.

[Note 173, page 322.]See Debates above, p. 174, and references at note 98.

See Debates below, 23d August, 1787, p. 416.

[Note 174, page 325.]See Debates above, p. 140, and references at note 86.

See Debates below, 24th July, 1787, p. 358; 24th August, 1787, p. 473.

[Note 175, page 327.]See Debates above, p. 143, and references at note 85.

[Note 176, page 328.]See Debates above, p. 155, and references at note 90.

[Note 177, page 330.]See Debates above, p. 156, and references at note 92.

[Note 178, page 333.]See Debates below, 26th July, 1787, p. 376; 6th August, 1787, p. 381; 30th August, 1787, p. 497; 16th September, 1787, p. 551.

Debates in the Convention of Virginia, 7th June, 1788, Elliot, vol. 3, p. 129.

The Federalist, No. 21; No. 43.

[Note 179, page 338.]There are some verbal variations between the resolution, as given here, and that in the Journal of the Convention, p. 190.

[Note 180, page 339.]See Debates above, p. 143, and references at note 85.

[Note 181, page 340.]See Debates above, 13th June, 1787, p. 190; p. 149, and references at note 88.

[Note 182, page 349.]See Debates above, p. 155, and references at note 90; p. 166, and note 96.

[Note 183, page 349.]See Debates above, p. 156, and references at note 92.

[Note 184, page 351.]See Debates, 1st June, 1787, p. 142; 13th June, 1787, p. 190; 17th July, 1787, p. 324; 18th July, 1787, p. 328, 21st July, 1787, p. 349; 29th July, 1787, p. 376; 6th August, 1787, pp. 379, 380; 4th September, 1787, p. 507; 7th September, 1787, p. 524.

The Federalist, No. 76; No. 77.

[Note 185, page 356.]See Debates above, p. 158, and references at note 93.

[Note 186, page 357.]Maryland, no; in the Journal of the Federal Convention, 23d July, 1787, p. 198.

[Note 187, page 357.]See Debates below, 6th August, 1787, p. 379; 21st August, 1787, p. 453; 22d August, 1787, p. 457; 24th August, 1787, p. 470; 25th August, 1787, p. 477; 28th August, 1787, p. 486; 31st August, 1787, p. 502; 14th September, 1787, p. 546.

Debates in the Convention of Pennsylvania, 3d December, 1787, Elliot, vol. 2, p. 451.

Debates in the Convention of New Hampshire, Elliot, vol. 2, p. 203.

Debates in the Convention of Massachusetts, 18th January, 1788, Elliot, vol. 2, p. 40; 25th January, 1788, Elliot, vol. 2, p. 106.

Debates in the Convention of Virginia, 15th June, 1788, Elliot, vol. 3, p. 452; 17th June, 1788, Elliot, vol. 3, p. 481.

Debates in the Convention of North Carolina, 26th July, 1788, Elliot, vol. 4, p. 100.

Debates in the Convention of South Carolina, 16th January, 1788, Elliot, vol. 4, pp. 271, 276, 286, 295.

Amendments to the Constitution proposed by the states. Supplement to the Journal of the Federal Convention, p. 462.

Debates in Congress, 13th May, 1789, Gales and Seaton, (First Series,) vol. 1, p. 352.

Objections of George Mason to the Federal Constitution, Elliot, vol. 1, p. 496.

The Federalist, No. 7, p. 36; No. 26; No. 42, No. 44, p. 252.

[Note 188, page 370.]Journal of the Federal Convention, 26th July, 1787, p. 204. There are some slight verbal differences.

[Note 189, page 374.]See Debates below, p. 376.

[Note 190, page 376.]Journal of the Federal Convention, 26th July, 1787, p. 207. The dates when each resolution was finally passed are there given.

[Note 191, page 381.]Journal of the Federal Convention, 6th August, 1787, p. 215. There are a few verbal differences. The original draught, from which each is taken, was printed, and is among the papers relating to the Convention, which were deposited by Gen. Washington in the Department of State, on the 19th March, 1796.

[Note 192, page 382.]The proceedings on this motion are more fully stated in the Journal of the Federal Convention, 7th August, 1787, p. 230.

[Note 193, page 385.]The Federalist, No. 52.

[Note 194, page 389.]See Debates above, 31st May, 1787, p. 135; 21st June, 1787, p. 223.

Debates in the Convention of Virginia, 4th June, 1788, Elliot, vol. 3, p. 7.

The Federalist, No. 52.

[Note 195, page 391.]See Debates above, p. 186, and references at note 106.

[Note 196, page 394.]See Debates above, p. 306, and references at note 168.

[Note 197, page 395.]See Debates above, p. 189, and references at note 109.

[Note 198, page 401.]See Debates above, 12th June, 1787, p. 187; 25th June, 1787, p. 241.

See Debates below, 13th August, 1787, p. 414.

The Federalist, No. 62.

[Note 199, page 402.]See Debates above, 6th August, 1787, p. 377.

Debates in the Convention of Massachusetts, 16th January, 1788, Elliot, vol. 2, p. 21; 17th January 1787, Elliot, vol. 2, p. 29; 21st January, 1787, Elliot, vol. 2, p. 48.

Debates in the Convention of Virginia, 4th June 1788, Elliot, vol. 3, p. 9; 5th June, 1788, Elliot, vol. 3, p. 60; 9th June, 1788, Elliot, vol. 3, p. 175; 14th June, 1788, Elliot, vol. 3, p. 366.

Debates in the Convention of North Carolina, 25th July, 1788, Elliot, vol. 4, p. 50.

Amendments to the Constitution proposed by the states; supplement to the Journal of the Federal Convention, pp. 402, 411, 418, 425, 433, 447, 454.

Letter of Elbridge Gerry to the Legislature of Massachusetts, 18th October, 1787, Elliot, vol. 1, p. 492.

Address of the Minority of the Convention of Pennsylvania, American Museum, vol. 2, p. 545.

[Note 200, page 404.]See Debates above, pp. 186, 388, 401, and references at notes 106, 194, 198.

[Note 201, page 406.]Debates in the Convention of Massachusetts, 16th January, 1788, Elliot, vol. 2, p. 22.

The Federalist, No. 22, No. 58.

[Note 202, page 407.]American State Papers, (Gales and Seaton's edition,) Miscellaneous, 22d March, 1796, vol. 1, p. 144; 31st December, 1807, vol. 1, p. 701.

[Note 203, page 409.]Journal of the Federal Convention, 13th September, 1787, p. 373.

[Note 204, page 410.]Debates in the Convention of Virginia, 14th June, 1788, Elliot, vol. 3, p. 366.

[Note 205, page 414.]See Debates above, pp. 186, 401, and references to notes 106, 198.

[Note 206, page 420.]See Debates above, p. 189, and references at note 109.

[Note 207, page 425.]See Debates above, p. 186, and references at note 106.

[Note 208, page 427.]See Debates above, p. 186, and references at note 106.

[Note 209, page 429.]See Debates above, pp. 154, 166, and references at notes 90, 96.

[Note 210, page 431.]See Debates above, p. 154, and references at note 90.

[Note 211, page 434.]See Debates above, p. 357, and references at note 187.

[Note 212, page 435.]See Debates above, 6th August, 1787, p. 378.

Debates in the Convention of North Carolina, 26th July, 1788, Elliot, vol. 4, p. 90.

Amendments to the Constitution proposed by the states, supplement to the Journal of the Federal Convention, p. 461.

The Federalist, No. 41, p. 231.

[Note 213, page 436.]See Debates above, 6th August, 1787, p. 378.

See Debates below, 14th September, 1787, p. 542.

[Note 214, page 438.]See Debates above, p. 334, and references at note 178.

Also Debates above, 6th August, 1787, pp. 378, 381; Debates below, 23d August, 1787, p. 467; 30th August, 1787, p. 497.

Debates in the Convention of Pennsylvania, 11th December, 1787, Elliot, vol. 2, p. 521.

Debates in the Convention of Virginia, 5th June, 1788, Elliot, vol. 3, p. 52; 6th June, 1788, Elliot, vol. 3, p. 90; 7th June, 1788, Elliot, vol. 3, p. 112; 12th June, 1788, Elliot, vol. 3, p. 388; 14th June, 1788, Elliot, vol. 3, p. 410.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1788, Elliot, vol. 1, p. 370.

Amendments to the Constitution proposed by the states; supplement to the Journal of the Federal Convention, p. 446.

The Federalist, No. 29; No. 43.

[Note 215, page 439.]See Debates above, 18th June, 1787, p. 205; 6th August, 1787, p. 379.

See Debates below, 5th September, 1787, p. 510.

Amendments to the Constitution proposed by the states; supplement to the Journal of the Federal Convention, pp. 434, 461.

Public Journals of Congress, 1st March, 1781, vol. 3, p. 588.

The Federalist, No. 23; No. 41.

Report on the Virginia Resolutions, Elliot, vol. 4, p. 557.

[Note 216, page 441.]See Debates below, 21st August, 1787, p. 449; 22d August, 1787, pp. 462, 463, 23d August, 1787, p. 469; 25th August, 1787, p. 475.

The Federalist, No. 43; No. 84.

[Note 217, page 442.]See Debates above, 29th May, 1787, p. 128; 6th June, 1787, p. 164.

See Debates below, 20th August, 1787, p. 446; 22d August, 1787, p. 462; 4th September, 1787, p. 507; 7th September, 1787, p. 525.

Debates in the Convention of Pennsylvania, 4th December, 1787, Elliot, vol. 2, p. 512.

Debates in the Convention of North Carolina, 28th July, 1788, Elliot, vol. 4, p. 108.

Objections of George Mason to the Constitution, Elliot, vol. 1, p. 495.

The Federalist, No. 70; No. 74.

Jefferson's Works, vol. 4, p. 143.

[Note 218, page 443.]See Debates above, 6th August, 1787, p. 379.

See Debates below, 5th September, 1787, p. 510; 14th September, 1787, p. 545.

Debates in the Convention of Pennsylvania, 11th December, 1787, Elliot, vol. 2, pp. 520, 536.

Debates in the Convention of Maryland, 29th April, 1788, Elliot, vol. 2, p. 551.

Debates in the Convention of Virginia, 6th June, 1788, Elliot, vol. 3, p. 91; 14th June, 1788, Elliot, vol. 3, p. 378; 16th June, 1788, Elliot, vol. 3, p. 410; 24th June, 1788, Elliot, vol. 3, pp. 587, 599.

Debates in the Convention of North Carolina, 26th July, 1788, Elliot, vol. 4, p. 94.

Amendments to the Constitution proposed by the states; supplement to the Journal of the Federal Convention, pp. 414, 421, 423, 427, 434, 443, 445, 456.

The Federalist, Nos. 24 to 29; No. 41.

[Note 219, page 445.]See Debates above, 6th August, 1787, p. 379.

See Debates below, 21st August, 1787, p. 451; 23d August, 1787, p. 464, 14th September, 1787, p. 545.

Debates in the Convention of Virginia, 5th June, 1788, Elliot, vol. 3, p. 51; 6th June, 1788, Elliot, vol. 3, p. 90; 14th June, 1788, Elliot, vol. 3, pp. 378, 388; 16th June, 1788, Elliot, vol. 3, pp. 410, 439; 24th June, 1788, Elliot, vol. 3, p. 601.

Amendments to the Constitution proposed by the states; supplement to the Journal of the Federal Convention, pp. 423, 427, 445.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1788, Elliot, vol. 1, p. 370.

The Federalist, No. 29.

Message of the President, 6th November, 1812; American State Papers, (Gales and Seaton's edition,) Military Affairs, vol. 1, p. 319.

[Note 220, page 448.]The proceedings are given more minutely in the Journal of the Federal Convention 20th August, 1787, p. 268.

[Note 221, page 451.]See Debates above, 6th August, 1787, p. 379.

Objections of George Mason to the Constitution, Elliot, vol. 1, p. 495.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1788, Elliot, vol. 1, p. 382.

[Note 222, page 453.]New Hampshire, ay; not stated in the Journal of the Federal Convention, 21st August, 1787, p. 275.

[Note 223, page 457.]See Debates above, p. 357, and references at note 187.

[Note 224, page 461.]See Debates above, p. 357, and references at note 187.

See Debates above, 6th August, 1787, p. 379.

See Debates below, 24th August, 1787, p. 470; 25th August, 1787, p. 478; 29th August, 1787, p. 488.

Debates in the Convention of South Carolina, 17th January, 1788, Elliot, vol. 4, p. 299.

Objections of George Mason to the Constitution, Elliot, vol. 1, p. 494.

[Note 225, page 463.]Debates in the Convention of Virginia, 17th June, 1788, Elliot, vol. 3, p. 461.

Amendments to the Constitution proposed by the states; supplement to the Journal of the Federal Convention, p. 430.

Objections of George Mason to the Constitution, Elliot, vol. 1, p. 495.

The Federalist, No. 44; No. 84.

[Note 226, page 463.]See Debates above, p. 442, and references at note 216.

[Note 227, page 464.]See Debates above, p. 442, and references at note 216.

[Note 228, page 467.]See Debates above, p. 445, and references at note 219.

[Note 229, page 469.]See Debates above, pp. 174, 416, and references at note 98.

[Note 230, page 470.]See Debates above, 6th August, 1787, p. 379.

See Debates below, 4th September, 1787, p. 507; 7th September, 1787, p. 524; 8th September, 1787, p. 526.

Debates in the Convention of Virginia, 18th June, 1788, Elliot, vol. 3, p. 498.

Debates in the Convention of North Carolina, 28th July, 1788, Elliot, vol. 4, p. 346.

Amendments to the Constitution proposed by the states; supplement to the Journal of the Federal Convention, p. 445.

The Federalist, No. 64; No. 69; No. 75.

Speeches of Mr. Madison in the House of Representatives, 10th March and 6th April, 1796. Debates on the British treaty, vol. 1, pp. 69, 375.

Speech of Mr. Baldwin in the House of Representatives, 14th March, 1796. Debates on the British treaty, vol. 1, p. 118.

[Note 231, page 471.]See Debates above, 6th August, 1787, p. 379.

See Debates below, 27th August, 1787, p. 482.

Journal of the Federal Convention, 27th August, 1787, p. 298.

Debates in the Convention of Pennsylvania, 7th December, 1787, Elliot, vol. 2, p. 490.

Debates in the Convention of Virginia, 20th June, 1788, Elliot, vol. 3, p. 532.

Amendments to the Constitution proposed by the states; supplement to the Journal of the Federal Convention, pp. 424, 430, 438, 446, 459, 481.

The Federalist, No. 39; No. 80.

[Note 232, page 474.]See Debates above, p. 144, and references at note 86.

[Note 233, page 476.]See Debates above, p. 442, and references at note 216.

[Note 234, page 478.]See Debates above, p. 357, and references at note 187.

[Note 235, page 479.]See Debates above, p. 475, where the resolution is stated to have been negatived without a count. In the Journal of the Federal Convention, p. 290, it is also stated in that manner.

[Note 236, page 480.]The resolution is not given in the Journal of the Federal Convention.

[Note 237, page 482.]See Debates above, 5th June, 1787, p. 156; 18th July, 1787, p. 330.

Debates in the Convention of Pennsylvania, 10th December, 1787, Elliot, vol. 2, p. 488; 11th December, 1787, Elliot, vol. 2, pp. 513, 531, 539.

The Federalist, No. 79.

[Note 238, page 483.]The amendments proposed to this section are more minutely given in the Journal of the Federal Convention, 27th August, 1787, p. 298.

See Debates above, p. 188, and references at note 108.

[Note 239, page 485.]See Debates above, 6th August, 1787, p. 381.

Debates in the Convention of Virginia, 6th June, 1788, Elliot, vol. 3, p. 75; 17th June, 1788, Elliot, vol. 3, p. 471.

Debates in the Convention of North Carolina, 29th June, 1788, Elliot, vol. 4, p. 182.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1788, Elliot, vol. 1, p. 376.

Letter of Mr. Madison to Mr. Ingersoll, 22d February, 1831, Elliot, vol. 4, p. 608.

The Federalist, No. 44.

[Note 240, page 485.]See Debates below, 14th September, 1787, p. 546.

See references above, at note 239.

[Note 241, page 488.]See Debates above, 6th August, 1787, p. 381.

Journal of Congress, 1st March, 1781, vol. 3, p. 587.

[Note 242, page 488.]See Debates below, 1st September, 1787, p. 503; 3d September, 1787, p. 504.

The Federalist, No. 42.

[Note 243, page 492.]See Debates above, 28th August, 1787, p. 487; 13th September, 1787, p. 550.

Debates in the Convention of North Carolina, 29th July, 1788, Elliot, vol. 4, p. 176.

Debates in the Convention of South Carolina, 17th January, 1788, Elliot, vol. 4, p. 286.

[Note 244, page 493.]The Journal of the Federal Convention, 29th August, 1787, p. 307, says,—

"On the question being taken, it passed in the affirmative: New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, Georgia, ay, 9; Maryland, Virginia, no, 2."

See Debates below, p. 471, and references at note 245.

[Note 245, page 497.]South Carolina, and Georgia, no, in the Journal of the Federal Convention, 30th August, 1787, p. 311.

See Debates above, 6th August, 1787, p. 381.

See Debates below, 16th September, 1787, p. 550.

Debates in the Convention of Virginia, 23d June, 1787, Elliot, vol. 3, p. 585.

The Federalist, No. 43.

Hamilton's Works, vol. 1, pp. 135, 147, 151.

[Note 246, page 498.]See Debates above, p. 439, and references at note 214.

[Note 247, page 501.]See Debates above, p. 158, and references at note 93.

[Note 248, page 503.]See Debates above, 8th June, 1787, p. 173; 6th August, 1787, pp. 378, 379, 381; 21st August, 1787, p. 453; 25th August, 1787, p. 479; 28th August, 1787, pp. 483, 485.

See references at note 187.

See Debates below, 14th September, 1787, p. 546; 15th September, p. 549.

Debates in the Convention of Virginia, 17th June, 1787, Elliot, vol. 3, p. 481.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1787, Elliot, vol. 1, p. 375.

Objections of George Mason to the Constitution, Elliot, vol. 1, p. 495.

The Federalist, No. 44.

[Note 249, page 503.]After article 7, sect. 1, clause 3, of the Constitution, as reported on the 6th August, 1787, above, p. 378.

See Debates above, 29th August, 1787, p. 487.

See Debates below, 3d September, 1787, p. 504.

Amendments to the Constitution proposed by the states; supplement to the Journal of the Federal Convention, p. 436.

The Federalist, No. 42.

[Note 250, page 504.]See Debates above, p. 488, and references at note 242.

[Note 251, page 506.]See Debates above, p. 186, and references at note 106.

[Note 252, page 510.]See Debates above, p. 144, and references at note 86.

[Note 253, page 512.]See Debates above, 18th August, 1787, p. 440.

Debates in the Convention of Virginia, 6th June, 1788, Elliot, vol. 3, p. 89; 9th June, 1788, Elliot, vol. 3, p. 158; 16th June, 1788, Elliot, vol. 3, p. 430.

Amendments to the Constitution proposed by the states; supplement to the Journal of the Federal Convention, pp. 423, 434, 446.

The Federalist, No. 43.

[Note 254, page 520.]In the Journal of the Federal Convention, 6th September, 1787, p. 332, the yeas and nays, not given by Mr. Madison on several of these motions, are inserted; but the various amendments are less distinctly stated in the Journal.

[Note 255, page 521.]See Debates above, p. 144, and references at note 86.

[Note 256, page 524.]See Debates above, p. 351, and references at note 184.

[Note 257, page 527.]Journal of the Federal Convention, 8th September, 1787, p. 343.

[Note 258, page 528.]See Debates above, p. 470, and references at note 230.

[Note 259, page 532.]See Debates above, p. 183, and references at note 102.

[Note 260, page 534.]See Debates above, p. 158, and references at note 93.

[Note 261, page 535.]See "A letter of Edmund Randolph, Esq., on the Federal Constitution, addressed to the speaker of the House of Delegates of Virginia, Richmond, 10th October, 1787," in Elliot, vol. 1, p. 482.

[Note 262, page 538.]Debates in the Convention of Massachusetts, 30th January, 1788, Elliot, vol. 2, p. 109.

Debates in the Convention of New York, 7th July, 1788, Elliot, vol. 2, p. 409.

Debates in the Convention of Pennsylvania, 28th October, 1787, Elliot, vol. 2, p. 434; 4th December, 1787, Elliot, vol. 2, p. 453; 11th December, 1787, Elliot, vol. 2, p. 515.

Debates in the Convention of Virginia, 9th June, 1788, Elliot, vol. 3, p. 190; 12th June, 1788, Elliot, vol. 3, p. 316; 16th June, 1787, Elliot, vol. 3, p. 443; 20th June, 1788, Elliot, vol. 3, pp. 544, 560; 21st June, 1788, Elliot, vol. 3, p. 573.

Debates in the Convention of North Carolina, 28th July, 1788, Elliot, vol. 4, pp. 143, 148; 29th July, 1788, Elliot, vol. 4, pp. 153, 160, 164, 175.

Address of Luther Martin to the Legislature of Maryland, 27th January, 1788, Elliot, vol. 1, p. 380.

Letter of Elbridge Gerry to the Legislature of Massachusetts, Elliot, vol. 1, p. 492.

Objections of George Mason to the Constitution, Elliot, vol. 1, p. 494.

Amendments to the Constitution proposed by the states; supplement to the Journal of the Federal Convention, pp. 402, 403, 413, 417, 426, 439, 453, 466.

Address of the Minority of the Convention of Pennsylvania, 12th December, 1787; American Museum, vol. 2, p. 540.

The Federalist, No. 3; No. 84.

Debates in Congress, (Gales and Seaton's First Series,) 8th June, 1789, vol. 1, p. 448.

[Note 263, page 539.]The letter to Congress, transmitting the Constitution, was read by paragraphs, and agreed to. Debates above, p. 536. Journal of the Federal Convention, p. 367.

[Note 264, page 540.]See Debates above, 28th August, 1787, p. 485.

See Debates below, 15th September, 1787, p. 548.

Debates in the Convention of Virginia, 17th June, 1788, Elliot, vol. 3, p. 481.

The Federalist, No. 44.

[Note 265, page 541.]Referring to the articles so numbered in the draft of the Constitution reported on 6th August, 1787. See Debates above, p. 381.

[Note 266, page 541.]The proceedings on these resolutions are not given by Mr. Madison, nor in the Journal of the Federal Convention. In the Journal of Congress, 28th September, 1787, vol. 4, p. 781, they are stated to have been presented to that body, as having passed in the Convention on the 17th September, immediately after the signing of the Constitution.

[Note 267, page 553.]See Correspondence below, p. 570.

The letters of Mr. Randolph, Mr. Mason, and Mr. Gerry, stating their reasons for not signing the Constitution, will be found in Elliot, vol. 1, pp. 482, 492, 494.

[Note 268, page 560.]See Debates above, 6th August, 1787, p. 378; 4th September, 1787, p. 506.

Journal of the Federal Convention, pp. 220, 323, 356, 494.

The Federalist, No. 41, p. 232.

Story's Commentaries on the Constitution, vol. 2, p. 371.

[William Houston.

[Note 270, page 569.]Diplomatic Correspondence, (Second Series,) vol. 3, p. 303; vol. 5, p. 347; vol. 7, p. 188.

Jefferson's Works, vol. 2, pp. 238, 245, 255, 304, 381.

[Note 271, page 570.]Washington's Writings, 7th December, 1787, vol. 9, p. 285.

Life of Richard Henry Lee, vol. 2, p. 78.

Public Journals of Congress, vol. 4, Appendix, p. 47.

American Museum, vol. 2, No. 6, pp. 536, 556, 558.

Oswald's Independent Gazetteer, 24th November, 1787.

Pennsylvania Packet, 7th December, 1787.

[Note 272, page 571.]The letter of Governor Randolph will be found in Elliot's Debates on the Constitution, vol. 1, p. 518.

American Museum, vol. 3, p. 62.

Washington's Writings, 8th January, 1788, vol. 9, p. 296.

Public Journals of Congress, vol. 4, Appendix, p. 47.

Life of Richard Henry Lee, vol. 2, p. 130.

[Note 273, page 572.]Life of Elbridge Gerry, vol. 2, p. 70.

Elliot's Debates on the Constitution, vol. 2, pp. 3, 43, 48.

[Note 274, page 573.]Washington's Writings, vol. 9, pp. 310, 329, 333.

[Note 275, page 573.]Washington's Writings, vol. 9, p. 334.

[Note 276, page 573.]Jefferson's Works, vol. 2, p. 319.

[Note 277, page 576.]Washington's Writings, vol. 9, p. 447.

Life of Patrick Henry, p. 299.

Life of Richard Henry Lee, vol. 1, p. 241.

[*]His dissent was founded on his construction of the treaty, as stated in a paper handed to Mr. Madison at the time. The following is a copy:—

"The words *such treaty* are relative.

"The antecedents must either be the 'treaty proposed to be concluded between the crown of Great Britain and the United States' or 'the terms of peace to be agreed upon between Great Britain and France.'

"Let us see how it will read if we understand it in the first sense. The articles are 'to be inserted, and to constitute the *treaty of peace* proposed to be concluded between the crown of Great Britain and the United States; but *which treaty* is not to be concluded (until terms of peace shall be agreed upon between Great Britain and France, and) until his Britannic Majesty shall be ready to conclude *such treaty* accordingly.'

"The words included in the parenthesis may in this case be omitted, and then the sentence will have no meaning.

"But if the words *such treaty* are construed as relative to the words *terms of peace,* the meaning will be plain; and if *terms of peace* have been agreed upon between France and Britain, then the *contingency* has happened on which the *proposed treaty* between America and Britain was to take effect."†

[†]See his change of opinion expressed in the debates of April 16.