(AMERICAN ELOQUENCE:)

A Collection of

SPEECHES AND ADDRESSES

BY THE MOST EMINENT

ORATORS OF AMERICA;

WITH BIOGRAPHICAL SKETCHES AND ILLUSTRATIVE NOTES,

By FRANK (MOORE.)

(12)

"There were Gyants in the earth in thoſe dayes . . . . . mightie men, which were of olde, men of renowne."

Illustrated with Fourteen Portraits engraved on Steel.

IN TWO VOLUMES.

(VOL. II.)

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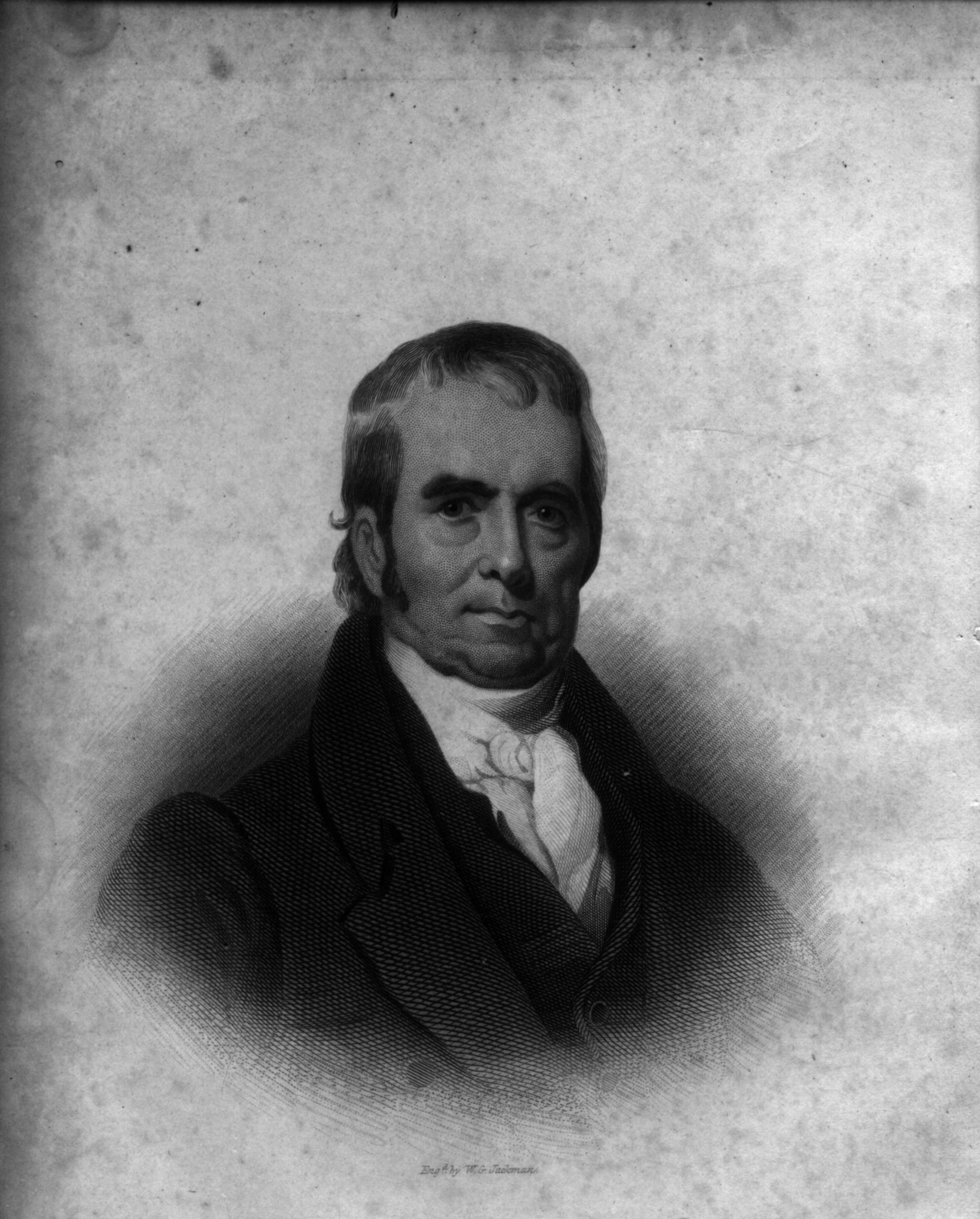

Engd. by W.G. Jackman.

JOHN MARSHALL, L.L.D.

J Marshall

D. Appleton & Co. New York

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AMERICAN ELOQUENCE.

JOHN MARSHALL.

John Marshall, the most illustrious of America's Judges, was the eldest son of Colonel Thomas Marshall, and Mary Keith, his wife. He was born on the twenty-fourth day of September, 1755, in Germantown, Fauquier County, Virginia. His youthful days were passed on the family estate, where he acquired the rudiments of an education, under the instruction of his father. At the age of fourteen he commenced his classical studies with a Mr. Campbell, with whom he remained a year, after which he returned to his home, and continued his studies with a Scotch gentleman, who had been inducted as pastor of the parish, and resided in his father's family. Here he made rapid progress, but on the expiration of a year, his instructor left him to his own unassisted resources; and his subsequent knowledge of the classics was attained without any other aid than his grammar and dictionary. In the literature of his native tongue he continued to receive the assistance of his father, who directed his studies, and contributed to cherish his love of knowledge. "It is to this circumstance," says his friend and associate, "that we are mainly to attribute that decided attachment to the writers of the golden age of English literature, which at all times he avowed, and vindicated with a glowing confidence in its importance, and its superior excellence." This parental care and attention was neither lost nor forgotten. It was a theme on which Mr. Marshall, in his mature years, delighted to expatiate. "My father," he would say, "was a far abler man than any of his sons. To him I owe the solid foundation of all my own success in life."

Mr. Marshall was entering upon his eighteenth year, when the difficulties between the American colonies and Great Britain began to assume a threatening aspect. In those affairs he manifested a deep interest. Relinquishing his literary labors, he devoted himself with spirit and energy to the acquisition of military knowledge, and to the diligent study of the politics of the day. In the summer of 1775, he was chosen a lieutenant in a company of minute-men, and in September of that year marched against Lord Dunmore, to obstruct that officer's progress through the lower counties of Virginia. Hearing of their approach, Lord Dunmore took a very judicious position on the north side of Elizabeth river, at the great bridge, where it was necessary for the provincials to cross in order to reach Norfolk, at which place he had established himself in some force. Here he erected a small fort on a piece of firm ground, surrounded by a marsh, which was only accessible on either side by a long causeway. The American troops took post within cannon shot of the enemy, in a small village at the south end of the causeway, across which, just at its termination, they constructed a breastwork, but being without artillery, were unable to make any attempt upon the fort. In this position both parties continued for a few days, when Lord Dunmore, participating probably in that contempt for the Americans,

which had been so freely expressed in the House of Commons, ordered Captain Fordyce, the commanding officer at the great bridge, though inferior in numbers, to storm the works of the provincials. Between daybreak and sunrise, this officer, at the head of about sixty grenadiers of the fourteenth regiment, who led the column of the enemy, advanced on the causeway, with fixed bayonets against the breastwork. The alarm was immediately given, and as is the practice with raw troops, the bravest of the Americans rushed to the works, where, unmindful of order, they kept up a tremendous fire on the front of the British column. Captain Fordyce, though received so warmly in front, and taken in flank, by a small body of men who were collected by Colonel Stevens, of the minute battalion, and posted on an eminence something more than one hundred yards to the left, marched up under this terrible fire with great intrepidity, until he fell dead within a few steps of the breastwork. The column immediately broke, but the British troops being covered in their retreat by the artillery of the fort, were not pursued. In this ill-judged attack, every grenadier is said to have been killed or wounded, while the Americans did not lose a single man. The next night the fort was evacuated. The provincial troops proceeded to Norfolk, and Lord Dunmore found it necessary to take refuge on board his vessels.*

In July, 1776, Mr. Marshall was appointed first lieutenant in the eleventh regiment of the continental troops, and in the following winter, he marched to the middle States, and joined the army of Washington. In the spring of 1777, he was promoted to the rank of captain, and remained in that character, in active service, until the close of the year 1779. He was present at the battles of Germantown, Brandywine, and Monmouth, and was one of that heroic band of patriots who suffered the severities of the memorable winter at Valley Forge. During this period he often acted as deputy judge advocate, a position which gave him an extensive acquaintance and weighty influence with the officers of the army, by whom he was greatly beloved and respected. "It was during his performance of the duties of judge advocate," says Judge Story, "that he, for the first time I believe, became personally acquainted with General Washington, and I am sure, with colonel, afterwards General Hamilton; for both of whom, it needs scarcely to be said, he always entertained the deepest respect, and whose unreserved friendship, at a subsequent period of his life, he familiarly enjoyed."

Late in the year 1779, Mr. Marshall returned to Virginia, and commenced a course of study in William and Mary College, attending the law lectures of Chancellor Wythe, and the lectures on natural philosophy of President (afterwards Bishop) Madison. In 1780 he received a license to practise law; and soon after returned to the army, where he continued actively engaged until after Arnold's invasion of Virginia. He now resigned his commission and returned to the prosecution of his professional studies; and on the reopening of the courts of law, after the surrender at Yorktown, commenced practice, in which he soon obtained a high and honorable distinction. In 1782 he was a member of the Virginia legislature, and during the same year occupied a seat in the State executive council. In January, 1783, he married Miss Ambler, of Richmond, to which place he removed shortly after, and established his permanent residence.

The duties of his profession, already very arduous, and rapidly increasing, impelled him to resign his position in the State council. But he did not long remain out of public life, being almost immediately elected to the Legislature to represent his native county. Here he continued two years, when he was again returned to the same body from the county of Richmond. It was in this position that he was disciplined to the "thorough mastery of the true principles of free government." "My immediate entrance into the State legislature," said he, in a letter written in the latter years of his life, "opened to my view the causes which had been chiefly instrumental in augmenting these sufferings [meaning of the army]; and the general tendency of state politics convinced me that no safe and permanent remedy could be found, but in a more efficient and better organized general government."

In the great contest which arose, after the conclusion of the war, between the advocates of an efficient general government and the supporters of the State sovereignties, Virginia took a

* Life of George Washington, by John Marshall, vol. 2, page 371.

prominent part. In her legislative halls, the question, "whether the Union ought to be continued or dissolved by a total separation of the States, was freely discussed, and either side of it was maintained, not only without reproach, but with uncompromising fearlessness of consequences. Here Mr. Marshall, side by side with Madison, stood forth on all occasions an inflexible and enlightened advocate for union. It was here that he learned and practised those profound doctrines of rational, limited, constitutional liberty, from which he never shrunk, and to which he resolutely adhered to the end of his life. * * * It was here that he learned to love the Union with a supreme, unconquerable love—a love which was never cooled by neglect, or alienated by disappointment: a love which survived the trials of adversity, and the still more dangerous trials of prosperity: a love which faltered not, fainted not, wearied not on this side the grave."

In 1788, Mr. Marshall was a member of the Virginia Convention, assembled for the ratification of the Federal Constitution. In the debates of that body he took an active part. His speeches on the power of taxation, the powers of the judiciary, and that on the power over the militia, evince many of those sagacious and statesmanlike views which characterized his subsequent life. After the adoption of the constitution, he was elected to the State legislature, where he remained until 1792, when he once more returned to the practice of his profession, and soon became engaged in many of the leading causes in the State and national tribunals. Again in 1795, he was returned to the State legislature, where he greatly distinguished himself by his ability and power in the discussions relating to the treaty negotiated by Mr. Jay.

During the winter of 1796, he visited Philadelphia, to argue an important case before the United States Supreme Court. It was during this sojourn that he became acquainted with many of the most celebrated men of the northern States, who were then in Congress. "I then became acquainted," said he, "with Mr. Cabot, Mr. Ames, Mr. Dexter, and Mr. Sedgwick, of Massachusetts, Mr. Wadsworth, of Connecticut, and Mr. King, of New York. I was delighted with these gentlemen. The particular subject, the British Treaty, which introduced me to their notice, was at that time so interesting, and a Virginian who supported, with any sort of reputation, the measures of the government, was such a *rara avis*, that I was received by them all with a degree of kindness which I had not anticipated." About this time he was invited by Washington to accept the office of Attorney General of the United States, but he declined, on account of its interference with the practice of his profession. He was offered the position of Minister to France, on the recall of Mr. Monroe. This he also declined. "I then thought," said he, "my determination to remain at the bar unalterable. My situation at the bar appeared to me to be more independent, and not less honorable than any other; my preference for it was decided."

General Pinckney, of South Carolina, who was subsequently appointed to succeed Mr. Monroe, being refused an audience at the Court of France, Mr. Adams, (who was then President,) desirous of an amicable and honorable adjustment of the differences between that nation and his own country, in 1797, appointed Mr. Marshall, Mr. Gerry, and General Pinckney, envoys extraordinary to France; but the envoys were not accredited, and in the summer of 1798, Mr. Marshall returned to the United States. The next year, yielding to the wishes of General Washington, he consented to become a candidate, and after a spirited political contest, was elected to Congress. His services in the memorable session of the winter of 1799 and 1800, were zealous and untiring. His masterly speech in the case of Thomas Nash alias Jonathan Robbins, delivered during this session, will be found in the subsequent pages of this volume.

In May, 1800, he was appointed by President Adams to the office of Secretary of War, but before he entered upon the duties of that station, he was transferred to the head of the department of State. On the resignation of Chief Justice Ellsworth, in 1801, Mr. Marshall was appointed as his successor, and continued on the bench of the Supreme Court of the United States, "with increasing reputation and unsullied dignity," until his death, on the sixth day of July, 1835.

That event created the deepest regret in the public mind throughout the country. Eulogies upon his character and judicial services were pronounced by the most eminent members of the

profession to which he belonged, all of which evince the highest sentiments of respect and admiration. One of the most carefully prepared and elaborate of these was a discourse delivered at the request of the Suffolk Bar, at Boston, by Mr. Justice Story, which has been freely used in the preparation of this sketch, and to which the reader is referred, as the best and most complete estimate of his life, character, and services.

THE FEDERAL CONSTITUTION.*

Mr. Marshall delivered the following speech, in the Virginia Convention for the ratification of the Federal Constitution, on the tenth of June, 1788, the preamble and the first and second section of the first article of the constitution being under consideration:

Mr. Chairman: I conceive that the object of the discussion now before us is, whether democracy or despotism be most eligible. I am sure that those who framed the system, submitted to our investigation, and those who now support it, intend the establishment and security of the former. The supporters of the constitution claim the title of being firm friends of the liberty and the rights of mankind. They say that they consider it as the best means of protecting liberty. We, sir, idolize democracy. Those who oppose it have bestowed eulogiums on monarchy. We prefer this system to any monarchy, because we are convinced that it has a greater tendency to secure our liberty and promote our happiness. We admire it, because we think it a well regulated democracy: it is recommended to the good people of this country: they are, through us, to declare whether it be such a plan of government as will establish and secure their freedom.

Permit me to attend to what the honorable gentleman, Mr. Henry, has said.* He has expatiated on the necessity of a due attention to certain maxims—to certain fundamental principles, from which a free people ought never to depart. I concur with him in the propriety of the observance of such maxims. They are necessary in any government, but more essential to a democracy than to any other. What are the favorite maxims of democracy? A strict observance of justice and public faith, and a steady adherence to virtue. These, sir, are the principles of a good government. No mischief, no misfortune, ought to deter us from a strict observance of justice and public faith. Would to Heaven that these principles had been observed under the present government! Had this been the case, the friends of liberty would not be so willing now to part with it. Can we boast that our government is founded on these maxims? Can we pretend to the enjoyment of political freedom or security, when we are told that a man has been, by an act of Assembly, struck out of existence without a trial by jury, without examination, without being confronted with his accusers and witnesses, without the benefits of the law of the land? Where is our safety, when we are told that this act was justifiable, because the person was not a Socrates? What has become of the worthy member's maxims? Is this one of them? Shall it be a maxim that a man shall be deprived of his life without the benefit of law? Shall such a deprivation of life be justified by answering, that the man's life was not taken secundum artem, because he was a bad man? Shall it be a maxim that government ought not to be empowered to protect virtue?

The honorable member, after attempting to vindicate that tyrannical legislative act to which I have been alluding, proceeded to take a view of the dangers to which this country is exposed. He told us that the principal danger arose from a government which, if adopted, would give away the Mississippi. I intended to proceed regularly, by attending to the clause under debate; but I must reply to some observations which were dwelt upon to make impressions on our minds unfavorable to the plan upon the table. Have we no navigation in, or do we

* So general was the conviction that the public welfare required a government of more extensive powers than those vested in the General Government by the Articles of Confederation, that in May, 1787, a convention composed of delegates from all the States in the Union, with the exception of Rhode Island, assembled at Philadelphia, to take the subject into consideration. This convention continued its sessions with closed doors, until the seventeenth of the following September, when the Federal Constitution was promulgated. The convention resolved, "That the 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, for their assent and ratification;" and in conformity with this recommendation, Congress, on the twenty-eighth of the same month, passed a resolution directing that the Constitution should be submitted to conventions to be assembled in the several States of the Union. The conventions subsequently assembled, and the expediency of adopting the Constitution was ably and eloquently discussed.

* See the speeches of Patrick Henry, at pages 13-39 of the first volume of this work.

derive no benefit from, the Mississippi? How shall we retain it? By retaining that weak government which has hitherto kept it from us? Is it thus that we shall secure that navigation? Give the government the power of retaining it, and then we may hope to derive actual advantages from it. Till we do this, we cannot expect that a government which hitherto has not been able to protect it, will have the power to do it hereafter. Have we attended too long to consider whether this government would be able to protect us? Shall we wait for further proofs of its inefficacy? If on mature consideration, the constitution will be found to be perfectly right on the subject of treaties, and containing no danger of losing that navigation, will he still object? Will he object because eight States are unwilling to part with it? This is no good ground of objection.

He then stated the necessity and probability of obtaining amendments. This we ought to postpone until we come to that clause, and make up our minds whether there be any thing unsafe in this system. He conceived it impossible to obtain amendments after adopting it. If he was right, does not his own argument prove that in his own conception, previous amendments cannot be had? for, sir, if subsequent amendments cannot be obtained, shall we get amendments before we ratify? The reasons against the latter do not apply against the former. There are in this State, and in every State in the Union, many who are decided enemies of the Union. Reflect on the probable conduct of such men. What will they do? They will bring amendments which are local in their nature, and which they know will not be accepted. What security have we that other States will not do the same. We are told that many in the States were violently opposed to it. They are more mindful of local interests. They will never propose such amendments as they think would be obtained. Disunion will be their object. This will be attained by the proposal of unreasonable amendments. This, sir, though a strong cause, is not the only one that will militate against previous amendments. Look at the comparative temper of this country now, and when the late Federal Convention met. We had no idea then of any particular system. The formation of the most perfect plan was our object and wish. It was imagined that the States would accede to, and be pleased with, the proposition that would be made them. Consider the violence of opinions, the prejudices and animosities which have been since imbibed. Will not these operate greatly against mutual concessions, or a friendly concurrence? This will, however, be taken up more properly another time. He says, we wish to have a strong, energetic, powerful government. We contend for a well-regulated democracy. He insinuates that the power of the government has been enlarged by the convention, and that we may apprehend it will be enlarged by others. The

They have proposed to our consideration, a scheme of government which they thought advisable. We are not bound to adopt it, if we disapprove of it. Had not every individual in this community a right to tender that scheme which he thought most conducive to the welfare of his country? Have not several gentlemen already demonstrated that the convention did not exceed their powers? But the Congress have the power of making bad laws, it seems. The Senate, with the President, he informs us, may make a treaty which shall be disadvantageous to us; and that, if they be not good men, it will not be a good constitution. I shall ask the worthy member only, if the people at large, and they alone, ought to make laws and treaties. Has any man this in contemplation? You cannot exercise the powers of government personally yourselves. You must trust to agents. If so, will you dispute giving them the power of acting for you, from an existing possibility that they may abuse it? As long as it is impossible for you to transact your business in person, if you repose no confidence in delegates, because there is a possibility of their abusing it, you can have no government; for the power of doing good is inseparable from that of doing some evil.

We may derive from Holland lessons very beneficial to ourselves. Happy that country which can avail itself of the misfortunes of others—which can gain knowledge from that source without fatal experience! What has produced the late disturbances in that country? The want of such a government as is on your table, and having in some measure, such a one as you are about to part with. The want of proper powers in the government, the consequent deranged and relaxed administration, the violence of contending parties, and inviting foreign powers to interpose in their disputes, have subjected them to all the mischiefs which have interrupted their harmony. I cannot express my astonishment at his high-colored eulogium on such a government. Can any thing be more dissimilar than the relation between the British government and the colonies, and the relation between Congress and the States? We were not represented in Parliament. Here we are represented. Arguments which prove the impropriety of being taxed by Britain, do not hold against the exercise of taxation by Congress.

Let me pay attention to the observation of the gentleman who was last up, that the power of taxation ought not to be given to Congress. This subject requires the undivided attention of this House. This power I think essentially necessary; for without it there will be no efficiency in the government. We have had a sufficient demonstration of the vanity of depending on requisitions. How, then, can the general government exist without this power? The possibility of its being abused is urged as an argument against its expediency. To very

in the old system; to little purpose, indeed, did she propose improvements; and to no purpose is this plan constructed for the promotion of our happiness, if we refuse it now, because it is possible that it may be abused. The confederation has nominal powers, but no means to carry them into effect. If a system of government were devised by more than human intelligence, it would not be effectual if the means were not adequate to the power. All delegated powers are liable to be abused. Arguments drawn from this source go in direct opposition to the government, and in recommendation of anarchy. The friends of the constitution are as tenacious of liberty as its enemies. They wish to give no power that will endanger it. They wish to give the government powers to secure and protect it. Our inquiry here must be, whether the power of taxation be necessary to perform the objects of the constitution, and whether it be safe, and as well guarded as human wisdom can do it. What are the objects of the national government? To protect the United States, and to promote the general welfare. Protection, in time of war, is one of its principal objects. Until mankind shall cease to have ambition and avarice, wars will arise.

The prosperity and happiness of the people depend on the performance of these great and important duties of the general government. Can these duties be performed by one State? Can one State protect us, and promote our happiness? The honorable gentleman who has gone before me, Governor Randolph, has shown that Virginia cannot do these things.* How, then, can they be done? By the national government only. Shall we refuse to give it power to do them? We are answered, that the powers may be abused; that, though the Congress may promote our happiness, yet they may prostitute their powers to destroy our liberties. This goes to the destruction of all confidence in agents. Would you believe that men who had merited your highest confidence would deceive you? Would you trust them again after one deception? Why then hesitate to trust the general government? The object of our inquiry is, Is the power necessary, and is it guarded? There must be men and money to protect us. How are armies to be raised? Must we not have money for that purpose? But the honorable gentleman says that we need not be afraid of war. Look at history, which has been so often quoted. Look at the great volume of human nature. They will foretell you that a defenceless country cannot be secure. The nature of man forbids us to conclude that we are in no danger from war. The passions of men stimulate them to avail themselves of the weakness of others. The powers of Europe are jealous of us. It is our interest to watch their conduct, and guard against them. They must be pleased with our disunion. If we invite them by our weakness to attack us, will they not do it? If we add debility to our present situation, a partition of America may take place.

It is, then, necessary to give the government that power, in time of peace, which the necessity of war will render indispensable, or else we shall be attacked unprepared. The experience of the world, a knowledge of human nature, and our own particular experience, will confirm this truth. When danger shall come upon us, may we not do what we were on the point of doing once already—that is, appoint a dictator? Were those who are now friends to this constitution less active in the defence of liberty, on that trying occasion, than those who oppose it? When foreign dangers come, may not the fear of immediate destruction, by foreign enemies, impel us take a most dangerous step? Where, then, will be our safety? We may now regulate and frame a plan that will enable us to repel attacks, and render a recurrence to dangerous expedients unnecessary. If we be prepared to defend ourselves, there will be little inducement to attack us. But if we defer giving the necessary power to the general government till the moment of danger arrives, we shall give it then, and with an unsparing hand. America, like other nations, may be exposed to war. The propriety of giving this power will be proved by the history of the world, and particularly of modern republics. I defy you to produce a single instance where requisitions on several individual States, composing a confederacy, have been honestly complied with. Did gentlemen expect to see such punctuality complied with in America? If they did, our own experience shows the contrary.

We are told that the confederation carried us through the war. Had not the enthusiasm of liberty inspired us with unanimity, that system would never have carried us through it. It would have been much sooner terminated had that government been possessed of due energy. The inability of Congress, and the failure of States to comply with the constitutional requisitions, rendered our resistance less efficient than it might have been. The weakness of that government caused troops to be against us which ought to have been on our side, and prevented all resources of the community from being called at once into action. The extreme readiness of the people to make their utmost exertions to ward off solely the pressing danger, supplied the place of requisitions. When they came solely to be depended on, their inutility was fully discovered. A bare sense of duty, or a regard to propriety, is too feeble to induce men to comply with obligations. We deceive ourselves if we expect any efficacy from these. If requisitions will not avail, the government must have the sinews of war some other way. Requisitions cannot be effectual. They will be productive of delay, and will ultimately be in-

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*Randolph, at page 165 of

of the government will be supplied in a peaceable manner, without irritating the minds of the people. But requisitions cannot be rendered efficient without a civil war—without great expense of money, and the blood of our citizens. Are there any other means? Yes, that Congress shall apportion the respective quotas previously, and if not complied with by the States, that then this dreaded power shall be exercised. The operation of this has been described by the gentleman who opened the debate. He cannot be answered. This great objection to that system remains unanswered. Is there no other argument which ought to have weight with us on this subject? Delay is a strong and pointed objection to it.

We are told by the gentleman who spoke last, that direct taxation is unnecessary, because we are not involved in war. This admits the propriety of recurring to direct taxation if we were engaged in war. It has not been proved that we have no dangers to apprehend on this point. What will be the consequence of the system proposed by the worthy gentleman? Suppose the States should refuse?

The worthy gentleman who is so pointedly opposed to the constitution, proposes remonstrances. Is it a time for Congress to remonstrate or compel a compliance with requisitions, when the whole wisdom of the Union, and the power of Congress are opposed to a foreign enemy? Another alternative is, that, if the States shall appropriate certain funds for the use of Congress, Congress shall not lay direct taxes. Suppose the funds appropriated by the States, for the use of Congress, should be inadequate; it will not be determined whether they be insufficient till after the time at which the quota ought to have been paid; and then, after so long a delay, the means of procuring money, which ought to have been employed in the first instance, must be recurred to. May they not be amused by such ineffectual and temporizing alternatives from year to year, until America shall be enslaved? The failure in one State will authorize a failure in another. The calculation in some States that others will fail, will produce general failures. This will, also, be attended with all the expenses which we are anxious to avoid. What are the advantages to induce us to embrace this system? If they mean that requisitions should be complied with, it will be the same as if Congress had the power of direct taxation. The same amount will be paid by the people.

It is objected, that Congress will not know how to lay taxes, so as to be easy and convenient for the people at large. Let us pay strict attention to this objection. If it appears to be totally without foundation, the necessity of levying direct taxes will obviate what the gentleman says; nor will there be any color for refusing to grant the power.

The objects of direct taxes are well understood: they are but few; what are they? Lands, slaves, [illegible] of all kinds, and a few other articles of domestic property. Can you believe that ten men, selected from all parts of the State, chosen because they know the situation of the people, will be unable to determine so as to make the tax equal on, and convenient for, the people at large? Does any man believe that they would lay the tax without the aid of other information besides their own knowledge, when they know that the very object for which they are elected is to lay the taxes in a judicious and convenient manner? If they wish to retain the affections of the people at large, will they not inform themselves of every circumstance that can throw light on the subject? Have they but one source of information? Besides their own experience—their knowledge of what will suit their constituents—they will have the benefit of the knowledge and experience of the State legislature. They will see in what manner the legislature of Virginia collects its taxes. Will they be unable to follow their example? The gentlemen who shall be delegated to Congress will have every source of information that the legislatures of the States can have, and can lay the taxes as equally on the people, and with as little oppression as they can. If, then, it be admitted that they can understand how to lay them equally and conveniently, are we to admit that they will not do it, but that in violation of every principle that ought to govern men, they will lay them so as to oppress us? What benefit will they have by it? Will it be promotive of their re-election? Will it be by wantonly imposing hardships and difficulties on the people at large, that they will promote their own interest, and secure their re-election? To me it appears incontrovertible that they will settle them in such a manner as to be easy for the people. Is the system so organized as to make taxation dangerous? I shall not go to the various checks of the government, but examine whether the immediate representation of the people be well constructed. I conceive its organization to be sufficiently satisfactory to the warmest friend of freedom. No tax can be laid without the consent of the House of Representatives. If there be no impropriety in the mode of electing the representatives, can any danger be apprehended? They are elected by those who can elect representatives in the State legislature. How can the votes of the electors be influenced? By nothing but the character and conduct of the man they vote for. What object can influence them when about choosing him? They have nothing to direct them in the choice but their own good. Have you not as pointed and strong a security as you can possibly have? It is a mode that seems an impossibility of being corrupted. If they are to be chosen for their wisdom, virtue, integrity, what inducement have they to infringe on our freedom? We are told that they may abuse their power. Are there strong motives to prompt them to abuse it? [illegible]

their own interest? Will not they and their friends feel the effects of iniquitous measures? Does the representative remain in office for life? Does he transmit his title of representative to his son? Is he secured from the burden imposed on the community?

To procure their re-election, it will be necessary for them to confer with the people at large, and convince them, that the taxes laid are for their good. If I am able to judge on the subject, the power of taxation now before us is wisely conceded, and the representatives are wisely elected.

The honorable gentleman said that a government should ever depend on the affections of the people. It must be so. It is the best support it can have. This government merits the confidence of the people, and, I make no doubt, will have it. Then he informed us again of the disposition of Spain with respect to the Mississippi, and the conduct of the government with regard to it. To the debility of the confederation alone may justly be imputed every cause of complaint on this subject. Whenever gentlemen will bring forward their objections, I trust we can prove that no danger to the navigation of that river can arise from the adoption of this constitution. I beg those gentlemen that may be affected by it, to suspend their judgment till they hear it discussed. Will, says he, the adoption of this constitution pay our debts? It will compel the States to pay their quotas. Without this, Virginia will be unable to pay. Unless all the States pay, she cannot. Though the States will not coin money, (as we are told,) yet this government will bring forth and proportion all the strength of the Union. That economy and industry are essential to our happiness, will be denied by no man. But the present government will not add to our industry. It takes away the incitements to industry, by rendering property insecure and unprotected. It is the paper on your table that will promote and encourage industry. New Hampshire and Rhode Island have rejected it, he tells us. New Hampshire, if my information be right, will certainly adopt it. The report spread in this country, of which I have heard, is, that the representatives of that State having, on meeting, found they were instructed to vote against it, returned to their constituents without determining the question, to convince them of their being mistaken, and of the propriety of adopting it.

The extent of the country is urged as another objection, as being too great for a republican government. This objection has been handed from author to author, and has been certainly misunderstood and misapplied. To what does it owe its source? To observations and criticisms on governments, where representation did not exist. As to the legislative power, was it ever supposed inadequate to any extent? Extent of country may render it difficult to execute the laws, but not to legislate. Extent will be sufficiently energetic and operative in a small territory, will be feeble when extended over a wide-extended country. The gentleman tells us there are no checks in this plan. What has become of his enthusiastic eulogium on the American spirit? We should find a check and control, when oppressed from that source. In this country, there is no exclusive personal stock of interest. The interest of the community is blended and inseparably connected with that of the individual. When he promotes his own, he promotes that of the community. When we consult the common good, we consult our own. When he desires such checks as these, he will find them abundantly here. They are the best checks. What has become of his eulogium on the Virginia constitution? Do the checks in this plan appear less excellent than those of the constitution of Virginia? If the checks in the constitution be compared to the checks in the Virginia constitution, he will find the best security in the former.

The temple of liberty was complete, said he, when the people of England said to their king, that he was their servant. What are we to learn from this? Shall we embrace such a system as that? Is not liberty secure with us, where the people hold all powers in their own hands, and delegate them cautiously, for short periods, to their servants, who are accountable for the smallest mal-administration? Where is the nation that can boast greater security than we do? We want only a system like the paper before you, to strengthen and perpetuate this security.

The honorable gentleman has asked if there be any safety or freedom, when we give away the sword and the purse. Shall the people at large hold the sword and the purse without the interposition of their representatives? Can the whole aggregate community act personally? I apprehend that every gentleman will see the impossibility of this. Must they, then, not trust them to others? To whom are they to trust them, but to their representatives, who are accountable for their conduct? He represents secrecy as unnecessary, and produces the British government as a proof of its inutility. Is there no secrecy there? When deliberating on the propriety of declaring war, or on military arrangements, do they deliberate in the open fields? No, sir. The British government affords secrecy when necessary, and so ought every government. In this plan, secrecy is only used when it would be fatal and pernicious to publish the schemes of government. We are threatened with the loss of our liberties by the possible abuse of power, notwithstanding the maxim, that those who give may take away. It is the people that give power, and can take it back. What shall restrain them? They are the masters who give it, and of whom their servants hold it.

He then argues against the system, because it does not resemble the British government in this—that the same power that declares war has

not the means of carrying it on. Are the people of England more secure, if the Commons have no voice in declaring war? or are we less secure by having the Senate joined with the President? It is an absurdity, says the worthy member, that the same man should obey two masters, that the same collector should gather taxes for the general government and the State legislature. Are they not both the servants of the people? Are not Congress and the State legislature the agents of the people, and are they not to consult the good of the people? May not this be effected by giving the same officer the collection of both taxes? He tells you that it is an absurdity to adopt before you amend. Is the object of your adoption to amend solely? The objects of your adoption are union, safety against foreign enemies, and protection against faction—against what has been the destruction of all republics. These impel you to its adoption. If you adopt it, what shall restrain you from amending it, if, in trying it, amendments shall be found necessary? The government is not supported by force, but depending on our free will. When experience shall show us any inconveniences, we can then correct it. But until we have experience on the subject, amendments as well as the constitution itself, are to try. Let us try it, and keep our hands free to change it when necessary. If it be necessary to change government, let us change that government which has been found to be defective. The difficulty we find in amending the confederation will not be found in amending this constitution. Any amendments, in the system before you, will not go to a radical change; a plain way is pointed out for the purpose. All will be interested to change it, and therefore all exert themselves in getting the change. There is such a diversity of sentiment in human minds, that it is impossible we shall ever concur in one system till we try it. The power given to the general government over the time, place, and manner of election, is also strongly objected to. When we come to that clause, we can prove it is highly necessary, and not dangerous.

The worthy member has concluded his observations by many eulogiums on the British constitution. It matters not to us whether it be a wise one or not. I think that, for America at least, the government on your table is very much superior to it. I ask you if your House of Representatives would be better than it is, if a hundredth part of the people were to elect a majority of them. If your Senators were for life, would they be more agreeable to you? If your President were not accountable to you for his conduct,—if it were a constitutional maxim, that he could do no wrong,—would you be safer than you are now? If you can answer, Yes, to these questions, then adopt the British constitution. If not, then, good as that government may be, this is better. The worthy gentleman who was last up, said the confederacies of ancient and modern times reasons which applied against them, could not be urged against it. Do they not hold out one lesson very useful to us? However unlike in other respects they resemble it in its total inefficacy. They warn us to shun their calamities, and place in our government those necessary powers, the want of which destroyed them. I hope we shall avail ourselves of their misfortunes, without experiencing them. There was something peculiar in one observation he made. He said that those who governed the cantons of Switzerland were purchased by foreign powers, which was the cause of their uneasiness and trouble. How does this apply to us? If we adopt such a government as theirs, will it not be subject to the same inconvenience? Will not the same cause produce the same effect? What shall protect us from it? What is our security?

He then proceeded to say, the causes of war are removed from us; that we are separated by the sea from the powers of Europe, and need not be alarmed. Sir, the sea makes them neighbors to us. Though an immense ocean divides us, we may speedily see them with us. What dangers may we not apprehend to our commerce! Does not our naval weakness invite an attack on our commerce? May not the Algerines seize our vessels? Cannot they and every other predatory or maritime nation, pillage our ships and destroy our commerce, without subjecting themselves to any inconvenience? He would, he said, give the general government all necessary powers. If any thing be necessary, it must be so to call forth the strength of the Union when we may be attacked, or when the general purposes of America require it. The worthy gentleman then proceeded to show that our present exigencies are greater than they will ever be again.

Who can penetrate into futurity? How can any man pretend to say that our future exigencies will be less than our present? The exigencies of nations have been generally commensurate to their resources. It would be the utmost impolicy to trust to a mere possibility of not being attacked, or obliged to exert the strength of the community. He then spoke of a selection of particular objects by Congress, which he says must necessarily be oppressive; that Congress, for instance, might select taxes, and that all but landholders would escape. Cannot Congress regulate the taxes so as to be equal on all parts of the community? Where is the absurdity of having thirteen revenues? Will they clash with, or injure, each other? If not, why cannot Congress make thirteen distinct laws, and impose the taxes on the general objects of taxation in each State, so as that all persons of the society shall pay equally, as they ought?

He then told you that your continental government will call forth the virtue and talents of America. This being the case, will they encroach on the power of the State govern-

zens wantonly attempt to destroy the liberty of the people? Will the most virtuous act the most wickedly? I differ in opinion from the worthy gentleman. I think the virtue and talents of the members of the general government will tend to the security, instead of the destruction, of our liberty. I think that the power of direct taxation is essential to the existence of the general government, and that it is safe to grant it. If this power be not necessary, and as safe from abuse as any delegated power can possibly be, then I say that the plan before you is unnecessary; for it imports not what system we have, unless it have the power of protecting us in time of peace and war.

On the twentieth of June, the first and second sections of the third article of the constitution being under consideration, Mr. Marshall spoke as follows:—

Mr. Chairman: This part of the plan before us, is a great improvement on that system from which we are now departing. Here are tribunals appointed for the decision of controversies, which were before, either not at all, or improperly provided for. That many benefits will result from this to the members of the collective society, every one confesses. Unless its organization be defective, and so constructed as to injure, instead of accommodating the convenience of the people, it merits our approbation. After such a candid and fair discussion by those gentlemen who support it, after the very able manner in which they have investigated and examined it, I conceived it would be no longer considered as so very defective, and that those who opposed it, would be convinced of the impropriety of some of their objections. But I perceive they still continue the same opposition. Gentlemen have gone on an idea, that the federal courts will not determine the causes, which may come before them, with the same fairness and impartiality with which other courts decide. What are the reasons of this supposition? Do they draw them from the manner in which the judges are chosen, or the tenure of their office? What is it that makes us trust our judges? Their independence in office and manner of appointment. Are not the judges of the federal court chosen with as much wisdom as the judges of the State governments? Are they not equally, if not more independent? If so, shall we not conclude that they will decide with equal impartiality and candor? If there be as much wisdom and knowledge in the United States, as in a particular State, shall we conclude that that wisdom and knowledge will not be equally exercised in the selection of the judges?

The principle on which they object to the federal jurisdiction, seems to me to be founded on a belief, that a fair trial will not be had in these courts. If this committee will consider that we are as secure there as any where else. What mischief results from some causes being tried there? Is there not the utmost reason to conclude, that judges wisely appointed, and independent in their office, will never countenance any unfair trial? What are the subjects of its jurisdiction? Let us examine them with an expectation that causes will be as candidly tried there, as elsewhere, and then determine. The objection which was made by the honorable member who was first up yesterday, Mr. Mason, has been so fully refuted, that it is not worth while to notice it. He objected to Congress having power to create a number of inferior courts according to the necessity of public circumstances. I had an apprehension that those gentlemen who placed no confidence in Congress, would object that there might be no inferior courts. I own that I thought that those gentlemen would think there would be no inferior courts, as it depended on the will of Congress, but that we should be dragged to the centre of the Union. But I did not conceive, that the power of increasing the number of courts could be objected to by any gentleman, as it would remove the inconvenience of being dragged to the centre of the United States. I own that the power of creating a number of courts is, in my estimation, so far from being a defect, that it seems necessary to the perfection of this system. After having objected to the number and mode, he objected to the subject matter of their cognizance.

Here Mr. Marshall read the second section.

These, sir, are the points of federal jurisdiction to which he objects, with a few exceptions. Let us examine each of them, with a supposition that the same impartiality will be observed there, as in other courts, and then see if any mischief will result from them. With respect to its cognizance in all cases arising under the constitution and the laws of the United States, he says, that the laws of the United States being paramount to the laws of the particular States, there is no case but what this will extend to. Has the government of the United States power to make laws on every subject? Does he understand it so? Can they make laws affecting the mode of transferring property, or contracts, or claims between citizens of the same State? Can they go beyond the delegated powers? If they were to make a law not warranted by any of the powers enumerated, it would be considered by the judges as an infringement of the constitution which they are to guard. They would not consider such a law as coming under their jurisdiction. They would declare it void. It will annihilate the State courts, says the honorable gentleman. Does not every gentleman here know, that the causes in our courts are more numerous than they can decide, according to their present construction? Look at the dockets; you will find them crowded with

mined. If some of these suits be carried to other courts, will it be wrong? They will still have business enough. Then there is no danger that particular subjects, small in proportion, being taken out of the jurisdiction of the State judiciaries, will render them useless and of no effect. Does the gentleman think that the State courts will have no cognizance of cases not mentioned here? Are there any words in this constitution which exclude the courts of the States from those cases which they now possess? Does the gentleman imagine this to be the case? Will any gentleman believe it? Are not controversies respecting lands, claimed under the grants of different States, the only controversies between citizens of the same State, which the federal judiciary can take cognizance of? The case is so clear, that to prove it would be an useless waste of time. The State courts will not lose the jurisdiction of the causes they now decide. They have a concurrence of jurisdiction with the federal courts in those cases in which the latter have cognizance.

How disgraceful is it that the State courts cannot be trusted, says the honorable gentleman. What is the language of the constitution? Does it take away their jurisdiction? Is it not necessary that the federal courts should have cognizance of cases arising under the constitution and the laws of the United States? What is the service or purpose of a judiciary, but to execute the laws in a peaceable, orderly manner, without shedding blood, or creating a contest, or availing yourselves of force? If this be the case, where can its jurisdiction be more necessary than here?

To what quarter will you look for protection from an infringement on the constitution, if you will not give the power to the judiciary? There is no other body that can afford such a protection. But the honorable member objects to it, because, says he, the officers of the government will be screened from merited punishment by the federal judiciary. The federal sheriff, says he, will go into a poor man's house and beat him, or abuse his family, and the federal court will protect him. Does any gentleman believe this? Is it necessary that the officers will commit a trespass on the property or persons of those with whom they are to transact business? Will such great insults on the people of this country be allowable? Were a law made to authorize them, it would be void. The injured man would trust to a tribunal in his neighborhood. To such a tribunal he would apply for redress, and get it. There is no reason to fear that he would not meet that justice there, which his country will be ever willing to maintain. But on appeal, says the honorable gentleman, what chance is there to obtain justice? This is founded on an idea, that they will not be impartial. There is no clause in the constitution, which bars the individual member injured, from applying to the State courts to give him redress. He says, that there is no cases. The contrary is well known to you, Mr. Chairman, to be the case in this commonwealth. With respect to mills, roads, and other cases, appeals lie from the inferior to the superior court, as to fact, as well as law. Is it clear that there can be no case in common law, in which an appeal as to fact might be proper and necessary? Can you not conceive a case where it would be productive of advantages to the people at large, to submit to that tribunal the final determination, involving facts as well as law? Suppose it should be deemed for the convenience of the citizens, that those things which concerned foreign ministers, should be tried in the inferior courts: if justice should be done, the decision would satisfy all. But if an appeal in matters of fact could not be carried to the superior court, then it would result, that such cases could not be tried before the inferior courts, for fear of injurious and partial decisions.

But, sir, where is the necessity of discriminating between the three cases of chancery, admiralty, and common law? Why not leave it to Congress? Will it enlarge their powers? Is it necessary for them wantonly to infringe your rights? Have you any thing to apprehend, when they can, in no case, abuse their power without rendering themselves hateful to the people at large? When this is the case, something may be left to the legislature, freely chosen by ourselves, from among ourselves, who are to share the burdens imposed upon the community, and who can be changed at our pleasure. Where power may be trusted, and there is no motive to abuse it, it seems to me to be as well to leave it undetermined, as to fix it in the constitution.

With respect to disputes between a State and the citizens of another State, its jurisdiction has been decried with unusual vehemence. I hope no gentleman will think that a State will be called at the bar of the federal court. Is there no such case at present? Are there not many cases in which the legislature of Virginia is a party, and yet the State is not sued? It is not rational to suppose, that the sovereign power shall be dragged before a court. The intent is, to enable States to recover claims of individuals residing in other States. I contend this construction is warranted by the words. But, say they, there will be partiality in it, if a State cannot be defendant—if an individual cannot proceed to obtain judgment against a State, though he may be sued by a State. It is necessary to be so, and cannot be avoided. I see a difficulty in making a State defendant, which does not prevent its being plaintiff. If this be only what cannot be avoided, why object to the system on that account? If an individual has a just claim against any particular State, is it to be presumed, that on application to its legislature, he will not obtain satisfaction? But how could a State recover any claim from a citizen

The honorable member objects to suits being instituted in the federal courts by the citizens of one State against the citizens of another State. Were I to contend, that this was necessary in all cases, and that the government without it would be defective, I should not use my own judgment. But are not the objections to it carried too far? Though it may not in general, be absolutely necessary, a case may happen, as has been observed, in which a citizen of one State ought to be able to recur to this tribunal, to recover a claim from the citizen of another State. What is the evil which this can produce? Will he get more than justice there? The independence of the judges forbids it. What has he to get? Justice. Shall we object to this, because the citizen of another State can obtain justice without applying to our State courts? It may be necessary with respect to the laws and regulations of commerce, which Congress may make. It may be necessary in cases of debt, and some other controversies. In claims for land it is not necessary, but it is not dangerous. In the court of which State will it be instituted—said the honorable gentleman. It will be instituted in the court of the State where the defendant resides, where the law can come at him, and nowhere else. By the laws of which State will it be determined—said he. By the laws of the State where the contract was made. According to those laws, and those only, can it be decided. Is this a novelty? No, it is a principle in the jurisprudence of this commonwealth. If a man contracted a debt in the East Indies, and it was sued for here, the decision must be consonant to the laws of that country. Suppose a contract made in Maryland, where the annual interest is at six *per centum*, and a suit instituted for it in Virginia, what interest would be given now, without any federal aid? The interest of Maryland, most certainly, and if the contract had been made in Virginia, and suit brought in Maryland, the interest of Virginia must be given without doubt. It is now to be governed by the laws of that State where the contract was made. The laws which governed the contract at its formation, govern it in its decision. To preserve the peace of the Union only, its jurisdiction in this case ought to be recurred to. Let us consider, that when citizens of one State carry on trade in another State, much must be due to the one from the other, as the case between North Carolina and Virginia. Would not the refusal of justice to our citizens, from the courts of North Carolina, produce disputes between the States? Would the federal judiciary swerve from their duty, in order to give partial and unjust decisions?

The objection respecting the assignment of a bond to a citizen of another State, has been fully answered. But suppose it were to be tried as he says, what would be given more than was actually due in the case he mentioned? It is possible, in our courts as they justice. But the court of chancery grants relief. Would it not be so in the federal court? Would not depositions be taken to prove the payments, and if proved, would not the decision of the court be accordingly?

He objects, in the next place, to its jurisdiction in controversies between a State and a foreign state. Suppose, says he, in such a suit, a foreign state is cast, will she be bound by the decision? If a foreign state brought a suit against the commonwealth of Virginia, would she not be barred from the claim if the federal judiciary thought it unjust? The previous consent of the parties is necessary; and, as a federal judiciary will decide, each party will acquiesce. It will be the means of preventing disputes with foreign nations. On an attentive consideration of these courts, I trust every part will appear satisfactory to the committee.

The exclusion of trial by jury in this case, he urged, would prostrate our rights. Does the word court only mean the judges? Does not the determination of a jury, necessarily lead to the judgment of the court? Is there any thing here which gives the judges exclusive jurisdiction of matters of fact? What is the object of a jury trial? To inform the court of the facts. When a court has cognizance of facts, does it not follow, that they can make inquiry by a jury? It is impossible to be otherwise. I hope that in this country, where impartiality is so much admired, the laws will direct facts to be ascertained by a jury. But, says the honorable gentleman, the juries in the ten miles square will be mere tools of parties, with which he would not trust his person or property, which, he says, he would rather leave to the court. Because the government may have a district ten miles square, will no man stay there but the tools and officers of the government? Will nobody else be found there? Is it so in any other part of the world, where a government has legislative power? Are there none but officers and tools of the government of Virginia in Richmond? Will there not be independent merchants, and respectable gentlemen of fortune, within the ten miles square? Will there not be worthy farmers and mechanics? Will not a good jury be found there as well as any where else? Will the officers of the government become improper to be on a jury? What is it to the government, whether this man or that man succeeds? It is all one thing. Does the constitution say, that juries shall consist of officers, or that the supreme court shall be held in the ten miles square? It was acknowledged by the honorable member, that it was secure in England. What makes it secure there? Is it their constitution? What part of their constitution is there, that the parliament cannot change? As the preservation of this right is in the hands of parliament, and it has ever been held sacred by them, will the government of America be less honest than that of Great Britain? Here a restriction is to be

the State. There is no such restriction in that government; for the laws of parliament decide every thing respecting it. Yet gentlemen tell us, that there is safety there, and nothing here but danger. It seems to me, that the laws of the United States will generally secure trials by a jury of the vicinage, or in such manner as will be most safe and convenient for the people.

But it seems that the right of challenging the jurors is not secured in this constitution. Is this done by our own constitution, or by any provision of the English government? Is it done by their magna charta, or bill of rights? This privilege is founded on their laws. If so, why should it be objected to the American constitution, that it is not inserted in it? If we are secure in Virginia, without mentioning it in our constitution, why should not this security be found in the federal court?

The honorable gentleman said much about the quit rents in the Northern Neck. I will refer it to the honorable gentleman himself. Has he not acknowledged that there was no complete title? Was he not satisfied, that the right of the legal representatives of the proprietor did not exist at the time he mentioned? If so, it cannot exist now. I will leave it to those gentlemen who come from that quarter. I trust they will not be intimidated on this account, in voting on this question. A law passed in 1782, which secures this. He says that many poor men may be harassed and injured by the representatives of Lord Fairfax. If he has no right, this cannot be done. If he has this right, and comes to Virginia, what laws will his claims be determined by? By those of this State. By what tribunals will they be determined? By our State courts. Would not the poor man, who was oppressed by an unjust prosecution, be abundantly protected and satisfied by the temper of his neighbors, and would he not find ample justice? What reason has the honorable member to apprehend partiality or injustice? He supposes that if the judges be judges of both the federal and State courts, they will incline in favor of one government. If such contests should arise, who could more properly decide them, than those who are to swear to do justice? If we can expect a fair decision any where, may we not expect justice to be done by the judges of both the federal and State governments? But, says the honorable member, laws may be executed tyrannically. Where is the independency of your judges? If a law be exercised tyrannically in Virginia, to what can you trust? To your judiciary. What security have you for justice? Their independence. Will it not be so in the federal court?

Gentlemen ask what is meant by law cases, and if they be not distinct from facts. Is there no law arising on cases in equity and admiralty? Look at the acts of assembly; have you not many cases, where law and fact are blended? Does not the jurisdiction in point of fied in law and fact? The honorable gentleman says, that no law of Congress can make any exception to the federal, appellate jurisdiction of fact as well as law. He has frequently spoken of technical terms, and the meaning of them. What is the meaning of the term exception? Does it not mean an alternation and diminution? Congress is empowered to make exceptions to the appellate jurisdiction, as to law and fact, of the supreme court. These exceptions certainly go as far as the legislature may think proper, for the interest and liberty of the people. Who can understand this word, exception, to extend to one case as well as the other? I am persuaded, that a reconsideration of this case will convince the gentleman, that he was mistaken. This may go to the cure of the mischief apprehended. Gentlemen must be satisfied, that this power will not be so much abused as they have said.

The honorable member says, that he derives no consolation from the wisdom and integrity of the legislature, because we call them to rectify defects which it is our duty to remove. We ought well to weigh the good and evil before we determine. We ought to be well convinced that the evil will be really produced before we decide against it. If we be convinced that the good greatly preponderates, though there may be small defects in it, shall we give up that which is really good, when we can remove the little mischief it may contain, in the plain, easy method pointed out in the system itself?

I was astonished when I heard the honorable gentleman say, that he wished the trial by jury to be struck out entirely. Is there no justice to be expected by a jury of our fellow-citizens? Will any man prefer to be tried by a court, when the jury is to be of his countrymen, and probably of his vicinage? We have reason to believe the regulations with respect to juries will be such as shall be satisfactory. Because it does not contain all, does it contain nothing? But I conceive that this committee will see there is safety in the case, and that there is no mischief to be apprehended.

He states a case, that a man may be carried from a federal to an anti-federal corner, and *vice versa* where men are ready to destroy him. Is this probable? Is it presumable that they will make a law to punish men who are of different opinions in politics from themselves? Is it presumable, that they will do it in one single case, unless it be such a case as must satisfy the people at large? The good opinion of the people at large must be consulted by their representatives; otherwise mischiefs would be produced, which would shake the government to its foundation. As it is late, I shall not mention all the gentleman's argument; but some parts of it are so glaring, that I cannot pass them over in silence. He says that the establishment of these tribunals, and more particularly in their jurisdiction of controversies be-

Is there no difference between a tribunal which shall give justice and effect to an existing right, and creating a right that did not exist before? The debt or claim is created by the individual; he has bound himself to comply with it; does the creation of a new court amount to a retrospective law?

We are satisfied with the provision made in this country on the subject of trial by jury. Does our constitution direct trials to be by jury? It is required in our bill of rights, which is not a part of the constitution. Does any security arise from hence? Have you a jury when a judgment is obtained on a replevin bond, or by default? Have you a jury when a motion is made for the commonwealth against an individual; or when a motion is made by one joint obligor against another, to recover sums paid as security? Our courts decide in all these cases, without the intervention of a jury; yet they are all civil cases. The bill of rights is merely recommendatory. Were it otherwise, the consequence would be, that many laws which are found convenient, would be unconstitutional. What does the government before you say? Does it exclude the legislature from giving a trial by jury in civil cases? If it does not forbid its exclusion, it is on the same footing on which your State government stands now. The legislature of Virginia does not give a trial by jury where it is not necessary. But gives it wherever it is thought expedient. The federal legislature will do so too, as it is formed on the same principles.

The honorable gentleman says, that unjust claims will be made, and the defendant had better pay them than go to the supreme court. Can you suppose such a disposition in one of your citizens, as that to oppress another man, he will incur great expenses? What will he gain by an unjust demand? Does a claim establish a right? He must bring his witnesses to prove his claim. If he does not bring his witnesses, the expenses must fall upon him. Will he go on a calculation that the defendant will not defend it, or cannot produce a witness? Will he incur a great deal of expense, from a dependence on such a chance? Those who know human nature, black as it is, must know that mankind are too well attached to their interest to run such a risk. I conceive that this power is absolutely necessary, and not dangerous; that should it be attended by little inconveniences, they will be altered, and that they can have no interest in not altering them. Is there any real danger? When I compare it to the exercise of the same power in the government of Virginia, I am persuaded there is not. The federal government has no other motive, and has every reason of doing right, which the members of our State legislature have. Will a man on the Eastern Shore, be sent to be tried in Kentucky; or a man from Kentucky be brought to the Eastern Shore to have his trial? A government by doing this would destroy itself. I am convinced, the trial by jury will be regulated in the manner most advantageous to the community.

SPEECH IN ROBBINS' CASE.

This speech in the case of Thomas Nash alias Jonathan Robbins, who was surrendered to the British Government for trial for a supposed murder, committed by him on board of a British man-of-war, was delivered by Mr. Marshall in the House of Representatives, on the fourth of March, 1800:*

Believing, as I do, most seriously, that in a Government constituted like that of the United States, much of the public happiness depends, not only on its being rightly administered, but on the measures of administration being rightly understood: on rescuing public opinion from those numerous prejudices with which so many causes might combine to surround it, I have been highly gratified with the very eloquent, and what was still more valuable, the very able and very correct argument which has been delivered by the gentleman from Delaware, Mr. Bayard, against the resolutions now under consideration. I had not expected that the effect of this argument would have been universal; but I had cherished the hope, and in this I have not been disappointed, that it would be very extensive. I do not flatter myself with being able to shed much new light on the subject; but, as the argument in opposition to the resolutions has been assailed, with considerable ability, by gentlemen of great talents, I trust the House will not think the time misapplied, which will be devoted to the re-establishment of the principles contained in that argument, and to the refutation of those advanced in opposition to it. In endeavoring to do this, I shall notice the observations in support of the resolutions, not in the precise order in which they are made; but as they apply to the different points, I deem it necessary to maintain, in

* Certain resolutions were brought forward in the House of Representatives, censuring the President of the United

charged with the errors imputed to it by the resolutions.

My first proposition is, that the case of Thomas Nash, as stated to the President, is completely within the 27th article of the Treaty of Amity, Commerce, and Navigation, entered into between the United States of America and Great Britain.*

He read the Article, and then observed:

The casus fœderis of this article occurs, when a person, having committed murder or forgery within the jurisdiction of one of the contracting parties, and having sought an asylum in the country of the other, is charged with the crime, and his delivery demanded, on such proof of his guilt as, according to the laws of the place where he shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed.

The case stated is, that Thomas Nash, having committed a murder on board of a British frigate, navigating the high seas under a commission from His Britannic Majesty, had sought an asylum within the United States, and on this case his delivery was demanded by the minister of the King of Great Britain.

It is manifest that the case stated, if supported by proof, is within the letter of the article, provided a murder committed in a British frigate, on the high seas, be committed within the jurisdiction of that nation.

That such a murder is within their jurisdiction, has been fully shown by the gentleman from Delaware. The principle is, that the jurisdiction of a nation extends to the whole of its territory, and to its own citizens in every part of the world. The laws of a nation are rightfully obligatory on its own citizens in every situation, where those laws are really extended to them. This principle is founded on the nature of civil union. It is supported every where by public opinion, and is recognized by writers on the law of nations. Rutherforth, in his second volume, p. 180, says: "The jurisdiction which a civil society has over the persons of its members, affects them immediately, whether they are within its territories or not."

This general principle is especially true, and is particularly recognized, with respect to the fleets of a nation on the high seas. To punish offences committed in its fleet, is the practice of every nation in the universe; and consequently the opinion of the world is, that a fleet at sea is within the jurisdiction of the nation to which it belongs. Rutherforth, volume 2, p. 491, says, there can be no doubt about the jurisdiction of a nation over the persons which compose its fleets, when they are out at sea, whether they are sailing upon it, or are stationed in any particular part of it.

The gentleman from Pennsylvania, Mr. Gallatin, though he has not directly controverted this doctrine, has sought to weaken it by observing, that the jurisdiction of a nation at sea could not be complete even in its own vessels; and in support of this position, he urged the admitted practice of submitting to search for contraband—a practice not tolerated on land, within the territory of a neutral power. The rule is as stated; but is founded on a principle which does not affect the jurisdiction of a nation over its citizens or subjects in its ships. The principle is, that in the sea, itself, no nation has any jurisdiction. All may equally exercise their rights, and consequently the right of a belligerent power to prevent aid being given to his enemy, is not restrained by any superior right of a neutral in the place. But if this argument possessed any force, it would not apply to national ships of war, since the usage of nations does not permit them to be searched.

According to the practice of the world, then, and the opinions of writers on the law of nations, the murder committed on board of a British frigate navigating the high seas, was a murder committed within the jurisdiction of the British nation.

Although such a murder is plainly within the letter of the article, it has been contended not to be within its just construction; because at sea all nations have a common jurisdiction, and the article correctly construed, will not embrace a case of concurrent jurisdiction.

It is deemed unnecessary to controvert this construction, because the proposition, that the United States had no jurisdiction over the murder committed by Thomas Nash, is believed to be completely demonstrable.

It is not true that all nations have jurisdiction over all offences committed at sea. On the contrary, no nation has any jurisdiction at sea, but over its own citizens or vessels, or offences against itself. This principle is laid down in Rutherford, volume 2, p. 488, 491.

The American government has, on a very solemn occasion, avowed the same principle. The first minister of the French Republic asserted and exercised powers of so extraordinary a nature, as unavoidably to produce a controversy with the United States. The situation in which the government then found itself

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* The twenty-seventh article of the treaty between the United States and Great Britain, runs thus:

"ART. 27. It is further agreed that His Majesty and the United States, on mutual requisitions, by them respectively or by their respective ministers or officers authorized to make the same, will deliver up to justice all persons, who being charged with murder or forgery, committed within the jurisdiction of *either*, shall seek an asylum within any of the countries of *the other*: provided that this shall only be done on such evidence of criminality, as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed. The expense of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive

ous and mature consideration of the opinions it should adopt. Of consequence, the opinions then declared, deserve great respect. In the case alluded to, Mr. Genet has asserted the right of fitting out privateers in the American ports, and of manning them with American citizens in order to cruise against nations with whom America was at peace. In reasoning against this extravagant claim, the then Secretary of State, in his letter of the 17th of June, 1793, says: "For our citizens then to commit murders and depredations on the members of nations at peace with us, or to combine to do it, appeared to the Executive, and to those whom they consulted, as much against the laws of the land, as to murder or rob, or combine to murder or rob its own citizens; and as much to require punishment, if done within their limits, where they have a territorial jurisdiction, or on the high seas, where they have a personal jurisdiction, that is to say, one which reaches their own citizens only; this being an appropriate part of each nation, on an element where all have a common jurisdiction."

The well considered opinion, then, of the American government, on this subject, is that the jurisdiction of a nation at sea is "personal," reaching its "own citizens only;" and that this is the "appropriate part of each nation" on that element.

This is precisely the opinion maintained by the opposers of the resolutions. If the jurisdiction of America at sea be personal, reaching its own citizens only; if this be its appropriate part, then the jurisdiction of the nation cannot extend to a murder committed by a British sailor on board a British frigate navigating the high seas under a commission from His Britannic Majesty.

As a further illustration of the principle contended for, suppose a contract made at sea, and a suit instituted for the recovery of money which might be due thereon. By the laws of what nation would the contract be governed? The principle is general that a personal contract follows the person, but is governed by the law of the place where it is formed. By what law then would such a contract be governed? If all nations had jurisdiction over the place, then the laws of all nations would equally influence the contract; but certainly no man will hesitate to admit that such a contract ought to be decided according to the laws of that nation to which the vessel or contracting parties might belong.

Suppose a duel, attended with death, in the fleet of a foreign nation, or in any vessel which returned safe to port, could it be pretended that any government on earth, other than that to which the fleet or vessel belonged, had jurisdiction in the case; or that the offender could be tried by the laws or tribunals of any other nation whatever?

Suppose a private theft by one mariner from another, and the vessel to perform its voyage that all nations have equal cognizance of this crime, and are equally authorized to punish it?

If there be this common jurisdiction at sea, why not punish desertion from one belligerent power to another, or correspondence with the enemy, or any other crime which may be perpetrated? A common jurisdiction over all offences at sea, in whatever vessel committed, would involve the power of punishing the offences which have been stated. Yet, all gentlemen will disclaim this power. It follows, then, that no such common jurisdiction exists.

In truth the right of every nation to punish is limited, in its nature, to offences against the nation inflicting the punishment. This principle is believed to be universally true.

It comprehends every possible violation of its laws on its own territory, and it extends to violations committed elsewhere by persons it has a right to bind. It extends also to general piracy.

A pirate, under the law of nations, is an enemy of the human race. Being the enemy of all, he is liable to be punished by all. Any act which denotes this universal hostility, is an act of piracy.

Not only an actual robbery, therefore, but cruising on the high seas without commission, and with intent to rob, is piracy. This is an offence against all and every nation, and is therefore alike punishable by all. But an offence which in its nature affects only a particular nation, is only punishable by that nation.

It is by confounding general piracy with piracy by statute, that indistinct ideas have been produced, respecting the power to punish offences committed on the high seas.

A statute may make any offence piracy, committed within the jurisdiction of the nation passing the statute, and such offence will be punishable by that nation. But piracy under the law of nations which alone is punishable by all nations, can only consist in an act which is an offence against all. No particular nation can increase or diminish the list of offences thus punishable.

It has been observed by my colleague Mr. Nicholas, for the purpose of showing that the distinction taken on this subject by the gentleman from Delaware Mr. Bayard is inaccurate, that any vessel robbed on the high seas could be the property only of a single nation, and being only an offence against that nation, could be, on the principle taken by the opposers of the resolutions, no offence against the law of nations; but in this his colleague had not accurately considered the principle. As a man who turns out to rob on the highway, and forces from a stranger his purse with a pistol at his bosom, is not the particular enemy of that stranger, but alike the enemy of every man who carries a purse, so those who without a commission rob on the high seas, manifest a temper hostile to all nations, and therefore become the enemies of all. The same inducements which

casion the robbery of others, and therefore the single offence is an offence against the whole community of nations, manifests a temper hostile to all, is the commencement of an attack on all, and is consequently, of right, punishable by all.

My colleague has also contended that all the offences at sea, punishable by the British statutes from which the act of Congress was in a great degree copied, are piracies at common law, or by the law of nations, and as murder is among these, consequently murder is an act of piracy by the law of nations, and therefore punishable by every nation. In support of this position he has cited 1 Hawk. P. C. 267, 271–3, Inst. 112, and 1 Woodeson 140.

The amount of these cases is, that no new offence is made piracy by the statutes; but that a different tribunal is created for their trial, which is guided by a different rule from that which governed previous to those statutes. Therefore, on an indictment for piracy, it is still necessary to prove an offence which was piracy before the statutes. I draw from these authorities a very different conclusion from that which has been drawn by my colleague. To show the correctness of my conclusion, it is necessary to observe, that the statute did not indeed change the nature of piracy, since it only transferred the trial of the crime to a different tribunal where different rules of decision prevailed; but having done this, other crimes committed on the high seas, which were not piracy, were made punishable by the same tribunal; but certainly this municipal regulation could not be considered as proving that those offences were, before, piracy by the law of nations.

Mr. Nicholas insisted that the law was not correctly stated, whereupon Mr. Marshall called for 3 Inst. and read the statute.

"All treasons, felonies, robberies, murders, and confederacies, committed in or upon the seas, &c., shall be inquired, tried, heard, determined and judged in such shires, &c. in like form and condition as if any such offence had been committed on the land," &c. "And such as shall be convicted, &c., shall have and suffer such pains of death, &c., as if they had been attainted of any treason, felony, robbery, or other the said offences done upon the land." This statute, it is certain, does not change the nature of piracy; but all treasons, felonies, robberies, murders and confederacies committed in or upon the sea, are not declared to have been, nor are they piracies. If a man be indicted as a pirate, the offence must be shown to have been piracy before the statute; but if he be indicted for treason, felony, robbery, murder, or confederacy, committed at sea, whether such offence was or was not a piracy, he shall be punished in like manner as if he had committed the same offence on land. The passage cited from 1 Woodeson, 140, is a full authority to this point. Having stated that offences committed at sea were formerly triable before the Lord High Admiral, according to the course of the Roman civil law, Woodeson says: "But, by the statutes 27 H. 8 c. 4, and 28 H. 8 c. 15, all treasons, felonies, piracies and other crimes committed on the sea, or where the admiral has jurisdiction, shall be tried in the realm as if done on land. But the statutes referred to affect only the manner of the trial so far as respects piracy. The nature of the offence is not changed. Whether a charge amount to piracy or not, must still depend on the law of nations, except where in the case of British subjects, express acts of Parliament have declared that the crimes therein specified shall be adjudged piracy, or shall be liable to the same mode of trial and degree of punishment."

This passage proves not only that all offences at sea are not piracies by the law of nations, but also that all indictments for piracy must depend on the law of nations, "except where, in the case of British subjects, express acts of Parliament" have changed the law. Why do not these "express acts of Parliament" change the law as to others than "British subjects?" The words are general, "all treasons, felonies, &c." Why are they confined in construction to British subjects? The answer is a plain one. The jurisdiction of the nation is confined to its territory and to its subjects.

The gentleman from Pennsylvania (Mr. Gallatin) abandons, and very properly abandons, this untenable ground. He admits that no nation has a right to punish offences against another nation, and that the United States can only punish offences against their own laws and the law of nations. He admits, too, that if there had only been a mutiny (and consequently if there had only been a murder) on board the Hermione, that the American courts could have taken no cognizance of the crime. Yet mutiny is punishable as piracy by the law of both nations. That gentleman contends that the act committed by Nash was piracy, according to the law of nations. He supports his position by insisting that the offence may be constituted by the commission of a single act; that unauthorized robbery on the high seas is this act, and that the crew having seized the vessel, and being out of the protection of any nation, were pirates.

It is true that the offence may be completed by a single act; but it depends on the nature of that act. If it be such as manifests generally hostility against the world—an intention to rob generally, then it is piracy; but if it be merely a mutiny and murder in a vessel, for the purpose of delivering it up to the enemy, it seems to be an offence against a single nation and not to be piracy. The sole object of the crew might be to go over to the enemy, or to free themselves from the tyranny experienced on board a ship of war, and not to rob generally.

But, should it even be true that running away with a vessel to deliver her up to an

by all nations, yet the mutiny and murder was a distinct offence. Had the attempt to seize the vessel failed, after the commission of the murder, then, according to the argument of the gentleman from Pennsylvania, the American courts could have taken no cognizance of the crime. Whatever then might have been the law respecting the piracy, of the murder there was no jurisdiction. For the murder, not the piracy, Nash was delivered up. Murder, and not piracy, is comprehended in the 27th article of the treaty between the two nations. Had he been tried then and acquitted on an indictment for the piracy, he must still have been delivered up for the murder, of which the court could have no jurisdiction. It is certain that an acquittal of the piracy would not have discharged the murder; and, therefore, in the so much relied on trials at Trenton, a separate indictment for murder was filed after an indictment for piracy. Since, then, if acquitted for piracy, he must have been delivered to the British government on the charge of murder, the President of the United States might, very properly, without prosecuting for the piracy, direct him to be delivered up on the murder.

All the gentlemen who have spoken in support of the resolutions, have contended that the case of Thomas Nash is within the purview of the act of Congress, which relates to this subject, and is by that act made punishable in the American courts. That is, that the act of Congress designed to punish crimes committed on board a British frigate. Nothing can be more completely demonstrable than the untruth of this proposition.

It has already been shown that the legislative jurisdiction of a nation extends only to its own territory, and to its own citizens, wherever they may be. Any general expression in a legislative act must, necessarily, be restrained to objects within the jurisdiction of the legislature passing the act. Of consequence an act of Congress can only be construed to apply to the territory of the United States, comprehending every person within it and to the citizens of the United States.

But, independent of this undeniable truth, the act itself affords complete testimony of its intention and extent. (See Laws of the United States, vol. i. p. 10.) The title is: "An act for the punishment of certain crimes against the United States." Not against Britain, France, or the world, but singly "against the United States."

The first section relates to treason, and its objects are, "any person or persons owing allegiance to the United States." This description comprehends only the citizens of the United States, and such others as may be on its territory or in its service.

The second section relates to misprision of treason; and declares, without limitation, that any person or persons, having knowledge of any treason, and not communicating the same, instance of that limited description of persons in one section, and of that general description in another, which has been relied on to support the construction contended for by the friends of the resolutions. But will it be pretended that a person can commit misprision of treason who cannot commit treason itself? That he would be punishable for concealing a treason who could not be punished for plotting it? Or, can it be supposed that the act designed to punish an Englishman or a Frenchman, who, residing in his own country, should have knowledge of treasons against the United States, and should not cross the Atlantic to reveal them?

The same observations apply to the sixth section, which makes any "person or persons" guilty of misprision of felony, who, having knowledge of murder or other offences enumerated in that section, should conceal them. It it impossible to apply this to a foreigner, in a foreign land, or to any person not owing allegiance to the United States.

The eighth section, which is supposed to comprehend the case, after declaring that if any "person or persons" shall commit murder on the high seas, he shall be punishable with death, proceeds to say, that if any captain or mariner shall piratically run away with a ship or vessel, or yield her up voluntarily to a pirate, or if any seaman shall lay violent hands on his commander, to prevent his fighting, or shall make a revolt in the ship, every such offender shall be adjudged a pirate and a felon.

The persons who are the objects of this section of the act are all described in general terms, which might embrace the subjects of all nations. But is it to be supposed that if in an engagement between an English and a French ship of war, the crew of the one or the other should lay violent hands on the captain and force him to strike, that this would be an offence against the act of Congress, punishable in the courts of the United States? On this extended construction of the general terms of the section, not only the crew of one of the foreign vessels forcing their captain to surrender to another would incur the penalties of the act, but if in the late action between the gallant Truxton and the French frigate, the crew of that frigate had compelled the captain to surrender, while he was unwilling to do so, they would have been indictable as felons in the courts of the United States. But surely the act of Congress admits of no such extravagant construction.

My colleague has cited and particularly relied on the ninth section of the act; that section declares that if a citizen shall commit any of the enumerated piracies, or any acts of hostility, on the high seas, against the United States, under color of a commission from any foreign prince or state, he shall be adjudged a pirate, felon and robber, and shall suffer death.

This section is only a positive extension of

escaped punishment. It takes away the protection of a foreign commission from an American citizen, who, on the high seas, robs his countrymen. This is no exception from any preceding part of the law, because there is no part which relates to the conduct of vessels commissioned by a foreign power: it only proves that, in the opinion of the legislature, the penalties of the act could not, without this express provision, have been incurred by a citizen holding a foreign commission.

It is then most certain that the act of Congress does not comprehend the case of a murder committed on board a foreign ship of war.

The gentleman from New York has cited 2 Woodeson, 428, to show that the courts of England extend their jurisdiction to piracies committed by the subjects of foreign nations.

This has not been doubted. The case from Woodeson is a case of robberies committed on the high seas by a vessel without authority. There are ordinary acts of piracy which, as has been already stated, being offences against all nations, are punishable by all. The case from 2 Woodeson, and the note cited from the same book by the gentleman from Delaware, are strong authorities against the doctrines contended for by the friends of the resolutions.

It has also been contended that the question of jurisdiction was decided at Trenton, by receiving indictments against persons there arraigned for the same offence, and by retaining them for trial after the return of the habeas corpus.

Every person in the slightest degree acquainted with judicial proceedings knows that an indictment is no evidence of jurisdiction; and that in criminal cases, the question of jurisdiction will seldom be made but by arrest of judgment after conviction.

The proceedings after the return of the habeas corpus only prove that the case was not such a case as to induce the judge immediately to decide against his jurisdiction. The question was not free from doubt, and therefore might very properly be postponed until its decision should become necessary.

It has been argued by the gentleman from New York, that the form of the indictment is, itself, evidence of a power in the court to try the case. Every word of that indictment, said the gentleman, gives the lie to a denial of the jurisdiction of the court.

It would be assuming a very extraordinary principle indeed, to say that words inserted in an indictment for the express purpose of assuming the jurisdiction of a court, should be admitted to prove that jurisdiction. The question certainly depends on the nature of the fact, and not on the description of the fact. But as an indictment must necessarily contain formal words in order to be supported, and as forms often denote what a case must substantially be to authorize a court to take cognizance of it, some words in the indictments at Trenton ought to be noticed. The indictments charge the persons to have been within the peace, and murder to have been committed against the peace of the United States. These are necessary averments, and, to give the court jurisdiction, the fact ought to have accorded with them. But who will say that the crew of a British frigate on the high seas are within the peace of the United States, or a murder committed on board such a frigate against the peace of any other than the British government?

It is then demonstrated that the murder with which Thomas Nash was charged, was not committed within the jurisdiction of the United States, and, consequently, that the case stated was completely within the letter, and the spirit of the twenty-seventh article of the treaty between the two nations. If the necessary evidence was produced, he ought to have been delivered up to justice. It was an act to which the American nation was bound by a most solemn compact. To have tried him for the murder would have been mere mockery. To have condemned and executed him, the court having no jurisdiction, would have been murder; to have acquitted and discharged him would have been a breach of faith, and a violation of national duty.

But, it has been contended, that although Thomas Nash ought to have been delivered up to the British minister, on the requisition made by him in the name of his government, yet the interference of the President was improper.

This leads to my second proposition, which is:

That the case was a case for executive and not judicial decision. I admit implicitly the division of powers, stated by the gentleman from New York, and that it is the duty of each department to resist the encroachments of the others.

This being established, the inquiry is to what department is the power in question allotted?

The gentleman from New York has relied on the second section of the third article of the constitution, which enumerates the cases to which the judicial power of the United States extends, as expressly including that now under consideration. Before I examine that section, it will not be improper to notice a very material misstatement of it made in the resolutions, offered by the gentleman from New York. By the constitution, the judicial power of the United States is extended to all cases in law and equity, arising under the constitution, laws and treaties of the United States; but the resolutions declare that judicial power to extend to all questions arising under the constitution, treaties and laws of the United States. The difference between the constitution and the resolutions is material and apparent. A case in law or equity is a term well understood, and of limited signification. It is a controversy between parties which had taken a shape for judicial decision. If the judicial power extends to every question under the constitution, it will

tive discussion and decision; if to every question under the laws and treaties of the United States, it will involve almost every subject on which the executive can act. The division of power which the gentleman has stated could exist no longer, and the other departments would be swallowed up by the judiciary. But it is apparent that the resolutions have essentially misrepresented the constitution. I do not charge the gentleman from New York with intentional misrepresentation; I will not attribute to him such an artifice in any case, much less in a case where detection is so easy, and so certain. Yet this substantial departure from the constitution, in resolutions affecting substantially to unite it, is not less worthy of remark for being unintentional. It manifests the course of reasoning by which the gentleman has himself been misled, and his judgment betrayed into the opinions those resolutions expressed. By extending the judicial power to all cases in law and equity, the constitution has never been understood to confer on that department any political power whatever. To come within this description, a question must assume a legal form for forensic litigation and judicial decision. There must be parties to come into court, who can be reached by its process, and bound by its power; whose rights admit of ultimate decision by a tribunal to which they are bound to submit.

A case in law or equity proper for judicial decision may arise under a treaty, where the rights of individuals acquired or secured by a treaty are to be asserted or defended in court. As under the fourth or sixth article of the treaty of peace with Great Britain, or under those articles of our late treaties with France, Prussia and other nations, which secure to the subjects of those nations their property within the United States: or, as would be an article, which, instead of stipulating to deliver up an offender, should stipulate his punishment, provided the case was punishable by the laws and in the courts of the United States. But the judicial power cannot extend to political compacts: as the establishment of the boundary line between the American and British dominions: the case of the late guarantee in our treaty with France, or the case of the delivery of a murderer under the twenty-seventh article of our present treaty with Britain.

The gentleman from New York has asked, triumphantly asked, what power exists in our courts to deliver up an individual to a foreign government? Permit me, but not triumphantly, to retort the question. By what authority can any court render such a judgment? What power does a court possess to seize any individual and determine that he shall be adjudged by a foreign tribunal? Surely our courts possess no such power, yet they must possess it, if this article of the treaty is to be executed by the courts.

gress to define and punish piracies and felonies committed on the high seas, and offences against the law of nations; together with the act of Congress, declaring the punishment of those offences; as transferring the whole subject to the courts. But that clause can never be construed to make to the government a grant of power, which the people making it do not themselves possess. It has already been shown that the people of the United States have no jurisdiction over offences committed on board a foreign ship against a foreign nation. Of consequence, in framing a government for themselves, they cannot have passed this jurisdiction to that government. The law, therefore, cannot act upon the case. But this clause of the constitution cannot be considered, and need not be considered, as affecting acts which are piracy under the law of nations. As the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction, and piracy under the law of nations is of admiralty and maritime jurisdiction, punishable by every nation, the judicial power of the United States of course extends to it. On this principle the courts of admiralty under the confederation took cognizance of piracy, although there was no express power in Congress to define and punish the offence.

But the extension of the judicial power of the United States to all cases of admiralty and maritime jurisdiction, must necessarily be understood with some limitation. All cases of admiralty and maritime jurisdiction which, from their nature, are triable in the United States, are submitted to the jurisdiction of the courts of the United States.

There are cases of piracy by the law of nations, and cases within the legislative jurisdiction of the nation; the people of America possess no other power over the subject, and can consequently transfer no other to their courts; and it has already been proved that a murder committed on board a foreign ship-of-war is not comprehended within this description.

The consular convention with France, has also been relied on, as proving the act of delivering up an individual to a foreign power to be in its nature judicial and not executive.

The ninth article of that convention authorizes the consuls and vice-consuls of either nation to cause to be arrested all deserters from their vessels, "for which purpose the said consuls and vice-consuls shall address themselves to the courts, judges, and officers, competent."

This article of the convention does not, like the 27th article of the treaty with Britain, stipulate a national act, to be performed on the demand of a nation; it only authorizes a foreign minister to cause an act to be done, and prescribes the course he is to pursue. The contract itself is, that the act shall be performed by the agency of the foreign consul, through the medium of the courts; but this affords no evidence

It is said that the then President of the United States declared the incompetency of the courts, judges, and officers, to execute this contract without an act of the legislature. But the then President made no such declaration.

He has said that some legislative provision is requisite to carry the stipulations of the convention into full effect. This, however, is by no means declaring the incompetency of a department to perform an act stipulated by treaty, until the legislative authority shall direct its performance.

It has been contended that the conduct of the executive on former occasions, similar to this in principle, has been such as to evince an opinion, even in that department, that the case in question is proper for the decision of the courts.

The fact adduced to support this argument is the determination of the late President on the case of prizes made within the jurisdiction of the United States, or by privateers fitted out in their ports.

The nation was bound to deliver up those prizes in like manner, as the nation is now bound to deliver up an individual demanded under the 27th article of the treaty with Britain. The duty was the same, and devolved on the same department.

In quoting the decision of the executive on that case, the gentleman from New York has taken occasion to bestow a high encomium on the late President; and to consider his conduct as furnishing an example worthy the imitation of his successor.

It must be cause of much delight to the real friends of that great man; to those who supported his administration while in office from a conviction of its wisdom and its virtue, to hear the unqualified praise which is now bestowed on it by those who had been supposed to possess different opinions. If the measure now under consideration shall be found, on examination, to be the same in principle with that which has been cited by its opponents as a fit precedent for it, then may the friends of the gentleman now in office indulge the hope, that when he, like his predecessor, shall be no more, his conduct too may be quoted as an example for the government of his successors.

The evidence relied on to prove the opinion of the then executive on the case, consists of two letters from the Secretary of State, the one of the 29th of June, 1793, to Mr. Genet, and the other of the 16th of August, 1793, to Mr. Morris.

In the letter to Mr. Genet, the secretary says, that the claimant having filed his libel against the ship William, in the court of admiralty, there was no power which could take the vessel out of court until it had decided against its own jurisdiction; that having so decided, the complaint is lodged with the executive, and he asks for evidence to enable that department to consider and decide finally on the subject.

It will be difficult to find in this letter executive opinion, that the case was not a case for executive decision. The contrary is clearly avowed. It is true, that when an individual, claiming the property as his, had asserted that claim in court, the executive acknowledges in itself a want of power to dismiss or decide upon the claim thus pending in court. But this argues no opinion of a want of power in itself to decide upon the case, if, instead of being carried before a court as an individual claim, it is brought before the executive as a national demand. A private suit instituted by an individual, asserting his claim to property, can only be controlled by that individual. The executive can give no direction concerning it. But a public prosecution carried on in the name of the United States can, without impropriety, be dismissed at the will of the government. The opinion, therefore, given in this letter, is unquestionably correct; but it is certainly misunderstood, when it is considered as being an opinion that the question was not in its nature a question for executive decision.

In the letter to Mr. Morris, the secretary asserts the principle, that vessels taken within our jurisdiction ought to be restored, but says, it is yet unsettled whether the act of restoration is to be performed by the executive or judicial department. The principle, then, according to this letter, is not submitted to the courts—whether a vessel captured within a given distance of the American coast, was or was not captured within the jurisdiction of the United States, was a question not to be determined by the courts, but by the executive. The doubt expressed is, not what tribunal shall settle the principle, but what tribunal shall settle the fact. In this respect, a doubt might exist in the case of prizes, which could not exist in the case of a man. Individuals on each side claimed the property, and therefore their rights could be brought into court, and there contested as a case in law or equity. The demand of a man made by a nation stands on different principles.

Having noticed the particular letters cited by the gentleman from New York, permit me now to ask the attention of the House to the whole course of executive conduct on this interesting subject.

It is first mentioned in a letter from the Secretary of State to Mr. Genet, of the 25th of June, 1793. In that letter, the secretary states a consultation between himself and the Secretaries of the Treasury and War (the President being absent), in which (so well were they assured of the President's way of thinking in those cases), it was determined that the vessels should be detained in the custody of the consuls, in the ports, until the government of the United States shall be able to inquire into and decide on the fact.

In his letter of the 12th of July, 1793, the Secretary writes, the President has determined to refer the questions concerning prizes "to persons learned in the laws," and he requests

should not depart "until his ultimate determination shall be made known."

In his letter of the 7th of August, 1793, the secretary informs Mr. Genet that the President considers the United States as bound "to effectuate the restoration of, or to make compensation for, prizes which shall have been made of any of the parties at war with France, subsequent to the 5th day of June last, by privateers fitted out of our ports." That it is consequently expected that Mr. Genet will cause restitution of such prizes to be made, and that the United States "will cause restitution" to be made "of all such prizes as shall be hereafter brought within their ports by any of the said privateers."

In his letter of the 10th of November, 1793, the secretary informs Mr. Genet, that for the purpose of obtaining testimony to ascertain the fact of capture within the jurisdiction of the United States, the governors of the several States were requested, on receiving any such claim, immediately to notify thereof the attorneys of their several districts, whose duty it would be to give notice "to the principal agent of both parties, and also to the consuls of the nations interested; and to recommend to them to appoint by mutual consent arbiters to decide whether the capture was made within the jurisdiction of the United States, as stated in my letter of the 8th inst., according to whose award the governor may proceed to deliver the vessel to the one or the other party." "If either party refuse to name arbiters, then the attorney is to take depositions on notice, which he is to transmit for the information and decision of the President." "This prompt procedure is the more to be insisted on, as it will enable the President, by an immediate delivery of the vessel and cargo to the party having title, to prevent the injuries consequent on long delay."

In his letter of the 22d of November, 1793, the secretary repeats, in substance, his letter of the 12th of July and 7th of August, and says that the determination to deliver up certain vessels, involved the brig Jane of Dublin, the brig Lovely Lass, and the brig Prince William Henry. He concludes with saying: "I have it in charge to inquire of you, sir, whether these three brigs have been given up according to the determination of the President, and if they have not, to repeat the requisition that they may be given up to their former owners."

Ultimately it was settled that the fact should be investigated in the courts, but the decision was regulated by the principles established by the executive department.

The decision then on the case of vessels captured within the American jurisdiction, by privateers fitted out of the American ports, which the gentleman from New York has cited with such merited approbation; which he has declared to stand on the same principles with more respect, because the government of the United States was then so circumstanced as to assure us, that no opinion was lightly taken up, and no resolution formed but on mature consideration. This decision, quoted as a precedent and pronounced to be right, is found, on fair and full examination, to be precisely and unequivocally the same with that which was made in the case under consideration. It is a full authority to show, that, in the opinion always held by the American Government, a case like that of Thomas Nash is a case for executive and not judicial decision.

This clause in the constitution which declares that "the trial of all crimes, except in cases of impeachment, shall be by jury," has also been relied on as operating on the case, and transferring the decision on a demand for the delivery of an individual from the executive to the judicial department.

But certainly this clause in the constitution of the United States cannot be thought obligatory on, and for the benefit of the whole world. It is not designed to secure the rights of the people of Europe and Asia, or to direct and control proceedings against criminals throughout the universe. It can then be designed only to guide the proceedings of our own courts, and to prescribe the mode of punishing offences committed against the government of the United States, and to which the jurisdiction of the nation may rightfully extend.

It has already been shown that the courts of the United States were incapable of trying the crime for which Thomas Nash was delivered up to justice. The question to be determined is, not how his crime shall be tried and punished, but whether he shall be delivered up to a foreign tribunal which is alone capable of trying and punishing him. A provision for the trial of crimes in the courts of the United States is clearly not a provision for the performance of a national compact for the surrender to a foreign government of an offender against that government.

The clause of the constitution declaring that the trial of all crimes shall be by jury, has never even been construed to extend to the trial of crimes committed in the land and naval forces of the United States. Had such a construction prevailed, it would most probably have prostrated the constitution itself, with the liberties and the independence of the nation, before the first disciplined invader who should approach our shores. Necessity would have imperiously demanded the review, and amendment of so unwise a provision. If then this clause does not extend to offences committed in the fleets and armies of the United States, how can it be construed to extend to offences committed in the fleets and armies of Britain or of France, or of the Ottoman or Russian empires?

The same argument applies to the observations on the seventh article of the amendments

not to the performance of a contract for the delivery of a murderer not triable in those courts.

In this part of the argument, the gentleman from New York has presented a dilemma, of a very wonderful structure indeed. He says, that the offence of Thomas Nash was either a crime or not a crime. If it was a crime, the constitutional mode of punishment ought to have been observed; if it was not a crime, he ought not to have been delivered up to a foreign government, where his punishment was inevitable.

It has escaped the observation of that gentleman, that if the murder committed by Thomas Nash was a crime, yet it was not a crime provided for by the constitution, or triable in the courts of the United States; and that if it was not a crime, yet it is the precise case in which his surrender was stipulated by treaty. Of this extraordinary dilemma then, the gentleman from New York is himself perfectly at liberty to retain either form.

He has chosen to consider it as a crime, and says it has been made a crime by treaty, and is punished by sending the offender out of the country.

The gentleman is incorrect in every part of his statement. Murder on board a British frigate is not a crime created by treaty. It would have been a crime of precisely the same magnitude, had the treaty never been formed. It is not punished by sending the offender out of the United States. The experience of this unfortunate criminal, who was hung and gibbeted, evinced to him that the punishment of his crime was of a much more serious nature than mere banishment from the United States.

The gentleman from Pennsylvania, and the gentleman from Virginia, have both contended that this was a case proper for the decision of the courts, because points of law occurred, and points of law must have been decided in its determination.

The points of law which must have been decided, are stated by the gentleman from Pennsylvania to be, first, a question whether the offence was committed within the British jurisdiction; and secondly, whether the crime charged was comprehended within the treaty.

It is true, sir, these points of law must have occurred, and must have been decided: but it by no means follows that they could only have been decided in court. A variety of legal questions must present themselves in the performance of every part of executive duty, but these questions are not therefore to be decided in court. Whether a patent for land shall issue or not is always a question of law, but not a question which must necessarily be carried into court. The gentleman from Pennsylvania seems to have permitted himself to have been misled by the misrepresentation of the constitution made in the resolutions of the gentleman from New York; and, in consequence of being misled by that misrepresentation, has appeared to suppose that the constitution was made to support the arguments, instead of the arguments being made to support the constitution.

When the gentleman has proved that these are questions of law, and that they must have been decided by the President, he has not advanced a single step towards proving that they were improper for executive decision. The question whether vessels captured within three miles of the American coast, or by privateers fitted out in the American ports, were legally captured or not, and whether the American government was bound to restore them, if in its power, were questions of law, but they were questions of political law, proper to be decided, and they were decided by the executive, and not by the courts.

The *casus fœderis* of the guaranty was a question of law, but no man could have hazarded the opinion that such a question must be carried into court, and can only be there decided. So the casus fœderis, under the twenty-seventh article of the treaty with Britain, is a question of law, but of political law. The question to be decided is, whether the particular case proposed be one in which the nation has bound itself to act, and this is a question depending on principles never submitted to courts.

If a murder should be committed within the United States, and the murderer should seek an asylum in Britain, the question whether the casus fœderis of the twenty-seventh article had occurred, so that his delivery ought to be demanded, would be a question of law, but no man would say it was a question which ought to be decided in the courts.

When, therefore, the gentleman from Pennsylvania has established, that in delivering up Thomas Nash, points of law were decided by the President, he has established a position which in no degree whatever aids his argument.

The case is in its nature a national demand made upon the nation. The parties are the two nations. They cannot come into court to litigate their claims, nor can a court decide on them. Of consequence, the demand is not a case for judicial cognizance.

The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made on him.

He possesses the whole executive power. He holds and directs the force of the nation. Of consequence, any act to be performed by the force of the nation is to be performed through him.

He is charged to execute the laws. A treaty is declared to be a law. He must then execute a treaty, where he, and he alone, possesses the means of executing it.

The treaty, which is a law, enjoins the performance of a particular object. The person who is to perform this object is marked out by

conducts the foreign intercourse, and is to take care that the laws be faithfully executed. The means by which it is to be performed, the force of the nation, are in the hands of this person. Ought not this person to perform the object, although the particular mode of using the means has not been prescribed? Congress, unquestionably, may prescribe the mode, and Congress may devolve on others the whole execution of the contract; but, till this be done, it seems the duty of the executive department to execute the contract by any means it possesses.

The gentleman from Pennsylvania contends, that, although this should be properly an executive duty, yet it cannot be performed until Congress shall direct the mode of performance. He says, that, although the jurisdiction of the courts is extended by the constitution to all cases of admiralty and maritime jurisdiction, yet if the courts had been created without any express assignment of jurisdiction, they could not have taken cognizance of cases expressly allotted to them by the constitution. The executive, he says, can, no more than courts, supply a legislative omission.

It is not admitted that, in the case stated, courts could not have taken jurisdiction. The contrary is believed to be the correct opinion. And although the executive cannot supply a total legislative omission, yet it is not admitted or believed that there is such a total omission in this case.

The treaty, stipulating that a murderer shall be delivered up to justice, is as obligatory as an act of Congress making the same declaration. If, then, there was an act of Congress in the words of the treaty, declaring that a person who had committed murder within the jurisdiction of Britain, and sought an asylum within the territory of the United States, should be delivered up by the United States, on the demand of His Britannic Majesty, and such evidence of his criminality, as would have justified his commitment for trial, had the offence been here committed; could the President, who is bound to execute the laws, have justified the refusal to deliver up the criminal, by saying that the legislature had totally omitted to provide for the case?

The executive is not only the constitutional department, but seems to be the proper department to which the power in question may most wisely and most safely be confided.

The department which is intrusted with the whole foreign intercourse of the nation, with the negotiation of all its treaties, with the power of demanding a reciprocal performance of the article, which is accountable to the nation for the violation of its engagements with foreign nations, and for the consequences resulting from such violation, seems the proper department to be intrusted with the execution of a national contract like that under consideration.

If, at any time, policy may temper the strict

litical discretion be placed so safely as in the department whose duty it is to understand precisely the state of the political intercourse and connection between the United States and foreign nations, to understand the manner in which the particular stipulation is explained and performed by foreign nations, and to understand completely the state of the Union?

This department, too, independent of judicial aid, which may, perhaps, in some instances, be called in, is furnished with a great law officer, whose duty it is to understand and to advise when the casus fœderis occurs. And if the President should cause to be arrested under the treaty an individual who was so circumstanced as not to be properly the object of such an arrest, he may perhaps bring the question of the legality of his arrest before a judge by a writ of habeas corpus.

It is then demonstrated, that, according to the practice and according to the principles of the American government, the question whether the nation has or has not bound itself to deliver up any individual, charged with having committed murder or forgery within the jurisdiction of Britain, is a question the power to decide which rests alone with the executive department.

It remains to inquire whether, in exercising this power, and in performing the duty it enjoins, the President has committed an unauthorized and dangerous interference with judicial decisions.

That Thomas Nash was committed originally at the instance of the British Consul at Charleston, not for trial in the American Courts, but for the purpose of being delivered up to justice in conformity with the treaty between the two nations, has been already so ably argued by the gentleman from Delaware, that nothing further can be added to that point. I will, therefore, consider the case as if Nash, instead of having been committed for the purposes of the treaty, had been committed for trial. Admitting even this to have been the fact, the conclusions which have been drawn from it were by no means warranted.

Gentlemen have considered it as an offence against judicial authority, and a violation of judicial rights, to withdraw from their sentence a criminal against whom a prosecution had been commenced. They have treated the subject as if it were the privilege of courts to condemn to death the guilty wretch arraigned at their bar, and that to intercept the judgment was to violate the privilege. Nothing can be more incorrect than this view of the case. It is not the privilege, it is the sad duty of courts to administer criminal judgment. It is a duty to be performed at the demand of the nation, and with which the nation has a right to dispense. If judgment of death is to be pronounced, it must be at the prosecution of the nation, and the nation may at will stop that prosecution. In this respect, the President expresses constitutionally the will of the nation;

and may rightfully, as was done in the case at Trenton, enter a nolle prosequi, or direct that the criminal be prosecuted no further. This is no interference with judicial decisions, nor any invasion of the province of a court. It is the exercise of an indubitable and a constitutional power. Had the President directed the judge at Charleston to decide for or against his own jurisdiction, to condemn or acquit the prisoner, this would have been a dangerous interference with judicial decisions, and ought to have been resisted. But no such direction has been given, nor any such decision been required. If the President determined that Thomas Nash ought to have been delivered up to the British government for a murder committed on board a British frigate, provided evidence of the fact was adduced, it was a question which duty obliged him to determine, and which he determined rightly. If, in consequence of this determination, he arrested the proceedings of a court on a national prosecution, he had a right to arrest and to stop them, and the exercise of this right was a necessary consequence of the determination of the principal question. In conforming to this decision, the court has left open the question of its jurisdiction. Should another prosecution of the same sort be commenced, which should not be suspended but continued by the Executive, the case of Thomas Nash would not bind as a precedent against the jurisdiction of the court. If it should even prove that, in the opinion of the executive, a murder committed on board a foreign fleet was not within the jurisdiction of the court, it would prove nothing more; and though this opinion might rightfully induce the executive to exercise its power over the prosecution, yet if the prosecution was continued, it would have no influence with the court in deciding on its jurisdiction.

Taking the fact, then, even to be as the gentleman in support of the resolutions has stated it, the fact cannot avail them.

It is to be remembered, too, that in the case stated to the President, the judge himself appears to have considered it as proper for executive decision, and to have wished that decision. The President and judge seem to have entertained, on this subject, the same opinion, and in consequence of the opinion of the judge, the application was made to the President.

It has then been demonstrated:

1st. That the case of Thomas Nash, as stated to the President, was completely within the twenty-seventh article of the treaty between the United States of America and Great Britain.

2d. That this question was proper for executive, and not for judicial decision, and

3d. That in deciding it, the President is not chargeable with an interference with judicial decisions.

After trespassing so long on the patience of the House, in arguing what has appeared to me to be the material points growing out of the you still longer for the purpose of noticing an observation which appears not to be considered by the gentleman who made it as belonging to the argument.

The subject introduced by this observation, however, is so calculated to interest the public feelings, that I must be excused for stating my opinion on it.

The gentleman from Pennsylvania has said, that an impressed American seaman, who should commit homicide for the purpose of liberating himself from the vessel in which he was confined, ought not to be given up as a murderer. In this, I concur entirely with the gentleman. I believe the opinion to be unquestionably correct, as were the reasons that gentleman has given in support of it. I have never heard any American avow a contrary sentiment, nor do I believe a contrary sentiment could find a place in the bosom of any American. I cannot pretend, and do not pretend to know the opinion of the executive on the subject, because I have never heard the opinions of that department; but I feel the most perfect conviction, founded on the general conduct of the government, that it could never surrender an impressed American to the nation, which, in making the impressment, had committed a national injury.

This belief is, in no degree, shaken by the conduct of the executive in this particular case.

In my own mind, it is a sufficient defence of the President from an imputation of this kind, that the fact of Thomas Nash being an impressed American, was obviously not contemplated by him in the decision he made on the principles of the case. Consequently, if a new circumstance occurred, which would essentially change the case decided by the President, the judge ought not to have acted under that decision, but the new circumstance ought to have been stated. Satisfactory as this defence might appear, I shall not resort to it, because to some it might seem a subterfuge. I defend the conduct of the President on other and still stronger ground.

The President had decided that a murder committed on board a British frigate on the high seas, was within the jurisdiction of that nation, and consequently within the twenty-seventh article of its treaty with the United States. He therefore directed Thomas Nash to be delivered to the British ministers, if satisfactory evidence of the murder should be adduced. The sufficiency of the evidence was submitted entirely to the judge.

If Thomas Nash had committed a murder, the decision was that he should be surrendered to the British minister; but if he had not committed a murder, he was not to be surrendered.

Had Thomas Nash been an impressed American, the homicide on board the Hermione would, most certainly, not have been a murder.

The act of impressing an American is an act

an additional outrage. Death committed within the United States, in resisting such violence, would not have been murder, and the person giving the wound could not have been treated as a murderer. Thomas Nash was only to have been delivered up to justice on such evidence as, had the fact been committed within the United States, would have been sufficient to have induced his commitment and trial for murder. Of consequence, the decision of the President was so expressed as to exclude the case of an impressed American liberating himself by homicide.

Mr. Marshall now observed that he had already too long availed himself of the indulgence of the House, to venture farther on that indulgence by recapitulating or reinforcing the arguments which had already been urged.

RUFUS KING.

Rufus King, the eldest son of Richard King, an opulent and worthy merchant of Scarboro', Maine, was born in the year 1755. After due preparation, he was placed in the Byfield Academy, at Newbury, Massachusetts, where, under the severe discipline of the "classical Samuel Moody," he finished his elementary studies: and in 1773, entered Harvard College. In 1777, he received his first degree; with great reputation for his classical attainments, and more especially, for his extraordinary powers of oratory; an accomplishment in which he was particularly desirous to excel, and to the acquisition of which he applied himself with the highest enthusiasm. On leaving college he went to Newburyport, and commenced the study of law in the office of the celebrated Theophilus Parsons, with whom he remained until his admission to the bar in the year 1780. A short portion of this period of his life, however, was devoted to the cause of his country, as, in 1778, he took the field as a volunteer, was appointed an aid to General Sullivan, and acompanied that officer in his enterprise with Count D'Estaing, against the British at Rhode Island.

Mr. King appeared at the bar in his first cause, under peculiar circumstances. His opponent was his great instructor, Parsons. Fully aware of the gigantic powers with which he was to contend, he called forth his best efforts, and evinced such talent, both as a lawyer and a speaker, that immediate and confident predictions were made of his future eminence. It is stated, that "the effect of his address upon the court, the bar, and the audience, was electrifying." Soon after this successful entrance upon professional life, he was elected to represent the town of Newburyport in the Legislature of Massachusetts, in which assembly he soon rose to distinction. In 1784, Congress recommended to the several States to grant to the general government, "full authority to regulate their commerce, both external and internal, and to impose such duties as might be necessary for that purpose." A debate arose in the legislature, in which Mr. King supported the grant, and finally prevailed.

During the same year, 1784, he was elected, by an almost unanimous vote of the legislature, a delegate to the Continental Congress, from the Commonwealth of Massachusetts; and on the sixth of December, joined that body, then in session at Trenton, New Jersey. In 1785 and 1786, he was reëlected to Congress, and took an active and important part in its transactions. On the sixteenth of March, 1785, he submitted to Congress and advocated the passage of the following proposition: "That there shall be neither slavery nor involuntary servitude in any of the States, described in the resolve of Congress of the twenty-third of April, 1784, otherwise than in punishment of crimes, whereof the party shall have been personally guilty; and that this regulation shall be an article of compact, and remain a fundamental principle of the constitutions between the thirteen original States, and each of the States described in the said resolve of the twenty-third of April, 1784." By this resolution, slavery was prohibited in the territory northwest of the Ohio.*

In 1787, Mr. King was a member of the Convention held in Philadelphia, for the purpose

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* Journals of the American Congress. Edition of 1800, vol. 3, p. 401.

of framing the Federal Constitution, and on the reference of that instrument to the several States for their consideration, he was chosen by his old constituents of Newburyport, a delegate to the Massachusetts Convention. In both of those assemblies, he bore an active and prominent part. In the latter, he and Fisher Ames took the lead. For their wise and patriotic labors here, they are entitled to the deepest gratitude of their countrymen. "The history of the world," says a modern writer, "records no case of more interest, than that which pervaded the United States in 1788. Thirteen independent sovereignties, seriously alarmed for their preservation against each other, more alarmed with the apprehension that they might give up the liberty which they had gained with the utmost exertion of mind and body from foreign tyranny, to one of their own creation, within their own limits, called into the deliberative assemblies of the time all the able men of the country. Some union of the States was admitted by all to be indispensable; but in what manner it was to be effected, what powers should be given, and what powers reserved,—how these should be modified, checked, and balanced,—were points on which honest men might zealously contend. Here was a case in which a whole people, unawed by any foreign power, in peace with all the world, sorely experienced in what may be the exercise of civil authority, dependent on no will but their own, convinced of the necessity of forming some government, were called on to settle, by peaceful agreement, among themselves, the most important questions which can be presented to the human mind." *

An intense interest was manifested in the proceedings of the Massachusetts Convention, and it was believed that, if that body rejected the constitution, its adoption by a requisite number of the other States would not be made. There was a great difference of opinion among the members; each one had his own objections, and "there is no doubt," says Sullivan, "if the question had been taken without discussion, there would have been a large majority against the adoption." At this crisis, Mr. King and Mr. Ames, advocated the ratification. "Every day they made converts, and became more popular, until at last the question was carried against the declared determination of those who entered the convention for the express purpose of defeating it." The next year, 1788, Mr. King removed to the city of New York, where he was chosen a member of the State Legislature, and during the summer of the same year, was elected one of the first senators to Congress under the Federal Constitution.

In 1794, during the excitement consequent on the promulgation of the British treaty, Mr. King appearing, with his friend Alexander Hamilton, at a public meeting in New York, attempted to explain and defend it, but the people refused to listen, and a short time after the sentiments which were to have been offered, were conveyed to the people through the press, in a series of essays under the signature of *Camillus;* the first ten numbers of which were written by Hamilton, and the rest, which treated of navigation, trade, and maritime law, by Mr. King.

About this time a warm and protracted controversy arose in the Senate of the United States, relative to the eligibility of Albert Gallatin,† who had been elected a Senator from the State of Pennsylvania. A petition was presented against his taking his seat, in which it was set forth that he was not legally qualified by having been a citizen of the United States a sufficient number of years. Owing to the various modes of naturalization adopted by different States, the question was involved in some obscurity: at the same time it was one of the highest importance. Among the debaters on the subject were the ablest men of both parties. The opponents of the petition, who maintained the right of the returned member to his seat, were Mr. Monroe, Mr. Burr, and John Taylor, of Virginia; opposed to these, were Ellsworth, Strong, King, and their political friends; and to Mr. King, it was assigned to answer Mr. Burr, if he should take part in the debate. Mr. Burr opened the case in "a discourse of considerable ingenuity." When he had finished, Mr. King immediately replied, in a speech which is said to have been one of the most gigantic displays of eloquence of modern times. One of his auditors says, "he worked himself up into such a fervor, that he leapt from the floor, and that, extravagant as this action

* Familiar Letters upon Public Characters, by William Sullivan, page 61.

† See the sketch of Albert Gallatin, in the subsequent pages of this work.

may appear, it was no more then, than 'the action suited to the word.'"* The debate resulted in the exclusion of Mr. Gallatin.

Early in the year 1796, he was appointed by President Washington, minister to the Court of Great Britain, in which service he remained seven years. While abroad his relations with the literary and public men of the day, were intimate and distinguished. By the "mild dignity of his manners, and his capacity for public business, he acquired and maintained a powerful personal influence, which he exerted to advance the interests of his country." He returned to New York in 1803, and five years after removed to his estate on Long Island, where he resided until the commencement of the war of 1812, when he again entered the scenes of political life. In 1813 he was chosen by the legislature of New York, a Senator of the United States. The nation was at that time involved in a war with England. "At this momentous crisis," says one of his cotemporaries, "when many of the stoutest hearts were appalled, and the weak despaired of the Republic, Mr. King was neither idle nor dismayed. His love of country dispelled his attachments to party. No habit of opposition could induce him to forget that the United States was his country, and that the rights and honor of that country he ought to support and maintain. It has been observed that the conduct of the British, exhibited in their destruction of Washington, tended to unite all parties in America. The speech of Mr. King, in the Senate, on this occasion, while it may compare with any of his former efforts, in eloquence, has the rare and enviable distinction of being approved and applauded for its sentiments also, by the entire nation."

During his attendance at Congress, in 1816, he was nominated for the office of Governor of New York. With reluctance, and after much solicitation, he acquiesced in the nomination. The result, however, was unfavorable to the expectations of his friends. In 1820 he was again returned to the Senate, where he continued until the expiration of the term, in March, 1825. The most important measures originated by him during his senatorial term are, the law requiring cash payments upon sales of the public lands, and the act of 1818, which is the foundation of the navigation system of the United States.

On his retirement from Congress, he intended to close his political career; but, with the hope of contributing to the adjustment of several disputed questions between Great Britain and the United States, he accepted the mission to the British Court, tendered him by President Adams. His appointment proved satisfactory to the ministers of the British Court. On his arrival in England he was treated with distinguished and respectful consideration; but his health was so impaired, by a disease often the consequence of a voyage, that he never entered upon the active duties of his office. After remaining abroad a year, in the hope of re-establishing his health, without any improvement, he returned to his native land, where, cheered by the attentions of an affectionate family, and with resignation, he died on the 29th of April, 1827.†

THE NAVIGATION ACT.

This speech on the "American Navigation Act," ‡ was delivered by Mr. King, in the Senate of the United States, on the third day of April, 1818:

Agriculture, Manufactures, and Foreign Commerce are the true source of the wealth and power of nations. Agriculture is the chief and well rewarded occupation of our people, and yields, in addition to what we want for our own use, a great surplus for exportation. Manufactures are making a sure and steady progress; and, with the abundance of food and of raw materials, which the country affords, will, at no distant day, be sufficient, in the principal

* Delaplaine's Repository: Article Rufus King.

† Maryland Gazette, 1813, and the American Annual Register. Curtis's History of the Constitution of the United States.

‡ The first section of this Act provided, "that from and

States should be and should remain closed against every vessel owned, wholly or in part, by a subject or subjects of His Britannic Majesty, coming or arriving from any port or

branches, for our own consumption, and furnish a valuable addition to our exports. But, without shipping and seamen, the surpluses of agriculture and of manufactures would depreciate on our hands: the cotton, tobacco, bread stuffs, provisions and manufactures would turn out to be of little worth, unless we have ships and mariners to carry them abroad, and to distribute them in the foreign markets.

Nations have adopted different theories, as respects the assistance to be derived from navigation; some have been content with a passive foreign commerce—owning no ships themselves, but depending on foreigners and foreign vessels to bring them their supplies, and to purchase of them their surpluses; while others, and almost every modern nation that borders upon the ocean, have preferred an active foreign trade, carried on, as far as consistent with the reciprocal rights of others, by national ships and seamen.

A dependence upon foreign navigation subjects those who are so dependent, to the known disadvantages from foreign wars, and to the expense and risk of the navigation of belligerent nations—the policy of employing a national shipping is, therefore, almost universally approved and adopted: it affords not only a more certain means of prosecuting foreign commerce, but the freight, as well as the profits of trade, are added to the stock of the nation. The value and importance of national shipping and seamen, have created among the great maritime powers, and particularly in England, a strong desire to acquire, by restrictions and exclusions, a disproportionate share of the general commerce of the world. As all nations have equal rights, and each may claim equal advantages in its intercourse with others, the true theory of international commerce is one of equality, and of reciprocal benefits: this theory gives to enterprise, to skill and to capital, their just and natural advantages; any other scheme is artificial; and so far as it aims at advantages over those who adhere to the open system, it aims at profit at the expense of natural justice.

The colonial system being founded in this vicious theory, has, therefore, proved to be the fruitful source of dissatisfaction, insecurity and war. According to this system the colonies were depressed below the rank of their fellow subjects, and the fruits of their industry and their intercourse with foreign countries, placed under different regulations from those of the inhabitants of the mother country. It was the denial to Americans of the rights enjoyed by Englishmen, that produced the American revolution—and the same cause, greatly aggravated, is producing the same effect in South America.

Among the navigators and discoverers of the sixteenth and seventeenth centuries, the Dutch became highly distinguished, and, by enterprise, economy and perseverance, made themselves the carriers of other nations, and their country the entrepot of Europe—and it was not until the middle of the last mentioned century, that England passed her Navigation Act, which had for its object, to curtail the navigation of the Dutch and to extend her own.

According to this act, the whole trade and intercourse between England, Asia, Africa and America, were confined to the shipping and mariners of England; and the intercourse between England and the rest of Europe was placed under regulations which, in a great measure, confined the same to English ships and English seamen. This act was strenuously opposed by the Dutch, and proved the occasion of the obstinate naval wars that afterwards followed. England was victorious; persisted in her Navigation Act, and, in the end, broke down the monopoly in trade which the Dutch had until then possessed.

That in vindication of her equal right to navigate the ocean, England should have resisted the monopoly of the Dutch, and freely expended her blood and treasure to obtain her just share of the general commerce, deserved the approbation of all impartial men. But, having accomplished this object, that she should herself aim at, and in the end establish, the same exclusive system, and on a more extended scale, is neither consistent with her own laudable principles, nor compatible with the rights of others; who, relatively to her monopoly now, are in the like situation towards England, as England was towards the Dutch, when she asserted and made good her rights against them.

By the English Act of Navigation, the trade of her colonies is restrained to the dominions of the mother country; and none but English ships, "whereof the master and three-fourths of her mariners are English," are allowed to engage in it.

So long as colonies are within such limits as leaves to other nations a convenient resort to foreign markets for the exchange of the goods which they have to sell, for those they want to buy, so long this system is tolerable; but if the power of a state enables it to increase the number of its colonies and dependent territories, so that it becomes the mistress of the great military and commercial stations throughout the globe, this extension of dominion, and the con-

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trade, closed against vessels owned by citizens of the United States; and every such vessel, so excluded from the ports of the United States, that should enter, or attempt to enter the same, in violation of the act, should, with her tackle, apparel, and furniture, together with the cargo on board such vessel, be forfeited to the United States."

The second section provided, substantially, "that any British vessel entering any port of the United States, should on her departure, if laden with the productions of the United States, give bond not to land her cargo at any of the British ports prohibited in the first section, and to forfeit vessel, tackle, &c., if she should attempt to sail without so giving bond."

The third section enacted the manner of recovering the penalties, accounting for them, &c.—*History of Congress*,

compatible with, and necessarily to abridge the equal rights of other states.

In the late debates of the English Parliament, the minister in the House of Lords stated, "that instead of seventeen thousand men, employed abroad in 1791, forty-one thousand were then (1816) required, exclusive of those that were serving in France and in India. That England now has forty-three principal colonies, in all of which troops are necessary; that sixteen of these principal colonies were acquired since 1791, and six of them had grown into that rank from mere colonial dependencies." And in the House of Commons the minister, alluding to the acquisitions made during the late war with France, said, "that England had acquired what, in former days, would have been thought a romance—she had acquired the keys of every great military station."

Thus the commercial aggrandizement of England has become such, as that the men who protested against monopoly, and devised the Navigation Act to break it down, could never have anticipated. And it may, ere long, concern other nations to inquire whether laws and principles, applicable to the narrow limits of English dominion and commerce, at the date of the Navigation Act, when colonies and commerce, and even navigation itself, were comparatively in their infancy; laws and principles aimed against monopoly, and adopted to secure to England her just share in the general commerce and navigation, ought to be used by England to perpetuate in her own hands a system equally as exclusive, and far more comprehensive, than that which she was the chief agent to abolish.

Our commercial system is an open one—our ports and commerce are free to all. We neither possess, nor desire to possess, colonies; nor do we object that others should possess them, subject to the ordinary rules and regulations of the colonial system, unless thereby the general commerce of the world be so abridged, that we are restrained in our intercourse with foreign countries wanting our supplies, and furnishing in return, those which we stand in need of.

It is not, however, to the colonial system, but to a new principle, which, in modern times, has been incorporated with those of the Navigation Act, that we now object. According to this act, no direct trade or intercourse can be carried on between a colony and a foreign country; but yet, by the free port bill, passed in the present reign, the English contraband trade, which had been long pursued, in violation of Spanish laws, between the English and Spanish colonies, was sanctioned and regulated by an English act of parliament; and, since the independence of the United States, England has passed laws, opening an intercourse and trade between her West India colonies and the United States, and, excluding the shipping and seamen of the United States, has confined the same to English ships and seamen; the Navigation Act, which she was at liberty to do, by opening a direct intercourse between the colonies and a foreign country, but controlling, which she had no authority to do, the reciprocal rights of the United States to employ their own vessels to carry it on.

Colonies, being parts of the nation,* are subject to its regulations, and, according to the practice of Europe, they have been considered as a monopoly of the mother country; but, as has been stated in former discussions of this subject, when an intercourse and trade are once opened between colonies and a foreign country, the foreign country becomes a party, and thereby has a reciprocal claim to employ its own vessels and seamen equally in the intercourse and trade with such colonies, as with any other part of the nation to which they belong.

Governments owe it to the trust confided to them, carefully to watch over, and by all suitable means to promote, the general welfare; and while, on account of a small or doubtful inconvenience, they will not disturb a beneficial intercourse between their own people and a foreign country, they ought not to omit the interposition of their corrective authority, whenever an important public interest is invaded, or the national reputation affected.—"It is good not to try experiments in states unless the necessity be urgent, or the utility evident; and it is well to beware, that it be the reformation that draweth on the change, and not the desire of change that pretendeth the reformation." In this case the importance of the reformation is seen and acknowledged by every one, and the delay that has occurred in the making of it may call for explanation.

We are unable to state with accuracy the tonnage and seamen employed before the revolution, in the trade between the territories of the United States and the other English colonies; but it is known to have been a principal branch of the American navigation. The colonies that England has since acquired from France, Spain, and Holland, together with the increased population of the old colonies, require more ships and seamen to be employed in the trade now, than were engaged in it before the independence of the United States. Without reference to the tonnage and trade between the United States and the English West India colonies, during the late wars between England and France, which, by reason of the suspension of the English Navigation Act, and the neutrality of the United States, will not afford a correct standard by which the tonnage and trade in time of peace can be ascertained: our custom-house returns are the best documents that we

* England alone excludes our vessels and seamen from the trade opened between her West India colonies and the United States. In the same trade between the United States and the colonies of France, Spain, Holland, Denmark, and Sweden, our vessels and

can consult upon this subject. According to a late report from the department of the treasury, the tonnage employed in this trade during the year 1816, which may be taken as a pretty fair average, amounted to one hundred and two thousand tons, requiring upwards of five thousand seamen. There may be some error in this return, though we are not able to detect it. The magnitude and importance of the shipping and seamen engaged in this trade will be more readily understood by comparison than otherwise. The tonnage thus employed exceeds the whole tonnage employed by the English East India Company in its trade with Asia; is nearly a moiety of the American and English tonnage employed between the United States and England, and her possessions in Europe—is equal to the American tonnage employed between the United States and England, and is almost an eighth part of the whole registered tonnage of the United States.

To the loss of profits which would accrue from an equal participation in this trade, may be added the loss of an equal share of the freights made by the vessels engaged in it—the aggregate amount whereof must be equal to two millions of dollars, annually. Other advantages are enjoyed by England in the possession of the exclusive navigation between the United States and her colonies, and between them and England. Freights are made by English vessels between England and the United States; between them and the English colonies, as well as between these colonies and England. English voyages are thus made on the three sides of the triangle, while those of the United States are confined to one side of it; that between the United States and England.

But the money value of this great portion of our navigation, claimed and hitherto enjoyed by England, although an object that deserves the public protection, is not the most important view in which the same should be considered by the Senate. We must learn wisdom from past times; and while the experience of the father is too often lost on the son, this ought not to be the case in the affairs of nations, which, living from age to age, and profiting by long experience, should become wiser as they grow older. The present condition of nations, and especially that of the inhabitants of our own continent, merits our watchful attention, and admonishes us to cherish our national resources, and seasonably to devise, and perseveringly to build up, those establishments that our present safety demands, and which may be commensurate with our future destiny.

Justice and moderation, which, we confidently hope, may preside over, and guide our public counsels, have not been found to be a sufficient armor for the defence of nations. "Wisdom, in the ancient mythology, was represented as armed, because experience had proved, that good examples and noble precepts fail of their efficacy, unaccompanied by a power

houses, our harbors, and our commerce, from foreign aggression and violence, a navy is acknowledged to be necessary. From the land side we are safe; against dangers from the ocean, a navy will prove to be our cheap, our sure, and most efficient defence. Although a subject of doubt heretofore, this truth is now so well understood, and so universally admitted, that it would be to misspend the time of the Senate to enter into its development.

An efficient navy never has existed, and cannot exist, without a commercial marine, and the maritime history of Europe, which abounds with instruction on this subject, demonstrates this political truth, that the naval power of every nation is in proportion to its ships and seamen. Money may build ships, but the navigation of the great ocean only can make seamen; and it is in connection with this view of the subject, that the exclusion of our shipping and seamen from the navigation between the United States and the colonies of England, derives its chief importance.

The prosperity and safety of nations are promoted and established, by institutions early and wisely adapted to these ends. A navy, being such an institution, and our experience having proved its importance, it has become the duty of Congress to adopt and to enforce those regulations that are necessary to its efficient establishment. In addition to the protection of the fisheries, none more efficacious can be devised, than such as shall secure to our own shipping and seamen a full participation in the national navigation; thereby shutting out any foreign power from the exclusive enjoyment of a principal branch thereof; a branch that now educates and holds ready for service in the navy of England, and which would educate and hold ready for service in our own navy, were the United States, instead of England, in the possession thereof, a body of several thousand seamen.

But, by passing this act, shall we not cut ourselves off from those foreign supplies, which our habits have rendered indispensable as well as desirable? Will not the English colonial markets for supplies hitherto purchased and exported among us, be lost to them? And shall we increase our navigation by adopting the law?

The documents that have been communicated to the Senate, by the chairman of the Committee of Foreign Relations (Mr. Barbour), satisfactorily prove, that we are independent of the English colonies for a supply of sugar and coffee, for our own consumption; our annual re-exportation of these articles exceeding the quantity of them annually imported from the English colonies: and, in respect to rum, the other article imported from these colonies, its exclusion will be the loss to England of its best, if not only market; and its place will be readily supplied by other foreign rum and by brandy: or, which is more probable, as well as more desirable, by domestic spirits distilled

The exports from the United States to the English West India colonies have been estimated at four millions of dollars annually. The problem has been disputed ever since the independence of the United States, and still remains to be solved, whether these colonies could obtain from any other quarter the supplies received from the United States. To make this experiment, effectually, further restrictions and regulations may become necessary, which it is not now deemed expedient to propose. If the question be decided in the negative, the supplies will be continued from the United States, and our shipping will be benefited. If the articles heretofore supplied from this country can be obtained elsewhere, we must find out other markets for our exports, or the labor employed in preparing them must be applied to some other branch of industry. We have the power, and hereafter it may become our policy, as it is that of other countries, to resort to measures, the effect of which would go far to balance any disadvantage arising from the loss of the English colonial markets. We import annually upwards of six million gallons of West India rum, more than half of which comes from the English colonies; we also import every year nearly seven million gallons of molasses; and as every gallon of molasses yields, by distillation, a gallon of rum, the rum imported, added to that distilled from molasses, is probably equal to twelve million gallons; which enormous quantity is chiefly consumed by citizens of the United States. If the importation of rum and molasses for distillation be prohibited, it would require, at least, four million bushels of grain for distillation to supply an equal quantity of ardent spirits; and in this way, our agriculture would be indemnified for any loss it might suffer by an exclusion from the English colonial markets.

As respects the timber and lumber trade, including staves and woods, in all the forms in which we prepare them for exportation, should no foreign markets be found to supply those, which, by the imposition of high duties in England, and those, which, by the passing of this bill, we may lose in the colonies, those who are engaged in this precarious, and, generally, ill paid and unprofitable business, will hereafter confine their supplies to our domestic wants, which are constantly increasing, and to the foreign markets, that are neither affected by English duties, nor the bill before us.

The timber of the country is becoming scarce, and more and more an object of public concern. The forests upon the frontier of the ocean, and on the great rivers leading to it, are nearly destroyed. In other countries, and even in Russia, the improvident waste of their timber, especially in the neighborhood of their great iron works, has become a subject of national solicitude. Masts, spars, pine, and oak timber fit for naval purposes, and for the other numerous uses for which timber and wood are wanted, were far more abundant and of better quality formerly, and within the memory of men now living, than they are at the present day; and a little more care and economy in the use of our timber, even now, would confer an important benefit on posterity. The probability, however, is, that as respects our valuable timber, we shall not want foreign markets for all we ought to spare.

As a general rule, it is correct, that every person should be free to follow the business he may prefer, since, by the freedom, sagacity and enterprise of individuals, the general welfare is commonly promoted. There are, however, exceptions to this principle; and, as general rules affect unequally individual concerns, and measures adopted for the common welfare may, from the nature and end of society, sometimes interfere with private pursuits, the latter must give way for, and yield to, the former; and, in this case, the general welfare, and the interest that all have, in the encouragement and protection of the shipping and seamen of the country, take precedence over the private and individual interests of persons, whose occupations may thereby be somewhat affected.

As to the last point, whether we shall increase our own navigation and seamen, by passing the bill, it may be observed: if England meets us in the temper that we hope she may, and enters into a reciprocally beneficial arrangement, concerning the navigation of the two countries, our shipping will acquire thereby a portion of the carrying trade, now exclusively possessed by her; if she persist in her exclusive system, and thus compels us to meet restriction with restriction, we shall not be losers by this course, but shall ultimately be gainers.

According to the English navigation act, as well as the act of parliament, that departs from it, and opens an intercourse between the English colonies and the United States, we are excluded from any share in the navigation between these colonies and the United States. No notice is taken of the occasional relaxation of the latter act, because, by the double competition created by the Americans themselves, as sellers and buyers in the English colonies, the intercourse is probably disadvantageous, rather than beneficial to us. According to the permanent law, English shipping only brings to us her West India supplies, and takes in return the articles wanted in these colonies. If English shipping be no longer employed in this service, and the articles formerly sent to these colonies are exported to other markets, or the supplies received from them are sought for, and imported into the United States from other places, the vessels of the United States will be employed in this service, and so the navigation and mariners of the country will be encouraged and increased.

It will doubtless be found, as it has been heretofore, that new markets will be discovered, as well for our surpluses, as for our wants, should those be lost with which we have formerly had intercourse.

been so long deferred? The explanation which this question requires, cannot be made without some reference to the history of our communications with England since the peace of 1783, as well as to the views and policy of men and parties, that have in succession influenced our public affairs.

As, according to the laws of England, notwithstanding the acknowledgment of our independence, neither trade nor intercourse could be carried on between the United States and her dominions, it became necessary after the treaty of peace to pass some act whereby this trade and intercourse might be opened;—a bill for this purpose was therefore introduced into the House of Commons by the administration which concluded the treaty of peace with the United States. The general scope and provisions of the bill correspond with the liberal principles which were manifested in that treaty, plainly show that the authors of this bill understood that the true basis of trade and intercourse between nations, is reciprocity of benefit; a foundation on which, alone, the friendly intercourse between men and nations can be permanently established. The preamble of this bill declares "that it was highly expedient that the intercourse between Great Britain and the United States should be established on the most enlarged principles of reciprocal benefit to both countries," and as, from the distance between them, it would be a considerable time before a treaty of commerce placing their trade and intercourse on a permanent foundation, could be concluded the bill, for the purpose of a temporary regulation thereof, provided, that American vessels should be admitted into the ports of Great Britain, as those of other independent states, and that their cargo should be liable to the same duties only as the same merchandise would be subject to, if the same were the property of British subjects, and imported in British vessels—and, further, that the vessels of the United States should be admitted into the English plantations, and colonies, in America, with *any articles* the growth or manufacture of the United States, and, with liberty to export from such colonies and plantations to the United States any merchandise whatsoever, subject to the same duties only, as if the property of British subjects, and imported or exported in British vessels; allowing, also, the same bounties, drawbacks, and exemptions, on goods exported from Great Britain, to the United States, in American vessels, as on the like exportations in British vessels to the English colonies and plantations. The persons benefited by the English exclusive system of trade and navigation, became alarmed by the provisions of this bill and earnestly opposed it; and which, after a variety of discussion, was postponed or rejected. About this period, Mr. Pitt, who had supported this bill in the House of Commons, resigned his office of Chancellor of the Exchequer, as his colleagues in Lord Shelburne's administration, that succeeded, introduced, in lieu thereof, a new bill, which became a law, vesting in the king and council authority to make such temporary regulations of the American navigation and trade, as should be deemed expedient.

Sundry orders in council were accordingly made, whereby a trade and intercourse in American and English vessels, between the United States and Great Britain, were allowed, and, with the exception of fish-oil, and one or two other articles, the produce of the United States, imported into Great Britain, was admitted free, or subject only to the duties payable on the like articles imported in English vessels from the American colonies.

An intercourse, and a trade, in enumerated articles, were also opened, between the United States and the English West India colonies, but with a proviso (the principle of which is still maintained against us), whereby American vessels were excluded, and the whole trade confined to English vessels.

After a periodical renewal of these orders, for several years, the regulations that they contained were adopted by, and became an act of Parliament. This act was afterwards modified, and rendered conformable to the provisions of Mr. Jay's treaty, the commercial articles of which expired in the year 1803;—not long after which date England passed a new act of Parliament concerning the American navigation and trade. This act maintains the exclusion of American vessels from the intercourse between the United States and the English colonies, and confines the same, as former acts and orders in council had done, to English vessels; it repeals the settlement of duties pursuant to Mr. Jay's treaty; and, giving up the policy of the enlarged and liberal system of intercourse which had been proposed in Mr. Pitt's bill, it also repeals such parts of all former acts and orders as admitted the productions of the United States, either free, or on paying the same duties only as were payable on the like articles imported from the English colonies and plantations; and places all articles, the produce of the United States, imported in American vessels, on the same footing as the like articles imported in foreign ships from other foreign countries. This new footing of our trade with England, the importance whereof is well understood by those who are engaged in supplying her markets with masts, spars, timber, naval stores, and pot and pearl ashes, may be regarded as decisive evidence of a complete change of policy concerning the American trade and intercourse; which, however unsatisfactory, as respected the colonial trade, has become more so, by the provisions of this act of Parliament.

The policy that manifested itself in the treaty of our independence, and which is seen in the bill to regulate the trade and intercourse between England and the United States, prepared by the administration that made the treaty of

intercourse on the solid basis of reciprocal benefit, to unite in a firm bond of friendship, a people politically separate, living under different governments, but having a common origin, a common language, a common law, and kindred blood; circumstances so peculiar as not to be found between any other nations. Instead of this policy, one of a different sort is preferred; one, however, that England has a right to prefer; and, against the many evils of which, we must protect ourselves as well as we are able to do. The intricate, countervailing, and perplexing code of commercial intercourse, founded in jealousy, and the rival establishments and pursuits of the powers of Europe bordering upon, and constantly interfering with, each other, has been adopted and applied to the United States—a people agricultural more than manufacturing or commercial; placed in another quarter of the globe; cultivating, and proposing to others an open system of trade and intercourse; and herein, as in many other important discriminations, differing from the nations of Europe, and therefore not fit subjects for these restrictive and jealous regulations. Our policy is, and ever has been, a different one. We desire peace with all nations; and the wars of maritime Europe have taught us, that a free system of trade and intercourse would be the best means of preserving it.

With these principles as our guide, at the negotiation of the treaty of peace, in 1783, our ministers were authorized to conclude a treaty of commerce with England on this basis; but no treaty was concluded. Afterwards, and when a temporary trade and intercourse were opened by England, looking, as we supposed, to a treaty of commerce, Congress instructed Messrs. Adams, Franklin, and Jefferson, to renew the overture of a treaty of commerce, which was done by them through the English ambassador at Paris, in the year 1784; but no correspondent disposition being shown by England, this second overture failed.

The interest and prejudice of those who were benefited by the monopolies, and the exclusive system of England, were opposed to any treaty with this country, on the principle of reciprocal advantage. The political writers of that day, under the influence of these partial views, or not sufficiently appreciating the true theory of commerce, contended that it would be folly to enter into engagements by which England might not wish to be bound in future; that such engagements would be gratuitous, as, according to their interpretation, Congress possessed no power, under the confederation, to enforce any stipulation into which they might enter; that no treaty that could be made would suit all the States; that if any were necessary, they should be made with the States separately; but that none was necessary; and those who talked of liberality and reciprocity in commercial affairs, were either without argument or knowledge; that the object of England was, not reciprocity and liberality, but to [illegible] many sailors and as much shipping as possible.*

This unequal footing of our foreign commerce, and the language made use of by England at this juncture, served still more to increase the public discontent; especially as it was plainly avowed that England ought to render the trade with us as exclusively advantageous to herself, as her power and the defects of the old confederation would enable her to do. Congress having no authority, under the confederation, to impose countervailing and other corrective regulations of trade, the States separately attempted to establish regulations upon this subject. But, as a part only of the States joined in this measure, and as the laws passed for this purpose differed from each other, the experiment completely failed.

In this condition of our navigation and trade, subject to foreign restrictions and exclusion, without a power at home to countervail and check the same, Congress resolved to make another effort to conclude a commercial treaty with England. For this purpose Mr. Adams, since President of the United States, was appointed, and went to England in 1785, where he resided for several years; but found and left the government unchanged, and equally as before disinclined to make with us a treaty of commerce, although, during his residence, England concluded her famous commercial treaty with France.

This further disappointment, with the depreciating condition of our navigation and trade, joined to the embarrassment of the public finances, produced what no inferior pressure could have done; it produced the general convention of 1787, that formed the constitution of the United States. Had England entered into a liberal treaty of commerce with the United States, this convention would not, perhaps, have been assembled. Without so intending it, the adherence of England to her unequal and exclusive system of trade and navigation, gave to this country a constitution; and the countervailing and equalizing bill now before the Senate, arising from the same cause, may assist us in establishing and extending those great branches of national wealth and power, which we have such constant and urgent motives to encourage.

The establishment of the constitution of the United States was coeval with the commencement of the French revolution. The sessions of the General Convention at Philadelphia, and the sessions of the Assembly of Notables at Paris, were held in the same year.

Laws were passed by the first Congress assembled under the new constitution, partially to correct the inequality of our navigation and trade with foreign nations; and a small discrimination in duties of impost and of tonnage was made for this purpose. Afterwards, in the year 1794, a number of resolutions on the sub-

ject of navigation and trade, were moved in the House of Representatives, by a distinguished member of that body. These resolutions had a special reference to the refusal of England to enter into an equal commercial treaty with us, and aimed at countervailing her exclusive system. Other and more direct resolutions, bearing on England, were also proposed by other members, and referred to the inexecution of the treaty of peace, and to the recent captures of American vessels by English cruisers, in the American seas. The policy of these resolutions, in the actual circumstances of the times, was denied; were therefore strenuously opposed, and the mission of Mr. Jay, as envoy extraordinary to England, suspended their further discussion. The French revolution had by this time become the object of universal attention. War had broken out between France and England: The avowed policy of our own government to avoid war, and to adhere to a strict system of neutrality, was much questioned; and for a time it was matter of great uncertainty whether the country would support the neutrality recommended by the President.

The universal dissatisfaction on account of the commercial system of England; the inexecution on her part of the articles of peace; the numerous captures, by orders of the English government, of our vessels, employed in a trade strictly neutral, combined with our friendly recollections of the services of France, and our good wishes in favor of the effort she professed to be making to establish a free constitution, constituted a crisis most difficult and important. It was in these circumstances, that President Washington nominated Mr. Jay as envoy to England.

England seems never to have duly appreciated the true character and importance of this extraordinary measure. France well understood and resented it. Mr. Jay was received with civility, and concluded a treaty with England on the chief points of his instructions. When published, the treaty met with great opposition. The article respecting the West India trade, having been excluded by the Senate, on account of the inadmissible condition or proviso that was coupled with it;—with this exception, it was finally ratified by the President.

Although the treaty did not come up to the expectation of all, yet, in addition to satisfactory arrangements concerning English debts, the unlawful capture and condemnation of our vessels, and the delivery of the posts, points of very great importance, it contained articles regulating the trade, navigation, and maritime rights of the two countries. No treaty which could at that time have been made with England, would, in the highly excited temper of the people, have satisfied the country. But, to those whose object it was to prevent the United States from taking part in the war between France and England, and to prevail upon them to adhere to a system of impartial neutrality, whether the safety and even liberties of the country were concerned in the adoption of this course, the treaty proved a welcome auxiliary.

It suspended the further agitation of difficult and angry topics of controversy with England; it enabled the government to persist in, and to maintain, the system of neutrality which had been recommended by the father of his country;—a policy, the correctness and benefits of which, whatever may have been the disagreement of opinion among the public men of those times, will now scarcely be doubted by any one.

During the continuance of this treaty, further, though ineffectual, attempts were made to establish a satisfactory intercourse with the English colonies in the West Indies, and, likewise, to place the subject of impressment on a mutually safe and equitable footing. The commercial articles of this treaty expired in 1803, no proposals having been made to renew them. A subsequent negotiation took place in 1806, and a treaty was made, but not ratified by the United States. The peace of Amiens was of short duration. Another war took place between France and England; no maritime treaty then existed between the United States and the latter; and the manner in which she exercised her power on the ocean; the great interruption of the navigation and trade of neutral nations; the numerous captures of their ships and cargoes under the retaliatory decrees and orders of these two powers, with other vexatious occurrences, revived the former angry feelings towards England, and greatly contributed to the late war with that nation. This war was closed by the treaty of Ghent, not long after the conclusion of the general peace in Europe, and was followed by a meagre commercial convention, made at London, and limited, in its duration, to a few years only. Neither the spirit of the negotiation, nor the scope of the articles of this convention, afford any evidence that England is inclined to treat with this country on the only principle on which a commercial treaty with her can be desirable. Her decision on this point can hardly be doubted; as our latest communications inform us, that her ancient system will not be changed; and in case we are dissatisfied with its operation, that England has no objection to our taking any such measures concerning the same, as we may deem expedient—an intimation that seems to put an end to further overtures on our part.

Such is the explanation why the measure now proposed has been so long deferred.

During the confederation, Congress were without power to adopt it.

The treaty concluded by Mr. Jay, in 1794, and the relaxation of the navigation and colonial laws, during the war between France and England, rendered the measure inexpedient during this period:

And the expectation entertained, that a more enlarged and equal treaty of commerce and navigation, applicable, in its provisions, to peace

the present commercial convention, has hitherto suspended the interference of Congress. This expectation, we fear, must be given up. England has apprised us of her determination to adhere to her ancient and exclusive system of trade and navigation, and the only alternative before us is, to submit to her regulation of our own navigation, or to interpose the authority of the constitution to counteract the same. There can be no hesitation in our choice.

The bill before the Senate, is in nothing unfriendly towards England;—it is merely a commercial regulation, to which we are even invited; a measure strictly of self-defence, and intended to protect the legitimate resources of our own country from being any longer made use of, not as they should be, for our benefit, but to increase and strengthen the resources and power of a foreign nation. The time is propitious. Causes that formerly prevented the union of opinions in favor of this measure no longer exist; the old world is at peace, and every nation is busily employed in repairing the waste of war, by cultivating the arts, and extending the blessings of peace;—England has come out of the most portentous war that Europe has ever suffered, not only unbroken, but with increased power. Her agriculture, manufactures, and commerce were cherished; were without interruption, and increased, while those of neighboring nations were suspended, interrupted, or destroyed. Her colonies and dependent territories have been greatly enlarged, at the expense of her enemies; and regions, with which we and others once had trade and intercourse, having fallen under her power, are now closed against us. We have no other questions depending with her, except those concerning impressment* and the fisheries,* and their settlement can, in no manner, be affected by the passing of this act.

England is a great and illustrious nation, having attained to this pre-eminence by generous and successful efforts, in breaking down the civil and religious bondage of former ages. Her patriots, her scholars, and her statesmen have adorned her history, and offer models for the imitation of others. We are the powerful descendants of England, desiring perpetual friendship, and the uninterrupted interchange of kind offices, and reciprocal benefits with her. We have demonstrated, in circumstances the most critical, constant and persevering evidence of this disposition. We still desire the impartial adjustment of our mutual intercourse, and the establishment of some equitable regulations, by which our personal and maritime rights may be secure from arbitrary violation: A settlement that, instead of endless collision and dispute, may be productive of concord, good humor, and friendship: and, it depends on her whether such is to be the relation between us.

If this bill becomes a law, it must be followed up by ulterior provisions, if requisite, to give it complete effect. Either the intercourse must be reciprocally beneficial, or a sound policy and a due regard to the highest interests of our country demand that it should not be suffered to exist.

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* With the English laws of allegiance and impressment, we have no other concern, than to exempt our citizens from their application! we do not desire the service of her seamen, and she should be the last to seize our citizens and force them into her service. She disclaims this purpose; but, in her attempts to discover and impress her own seamen, persists in a practice, that, unavoidably, subjects ours to her violence. Whatever her rights may be, they should be so used, as not to injure ours. This is a precept of universal obligation—A regulation, however, may be devised, that if not perfect in every case, would be so generally correct, that, considering the difficulty of the subject, it ought to be satisfactory.

* As regards the fisheries, those of the ocean, not within the territorial limits of any nation, are free to all men who have not renounced their rights: those on the coasts and bays of the provinces, conquered in America, from France, were acquired by the common sword, and mingled blood, of Americans and Englishmen:—members of the same empire, we, with them, had a common right to these fisheries; and, in the division of the empire, England confirmed our title without condition or limitation—a title equally irrevocable with those of our boundaries, or of our independence itself.

———*Littusque rogamus.*
Innocuum, et cunctis undamque, auramque patentem.

THE MISSOURI BILL.

The following is the substance of two speeches delivered by Mr. King, in the Senate of the United States, when the Missouri Bill was under its consideration.*

The constitution declares "that Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory and other property of the United States." Under this power Congress have passed laws for the survey and sale of the public lands; for the division of the same into separate territories; and have ordained for each of them a constitution, a plan of temporary government, whereby the civil and political rights of the inhabitants are regulated, and the rights of conscience and other natural rights are protected.

The power to make all needful regulations, includes the power to determine what regulations are needful; and if a regulation prohibiting slavery within any territory of the United States be, as it has been, deemed needful, Congress possess the power to make the same, and, moreover, to pass all laws necessary to carry this power into execution.

The territory of Missouri is a portion of Louisiana, which was purchased of France, and belongs to the United States in full dominion; in the language of the constitution, Missouri is their territory or property, and is subject, like other territories of the United States, to the regulations and temporary government, which has been, or shall be prescribed by Congress. The clause of the constitution which grants this power to Congress, is so comprehensive and unambiguous, and its purpose so manifest, that commentary will not render the power, or the object of its establishment, more explicit or plain.

The constitution further provides that "new States may be admitted by Congress in the Union." As this power is conferred without limitation, the time, terms, and circumstances of the admission of new States are referred to the discretion of Congress; which may admit new States, but are not obliged to do so—of right no new State can demand admission into the Union, unless such demand be founded upon some previous engagement of the United States.

When admitted by Congress into the Union, whether by compact, or otherwise, the new State becomes entitled to the enjoyment of the same rights, and bound to perform the like duties as the other States; and its citizens will be entitled to all privileges and immunities of citizens in the several States.

The citizens of each State possess rights, and owe duties that are peculiar to, and arise out of the constitution and laws of the several States. These rights and duties differ from each other in the different States, and among these differences none is so remarkable or important as that which proceeds from the constitution and laws of the several States respecting slavery; the same being permitted in some States, and forbidden in others.

The question respecting slavery in the old thirteen States had been decided and settled before the adoption of the constitution, which grants no power to Congress to interfere with, or to change what had been so previously settled—the slave States, therefore, are free to continue or to abolish slavery. Since the year 1808 Congress have possessed power to prohibit and have prohibited the further migration or importation of slaves into any of the old thirteen States, and at all times, under the constitution, have had power to prohibit such migration or importation into any of the new States or territories of the United States. The constitution contains no express provision respecting slavery in a new State that may be admitted into the Union; every regulation upon this subject belongs to the power whose consent is necessary to the formation and admission of new States into the Union. Congress may, therefore, make it a condition of the admission of a new State, that slavery shall be for ever prohibited within the same. We may, with the more confidence, pronounce this to be the true construction of the constitution, as it has been so amply confirmed by the past decisions of Congress.

Although the articles of confederation were drawn up and approved by the old Congress, in the year 1777, and soon afterwards were ratified by some of the States, their complete ratification did not take place until the year 1781. The States which possessed small and already settled territory, withheld their ratification, in order to obtain from the large States a cession

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* In a letter of Mr. King, which forms a preface to these speeches, as published in 1819, he says:—"As my notes are imperfect, I may have omitted some remarks made on that occasion, and added others which were not made; the communication, however, contains the substance of my observations, and my present opinions on this important subject. I am particularly anxious not to be misunderstood on this subject, never having thought myself at liberty to encourage, or to assent to, any measure that would affect the security of property in slaves, or tend to disturb the political adjustment which the constitution has established respecting them; I desire to be considered as still adhering to this reserve; and that the observations should be construed to refer, and to be confined, to the prohibition of slavery in the new States, to be formed beyond the original limits of the United States—a prohibition which, in my judgment, Congress have the power to establish, and the omission of which may, as I fear, be productive of most serious conse-

territory, without entering into the reasons on which this demand was urged. It is well known that they had an influence on Massachusetts, Connecticut, New York, and Virginia, which States ceded to the United States their respective claims to the territory lying northwest of the river Ohio. This cession was made on the express condition, that the ceded territory should be sold for the common benefit of the United States; that it should be laid out into States, and that the States so laid out should form distinct republican States, and be admitted as members of the federal Union, having the same rights of sovereignty, freedom, and independence, as the other States! Of the four States which made this cession, two permitted, and the other two prohibited slavery.

The United States having in this manner become proprietors of the extensive territory northwest of the river Ohio, although the confederation contained no express provision upon the subject, Congress, the only representatives of the United States, assured as incident to their office, the power to dispose of this territory; and for this purpose, to divide the same into distinct States, to provide for the temporary government of the inhabitants thereof, and for their ultimate admission as new States into the Federal Union.

The ordinance for those purposes, which was passed by Congress in 1787, contains certain articles, which are called "Articles of compact between the original States and the people and States within the said territory, for ever to remain unalterable, unless by common consent." The sixth of those unalterable articles provides, "that there shall be neither slavery nor involuntary servitude in the said territory."

The Constitution of the United States supplies the defect that existed in the articles of confederation, and has vested Congress, as has been stated; with ample powers on this important subject. Accordingly, the ordinance of 1787, passed by the old Congress, was ratified and confirmed by an act of the new Congress during their first session under the constitution.

The State of Virginia, which ceded to the United States her claims to this territory, consented by her delegates in the old Congress to this ordinance—not only Virginia, but North Carolina, South Carolina, and Georgia, by the unanimous votes of their delegates in the old Congress, approved of the ordinance of 1787, by which slavery is for ever abolished in the territory northwest of the river Ohio.

Without the votes of these States, the ordinance could not have passed; and there is no recollection of an opposition from any of these States to the act of confirmation, passed under the actual constitution. Slavery had long been established in these States—the evil was felt in their institutions, laws, and habits, and could demonstrate their unwillingness to permit the extension of slavery into the new States which might be admitted by Congress into the Union.

The States of Ohio, Indiana, and Illinois, on the northwest of the river Ohio, have been admitted by Congress into the Union, on the condition and conformably to the article of compact, contained in the ordinance of 1787, and by which it is declared that there shall be neither slavery nor involuntary servitude in any of the said States.

Although Congress possess the power of making the exclusion of slavery a part or condition of the act admitting a new State into the Union, they may, in special cases, and for sufficient reasons, forbear to exercise this power. Thus Kentucky and Vermont were admitted as new States into the Union, without making the abolition of slavery the condition of their admission. In Vermont, slavery never existed; her laws excluding the same. Kentucky was formed out of, and settled by, Virginia, and the inhabitants of Kentucky equally with those of Virginia, by fair interpretation of the constitution, were exempt from all such interference of Congress, as might disturb or impair the security of their property in slaves. The western territory of North Carolina and Georgia, having been partially granted and settled under the authority of those States, before the cession thereof to the United States, and these States being original parties to the constitution which recognizes the existence of slavery, no measure restraining slavery could be applied by Congress to this territory. But to remove all doubt on this head, it was made a condition of the cession of this territory to the United States, that the ordinance of 1787, except the sixth article thereof, respecting slavery, should be applied to the same; and that the sixth article should not be so applied. Accordingly, the States of Tennessee, Mississippi, and Alabama, comprehending the territory ceded to the United States by North Carolina and Georgia, have been admitted as new States into the Union, without a provision, by which slavery shall be excluded from the same. According to this abstract of the proceedings of Congress in the admission of new States into the Union, of the eight new States within the original limits of the United States, four have been admitted without an article excluding slavery; three have been admitted on the condition that slavery should be excluded; and one admitted without such condition. In the few first cases, Congress were restrained from exercising the power to exclude slavery; in the next three, they exercised this power; and in the last, it was unnecessary to do so, slavery being excluded by the State Constitution.

The province of Louisiana, soon after its cession to the United States, was divided into two territories, comprehending such parts thereof as were contiguous to the river Mississippi,

toms, and manners of the inhabitants, required the immediate and cautious attention of Congress, which, instead of extending, in the first instance, to these territories the ordinance of 1787, ordained special regulations for the government of the same. These regulations were from time to time revised and altered, as observation and experience showed to be expedient, and as was deemed most likely to encourage and promote those changes which would soonest qualify the inhabitants for self-government and admission into the Union. When the United States took possession of the province of Louisiana in 1804, it was estimated to contain 50,000 white inhabitants; 40,000 slaves, and 2,000 free persons of color.*

More than four-fifths of the whites, and all the slaves, except about thirteen hundred, inhabited New Orleans and the adjacent territory; the residue, consisting of less than ten thousand whites, and about thirteen hundred slaves, were dispersed throughout the country now included in the Arkansas and Missouri territories. The greater part of the thirteen hundred slaves were in the Missouri territory, some of them having been removed thither from the old French settlements on the East side of the Mississippi, after the passing of the ordinance of 1787, by which slavery in those settlements was abolished.

In 1812, the territory of New Orleans, to which the ordinance of 1787, with the exception of certain parts thereof, had been previously extended, was permitted by Congress to form a Constitution and State Government, and admitted as a new State into the Union, by the name of Louisiana. The acts of Congress for these purposes, in addition to sundry important provisions respecting rivers and public lands, which are declared to be irrevocable unless by common consent, annex other terms and conditions, whereby it is established, not only that the Constitution of Louisiana should be republican, but that it should contain the fundamental principles of civil and religious liberty, that it should secure to the citizens the trial by jury in all criminal cases, and the privilege of the writ of habeas corpus according to the Constitution of the United States; and after its admission into the Union, that the laws which Louisiana might pass, should be promulgated; its records of every description preserved; and its judicial and legislative proceedings conducted in the language in which the laws and judicial proceedings of the United States are published and conducted.

Guards so friendly to the rights of the citizens, and restraints on the State sovereignty so material to the gradual confirmation and security of their liberties, demonstrate the extensive and parental power of Congress; power the wise exercise of which on this occasion, is not confined to the inhabitants of the new State, but reaches and protects the rights of the citizens of all the States. The habits of the people and the number of slaves by whom the labor of the territory of New Orleans was performed, were doubtless the reason for the omission of an article in the act of admission by which slavery should be excluded from the new State.

Having annexed these new and extraordinary conditions to the act for the admission of Louisiana into the Union, Congress may, if they shall deem it expedient, annex the like conditions to the act for the admission of Missouri; and moreover, as in the case of Ohio, Indiana, and Illinois, provide by an article for that purpose, that slavery shall not exist within the same.

Admitting this construction of the constitution, it is alleged that the power by which Congress excluded slavery from the States northwest of the river Ohio, is suspended in respect to the States that may be formed in the province of Louisiana. The article of the treaty referred to declares: "That the inhabitants of the territory shall be incorporated in the Union of the United States, and admitted as soon as possible; according to the principles of the Federal Constitution, to the enjoyment of all rights, advantages, and immunities of citizens of the United States; and in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

Although there is want of precision in the article, its scope and meaning cannot be misunderstood. It constitutes a stipulation by which the United States engage that the inhabitants of Louisiana should be formed into a State or States, and as soon as the provisions of the constitution permit, that they should be admitted as new States into the Union on the footing of the other States; and before such admission, and during their territorial government, that they should be maintained and protected by Congress in the enjoyment of their liberty, property, and religion. The first clause of this stipulation will be executed by the admission of Missouri as a new State into the Union, as such admission will impart to the inhabitants of Missouri "all the rights, advantages, and immunities" which citizens of the United States derive from the constitution thereof; these rights may be denominated federal rights, are uniform throughout the Union, and are common to all its citizens: but the rights derived from the constitution and laws of the States, which may be denominated State rights, in many particulars differ from each other. Thus, while the federal rights of the citizens of Massachusetts and Virginia are the same, their State rights are dissimilar and different, slavery being forbidden in one, and permitted in the other State. This difference arises out of the constitutions and laws of the

* This estimate was too high, as, by the census of 1810, the whole province was found to contain only 96,000 inhabitants, viz: 51,000 whites, 37,000 slaves, and 8,000 free persons of color.

two States, in the same manner as the difference in the rights of the citizens of these States to vote for representatives in Congress arises out of the State laws and constitution. In Massachusetts, every person of lawful age, and possessing property of any sort, of the value of two hundred dollars, may vote for representatives to Congress. In Virginia, no person can vote for representatives to Congress, unless he be a freeholder. As the admission of a new State into the Union confers upon its citizens only the rights denominated federal, and as these are common to the citizens of all the States, as well of those in which slavery is prohibited, as of those in which it is allowed, it follows that the prohibition of slavery in Missouri will not impair the federal rights of its citizens, and that such prohibition is not sustained by the clause of the treaty which has been cited.

The remaining clause of the article is expressly confined to the period of the territorial government of Missouri, to the time between the first occupation of the country by the United States, and its admission as a new State into the Union. Whatever may be its import, it has no reference nor application to the terms of the admission, or to the condition of Missouri, after it shall have been admitted into the Union. The clause is but the common formula of treaties, by which inhabited territories are passed from one sovereign to another; its object is to secure such inhabitants the permanent or temporary enjoyment of their former liberties, property, and religion; leaving to the new sovereign full power to make such regulations respecting the same, as may be thought expedient, provided these regulations be not incompatible with the stipulated security.

What were the liberties under the French government, the enjoyment of which, under ours, called for protection, we are unable to explain; as the United States have no power to prevent the free enjoyment of the Catholic religion, no stipulation against their interference to disturb it could be necessary; and the only part of the clause whose object can be readily understood, is that relative to "property."

As all nations do not permit slavery, the term property, in its common and universal meaning, does not include or describe slaves. In treaties, therefore, between nations, and especially in those of the United States, whenever stipulations respecting slaves were to be made, the word "negroes," or "slaves," have been employed, and the omission of these words in this clause, increases the uncertainty whether, by the term property, slaves were intended to be included. But admitting that such was the intention of the parties, the stipulation is not only temporary, but extends no further than to the property actually possessed by the inhabitants of Missouri, when it was first occupied by the United States. Property or possessed by the new inhabitants of Missouri, has in each case been acquired under the laws of the United States, and not during and under the laws of the province of Louisiana. Should, therefore, the future introduction of slaves into Missouri, be forbidden, the feelings of the citizens would soon become reconciled to their exclusion, and the inconsiderable number of slaves owned by the inhabitants at the date of the cession of Louisiana, would be emancipated or sent for sale into States where slavery exists.

It is further objected, that the article of the act of admission into the Union, by which slavery should be excluded from Missouri, would be nugatory, as the new State in virtue of its sovereignty would be at liberty to revoke its consent, and annul the article by which slavery is excluded.

Such revocation would be contrary to the obligations of good faith, which enjoins the observance of our engagements; it would be repugnant to the principles on which government itself is founded: sovereignty in every lawful government is a limited power, and can do only what it is lawful to do—sovereigns, like individuals, are bound by their engagements, and have no moral power to break them. Treaties between nations repose on this principle. If the new State can revoke and annul an article concluded between itself and the United States, by which slavery is excluded from it, it may revoke and annul any other article of the compact; it may, for example, annul the article respecting public lands, and in virtue of its sovereignty, assume the right to tax and to sell the lands of the United States. There is yet a more satisfactory answer to this objection. The judicial power of the United States is co-extensive with their legislative power, and every question arising under the Constitution or laws of the United States, is cognizable by the judiciary thereof. Should the new State rescind any of the articles of compact contained in the act of admission into the Union, that, for example, by which slavery is excluded, and should pass a law authorizing slavery, the judiciary of the United States, on proper application, would immediately deliver from bondage, any person detained as a slave in said State. And, in like manner, in all instances affecting individuals, the judiciary might be employed to defeat every attempt to violate the Constitution and laws of the United States.

If Congress possess the power to exclude slavery from Missouri, it still remains to be shown that they ought to do so. The examination of this branch of the subject, for obvious reasons, is attended with peculiar difficulty, and cannot be made without passing over arguments which, to some of us, might appear to be decisive, but the use of which, in this place, would call up feelings, the influence of which would disturb, if not defeat, the impartial consideration of the subject.

States. Enlightened men, in the States where it is permitted, and every where out of them, regret its existence among us, and seek for the means of limiting and of mitigating it. The first introduction of slaves is not imputable to the present generation, nor even to their ancestors. Before the year 1642, the trade and ports of the colonies were open to foreigners equally as those of the mother country; and as early as 1620, a few years only after the planting of the colony of Virginia, and the same year in which the first settlement was made in the old colony of Plymouth, a cargo of negroes was brought into, and sold as slaves in Virginia, by a foreign ship.* From this beginning, the importation of slaves was continued for nearly two centuries. To her honor, Virginia, while a colony, opposed the importation of slaves, and was the first State to prohibit the same, by a law passed for this purpose in 1778, thirty years before the general prohibition enacted by Congress in 1808. The laws and custom of the States in which slavery has existed for so long a period, must have had their influence on the opinions and habits of the citizens, which ought not to be disregarded on the present occasion.

Omitting, therefore, the arguments which might be urged, and which by all of us might be deemed conclusive were this an original question, the reasons which shall be offered in favor of the interposition of the power of Congress to exclude slavery from Missouri shall be only such as respect the common defence, the general welfare, and that wise administration of the government, which, as far as possible, may produce the impartial distribution of benefits and burdens throughout the Union.

By the articles of confederation the common treasury was to be supplied by the several States, according to the value of the lands, with the houses and improvements thereon, within the respective States. From the difficulty in making this valuation, the old Congress were unable to apportion the requisition for the supply of the general treasury, and obliged to propose to the States to propose an alteration of the articles of confederation, by which the whole number of free persons, with three-fifths of the slaves contained in the respective States, should become the rule of such apportionment of the taxes. A majority of the States approved of this alteration, but some of them disagreed to the same; and for want of a practicable rule of apportionment, the whole of the requisition of taxes made by Congress, during the revolutionary war and afterwards, up to the establishment of the Constitution of the United States, were merely provisional, and subject to revision and correction, as soon as such rules should be adopted. The several States were credited for their supplies, and charged for the advances made to them by Congress; but no settlement of their accounts could be made for the want of a rule of apportionment, until the establishment of the constitution.

When the general convention that formed the constitution took this subject into their consideration, the whole question was once more examined; and while it was agreed that all contributions to the common treasury should be made according to the ability of the several States to furnish the same, the old difficulty recurred in agreeing upon a rule whereby such ability should be ascertained, there being no simple standard by which the ability of individuals to pay taxes can be ascertained. A diversity in the selection of taxes has been deemed requisite to their equalization. Between communities this difficulty is less considerable, and although the rule of relative numbers would not accurately measure the relative wealth of nations, in States in the circumstances of the United States, whose institutions, laws and employments are so much alike, the rule of numbers is probably as near equal as any other simple and practicable rule can be expected to be, (though between the old and new States its equity is defective,) these considerations, added to the approbation which had already been given to the rule, by a majority of the States, induced the convention to agree that direct taxes should be apportioned among the States, according to the whole number of free persons, and three-fifths of the slaves which they might respectively contain.

The rule for apportionment of taxes is not necessarily the most equitable rule for the apportionment of representatives among the States; property must not be disregarded in the composition of the first rule, but frequently is overlooked in the establishment of the second. A rule which might be approved in respect to taxes, would be disapproved in respect to representatives; one individual possessing twice as much property as another, might be required to pay double the taxes of such other; but no man has two votes to another's one; rich or poor, each has but a single vote in the choice of representatives.

In the dispute between England and the colonies, the latter denied the right of the former to tax them, because they were not represented in the English Parliament. They contended that, according to the law of the land, taxation and representation were inseparable. The rule of taxation being agreed upon by the convention, it is possible that the maxim with which we successfully opposed the claim of England, may have had an influence in procuring the adoption of the same rule for the apportionment of representatives; the true meaning, however, of this principle of the English constitution is, that a colony or district is not to be taxed which is not represented; not that its number of representatives shall be ascertained by its quota of taxes. If three-fifths of the slaves are virtually represented, or their owners obtain a disproportionate power in legislation, and in the appointment of

* Stith's History of Virginia.

the President of the United States, why should not other property be virtually represented, and its owners obtain a like power in legislation, and in the choice of the President? Property is not confined in slaves, but exists in houses, stores, ships, capital in trade and manufactures. To secure to the owners of property in slaves greater political power than is allowed to the owners of other and equivalent property, seems to be contrary to our theory of the equality of personal rights, inasmuch as the citizens of some States thereby become entitled to other and greater political power, than the citizens of other States. The present House of Representatives consist of one hundred and eighty-one members, which are apportioned among the States in a ratio of one representative for every thirty-five thousand federal members, which are ascertained by adding to the whole number of free persons, three-fifths of the slaves. According to the last census, the whole number of slaves within the United States was 1,191,364, which entitles the States possessing the same to twenty representatives, and twenty presidential electors more than they would be entitled to, were the slaves excluded. By the last census, Virginia contained 582,104 free persons, and 392,518 slaves. In any of the States where slavery is excluded, 582,104 free persons would be entitled to elect only sixteen representatives, while in Virginia, 582,104 free persons, by the addition of three-fifths of her slaves, become entitled to elect, and do in fact elect twenty-three representatives, being seven additional ones on account of her slaves. Thus, while 35,000 free persons are requisite to elect one representative in a State where slavery is prohibited; 25,559 free persons in Virginia, may and do elect a representative—so that five free persons in Virginia have as much power in the choice of Representatives to Congress, and in the appointment of presidential electors, as seven free persons in any of the States in which slavery does not exist.

This inequality in the apportionment of representatives, was not misunderstood at the adoption of the constitution—but as no one anticipated the fact that the whole of the revenue of the United States would be derived from indirect taxes (which cannot be supposed to spread themselves over the several States according to the rule for the apportionment of direct taxes), but it was believed that a part of the contribution to the common treasury would be apportioned among the States by the rule for the apportionment of representatives. The States in which slavery is prohibited, ultimately, though with reluctance, acquiesced in the disproportionate number of representatives and electors that was secured to the slaveholding States. The concession was, at the time, believed to be a great one, and has proved to have been the greatest which was made to secure the adoption of the constitution.

Great, however, as this concession was, it was definite, and its full extent was compre-

hended. It was a settlement between the original thirteen States. The considerations arising out of their actual condition, their past connection, and the obligation which all felt to promote a reformation in the Federal Government, were peculiar to the time and to the parties, and are not applicable to the new States, which Congress may now be willing to admit into the Union.

The equality of rights, which includes an equality of burdens, is a vital principle in our theory of government, and its jealous preservation is the best security of public and individual freedom; the departure from this principle in the disproportionate power and influence, allowed to the slaveholding States, was a necessary sacrifice to the establishment of the constitution. The effect of this concession has been obvious in the preponderance which it has given to the slaveholding States, over the other States. Nevertheless, it is an ancient settlement, and faith and honor stand pledged not to disturb it. But the extension of this disproportionate power to the new States would be unjust and odious. The States whose power would be abridged, and whose burdens would be increased by the measure, cannot be expected to consent to it; and we may hope that the other States are too magnanimous to insist on it.

The existence of slavery impairs the industry and the power of a nation; and it does so in proportion to the multiplication of its slaves: where the manual labor of a country is performed by slaves, labor dishonors the hands of freemen.

If her laborers are slaves, Missouri may be able to pay money taxes, but will be unable to raise soldiers or to recruit seamen, and experience seems to have proved that manufactures do not prosper where the artificers are slaves. In case of foreign war, or domestic insurrection, misfortunes from which no State is exempt, and against which all should be seasonably prepared, slaves not only do not add to, but diminish the faculty of self-defence; instead of increasing the public strength, they lessen it, by the whole number of free persons whose place they occupy, increased by the number of freemen that may be employed as guards over them.

The motives for the admission of new States into the Union, are the extension of the principles of our free government, the equalizing of the public burdens, and the consolidation of the power of the confederated nation. Unless these objects be promoted by the admission of new States, no such admission can be expedient or justified.

The States in which slavery already exists are contiguous to each other; they are also the portion of the United States nearest to the European colonies in the West Indies; colonies whose future condition can hardly be regarded as problematical. If Missouri, and the other States that may be formed to the west of the

and establish slavery, the repose, if not the security, of the Union may be endangered; all the States south of the river Ohio, and west of Pennsylvania and Delaware, will be peopled with slaves, and the establishment of new States west of the river Mississippi, will serve to extend slavery instead of freedom over that boundless region.

Such increase of the States, whatever other interests it may promote, will be sure to add nothing to the security of the public liberties, and can hardly fail, hereafter, to require and produce a change in our government.

On the other hand, if slavery be excluded from Missouri, and the other new States which may be formed in this quarter, not only will the slave markets be broken up, and the principles of freedom be extended and strengthened, but an exposed and important frontier will present a barrier which will check and keep back foreign assailants, who may be as brave, and, as we hope, will be as free as ourselves. Surrounded in this manner by connected bodies of freemen, the States where slavery is allowed will be made more secure against domestic insurrection, and less liable to be affected by what may take place in the neighboring colonies.

It ought not to be forgotten, that the first and main object of the negotiation which led to the acquisition of Louisiana, was the free navigation of the Mississippi; a river that forms the sole passage from the western States to the ocean. This navigation, although of general benefit, has been always valued and desired, as of peculiar advantage to the western States, whose demands to obtain it, were neither equivocal nor unreasonable. But with the river Mississippi, by a sort of coercion, we acquired, by good or ill fortune, as our future measures shall determine, the whole province of Louisiana. As this acquisition was made at the common expense, it is very fairly urged that the advantages to be derived from it should also be common. This, it is said, will not happen if slavery be excluded from Missouri, as the citizens of the States where slavery is permitted will be shut out, and none but citizens of States where slavery is prohibited, can become inhabitants of Missouri.

But this consequence will not arise from the proposed exclusion of slavery. The citizens of States in which slavery is allowed, like all other citizens, will be free to become inhabitants of Missouri, in like manner as they have become inhabitants of Ohio, Indiana, and Illinois, in which slavery is forbidden. The exclusion of slaves from Missouri will not, therefore, operate unequally among the citizens of the United States. The constitution provides, "that the citizens of each State shall be entitled to enjoy all the rights and immunities of citizens of the several States;" every citizen may, therefore, remove from one to another State, and there enjoy the rights and immunities of its citizens. The proposed provision excludes slaves, not citizens, whose rights it will not, and cannot impair.

Besides there is nothing new or peculiar in a provision for the exclusion of slavery; it has been established in the States northwest of the river Ohio, and has existed from the beginning in the old States where slavery is forbidden. The citizens of States where slavery is allowed, may become inhabitants of Missouri, but cannot hold slaves there, nor in any other State where slavery is prohibited. As well might the laws prohibiting slavery in the old States become the subject of complaint, as the proposed exclusion of slavery in Missouri; but there is no foundation for such complaint in either case. It is further urged, that the admission of slaves into Missouri would be limited to the slaves who are already within the United States; that their health and comfort would be promoted by their dispersion, and that their numbers would be the same whether they remain confined to the States where slavery exists, or are dispersed over the new States that may be admitted into the Union.

That none but domestic slaves would be introduced into Missouri, and the other new and frontier States, is most fully disproved by the thousands of fresh slaves, which, in violation of our laws, are annually imported into Alabama, Louisiana, and Mississippi.

We may renew our efforts, and enact new laws with heavier penalties against the importation of slaves: the revenue cutters may more diligently watch our shores, and the naval force may be employed on the coast of Africa, and on the ocean, to break up the slave trade—but these means will not put an end to it; so long as markets are open for the purchase of slaves, so long they will be supplied;—and so long as we permit the existence of slavery in our new and frontier States, so long slave markets will exist. The plea of humanity is equally inadmissible, since no one who has ever witnessed the experiment, will believe that the condition of slaves is made better by the breaking up, and separation of their families, nor by their removal from the old States to the new ones; and the objection to the provision of the bill, excluding slavery from Missouri, is equally applicable to the like prohibitions of the old States: these should be revoked, in order that the slaves now confined to certain States, may, for their health and comfort, and multiplication, be spread over the whole Union.

That the condition of slaves within the United States has been improved, and the rigors of slavery mitigated, by the establishment and progress of our free governments, is a fact that imparts consolation to all who have taken pains to inquire concerning it. The disproportionate increase of free persons of color, can be explained only by the supposition that the practice of emancipation is gaining ground; a practice which there is reason to believe would become more general, if a plan could be devised by which the comfort and

morals of the emancipated slaves could be satisfactorily provided for: for it is not to be doubted that public opinion every where, and especially in the oldest State of the Union, is less favorable than formerly to the existence of slavery. Generous and enlightened men in the States where slavery exists, have discovered much solicitude on the subject: a desire has been manifested that emancipation might be encouraged by the establishment of a place or colony, without the United States, to which free persons of color might be removed; and great efforts for that purpose are making, with a corresponding anxiety for their success. These persons, enlightened and humane as they are known to be, surely will be unwilling to promote the removal of the slaves from the old States to the new ones: where their comforts will not be multiplied, and where their fetters may be riveted for ever.

Slavery cannot exist in Missouri without the consent of Congress; the question may therefore be considered, in certain lights, as a new one, it being the first instance in which an inquiry respecting slavery, in a case so free from the influence of the ancient laws, usages, and manners of the country, has come before the Senate.

The territory of Missouri is beyond our ancient limits, and the inquiry whether slavery shall exist there, is open to many of the arguments that might be employed, had slavery never existed within the United States. It is a question of no ordinary importance. Freedom and slavery are the parties which stand this day before the Senate; and upon its decision the empire of the one or the other will be established in the new State which we are about to admit into the Union.

If slavery be permitted in Missouri with the climate, and soil, and in the circumstances of this territory, what hope can be entertained that it will ever be prohibited in any of the new States that will be formed in the immense region west of the Mississippi. Will the coextensive establishment of slavery and of the new States throughout this region, lessen the dangers of domestic insurrection, or of foreign aggression? Will this manner of executing the great trust of admitting new States into the Union, contribute to assimilate our manners and usages, to increase our mutual affection and confidence, and to establish that equality of benefits and burdens which constitutes the true basis of our strength and union? Will the militia of the nation, which must furnish our soldiers and seamen, increase as slaves increase? Will the actual disproportion in the military service of the nation, be thereby diminished? A disproportion that will be, as it has been, readily borne, as between the original States, because it arises out of their compact of Union, but which may become a badge of inferiority, if required for the protection of those who, being free to choose, persist in the establishment of maxims, the inevitable effect of which will deprive them of the power to contribute to the common defence, and even of the ability to protect themselves. There are limits within which our federal system must stop; no one has supposed that it could be indefinitely extended—we are now about to pass our original boundary; if this can be done without affecting the principles of our free governments, it can be accomplished only by the most vigilant attention to plant, cherish, and sustain the principles of liberty in the new States, that may be formed beyond our ancient limits: with our utmost caution in this respect, it may still be justly apprehended that the General Government must be made stronger as we become more extended.

But, if instead of freedom, slavery is to prevail and spread, as we extend our dominion, can any reflecting man fail to see the necessity of giving to the General Government greater powers, to enable it to afford the protection that will be demanded of it? powers that will be difficult to control, and which may prove fatal to the public liberties.*

* See the speech, on the Missouri Bill, by William Pinkney, in the subsequent pages of this volume.

JAMES A. BAYARD.

JAMES A. BAYARD was a descendant of Pierre du Terrail Bayard, who is familiarly known as the *Chevalier sans peur et sans reproche.* His ancestors were Huguenots, who, fearing the fanatical tendencies of the age, abandoned their estates in France, some time prior to the revocation of the edict of Nantes, and emigrated to America. They settled in New York, and, at a subsequent period, one of them removed to Maryland, and there established his residence. From this branch of the family the subject of this sketch was descended.

He was born in Philadelphia on the twenty-eighth day of July, 1767. His father, Doctor James A. Bayard, was a practitioner of medicine of great promise and an increasing reputation at the time of his death, in 1770. His uncle, Colonel John Bayard, occupied a prominent position in the councils of Pennsylvania, during the war of the Revolution, and for many years was speaker of the Legislature of that State. After the death of his parents, young Bayard was placed in the care of this uncle, and continued as a member of his family for a long period. He prepared for college under the supervision of the Reverend Mr. Smith, a respectable clergyman of Lancaster county, and a private tutor, in his uncle's family, and in 1780, matriculated at the College of New Jersey. From this institution, he graduated in 1784, with distinguished honor, and gave a pledge of future eminence, in the reputation he carried with him into the more extended scenes of life.

Having decided to pursue the profession of the law, he commenced his studies under the direction of General Joseph Reed, and on his decease, removed to the office of Jared Ingersoll, where he remained until the close of his legal course. He selected the State of Delaware as the theatre for the pursuit of his profession, and, in the year 1787, was admitted to the bar of the Court of Common Pleas for the county of New Castle. The first years of his professional life were spent in severe study, at the same time acquiring the principles of general jurisprudence, and a thorough knowledge of political science, both of which were of the greatest service to him at the bar and in the halls of legislation.

In the autumn of the year 1796, he was elected a member of the House of Representatives, and remained in public life, from that moment, through all the vicissitudes of party triumph and defeat, until the time of his death. Actively engaged in political and professional duties, he contrived to reconcile their endless varieties, and evinced a rare and happy aptitude for both. At the same moment one of the most conspicuous supporters of the Federal administration, and a leader of acknowledged ability in the House of Representatives—and the chief ornament of the forum, where he had chosen to excel. At once the profound jurist and the accomplished statesman; the acute, ingenious, and dexterous advocate, and the eloquent and dignified occupant of the parliamentary floor. The same efforts of industry, and powers of genius, that qualified and calculated him for superiority in the less magnified but intricate controversies of individuals, readily enabled him to extend his intellectual grasp to the comprehension of more enlarged topics of general interest, which involved the duties and the policy, the happiness and the rights of nations. The study and practice of the law is calculated to add vigor to a mind naturally strong. In a country emphatically subject to the government of the laws alone, the

sors of that science, who have borne the weight of public councils, and successfully endeavored to ennoble by their efforts the national character, it derives irresistible weight and authority. To Mr. Bayard's early adoption and active and vigorous pursuit of this profession, are to be ascribed, in no unimportant degree, the method of his arguments, and the logical accuracy of his inferences.

In July, 1797, a short time after his appearance in Congress, Mr. Bayard was appointed one of a committee to prepare and report articles of impeachment against William Blount, a United States senator; and in the following session of that Congress he was a member of the committee to conduct the impeachment, and finally was elected chairman of that body. In the trial, Mr. Blount pleaded to the jurisdiction of the Senate, upon the principle that a senator is not a civil officer, within the meaning of the constitution; and that the courts of common law were "competent to the cognizance, prosecution, and punishment of the said crimes and misdemeanors, if the same have been perpetrated, as has been suggested and charged by the said articles." The preliminary question growing out of this plea was to be discussed, and the direction of this delicate and interesting inquiry, was submitted to the chairman, and Mr. Harper, one of the managers. The subject underwent a laborious and ingenious discussion, in which the constitution was thoroughly sifted, and the doctrines of the common law of England bearing a remote or close analogy to the point in controversy, were made tributary to the talents of the respective advocates.

The decision was adverse to the managers; a majority of fourteen to eleven senators deciding "that the matter alleged in the plea of the defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed." The efforts were abortive, because the cause was insupportable; but the exertion was not the less honorable, nor the display of genius and erudition the less brilliant, because success did not crown them.

John Adams, a short time previous to the expiration of his presidential term, appointed Mr. Bayard minister to the French republic, but owing to the delicate position in which he was placed, by the part he had taken in the contest which terminated in the election of Mr. Jefferson, he declined the proffered honor.* In a letter on this subject, addressed to a near relative and one of his earliest friends, he thus explained his motives for the refusal. "Under proper circumstances, the acceptance would have been complete gratification; but under the existing circumstances, I thought the resignation most honorable. To have taken eighteen thousand dollars out of the public treasury, with a knowledge that no service could be rendered by me, as the French Government would have waited for a man who represented the existing feelings and views of this government, would have been disgraceful. Another consideration of great weight, arose from the part I took in the presidential election. As I had given the turn to the election, it was impossible for me to accept an office, which would be held on the tenure of Mr. Jefferson's pleasure. My ambition shall never be gratified at the expense of a suspicion. I shall never lose sight of the motto of the great original of our name."†

* At the first election of President Jefferson, an extraordinary scene was displayed. The constitution provides, that "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 a majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President." In that situation stood the candidates, and the election devolved of consequence upon the House of Representatives. No less than thirty-six times was the vote ineffectual, each party, equally zealous, and equally numerous, adhering to its candidate. The federalists of the House adopted, as they believed the less evil, the side of Mr. Burr, and persevered during so many abortive efforts to give him their votes. It was at length perceived, that a pertinacious adherence to this course of conduct might expose the country to greater embarrassment and difficulty than even the selection of a President who was considered dangerous; and some of the federalists determined to withdraw from him their opposition, without giving him direct countenance and support. They accordingly threw into the box blank votes; and the election of Mr. Jefferson was thus obtained. By a sacrifice of personal feeling and judgment, which required no ordinary firmness and magnanimity, Mr. Bayard, by this means, principally contributed to place in the Executive chair, the decided enemy of the men and measures that he personally approved; and removed to a distance, apparently insurmountable, the fulfilment, if they existed, of his own political aspirations. But the good of the country required it, and the sacrifice was made.—*Analectic, vol. 7, page 339.*

† Appendix of Sullivan's Familiar Letters on Public Characters.

During the debates on the Judiciary system, in the early part of the year 1802, Mr. Bayard took an active part. "On this memorable occasion," says his biographer, "all parties united in paying homage to his abilities. It will not be invidious to remark, that in the constellation of talents that glittered in that transaction, none were more conspicuous than his. He was alike distinguished for the depth of his knowledge, the solidity of his reasoning, and the perspicuity of his illustration. On his own side of the House his range was pronounced to be 'commensurate with the extent of his own mighty mind, and with the magnitude of the subject,' which was declared to be as awful as any on this side of the grave. On the part of the majority he was termed the Goliath of the adverse party, and sarcastically, but with truth, denominated the high priest of the constitution." His speech on this occasion is included in this volume.

In November, 1804, he was chosen by the legislature of Delaware, a senator of the United States, to fill a vacancy, and in February of the next year, was again elected to that dignified and honorable station, where he continued until the spring of the year 1813. During the session of Congress, he was generally at his post, the faithful supporter of the principles he brought with him into public life, and in the recess of legislative duty, he successfully pursued his professional labors, and maintained and increased the reputation he acquired at an early period of his life.

In 1813, when the intelligence of the commencement of hostilities between the United States and Great Britain reached Europe, the Emperor of Russia offered his mediation to both nations. This offer was accepted by President Madison, and Mr. Bayard, Mr. Gallatin, and Mr. Adams, were appointed commissioners, "fully charged to conclude a peace upon the terms set forth in the declaration of war, and upon no others," and directed to proceed immediately to St. Petersburg. Early in May the negotiators sailed from Philadelphia, and on the twenty-first of July following, they arrived at the Russian court. Alexander, the emperor, under whose auspices the negotiation was undertaken, was with his armies in Germany, and intelligence of the sentiments of the British Government on the terms proposed, was not yet received. Mr. Bayard concluding that the hopes of peace were blasted, left St. Petersburg and passed over into Holland, from thence to return to America. In the mean time Lord Cathcart had communicated to the Russian court the non-acceptance by the Prince Regent of the interposition of the emperor as to the question which constituted the principal object in dispute between the two States, and his readiness, nevertheless, to nominate plenipotentiaries to treat directly with the American envoys. The Bramble was despatched to America with the view of communicating these circumstances; and proposing at the same time London or Gottenburg as the scene of operations. The proposal was accepted, and Gottenburg was selected as neutral ground. New commissions were issued, and Mr. Clay and Mr. Russel were despatched to join the other members of the mission.

Mr. Bayard was now in England, and the negotiations having been transferred from Gottenburg to Ghent, he immediately proceeded to that place, where he arrived on the twenty-seventh of June, 1814. Here he found Mr. Adams and Mr. Russel, and in a few days they were joined by Mr. Gallatin and Mr. Clay. The British commissioners did not arrive until the early part of August. During the delay occasioned by their absence, Mr. Bayard wrote thus to a friend in America: "Nothing favorable can be augured from the delay in sending their commissioners to the rendezvous agreed to at their instance as the seat of the negotiations. Our commissioners have all been here more than a month, and we have not yet heard that theirs are even preparing to quit London. We expect them daily, but so we have done for twenty days past, and so we shall till they arrive, or till we learn that they do not mean to come at all. I assure you, between ourselves, my hopes of peace are very slender. The Government of England affect to despise us, but they know we are a growing and dangerous rival. If they could crush us at the present moment, they would not fail to do it; and I am inclined to think that they will not make peace till they have tried the effect of all their force against us. An united, firm, and courageous resistance upon our part, alone, in my opinion, can furnish hopes of a safe and honorable peace to the United States. I wish I could present you with different views; but what

while in fact we are increasing it. What I doubt is, that if the olive branch be presented to us by one hand, a cup of humiliation and disgrace will be held out in the other; and although I should rejoice to carry the former to the United States, yet I never shall consent to be the bearer of the latter." In a subsequent letter he writes: "No people are more easily elated or depressed by events than the English. We have nothing to hope but from vigorous and successful measures, so far as the war depends upon ourselves alone. The British force in America must be overcome and repelled, or the war must end in national disgrace."

The day after the arrival of the British commissioners, the negotiations commenced, and on the twenty-fourth of December following, a treaty of peace was signed.

Mr. Bayard now visited Paris, where he remained until the ratification of the treaty. Soon after he was appointed minister to the Court of Russia. This office he declined, stating that "he had no wish to serve the administration, except when his services were necessary for the public good. In the late transactions he believed that to be the case, and therefore he had cheerfully borne his part. Peace being obtained, he was perfectly satisfied to resign the honors of diplomacy for the sweets of domestic life. Nothing could induce him to accept an appointment that would threaten to identify him with the administration party, without contributing essentially to his country's good. That was his primary and exclusive object. In all his reflections, he was principally affected by an anxious jealousy for the welfare, and an ardent affection for the people of his native land. It is difficult to conceive how an idea should have arisen, that he ever deviated in thought or action from the genuine principles of federalism. In every public display, in every private discussion, he was their warmest advocate. The whole course of his political pilgrimage, long and laborious as it was, may safely challenge a comparison with that of any statesman for undeviating consistency of conduct, and pure and enlightened patriotism."

From Paris he intended to repair to England to assist in the formation of a commercial treaty, but he was prevented by a severe illness, which soon reduced him to a state of extreme debility and suffering. Anxious to reach his home, he sailed from England, and on the first of August, 1815, arrived in the Delaware. Five days after, he died, in the forty-ninth year of his age.*

SPEECH ON THE JUDICIARY.

Mr. Bayard delivered this speech, on the Judiciary Bill,† in the House of Representatives of the United States, on the nineteenth of February, 1802:

Mr. Chairman: I must be allowed to express my surprise at the course pursued by the honorable gentleman from Virginia, Mr. Giles,‡ in the remarks which he has made on the subject before us. I had expected that he would have adopted a different line of conduct. I had expected it as well from that sentiment of magnanimity which ought to have been inspired by a sense of the high ground he holds on the floor of this House, as from the professions of a desire to conciliate, which he has so repeatedly made during the session. We have been invited to bury the hatchet, and brighten the chain of peace. We were disposed to meet on middle-ground. We had assurances from the gentleman that he would abstain from reflections on the past, and that his only wish was that we might unite in future in promoting the welfare of our common country. We confided in the gentleman's sincerity, and cherished the

* See Biographical Sketch of Mr. Bayard, in the Analectic, vol. 7, p. 333: Raleigh Star, 1815: Biographie Universelle: and Mr. N. Correlissen's Oration at Ghent, on the 13th of October, 1816.

† The bill proposed, that "the act of Congress, passed on the 13th of February, 1801, entitled an act to provide for the more convenient organization of the Courts of the United States," and also, "an act passed on the 3d March, 1801, for altering the times and places of holding certain courts therein. It also provided, that all the acts in force before the passage of the aforesaid acts, and which, by the same, were either amended, explained, altered or repealed, should be revised. The bill contained further provision for the disposition of the actions, writs, &c., then pending in any of the Courts of the United States, which were established by the aforesaid act of Congress of 1801.

‡ See Mr. Giles's Speech on this bill in the subsequent pages of this volume; also, the speech of Mr. Thomas

hope, that if the divisions of party were not banished from the House, its spirit would be rendered less intemperate. Such were our impressions, when the mask was suddenly thrown aside, and we saw the torch of discord lighted and blazing before our eyes. Every effort has been made to revive the animosities of the House, and inflame the passions of the nation. I am at no loss to perceive why this course has been pursued. The gentleman has been unwilling to rely upon the strength of his subject, and has, therefore, determined to make the measure a party question. He has probably secured success, but would it not have been more honorable and more commendable, to have left the decision of a great constitutional question to the understanding, and not to the prejudices of the House? It was my ardent wish to discuss the subject with calmness and deliberation, and I did intend to avoid every topic which could awaken the sensibility of party. This was my temper and design when I took my seat yesterday. It is a course at present we are no longer at liberty to pursue. The gentleman has wandered far, very far, from the points of the debate, and has extended his animadversions to all the prominent measures of the former administrations. In following him through his preliminary observations, I necessarily lose sight of the bill upon your table.

The gentleman commenced his strictures with the philosophic observation, that it was the fate of mankind to hold different opinions as to the form of government which was preferable. That some were attached to the monarchical, while others thought the republican more eligible. This, as an abstract remark, is certainly true, and could have furnished no ground of offence, if it had not evidently appeared that an allusion was designed to be made to the parties in this country. Does the gentleman suppose that we have a less lively recollection than himself, of the oath which we have taken to support the constitution; that we are less sensible of the spirit of our government, or less devoted to the wishes of our constituents? Whatever impression it might be the intention of the gentleman to make, he does not believe that there exists in the country an anti-republican party. He will not venture to assert such an opinion on the floor of this House. That there may be a few individuals having a preference for monarchy is not improbable; but will the gentleman from Virginia, or any other gentleman, affirm in his place, that there is a party in the country who wish to establish monarchy? Insinuations of this sort belong not to the Legislature of the Union. Their place is an election-ground, or an alehouse. Within these walls they are lost; abroad, they have had an effect, and I fear are still capable of abusing popular credulity.

We were next told of the parties which have existed, divided by the opposite views of pro- of the people. The gentleman did not tell us in plain language, but he wished it to be understood, that he and his friends were the guardians of the people's rights, and that we were the advocates of executive power.

I know that this is the distinction of party which some gentlemen have been anxious to establish; but it is not the ground on which we divide. I am satisfied with the constitutional powers of the executive, and never wished nor attempted to increase them; and I do not believe, that gentlemen on the other side of the House ever had a serious apprehension of danger from an increase of executive authority. No, sir, our views, as to the powers which do and ought to belong to the General and State Governments, are the true sources of our divisions. I co-operate with the party to which I am attached, because I believe their true object and end is an honest and efficient support of the general government, in the exercise of the legitimate powers of the constitution.

I pray to God I may be mistaken in the opinion I entertain as to the designs of gentlemen to whom I am opposed. Those designs I believe hostile to the powers of this government. State pride extinguishes a national sentiment. Whatever power is taken from this government is given to the States.

The ruins of this government aggrandize the States. There are States which are too proud to be controlled; whose sense of greatness and resource renders them indifferent to our protection, and induces a belief that if no general government existed, their influence would be more extensive, and their importance more conspicuous. There are gentlemen who make no secret of an extreme point of depression, to which the government is to be sunk. To that point we are rapidly progressing. But I would beg gentlemen to remember, that human affairs are not to be arrested in their course, at artificial points. The impulse now given may be accelerated by causes at present out of view. And when those, who now design well, wish to stop, they may find their powers unable to resist the torrent. It is not true, that we ever wished to give a dangerous strength to executive power. While the government was in our hands, it was our duty to maintain its constitutional balance, by preserving the energies of each branch. There never was an attempt to vary the relation of its powers. The struggle was to maintain the constitutional powers of the executive. The wild principles of French liberty were scattered through the country. We had our jacobins and disorganizers. They saw no difference between a king and a President, and as the people of France had put down their king, they thought the people of America ought to put down their President. They, who considered the constitution as securing all the principles of rational and practicable liberty, who were unwilling to embark upon the tempestuous sea of revolution in pursuit of visionary schemes, were denounced as monarch-

ists. A line was drawn between the government and the people, and the friends of the government were marked as the enemies of the people. I hope, however, that the government and the people are now the same; and I pray to God, that what has been frequently remarked, may not, in this case, be discovered to be true, that they, who have the name of the people the most often in their mouths, have their true interests the most seldom at their hearts.

The honorable gentleman from Virginia wandered to the very confines of the federal administration, in search of materials the most inflammable and most capable of kindling the passions of his party.

He represents the government as seizing the first moment which presented itself, to create a dependent monied interest, ever devoted to its views. What are we to understand by this remark of the gentleman? Does he mean to say, that Congress did wrong in funding the public debt? Does he mean to say, that the price of our liberty and independence ought not to have been paid? Is he bold enough to denounce this measure as one of the federal victims marked for destruction? Is it the design to tell us, that its day has not yet come, but is approaching; and that the funding system is to add to the pile of federal ruins? Do I hear the gentleman say, we will reduce the army to a shadow, we will give the navy to the worms, the mint, which presented the people with the emblems of their liberty and of their sovereignty, we will abolish—the revenue shall depend upon the wind and waves, the judges shall be made our creatures, and the great work shall be crowned and consecrated by relieving the country from an odious and oppressive public debt? These steps, I presume, are to be taken in progression.

The gentleman will pause at each, and feel the public pulse. As the fever increases, he will proceed, and the moment of delirium will be seized to finish the great work of destruction.

The assumption of the State debts has been made an article of distinct crimination. It has been ascribed to the worst motives; to a design of increasing a dependent monied interest. Is it not well known, that those debts were part of the price of our Revolution—that they rose in the exigency of our affairs, from the efforts of the particular States, at times when the federal arm could not be extended to their relief? Each State was entitled to the protection of the Union, the defence was a common burden, and every State had a right to expect, that the expenses attending its individual exertions in the general cause, would be reimbursed from the public purse. I shall be permitted further to add, that the United States, having absorbed the sources of State revenue, except direct taxation, which was required for the support of the State governments, the assumption of these debts was necessary to save some of the States from bankruptcy.

The internal taxes are made one of the crimes of the federal administration. They were imposed, says the gentleman, to create a host of dependants on executive favor. This supposes the past administrations to have been not only very wicked, but very weak. They lay taxes in order to strengthen their influence. Who is so ignorant as not to know, that the imposition of a tax would create an hundred enemies for one friend? The name of excise was odious; the details of collection were unavoidably expensive, and it was to operate upon a part of the community least disposed to support public burdens, and most ready to complain of their weight. A little experience will give the gentleman a new idea of the patronage of this government. He will find it not that dangerous weapon in the hands of the administration, which he has heretofore supposed it; he will probably discover that the poison is accompanied by its antidote, and that an appointment of the government, while it gives to the administration one lazy friend, will raise up against it ten active enemies.

No! The motive ascribed for the imposition of the internal taxes, is unfounded as it is uncharitable. The Federal administration, in creating burdens to support the credit of the nation, and to supply the means of its protection, knew that they risked the favor of those upon whom their power depended. They were willing to be the victims, when the public good required.

The duties on imports and tonnage furnished a precarious revenue; a revenue at all times exposed to deficiency, from causes beyond our reach. The internal taxes offered a fund less liable to be impaired by accident; a fund which did not rob the mouth of labor, but was derived from the gratification of luxury. These taxes are an equitable distribution of the public burdens. Through this medium the western country is enabled to contribute something to the expenses of a government which has expended and daily expends such large sums for its defence. When these taxes were laid, they were indispensable. With the aid of them it has been difficult to prevent an increase of the public debt. And notwithstanding the fairy prospects which now dazzle our eyes, I undertake to say, if you abolish them this session, you will be obliged to restore them, or supply their place by a direct tax, before the end of two years. Will the gentleman say, that the direct tax was laid in order to enlarge the bounds of patronage? Will he deny, that this was a measure to which we had been urged for years by our adversaries, because they foresaw in it the ruin of federal power? My word for it, no administration will ever be strengthened by a patronage united with taxes which the people are sensible of paying.

We were next told, that to get an army an Indian war was necessary. The remark was extremely bald, as the honorable gentleman did not allege a single reason for the position.

He did not undertake to state, that it was a wanton war, or provoked by the government. He did not even venture to deny, that it was a war of defence, and entered into in order to protect our brethren on the frontiers from the bloody scalping-knife and murderous tomahawk of the savage. What ought the government to have done? Ought they to have estimated the value of the blood, which probably would be shed, and the amount of the devastation likely to be committed, before they determined on resistance? They raised an army, and after great expense and various fortune, they have secured the peace and safety of the frontiers. But why was the army mentioned on this occasion, unless to forewarn us of the fate which awaits them, and to tell us, that their days are numbered? I cannot suppose that the gentleman mentioned this little army, distributed on a line of three thousand miles, for the purpose of giving alarm to three hundred thousand free and brave yeomanry, ever ready to defend the liberties of the country.

The honorable gentleman proceeded to inform the committee, that the government, availing itself of the depredations of the Algerines, created a navy. Did the gentleman mean to insinuate, that this war was invited by the United States? Has he any documents or proof to render the suspicion colorable? No, sir, he has none. He well knows, that the Algerine aggressions were extremely embarrassing to the government. When they commenced, we had no marine force to oppose to them. We had no harbors or places of shelter in the Mediterranean. A war with these pirates could be attended with neither honor nor profit. It might cost a great deal of blood, and in the end it might be feared, that a contest so far from home, subject to numberless hazards and difficulties, could not be maintained. What would gentlemen have had the government to do? I know there are those who are ready to answer—abandon the Mediterranean trade. But would this have done? The corsairs threatened to pass the Straits, and were expected in the Atlantic. Nay, sir, it was thought that our very coasts would not have been secure?

Will gentlemen go farther and say, that the United States ought to relinquish their commerce? I believe this opinion has high authority to support it. It has been said, that we ought to be only cultivators of the earth, and make the nations of Europe our carriers.

This is not an occasion to examine the solidity of this opinion; but I will only ask, admitting the administration were disposed to turn the pursuits of the people of this country from the ocean to the land, whether there is a power in the government, or whether there would be, if we were as strong as the government of Turkey, or even of France, to accomplish the object? With a sea-coast of seventeen hundred miles, with innumerable harbors and inlets, with a people enterprising beyond ships, or sailors, or merchants? The people of this country will never consent to give up their navigation, and every administration will find themselves constrained to provide means to protect their commerce.

In respect to the Algerines, the late administrations were singularly unfortunate. They were obliged to fight or pay them. The true policy was to hold a purse in one hand and a sword in the other. This was the policy of the government. Every commercial nation in Europe was tributary to these petty barbarians. It was not esteemed disgraceful. It was an affair of calculation, and the administration made the best bargain in their power. They have heretofore been scandalized for paying tribute to a pirate, and now they are criminated for preparing a few frigates to protect our citizens from slavery and chains. Sir, I believe on this and many other occasions, if the finger of heaven had pointed out a course, and the government had pursued it, yet that they would not have escaped the censure and reproaches of their enemies.

We were told, that the disturbances in Europe were made a pretext for augmenting the army and navy. I will not, Mr. Chairman, at present go into a detailed view of the events which compelled the government to put on the armor of defence, and to resist by force the French aggressions. All the world know the efforts which were made to accomplish an amicable adjustment of differences with that power. It is enough to state, that ambassadors of peace were twice repelled from the shores of France with ignominy and contempt. It is enough to say, that it was not till after we had drunk the cup of humiliation to the dregs, that the national spirit was roused to a manly resolution to depend only on their God and their own courage for protection. What, sir, did it grieve the gentleman, that we did not croueh under the rod of the Mighty Nation, and like the petty powers of Europe, tamely surrender our independence? Would he have had the people of the United States relinquish without a struggle those liberties which had cost so much blood and treasure? We had not, sir, recourse to arms, till the mouths of our rivers were choked with French corsairs; till our shores, and every harbor, were insulted and violated; till our commercial capital had been seized, and no safety existed for the remainder but the protection of force. At this moment, a noble enthusiasm electrized the country: the national pulse beat high, and we were prepared to submit to every sacrifice, determined only, that our independence should be the last. At that time, an American was a proud name in Europe; but I fear, much I fear, that in the course we are now likely to pursue, the time will soon arrive, when our citizens abroad will be ashamed to acknowledge their country.

The measures of '98 grew out of the public feelings. They were loudly demanded by the

the government to arms, and not as the gentleman expressed it, the government which pushed the people to the X. Y. Z. of their political designs before they understood the A. B. C. of their political principles.

But what, sir, did the gentleman mean by his X. Y. Z.? I must look for something very significant, something more than a quaintness of expression, or a play upon words, in what falls from a gentleman of his learning and ability. Did he mean that the despatches which contained those letters were impostures, designed to deceive and mislead the people of America? Intended to rouse a false spirit not justified by events? Though the gentleman had no respect for some of the characters of that embassy; though he felt no respect for the chief justice, or the gentleman appointed from South Carolina, two characters as pure, as honorable, and exalted, as any the country can boast of, yet, I should have expected that he would have felt some tenderness for Mr. Gerry, in whom his party had since given proofs of undiminished confidence. Does the gentleman believe that Mr. Gerry would have joined in the deception, and assisted in fabricating a tale which was to blind his countrymen, and to enable the government to destroy their liberties? Sir, I will not avail myself of the equivocations or confessions of Talleyrand himself; I say these gentlemen will not dare publicly to deny what is attested by the hand and seal of Mr. Gerry.

The truth of these despatches admitted, what was your government to do? Give us, say the Directory, one million two hundred thousand livres for our own purse, and purchase fifteen millions of dollars of Dutch debt, which was worth nothing, and we will receive your ministers and negotiate for peace.

It was only left to the government to choose between an unconditional surrender of the honor and independence of the country, or a manly resistance. Can you blame, sir, the administration for a line of conduct, which has reflected on the nation so much honor, and to which, under God, it owes its present prosperity.

These are the events of the general government, which the gentleman has reviewed in succession, and endeavored to render odious or suspicious. For all this, I could have forgiven him, but there is one thing for which I will not, I cannot forgive him. I mean his attempt to disturb the ashes of the dead; to disturb the ashes of the great and good Washington. Sir, I might degrade by attempting to eulogize this illustrious character. The work is infinitely beyond my powers. I will only say that as long as exalted talents and virtues confer honor among men, the name of Washington will be held in veneration.

After, Mr. Chairman, the honorable member had exhausted one quiver of arrows against the late executive, he opened another, equally poisoned, against the judiciary. He has told we had heard the thundering voice of the people which dismissed us from their service, we erected a judiciary, which we expected would afford us the shelter of an inviolable sanctuary. The gentleman is deceived. We knew better, sir, the characters who were to succeed us, and we knew that nothing was sacred in the eyes of infidels. No, sir, I never had a thought that any thing belonging to the federal government, was holy in the eyes of those gentlemen. I could never, therefore, imagine that a sanctuary could be built up which would not be violated. I believe these gentlemen regard public opinion because their power depends upon it, but I believe they respect no existing establishment of the government, and if public opinion could be brought to support them, I have no doubt they would annihilate the whole. I shall at present only say further on this head, that we thought the reorganization of the judicial system an useful measure, and we considered it as a duty to employ the remnant of our power to the best advantage of the country.

The honorable gentleman expressed his joy that the constitution had at last become sacred in our eyes; that we formerly held that it meant every thing or nothing. I believe, sir, that the constitution formerly appeared different in our eyes from what it now appears in the eyes of the dominant party. We formerly saw in it the principles of a fair and goodly creation. We looked upon it as a source of peace, of safety, of honor, and of prosperity to the country. But now the view is changed; it is the instrument of wild and dark destruction. It is a weapon which is to prostrate every establishment, to which the nation owes the unexampled blessings which it enjoys.

The present state of the country is an unanswerable commentary upon our construction of the constitution. It is true that we made it mean much, and I hope, sir, we shall not be taught by the present administration that it can mean even worse than nothing.

The gentleman has not confined his animadversions to the individual establishment, but has gone so far as to make the judges the subject of personal invective. They have been charged with having transgressed the bounds of judicial duty, and become the apostles of a political sect. We have heard of their travelling about the country for little other purpose than to preach the federal doctrines to the people.

Sir, I think a judge should never be a partisan. No man would be more ready to condemn a judge who carried his political prejudices or antipathies on the bench. But I have still to learn that such a charge can be sustained against the judges of the United States.

The constitution is the supreme law of the land, and they have taken pains, in their charges to grand juries, to unfold and explain its principles. Upon similar occasions, they have enumerated the laws which compose our criminal code, and

stitutional, the judges may have felt themselves called upon to express their judgments upon that point, and the reasons of their opinions.

So far, but no further, I believe the judges have gone; in going thus far, they have done nothing more than faithfully discharge their duty.

But if, sir, they have offended against the constitution or laws of the country, why are they not impeached? The gentleman now holds the sword of justice; the judges are not a privileged order, they have no shelter but their innocence.

But in any view are the sins of the former judges to be fastened upon the new judicial system? Would you annihilate a system, because some men under part of it had acted wrong? The constitution has pointed out a mode of punishing and removing the men, and does not leave this miserable pretext for the wanton exercise of powers which is now contemplated.

The honorable member has thought himself justified in making a charge of a serious and frightful nature against the judges. They have been represented going about searching out victims of the sedition law. But no fact has been stated; no proof has been adduced, and the gentleman must excuse me for refusing my belief to the charge till it is sustained by stronger and better ground than assertion.

If, however, Mr. Chairman, the eyes of the gentleman are delighted with victims, if objects of misery are grateful to his feelings, let me turn his view from the walks of the judges to the track of the present executive. It is in this path we see the real victims of stern, uncharitable, unrelenting power. It is here, sir, we see the soldier who fought the battles of the Revolution; who spilt his blood and wasted his strength to establish the independence of his country, deprived of the reward of his services, and left to pine in penury and wretchedness. It is along this path that you may see helpless children crying for bread, and gray hairs sinking in sorrow to the grave! It is here that no innocence, no merit, no truth, no services, can save the unhappy sectary who does not believe in the creed of those in power. I have been forced upon this subject, and before I leave it, allow me to remark, that without inquiring into the right of the President to make vacancies in office, during the recess of the Senate, but admitting the power to exist, yet that it never was given by the constitution to enable the chief magistrate to punish the insults, to revenge the wrongs, or to indulge the antipathies of the man. If the discretion exists, I have no hesitation in saying that it is abused when exercised from any other motives than the public good. And when I see the will of a President precipitating from office, men of probity, knowledge, and talents, against whom the community has no complaint, I consider it as a wanton and dangerous abuse of power. And this abuse of power, I view them as the proper objects of national sympathy and commiseration.

Among the causes of impeachment against the judges, is their attempt to force the sovereignties of the States to bow before them. We have heard them called an ambitious body politic; and the fact I allude to has been considered as full proof of the inordinate ambition of the body.

Allow me to say, sir, the gentleman knows too much, not to know that the judges are not a body politic. He supposed, perhaps, there was an odium attached to the appellation, which it might serve his purposes to connect with the judges. But, sir, how do you derive any evidence of the ambition of the judges, from their decision, that the States under our federal compact were compellable to do justice? Can it be shown, or even said, that the judgment of the court was a false construction of the constitution? The policy of later times, on this point, has altered the constitution, and in my opinion, has obliterated its fairest feature. I am taught by my principles, that no power ought to be superior to justice. It is not, that I wish to see the States humbled in dust and ashes; it is not, that I wish to see the pride of any man flattered by their degradation; but it is, that I wish to see the great and the small, the sovereign and the subject, bow at the altar of justice, and submit to those obligations from which the Deity himself is not exempt. What was the effect of this provision in the constitution? It prevented the States being the judges in their own cause, and deprived them of the power of denying justice. Is there a principle of ethics more clear, than that a man ought not to be a judge in his own cause? and is not the principle equally strong, when applied not to one man, but to a collective body? It was the happiness of our situation which enabled us to force the greatest State to submit to the yoke of justice, and it would have been the glory of the country in the remotest times, if the principle in the constitution had been maintained. What had the States to dread? Could they fear injustice, when opposed to a feeble individual? Has a great man reason to fear from a poor one? And could a potent State be alarmed by the unfounded claim of a single person? For my part, I have always thought, that an independent tribunal ought to be provided, to judge on the claims against this government. The power ought not to be in our own hands. We are not impartial, and are therefore liable, without our knowledge, to do wrong. I never could see why the whole community should not be bound by as strong an obligation to do justice to an individual, as one man is bound to do it to another.

In England, the subject has a better chance for justice against the sovereign, than in this country a citizen has against a State. The Crown is never its own arbiter, and they who sit in judgment have no interest in the event

The judges, sir, have been criminated for their conduct in relation to the sedition act, and have been charged with searching for victims who were sacrificed under it. The charge is easily made, but has the gentleman the means of supporting it? It was the evident design of the gentleman to attach the odium of the sedition law to the judiciary; on this score the judges are surely innocent. They did not pass the act; the legislature made the law, and they were obliged, by their oaths, to execute it. The judges decided the law to be constitutional, and I am not now going to agitate the question. I did hope, when the law passed, that its effect would be useful. It did not touch the freedom of speech, and was designed only to restrain the enormous abuses of the press. It went no further than to punish malicious falsehoods, published with the wicked intention of destroying the government. No innocent man ever did, or could have suffered under the law. No punishment could be inflicted, till a jury was satisfied, that a publication was false, and that the party charged, knowing it to be false, had published it with an evil design.

The misconduct of the judges, however, on this subject, has been considered by the gentleman the more aggravated, by an attempt to extend the principles of the sedition act, by an adoption of those of the common law. Connected with this subject, such an attempt was never made by the judges. They have held, generally, that the Constitution of the United States was predicated upon an existing common law. Of the soundness of that opinion, I never had a doubt. I should scarcely go too far, were I to say, that, stripped of the common law, there would be neither constitution nor government. The constitution is unintelligible without reference to the common law. And were we to go into our courts of justice, with the mere statutes of the United States, not a step could be taken, not even a contempt could be punished. Those statutes prescribe no forms of pleadings; they contain no principles of evidence; they furnish no rule of property. If the common law does not exist in most cases, there is no law but the will of the judge.

I have never contended, that the whole of the common law attached to the constitution, but only such parts as were consonant to the nature and spirit of our government. We have nothing to do with the law of the ecclesiastical establishment, nor with any principle of monarchical tendency. What belongs to us, and what is unsuitable, is a question for the sound discretion of the judges. The principle is analogous to one which is found in the writings of all jurists and commentators. When a colony is planted, it is established subject to such parts of the law of the mother country as are applicable to its situation. When our forefathers colonized the wilderness of America, they [illegible] their children. Let me say, that this same common law, now so much despised and vilified, is the cradle of the rights and liberties which we now enjoy. It is to the common law we owe our distinction from the colonists of France, of Portugal, and of Spain. How long is it since we have discovered the malignant qualities which are now ascribed to this law? Is there a State in the Union, which has not adopted it, and in which it is not in force? Why is it refused to the federal constitution? Upon the same principle, that every power is denied which tends to invigorate the government. Without this law the constitution becomes, what perhaps many gentlemen wish to see it, a dead letter.

For ten years it has been the doctrine of our courts, that the common law was in force, and yet can gentlemen say, that there has been a victim who has suffered under it? Many have experienced its protection, none can complain of its oppression.

In order to demonstrate the aspiring ambition of this body politic, the judiciary, the honorable gentleman stated, with much emphasis and feeling, that the judges had been hardy enough to send their mandate into the executive cabinet. Was the gentleman, sir, acquainted with the fact, when he made this statement? It differs essentially from what I know I have heard upon the subject. I shall be allowed to state the fact.

Several commissions had been made out by the late administration, for justices of the peace of this territory. The commissions were complete; they were signed and sealed, and left with the clerks of the office of State, to be handed to the persons appointed. The new administration found them on the clerk's table, and thought proper to withhold them. These officers are not dependent on the will of the President. The persons named in the commissions considered that their appointments were complete, and that the detention of their commissions was a wrong, and not justified by the legitimate authority of the executive. They applied to the Supreme Court for a rule upon the Secretary of State, to show cause why a mandamus should not issue, commanding him to deliver up the commissions. Let me ask, sir, what could the judges do? The rule to show cause was a matter of course upon a new point, at the least doubtful. To have denied it would have been to shut the doors of justice against the parties. It concludes nothing, neither the jurisdiction nor the regularity of the act. The judges did their duty; they gave an honorable proof of their independence. They listened to the complaint of an individual against your President, and have shown themselves disposed to grant redress against the greatest man in the government. If a wrong has been committed, and the constitution authorizes their interfe-

we apply for redress but to our courts of justice? But, sir, it is not true that the judges issued their mandate to the executive; they have only called upon the Secretary of State to show them that what he has done is right. It is but an incipient proceeding, which decides nothing.

Mr. Giles rose to explain. He said, that the gentleman from Delaware had ascribed to him many things which he did not say, and had afterwards undertaken to refute them. He had only said, that mandatory process had issued: that the course, pursued by the court, indicated a belief by them, that they had jurisdiction, and that in the event of no cause being shown, a mandamus would issue. Mr. Bayard then continued:

I stated the gentleman's words as I took them down. It is immaterial whether the mistake was in the gentleman's expression, or in my understanding. He has a right to explain, and I will take his position as he now states it. I deny, sir, that mandatory process has issued. Such process would be imperative, and suppose a jurisdiction to exist; the proceeding, which has taken place, is no more than notice of the application for justice made to the court, and allows the party to show, either that no wrong has been committed, or that the court has no jurisdiction over the subject. Even, sir, if the rule were made absolute, and the mandamus issued, it would not be definitive; but it would be competent for the secretary, in a return to the writ, to justify the act which has been done, or to show, that it is not a subject of judicial cognizance.

It is not till after an insufficient return, that a peremptory mandamus issues. In this transaction, so far from seeing any thing culpable in the conduct of your judges, I think, sir, that they have given a strong proof of the value of that constitutional provision which makes them independent. They are not terrified by the frowns of executive power, and dare to judge between the rights of a citizen and the pretensions of a President.

I believe, Mr. Chairman, I have gone through most of the preliminary remarks which the honorable gentleman thought proper to make, before he proceeded to the consideration of those points which properly belong to the subject before the committee. I have not supposed the topics I have been discussing had any connection with the bill on your table; but I felt it as a duty, not to leave unanswered charges against the former administrations and our judges, of the most insidious tendency, which I know to be unfounded, and which were calculated and designed to influence the decision on the measure now proposed. Why, Mr. taxes and the sedition law? Was it to involve them in one common odium, and to consign them to one common fate? Do I see, in the preliminary remarks of the honorable member, the title-page of the volume of measures which are to be pursued? Are gentlemen sensible of the extent to which it is designed to lead them? They are now called on to reduce the army, to diminish the navy, to abolish the mint, to destroy the independence of the judiciary, and will they be able to stop when they are next required to blot out the public debt, that hateful source of moneyed interest and aristocratic influence?

Be assured, sir, we see but a small part of the system which has been formed. Gentlemen know the advantage of progressive proceedings, and my life for it, if they can carry the people with them, their career will not be arrested while a trace remains of what was done by the former administration.

There was another remark of the honorable member which I must be allowed to notice. The pulpit, sir, has not escaped invective. The ministers of the gospel have been represented, like the judges, forgetting the duties of their calling, and employed in disseminating the heresies of federalism. Am I then, sir, to understand that religion is also denounced, and that your churches are to be shut up? Are we to be deprived, sir, both of law and gospel? Where do the principles of the gentleman end? When the system of reform is completed, what will remain? I pray God that this flourishing country, which, under his providence, has attained such a height of prosperity, may yet escape the desolation suffered by another nation by the practice of similar doctrines.

I beg pardon of the committee for having consumed so much time upon points little connected with the subject of the debate. Till I heard the honorable member from Virginia, yesterday, I was prepared only to discuss the merits of the bill upon which you are called to vote. His preliminary remarks were designed to have an effect which I deemed it material to endeavor to counteract, and I therefore yielded to the necessity of pursuing the course he had taken, though I was conscious of departing very far from the subject before the committee. To the discussion of that subject I now return with great satisfaction, and shall consider it under the two views it naturally presents: the constitutionality and the expediency of the measure. I find it most convenient to consider, first, the question of expediency, and shall therefore beg permission to invert the natural order of the inquiry.

To show the inexpediency of the present bill, I shall endeavor to prove the expediency of the judicial law of the last session. In doing this, it will be necessary to take a view of the leading features of the pre-existing system, to inquire into its defects, and to examine how far

tion to enter into the details of the former system; it can be necessary only to state so much as will distinctly show its defects.

There existed, sir, a Supreme Court, having original cognizance in a few cases, but principally a court of appellate jurisdiction. This was the great national court of dernier resort. Before this tribunal, questions of unlimited magnitude and consequence, both of a civil and political nature, received their final decision: and I may be allowed to call it the national crucible of justice, in which the judgments of inferior courts were to be reduced to their elements and cleansed from every impurity. There was a circuit court, composed in each district of a judge of the Supreme Court and the district judge. This was the chief court of business both of a civil and criminal nature.

In each district, a court was established for affairs of revenue, and of admiralty and maritime jurisdiction. It is not necessary for the purposes of the present argument, to give a more extensive outline of the former plan of our judiciary. We discover that the judges of the Supreme Court, in consequence of their composing a part of the circuit courts, were obliged to travel from one extremity to the other of this extensive country. In order to be in the court-house two months in the year, they were forced to be upon the road six. The Supreme Court being the court of last resort, having final jurisdiction over questions of incalculable importance, ought certainly to be filled with men not only of probity, but of great talents, learning, patience and experience. The union of these qualities is rarely, very rarely found in men who have not passed the meridian of life. My Lord Coke tells us no man is fit to be a judge until he has numbered the lucubrations of twenty years. Men of studious habits are seldom men of strong bodies. In the course of things, it could not be expected that men fit to be judges of your Supreme Courts would be men capable of traversing the mountains and wildernesses of this extensive country. It was an essential and great defect in this court, that it required in men the combination of qualities which it is a phenomenon to find united. It required that they should possess the learning and experience of years, and the strength and activity of youth. I may say further, Mr. Chairman, that this court, from its constitution, tended to deterioration and not to improvement. Your judges, instead of being in their closets and increasing by reflection and study their stock of wisdom and knowledge, had not even the means of repairing the ordinary waste of time. Instead of becoming more learned and more capable, they would gradually lose the fruits of their former industry. Let me ask if this was not a vicious construction of a court of the highest authority and greatest importance in the nation—in a court from which no one had an appeal and to whom it belonged to establish the leading principles of national jurisprudence?

In the constitution of this court, as a court of last resort, there was another essential defect. The appeals to this court are from the circuit courts. The circuit court consists of the district judge and a judge of the Supreme Court. In cases where the district judge is interested, where he has been counsel, and where he has decided in the court below, the judge of the Supreme Court alone composes the circuit court. What then is substantially the nature of this appellate jurisdiction? In truth and practice, the appeal is from a member of a court to the body of the same court. The circuit courts are but emanations of the Supreme Court. Cast your eyes on the Supreme Court; you see it disappear, and its members afterwards arising in the shape of circuit judges. Behold the circuit judges; they vanish, and immediately you perceive the form of the Supreme Court appearing. There is, sir, a magic in this arrangement, which is not friendly to justice. When the Supreme Court assembles, appeals come from the various circuits of the United States. There are appeals from the decisions of each judge. The judgments of each member pass in succession under the revision of the whole body. Will not a judge, while he is examining the sentence of a brother to-day, remember that that brother will sit in judgment upon his proceedings to-morrow? Are the members of a court, thus constituted, free from all motive, exempt from all bias, which could even remotely influence opinion on the point of strict right; and yet let me ask emphatically, whether this court, being the court of final resort, should not be so constituted, that the world should believe and every suitor be satisfied, that in weighing the justice of a cause, nothing entered the scales but its true merits.

Your Supreme Court, sir, I have never considered as any thing more than the judges of assize sitting in bank.* It is a system with which, perhaps, I should find no fault, if the judges sitting in bank did not exercise a final jurisdiction. Political institutions should be so calculated as not to depend upon the virtues, but to guard against the vices and weaknesses of men. It is possible, that a judge of the Supreme Court would not be influenced by the esprit du corps, that he would neither be gratified by the affirmance, nor mortified by the reversal of his opinions; but this, sir, is estimating the strength and purity of human nature upon a possible, but not on its ordinary scale.

I believe, Mr. Chairman, that, in practice, the formation of the Supreme Court frustrated, in a great degree, the design of its institution. I believe that many suitors were discouraged from seeking a revision of the opinions of the circuit court, by a deep impression of the difficulties to be surmounted in obtaining the reversal of the judgment of a court from the brethren of the judge who pronounced the judgment. The benefit of a court of appeals, well constituted, is not confined to the mere act

but is more extensively useful by the general operation of the knowledge of its existence upon inferior courts. The power of uncontrollable decision is of the most delicate and dangerous nature. When exercised in the courts, it is more formidable than by any other branch of our government. It is the judiciary only which can reach the person, the property, or life of an individual. The exercise of their power is scattered over separate cases, and creates no common cause. The great safety under this power arises from the right of appeal. A sense of this right combines the reputation of the judge with the justice of the cause. In my opinion, it is a strong proof of the wisdom of a judicial system, when few causes are carried into the court of the last resort. I would say, if it were not paradoxical, that the very existence of a court of appeals ought to destroy the occasion for it. The conscience of the judge, sir, will, no doubt, be a great check upon him in the unbounded field of discretion created by the uncertainty of law; but I should, in general cases, more rely upon the effect produced by his knowledge, than an inadvertent or designed abuse of power was liable to be corrected by a superior tribunal. A court of appellate jurisdiction, organized upon sound principles, should exist, though few causes arose for their decision; for it is surely better to have a court and no causes, than to have causes and no court. I now proceed, sir, to consider the defects which are plainly discernible, or which have been discovered by practice in the constitution of the circuit courts.

These courts, from information which I have received, I apprehend were originally constructed upon a fallacious principle. I have heard it stated that the design of placing the judges of the Supreme Court in the circuit courts, was to establish uniform rules of decision throughout the United States. It was supposed that the presiding judges of the circuit courts, proceeding from the same body, would tend to identify the principles and rules of decision in the several districts. In practice, a contrary effect has been discovered to be produced by the peculiar organization of these courts. In practice we have found not only a want of uniformity of rule between the different districts, but no uniformity of rule in the same district. No doubt there was an uniformity in the decisions of the same judge; but as the same judge seldom sat twice successively in the same district, and sometimes not till after an interval of two or three years, his opinions were forgotten or reversed before he returned. The judges were not educated in the same school. The practice of the courts, the forms of proceeding, as well as the rules of property, are extremely various in the different quarters of the United States. The lawyers of the eastern, the middle, and southern States, are scarcely professors of the same science. These courts were in a state of perpetual fluctuation. The successive terms gave you courts in the same district as different from each other as those of Connecticut and Virginia. No system of practice could grow up, no certainty of rule could be established. The seeds sown in one term scarcely vegetated before they were trodden under foot. The condition of a suitor was terrible; the ground was always trembling under his feet. The opinion of a former judge was no precedent to his successor. Each considered himself bound to follow the light of his own understanding. To exemplify these remarks, I will take the liberty of stating a case which came under my own observation. An application before one judge was made to quash an attachment in favor of a subsequent execution creditor; the application was resisted upon two grounds, and the learned judge, to whom the application was first made, expressing his opinion in support of both grounds, dismissed the motion. At the succeeding court, a different judge presided, and the application was renewed and answered upon the same grounds. The second learned judge was of opinion, that one point had no validity, but he considered the other sustainable, and was about also to dismiss the motion, but, upon being pressed, at last consented to grant a rule to show cause. At the third term, a third learned judge was on the bench, and though the case was urged upon its former principles, he was of opinion, that both answers to the application were clearly insufficient, and accordingly quashed the attachment. When the opinions of his predecessors were cited, he replied, that every man was to be saved by his own faith.

Upon the opinion of one judge, a suitor would set out in a long course of proceedings, and after losing much time and wasting much money, he would be met by another judge, who would tell him he had mistaken his road, that he must return to the place from which he started, and pursue a different track. Thus it happened as to the chancery process, to compel the appearance of a defendant. Some of the judges considered themselves bound by the rules in the English books, while others conceived that a power belonged to the court, upon the service of a subpœna, to make a short rule for the defendant to appear and answer, or that the bill should be taken pro confesso. A case of this kind occurred where much embarrassment was experienced. In the circuit court for the district of Pennsylvania, a bill in chancery was filed against a person who then happened to be in that district, but whose place of residence was in the north-western territory. The subpœna was served, but there was no answer nor appearance. The court to which the writ was returned, without difficulty, upon an application, granted a rule for the party to appear and answer at the expiration of a limited time, or that the bill be taken pro confesso. A personal service of this rule being necessary, the complainant was obliged to hire a messenger to travel more than a thousand miles to serve a copy of the rule. At the ensuing court, affi-

davit was made of the service, and a motion to make the rule absolute. The scene immediately changed, a new judge presided, and it was no longer the same court.

The authority was called for to grant such a rule; was it warranted by any act of Congress, or by the practice of the State? It was answered, there is no act of Congress, the State has no court of chancery. But this proceeding was instituted, and has been brought to its present stage, at considerable expense, under the direction of this court. The judge knew of no power the court had to direct the proceeding, and he did not consider that the complainant could have a decree upon his bill, without going through the long train of process, found in the books of chancery practice. The complainant took this course, and at a future time was told by another judge that he was incurring an unnecessary loss of time and money, and that a common rule would answer his purpose. I ask you, Mr. Chairman, if any system could be devised more likely to produce vexation and delay? Surely, sir, the law is uncertain enough in itself, and its paths sufficiently intricate and tedious, not to require that your suitors should be burdened with additional embarrassments, by the organization of your courts.

The circuit is the principal court of civil and criminal business; the defects of this court were, therefore, most generally and sensibly felt. The high characters of the judges at first brought suitors into the courts, but the business was gradually declining, though causes, belonging to the jurisdiction of the courts, were multiplying, the continual oscillation of the court baffled all conjecture as to the correct course of the proceeding, or the event of a cause. The law ceased to be a science. To advise your client, it was less important to be skilled in the books than to be acquainted with the character of the judge who was to preside. When the term approached, the inquiry was, what judge are we to have? What is his character as a lawyer? Is he acquainted with chancery law? Is he a strict, common lawyer, or a special pleader?

When the character of the judge was ascertained, gentlemen would then consider the nature of their causes, determine whether it was more advisable to use means to postpone or to bring them to a hearing.

The talents of the judges rather increased the evil, than afforded a corrective for the vicious constitution of these courts. They had not drawn their knowledge from the same sources: their systems were different, and hence the character of the court more essentially changed at each successive term. These difficulties and embarrassments banished suitors from the court, and without more than a common motive, recourse was seldom had to the federal tribunals.

I have ever considered it, also, as a defect in this court, that it was composed of judges of the highest and lowest grades. This, sir, was an unnatural association; the members of the court stood on ground too unequal to allow the firm assertion of his opinion to the district judge. Instead of being elevated, he felt himself degraded by a seat upon the bench of this court. In the district court he was every thing, in the circuit court he was nothing. Sometimes he was obliged to leave his seat, while his associate reviewed the judgment which he had given in the court below. In all cases he was sensible that the sentences in the court in which he was were subject to the revision and control of a superior jurisdiction, where he had no influence but the authority of which was shared by the judge with whom he was acting. No doubt, in some instances, the district judge was an efficient member of this court, but this never arose from the nature of the system, but from the personal character of the man. I have yet, Mr. Chairman, another fault to find with the ancient establishment of the circuit courts. They consisted only of two judges, and sometimes of one. The number was too small, considering the extent and importance of the jurisdiction of the court. Will you remember, sir, that they hold the power of life and death without appeal? That these judgments were final over sums of two thousand dollars, and their original jurisdiction restrained by no limits of value, and that this was the court to which appeals were carried from the district court.

I have often heard, sir, that in a multitude of counsel there was wisdom, and if the converse of the maxim be equally true, this court must have been very deficient. When we saw a single judge reversing the judgment of the district court, the objection was most striking, but the court never had the weight which it ought to have possessed and would have enjoyed, had it been composed of more members.

But two judges belonging to the court, an inconvenience was sometimes felt from a division of their opinions. And this inconvenience was but poorly obviated by the provision of the law, that in such cases the cause should be continued to the succeeding term, and receive its decision from the opinion of the judge who should then preside.

I do not pretend, Mr. Chairman, to have enumerated all the defects which belonged to the former judicial system. But I trust those which I have pointed out, in the minds of candid men, will justify the attempt of the legislature to revise that system, and to make a fairer experiment of that part of the plan of our constitution which regards the judicial power. The defects, sir, to which I have alluded, had been a long time felt and often spoken of. Remedies had frequently been proposed. I have known the subject brought forward in Congress, or agitated in private, ever since I had the honor of a seat upon this floor. I believe, sir, a great and just deference for the author of the ancient scheme, prevented any innovation upon its material principles; there

was no gentleman who felt that deference more than myself, nor should I have ever hazarded a change upon speculative opinion. But practice had discovered defects which might well escape the most discerning mind in planning the theory. The original system could not be more than experiment; it was built upon no experience. It was the first application of principles to a new state of things. The first judicial law displays great ability, and it is no disparagement of the author, to say its plan is not perfect.

I know, sir, that some have said, and perhaps not a few have believed, that the new system was introduced not so much with a view to its improvement of the old, as to the places which it provided for the friends of the administration. This is a calumny so notoriously false, and so humble, as not to require nor to deserve an answer upon this floor. It cannot be supposed that the paltry object of providing for sixteen unknown men could have ever offered an inducement to a great party, basely to violate their duty; meanly to sacrifice their character; and foolishly to forego all future hopes.

I now come, Mr. Chairman, to examine the changes which were made by the late law. This subject has not been correctly understood. It has where been erroneously represented. I have heard much said about the additional courts created by the act of last session. I perceive them spoken of in the President's message. In the face of this high authority, I undertake to state that no additional court was established by that law. Under the former system there was one Supreme Court, and there is but one now. There were seventeen district courts, and there are no more now. There was a circuit court held in each district, and such is the case at present. Some of the district judges are directed to hold their courts at new places, but there is still in each district but one district court. What, sir, has been done? The unnatural alliance between the supreme and district courts has been severed, but the jurisdiction of both those courts remains untouched. The power or authority of neither of them has been augmented or diminished. The jurisdiction of the circuit court has been extended to the cognizance of debts of four hundred dollars, and this is the only material change in the power of that court. The chief operation of the late law is a new organization of the circuit courts. To avoid the evils of the former plan, it became necessary to create a new corps of judges. It was considered that the Supreme Court ought to be stationary, and to have no connection with the judges over whose sentences they had an appellate jurisdiction.

To have formed a circuit court out of the district judges, would have allowed no court of appeal from the district court, except the Supreme Court, which would have been attended with great inconvenience. But this scheme was opposed by a still greater difficulty. In many districts the duties of the judge require a daily attention. In all of them, business of great importance may, on unexpected occurrences, require his presence.

This plan was thought of; it was well examined, and finally rejected, in consequence of strong objections to which it was liable. Nothing therefore remained but to compose the circuit court of judges distinct from those of the other courts. Admitting the propriety of excluding from this court the judges of the supreme and district courts, I think the late Congress cannot be accused of any wanton expense, nor even of a neglect of economy in the new establishment. This extensive country has been divided into six circuits, and three judges appointed for each circuit. Most of the judges have twice a year to attend a court in three States, and there is not one of them who has not to travel further, and who in time will not have more labor to perform than any judge of the State courts. When we call to mind that the jurisdiction of this court reaches the life of the citizen, and that in civil cases its judgments are final to a large amount, certainly it will not be said that it ought to have been composed of less than three judges. One was surely not enough, and if it had been doubtful whether two were not sufficient, the inconvenience which would have frequently arisen from an equal division of opinion, justifies the provision which secures a determination in all cases.

It was additionally very material to place on the bench of this court a judge from each State, as the court was in general bound to conform to the law and the practice of the several States.

I trust, sir, the committee are satisfied that the number of judges which compose the circuit court is not too great, and that the legislature would have been extremely culpable to have committed the high powers of this court to fewer hands.

Let me now ask, if the compensation allowed to these judges is extravagant? It is little more then half the allowance made to the judges of the Supreme Court. It is but a small proportion of the ordinary practice of those gentlemen of the bar, who are fit, and to whom we ought to look to fill the places. You have given a salary of two thousand dollars. The puisne judges of Pennsylvania, I believe, have more. When you deduct the expenses of the office, you will leave but a moderate compensation for service, but a scanty provision for a family. When, Mr. Chairman, gentlemen coolly consider the amendments of the late law, I flatter myself their candor will at least admit that the present modification was fairly designed to meet and remedy the evils of the old system.

The Supreme Court has been rendered stationary. Men of age, of learning and of experience, are now capable of holding a seat on the bench; they have time to mature their opinions in causes on which they are called to decide, and they have leisure to devote to their books, and to augment their store of knowledge. It

was our hope, by the present establishment of the court, to render it the future pride, and honor, and safety of the nation. It is this tribunal which must stamp abroad the judicial character of our country. It is here that ambassadors and foreign agents resort for justice; and it belongs to this high court to decide finally, not only on controversies of unlimited value between individuals, and on the more important collision of State pretensions, but also upon the validity of the laws of the State, and of this government. Will it be contended that such great trusts ought to be reposed in feeble or incapable hands? It has been asserted that this court will not have business to employ it. The assertion is supported neither by what is past, nor by what is likely to happen. During the present session of Congress at their last term, the court was fully employed for two weeks in the daily hearing of causes. But its business must increase. There is no longer that restraint upon appeals from the circuit court, which was imposed by the authority of the judge of the court to which the appeal was to be carried; no longer will the apprehension of a secret unavoidable bias in favor of the decision of a member of their own body, shake the confidence of a suitor, in resorting to this court, who thinks that justice has not been done to him in the court below. The progressive increase of the wealth and population of the country, will unavoidably swell the business of the court. But there is a more certain and unfailing source of employment, which will arise in the appeals from the courts of the national territory. From the courts of original cognizance in this territory, it affords the only appellate jurisdiction. If gentlemen will look to the state of property of a vast amount in this city, they must be satisfied that the Supreme Court will have enough to do for the money which is paid them.

Let us next consider, sir, the present state of the circuit courts.

There are six courts, which sit in twenty-two districts; each court visits at least three districts, some four. The courts are now composed of three judges of equal power and dignity. Standing on equal ground, their opinions will be independent and firm. Their number is the best for consultation, and they are exempt from the inconvenience of an equal division of opinion. But what I value most, and what was designed to remedy the great defect of the former system, is the identity which the court maintains. Each district has now always the same court. Each district will hereafter have a system of practice and uniformity of decision. The judges of each circuit will now study and learn and retain the laws and practice of their respective districts. It never was intended, nor is it practicable, that the same rule of property or of proceeding should prevail from New Hampshire to Georgia. The old courts were enjoined to obey the laws of the respective the State legislatures, and no other uniformity could ever be expected, but in the construction of the constitution and statutes of the United States. This uniformity is still preserved by the control of the Supreme Court over the courts of the circuits. Under the present establishment, a rational system of jurisprudence will arise. The practice and local laws of the different districts may vary, but in the same district they will be uniform. The practice of each district will suggest improvements to the others, the progressive adoption of which will, in time, assimilate the systems of the several districts.

It is unnecessary, Mr. Chairman, for me to say any thing in relation to the district courts. Their former jurisdiction was not varied by the law of the last session.

It has been my endeavor, sir, to give a correct idea of the defects of the former judicial plan, and of the remedies for those defects introduced by the law now designed to be repealed. I do not pretend to say that the present system is perfect; I contend only that it is better than the old. If, sir, instead of destroying, gentlemen will undertake to improve the present plan, I will not only applaud their motives, but will assist in their labor. We ask only that our system may be tried. Let the sentence of experience be pronounced upon it. Let us hear the national voice after it has been felt. They will then be better able to judge its merits. In practice, it has not yet been complained of; and as it is designed for the benefit of the people, how can their friends justify the act of taking it from them before they have manifested their disposition to part with it?

How, sir, am I to account for the extreme anxiety to get rid of this establishment? Does it proceed from that spirit, which, since power has been given to it, has so unrelentingly persecuted men in office who belonged to a certain sect? I hope there will be a little patience; these judges are old and infirm men; they will die; they must die; wait but a short time, their places will be vacant; they will be filled with the disciples of the new school, and gentlemen will not have to answer for the political murder which is now meditated.

I shall take the liberty now, sir, of paying some attention to the objections which have been expressed against the late establishment. An early exception, which, in the course of the debate, has been abandoned by most gentlemen, and little relied on by any one, is the additional expense. The gentleman from Virginia stated the expense of the present establishment at one hundred and thirty-seven thousand dollars. On this head the material question is, not what is the expense of the whole establishment, but what will be saved by the repealing law on the table. I do not estimate the saving at more than twenty-eight thousand five hundred dollars. You save nothing but the salaries of sixteen judges, of two thousand dollars each. From this amount is to be deducted the salary

thousand five hundred dollars. Abolishing the present system will not vary the incidental expenses of the circuit court. You revive a circuit court, whose incidental expenses will be equal to those of the court you destroy. The increased salaries of the district judges of Kentucky and Tennessee must remain. It is not proposed to abolish their offices, and the admissions upon the other side, allow that the salaries cannot be reduced.

If there were no other objection, the present bill could not pass without amendment, because it reduces the salaries of those judges, which is a plain, undeniable infraction of the constitution. But, sir, it is not a fair way of treating the subject, to speak of the aggregate expense. The great inquiry is, whether the judges are necessary, and whether the salaries allowed to them are reasonable? Admitting the utility of the judges, I think no gentleman will contend that the compensation is extravagant.

We are told of the expense attending the federal judiciary. Can gentlemen tell me of a government under which justice is more cheaply administered? Add together the salaries of all your judges, and the amount but little exceeds the emoluments of the chancellor of England. Ascertain the expenses of State justice, and the proportion of each State of the expense of federal justice, and you will find that the former is five times greater than the latter. Do gentlemen expect that a system, expanded over the whole Union, is to cost no more than the establishment of a single State? Let it be remembered, sir, that the judiciary is an integral and co-ordinate part with the highest branches of the government. No government can long exist without an efficient judiciary. It is the judiciary which applies the law and enables the executive to carry it into effect. Leave your laws to the judiciaries of the States to execute, and my word for it, in ten years you have neither law nor constitution. Is your judiciary so costly that you will not support it? Why then lay out so much money upon the other branches of your government? I beg that it may be recollected that, if your judiciary costs you thousands of dollars, your legislature costs you hundreds of thousands, and your executive millions.

An objection has been derived from the paucity of causes in the federal courts, and the objection has been magnified by the allegation, that the number had been annually decreasing. The facts admitted, I draw a very different inference from my opponents. In my opinion, they furnish the strongest proof of the defects of the former establishment, and of the necessity of a reform. I have no doubt, nay, I know it to be a fact, that many suitors were diverted from those tribunals by the fluctuations to which they were subject. Allow me, however, to take some notice of the facts. They are founded upon the Presidential document. No. 8. Taking the facts as there stated, they allow upward of fifty suits annually for each court, each have exceeded the value of five hundred dollars, and that they were generally litigated cases, I do not conceive that there is much ground to affirm, that the courts were without business. But, sir, I must be excused for saying, I pay little respect to this document. It has been shown by others in several points to be erroneous, and from my own knowledge, I know it to be incorrect. What right had the President to call upon the clerks to furnish him with the list of the suits which had been brought, or were depending in their respective courts? Had this been directed by Congress, or was there any money appropriated to pay the expense? Is there any law which made it the duty of the clerks to obey the order of the executive? Are the clerks responsible for refusing the lists, or for making false or defective returns? Do we know any thing about the authenticity of the certificates made by the clerks? And are we not now aiming a mortal blow at one branch of the government, upon the credit, and at the instigation of another and a rival department? Yes, sir, I say at the instigation of the President, for I consider this business wholly as a Presidential measure. This document and his message, show that it originated with him; I consider it as now prosecuted by him, and I believe that he has the power to arrest its progress, or to accomplish its completion. I repeat that it is his measure. I hold him responsible for it; and I trust in God, that the time will come, when he will be called upon to answer for it as his act. And I trust the time will arrive, when he will hear us speaking upon the subject more effectually.

It has been stated as the reproach, sir, of the bill of the last session, that it was made by a party at the moment when they were sensible that their power was expiring and passing into other hands. It is enough for me, that the full and legitimate power existed. The remnant was plenary and efficient. And it was our duty to employ it according to our judgments and consciences for the good of the country. We thought the bill a salutary measure, and there was no obligation upon us to leave it as a work for our successors. Nay, sir, I have no hesitation in avowing, that I had no confidence in the persons who were to follow us. And I was the more anxious, while we had the means, to accomplish a work which I believed they would not do, and which I sincerely thought would contribute to the safety of the nation by giving strength and support to the constitution through the storm to which it was likely to be exposed. The fears, which I then felt, have not been dispelled, but multiplied by what I have since seen. I know nothing which is to be allowed to stand. I observe the institutions of the government falling around me, and where the work of destruction is to end, God alone knows. We discharged our consciences in establishing a judicial system, which now exists, and it will be for those, who now hold the power of the gov-

they at present meditate. We are told, that our law was against the sense of the nation. Let me tell those gentlemen, they are deceived, when they call themselves the nation. They are only a dominant party, and though the sun of federalism should never rise again, they will shortly find men, better or worse than themselves, thrusting them out of their places. I know it is the cant of those in power, however they have acquired it, to call themselves the nation. We have recently witnessed an example of it abroad. How rapidly did the nation change in France; at one time Brissot called himself the nation; then Robespierre, afterward Tallien and Barras, and finally Bonaparte. But their dreams were soon dissipated, and they awoke in succession upon the scaffold, or in banishment. Let not these gentlemen flatter themselves, that heaven has reserved to them a peculiar destiny. What has happened to others in this country, they must be liable to. Let them not exult too highly in the enjoyment of a little brief and fleeting authority. It was ours yesterday, it is theirs to-day, but to-morrow it may belong to others.

Here Mr. Bayard stated, that he had gone through the remarks he had to make, connected with the first point of the debate; that he observed that the common hours of adjournment had passed, and that he should sit down in order to allow the committee to rise if they thought proper. On the following day he resumed his argument.

I owe to the committee the expression of my thanks for the patience with which they attended to the laborious discussion of yesterday.

It will be my endeavor, in the remarks which I have to offer upon the remaining point of the debate, to consume no time which the importance of the subject does not justify. I have never departed from the question before the committee, but with great reluctance. Before I heard the gentleman from Virginia, I had not an observation to make unconnected with the bill on the table. It was he who forced me to wander on foreign ground; and be assured, sir, I shall be guilty of no new digressions where I am not covered by the same justification.

I did think, that this was an occasion when the House ought to have been liberated from the dominion of party spirit, and allowed to decide upon the unbiassed dictates of their understanding. The vain hope which I indulged, that this course would be pursued, was soon dissipated by the inflammatory appeal made by the gentleman from Virginia to the passions of his party. This appeal, which treated with no respect the feelings of one side of the House, will excuse recriminations which have been made, or which shall be retorted. We were disposed to conciliate, but gentlemen are deceived, if they think that we will submit to be trampled on.

I shall now, sir, proceed to the consideration of the second point which the subject presents. However this point may be disguised by subtilties, I conceive the true question to be,—has the legislature a right by law to remove a judge? Gentlemen may state their question to be,—has the legislature a right by law to vacate the office of a judge? But, as in fact they remove the judges, they are bound to answer our question.

The question, which I state, they will not meet. Nay, I have considered it as conceded upon all hands, that the legislature have not the power of removing a judge from his office; but it is contended only, that the office may be taken from the judge. Sir, it is a principle in law, which ought, and I apprehend does, hold more strongly in politics, that what is prohibited from being done directly, is restrained from being done indirectly. Is there any difference, but in words, between taking the office from a judge and removing a judge from the office? Do you not indirectly accomplish the end which you admit is prohibited? I will not say, that it is the sole intention of the supporters of the bill before us, to remove the circuit judges from their offices; but I will say, that they establish a precedent which will enable worse men than themselves to make use of the legislative power, for that purpose, upon any occasion. If it be constitutional to vacate the office, and in that way to dismiss the judge, can there be a question as to the power to re-create the office and fill it with another man? Repeal to-day the bill of the last session, and the circuit judges are no longer in office? To-morrow rescind this repealing act, (and no one will doubt the right to do it,) and no effect is produced, but the removal of the judges. To suppose that such a case may occur, is no vagary of imagination. The thing has been done, shamelessly done, in a neighboring State. The judges there held their offices upon the same tenure with the judges of the United States. Three of them were obnoxious to the men in power. The judicial law of the State was repealed, and immediately re-enacted, without a veil being thrown over the transaction. The obnoxious men were removed, their places supplied with new characters, and the other judges were re-appointed. Whatever sophistry may be able to show in theory, in practice there never will be found a difference in the exercise of the powers of removing a judge and of vacating his office.

The question, which we are now considering, depends upon the provisions contained in the constitution. It is an error of the committee, upon plain subjects to search for reasons very profound. Upon the present subject, the strong provisions of the constitution are so obvious, that no eye can overlook them. They have been repeatedly cited, and as long as the question stated is under discussion, they must be

ions to which I now particularly allude. First, the judges shall hold their offices during good behavior. Second, their compensation shall not be diminished during their continuance in office. These are provisions so clearly understood upon the first impression, that their meaning is rather obscured than illustrated by argument. What is meant, and what has been universally understood by the tenure of "good behavior?" A tenure for life, if the judge commit no misdemeanor. It is so understood and expressed in England, and so it has always been received and admitted in this country. The express provision, then, of the constitution defines the tenure of a judge's office; a tenure during life. How is that tenure expressly qualified? By the good behavior of the judge. Is the tenure qualified by any other express condition or limitation? No other. As the tenure is express, as but one express limitation is imposed upon it, can it be subject to any other limitation not derived from necessary implication? If any material provision in the constitution can in no other manner be satisfied, than by subjecting the tenure of this office to some new condition, I will then admit, that the tenure is subject to the condition.

Gentlemen have ventured to point out a provision which they conceived furnished this necessary implication. They refer to the power given to Congress from time to time, to establish courts inferior to the Supreme Court. If this power cannot be exercised without vacating the offices of existing judges, I will concede that those offices may be vacated. But on this head there can be no controversy. The power has been, and at all times may be exercised, without vacating the office of any judge. It was so exercised at the last session of Congress; and I surely do not now dispute the right of gentlemen to establish as many new courts as they may deem expedient. The power to establish new courts does not therefore necessarily imply a power to abolish the offices of existing judges, because the existence of those offices does not prevent an execution of the power.

The clause in the constitution to which I have just alluded, has furnished to gentlemen their famous position, that though you cannot remove a judge from his office, you may take the office from the judge. Though I should be in order, I will not call this a quibble, but I shall attempt in the course of the argument yet more clearly to prove that it is one. I do not contend that you cannot abolish an empty office; but the point on which I rely is, that you can do no act which impairs the independence of a judge. When gentlemen assert that the office may be vacated, notwithstanding the incumbency of the judge, do they consider that they beg the very point which is in controversy? The office cannot be vacated without violating the express provision of the constitution in relation to the tenure.

The judge is to hold the office during good behavior. Has the constitution said that he shall hold the office during good behavior, unless Congress shall deem it expedient to abolish the office? If this limitation has been omitted, what authority have we to make it a part of the constitution?

The second plain, unequivocal provision on this subject is, that the compensation of the judge shall not be diminished during the time he continues in office. This provision is directly levelled at the power of the legislature. They alone could reduce the salary. Could this provision have any other design than to place the judge out of the power of Congress? And yet how imperfect and how absurd the plan. You cannot reduce a part of the compensation, but you may extinguish the whole. What is the sum of this notable reasoning? You cannot remove a judge from the office, but you may take the office from the judge. You cannot take the compensation from the judge, but you may separate the judge from the compensation.

If your constitution cannot resist reasoning like this, then indeed is it waste paper.

I will here turn aside, in order to consider a variety of arguments drawn from different sources, on which gentlemen on the other side have placed a reliance. I know of no order in which they can be classed, and I shall, therefore, take them up as I meet with them on my notes. It was urged by the honorable member from Virginia, to whom I have so frequently referred, that what was created by law might by law be annihilated. In the application of his principle, he disclosed his views, which I believe have not been contemplated by gentlemen of his party. He was industrious to show that not only the inferior courts, but the Supreme Court derives its existence from law. The President and legislature exist under the constitution. They came into being without the aid of a law. But though the constitution said there should be a Supreme Court, no judges could exist till the court was organized by a law. This argument I presume was pushed to this extent, in order to give notice to the judges of the Supreme Court of their fate, and to bid them prepare for their end.

I shall not attempt to discriminate between the tenure of the offices of the judges of the supreme and inferior courts. Congress has power to organize both descriptions of courts, and to limit the number of judges, but they have no power to limit or define the tenure of office. Congress creates the office; the President appoints the officer; but it is neither under Congress nor the President, but under the constitution, that the judge claims to hold the office during good behavior. The principle asserted does not in this case apply; the tenure of office is not created by law, and if the truth of the principle were admitted, it would not follow that the tenure of the office might be vacated by law. But the principle is not sound.

its fallacy. Among the obnoxious measures of the late administration was the loan of five millions, which was funded at eight per centum. The loan was created by a law and funded by a law. Is the gentleman prepared to say that this debt, which was funded by a law of the former legislature, may be extinguished by a law of the present? Can you, by calling the interest of this debt exorbitant and usurious, justify the reduction of it? Gentlemen admit, that the salary of a judge, though established by a law, cannot be diminished by a law. The same thing must be allowed with respect to the salary of the President. Sir, the true principle is, that one legislature may repeal the act of a former, in cases not prohibited by the constitution. The correct question, therefore, is, whether the legislature are not forbidden by the constitution, to abridge the tenure of a judicial office?

In order to avoid cases of a nature similar to those which I have put, the gentleman from Kentucky, Mr. Davis, and after him the gentleman from Virginia, endeavored to draw a distinction between laws executed and laws executory.

The distinction was illustrated by reference to the case of a State admitted by a law into the Union. Here it is said the law is executed, and functus officio, and if you repeal it, still the State remains a member of the Union. But it was asked by the gentleman from Kentucky, supposing a law made to admit a State into the Union, at a future time, before the time of admission arrived, could not the law be repealed? I will answer the question to the satisfaction of the gentleman, by stating a case which exists. By an ordinance of Congress, in the year 1787, Congress ordained that when the population within the limits of a State within the Northwestern Territory should amount to sixty thousand souls, the district should be admitted as a member of the Union. Will the gentleman venture to doubt as to this case? Would he dare to tell the people of this country that Congress had the power to disfranchise them?

The law, in the case I refer to, is executory, though the event upon which it is to take effect is limited by population, and not by time.

But, sir, if there were any thing in the principle, it has no influence upon the case to which it has been applied. A law has created the office of a judge, the judge has been appointed and the office filled. The law is therefore executed, and upon the very distinction of the gentleman, cannot be repealed. The law, fixing the compensation, is executory, and so is that which establishes the salary of the President, but though executory, they cannot be repealed. The distinction, therefore, is idle, and leaves the question upon the ground of the repeal being permitted or prohibited by the constitution. I shall now advert, sir, to an argument urged with great force, and not a little triumph, by the honorable member from Vir-

word "hold," in the expression, the judge shall hold his office during good behavior. It is considered as correlative to tenure. The gentleman remarks, that the constitution provides, that the President shall nominate the judge to his office, and when approved by the Senate, shall commission him. It is hence inferred, that as the President nominates and commissions the judge, the judge holds the office of the President; and that when the constitution provides, that the tenure of the office shall be during good behavior, the provision applies to the President, and restrains the power, which otherwise would result in consequence of the offices being holden of him, to remove the judges at will. This is an argument, sir, which I should have thought that honorable member would have been the last person upon this floor to have adopted. It not only imputes to the President royal attributes, but prerogatives, derived from the rude doctrines of the feudal law. Does the gentleman mean to contend, that the President of these States, like the monarch of England, is the fountain of honor, of justice, and of office? Does he mean to contend, that the courts are the President's courts, and the judges the President's judges? Does he mean to say, sir, that the chief magistrate is always supposed to be present in these courts, and that the judges are but the images of his justice? To serve the paltry purposes of this argument, would the gentleman be willing to infuse into our constitution, the vital spirit of the feudal doctrines? He does not believe, he cannot believe, that, when the word "hold" was employed, any reference was had to its feudal import. The language of the constitution furnishes no support to this feudal argument. These officers are not called the judges of the President, but the Judges of the United States. They are a branch of the government equally important, and designed to be co-ordinate with the President. If, sir, because the President nominates to office, and commissions, the office is held of him; for a stronger reason, where by patent he grants lands of the United States, the lands are held of him. And upon the grantee's dying without heirs, the lands would escheat not to the United States, but to the President. In England, the tenure of lands and offices is derived from the same principle. All lands are held mediately or immediately of the Crown, because they are supposed to have been originally acquired from the personal grant of the monarch. It is the same of office, as the king is supposed to be the source of all offices. Having the power to grant, he has a right to define the terms of the grant. These terms constitute the tenure. When the terms fail, the tenure ceases, and the object of the grant reverts to the grantor. This gentleman has charged others with monarchical tendencies, but never have I before witnessed an attempt, so bold and strong, to incorporate in our constitution a rank monarchical principle. If, sir,

be republican and not monarchical, and the judges hold their offices of the United States, and not of the President, then the application of his argument has all the force against the gentleman, which he designed it should have against his adversaries. For if the office be held of the United States, and the tenure of good behavior was designed to restrain the power of those of whom the office was holden, it will follow, that it was the intention to restrain the power of the United States.

We have been told by an honorable gentleman from Virginia, who rose early in the debate, Mr. Thompson, that the principles we advocated, tended to establish a sinecure system in the country. Sir, I am as little disposed to be accessory to the establishment of such a system, as any gentleman on this floor. But let me ask how this system is to be produced? We established judicial offices, to which numerous and important duties were assigned. A compensation has been allowed to the judges, which no one will say is immoderate, or disproportioned to the service to be rendered. These gentlemen first abolish the duties of the offices, then call the judges pensioners, and afterwards accuse us of establishing sinecures. There are no pensioners at present; if there should be any, they will be the creatures of this law. I have ever considered it as a sound and moral maxim, that no one should avail himself of his own wrong. It is a maxim, which ought to be equally obligatory upon the public as upon the private man. In the present case, the judge offers you his service. You cannot say it is not worth the money you pay for it. You refuse to accept the service; and after engaging to pay him while he continued to perform the service, you deny him his compensation, because he neglects to render services which you have prevented him from performing. Was injustice ever more flagrant? Surely, sir, the judges are innocent. If we did wrong, why should they be punished and disgraced? They did not pass the obnoxious law, they did not create the offices, they had no participation in the guilty business; but they were invited upon the faith of government, to renounce their private professions, to relinquish the emolument of other employments, and to enter into the service of the United States, who engaged to retain them during their lives, if they were guilty of no misconduct. They have behaved themselves well, unexceptionably well, when they find the government rescinding the contract made with them, refusing the stipulated price of their labor, dismissing them from service, and in order to cover the scandalous breach of faith, stigmatizing them with names which may render them odious to their countrymen. Is there a gentleman on the floor of this House, who would not revolt at such conduct in private life? Is there one who would feel himself justified, after employing a person for a certain time, and agreeing to pay a certain compensation, to dismiss the party from the service upon any caprice which altered his views, deny him the stipulated compensation, and abuse him with opprobrious names, for expecting the benefit of the engagement?

A bold attempt was made by one of the gentlemen from Virginia, Mr. Giles, to force to his aid the Statute of 13th William III. I call it a bold attempt, because the gentleman was obliged to rely upon his own assertion to support the ground of his argument. He stated, that the clause in the constitution was borrowed from a similar provision in the statute. I know nothing about the fact, but I will allow the gentleman its full benefit. In England, at an earlier period, the judges held their commissions during the good pleasure of the monarch. The Parliament desired, and the king consented, that the royal prerogative should be restrained: that the offices of the judges should not depend on the will of the Crown alone, but upon the joint pleasure of the Crown and of Parliament. The king consented to part with a portion of his prerogative by relinquishing his power to remove the judges without the advice of his Parliament. But, by an express clause in the statute, he retained the authority to remove them by the advice of his Parliament. Suppose the clause had been omitted, which reserved the right to remove upon the address of the two Houses of Parliament, and the statute had been worded in the unqualified language of our constitution, that the judges should hold their offices during good behavior, would not the prerogative of removal have been abolished altogether? I will not say that the honorable member has been peculiarly unfortunate in the employment of this argument, because, sir, it appears to me, that most to which he has had recourse, when justly considered, have operated against the cause they were designed to support.

The gentleman tells us, that the constitutional provision on this subject was taken from the statute of William. Will he answer me this plain question? Why do we find omitted in the constitution, that part of the statutory provision, which allowed the judges to be removed upon the address of the two branches of the legislature? Does he suppose that the clause was not observed? Does he imagine that the provision was dropped through inadvertency? Will he impute so gross a neglect to an instrument, every sentence, and word, and comma, of which, he has told us was so maturely considered, and so warily settled? No, sir, it is impossible; and give me leave to say, that if this part of the constitution were taken from the statute, (and the gentleman from Virginia must have better information on the subject than I have,) that a stronger argument could not be adduced, to show that it was the intention of those who framed the constitution, by omitting that clause in the statute which made the judges tenants of their office at the will of Parliament, to improve in this country the English plan of judicature, by rendering the judges

independent of the legislature. And I shall have occasion, in the course of my observations, to show, that the strongest reasons derived from the nature of our government, and which do not apply to the English form, require the improvements to be made.

Upon this point, sir, we may borrow a few additional rays of light from the constitutions of Pennsylvania, of Delaware, and of some other States. In those States it has been thought, that there might be misconduct on the part of a judge, not amounting to an impeachable offence, for which he should be liable to be removed. Their constitutions, therefore, have varied from that of the United States, and rendered their judges liable to be removed upon the address of two-thirds of each branch of the legislature. Does it not strike every mind, that it was the intention of those constitutions to have judges independent of a majority of each branch of the legislature; and I apprehend, also, that it may be fairly inferred, that it was understood in those States, when their constitutions were formed, that even two-thirds of each branch of the legislature would not have the power to remove a judge, whose tenure of office was during good behavior, unless the power was expressly given to them by the constitution. I cannot well conceive of any thing more absurd, in an instrument designed to last for centuries and to bind the furious passions of party, than to fortify one pass to judicial independence, and to leave another totally unguarded against the violence of legislative power.

It has been urged, by the gentleman from Virginia, that our admission, that Congress has a power to modify the office of a judge, leads to the conclusion, that they have the power to abolish the office; because, by paring away their powers, they may at length reduce them to a shadow, and leave them as humble and as contemptible as a court of *piepoudre*. The office of a judge consists of judicial powers which he is appointed to execute. Every law which is passed, increases or diminishes those powers, and so far modifies the office; nay, it is competent for the legislature to prescribe additional duties or to dispense with unnecessary services, which are connected with the office of judge. But this power has its bounds. You may modify the office to any extent which does not affect the independence of the judge. The judge is to hold the office during good behavior; now modify as you please, so that you do not infringe this constitutional provision.

Do you ask me to draw a line and say, thus far you shall go and no further? I admit no line can be drawn. It is an affair of sound and *bona fide* discretion. Because a discretion on the subject is given to the legislature, to argue upon the abuse of that discretion, is adopting a principle subversive of all legitimate power.

The constitution is predicated upon the existence of a certain degree of integrity in man. It has trusted powers liable to enormous abuse, [illegible] legislature is not limited in the amount of the taxes which they have a right to impose, nor as to the objects to which they are to be applied. Does this power give us the property of the country, because by taxes we might draw it into the public coffers, and then cut up the treasury and divide the spoils? Is there any power, in respect to which a precise line can be drawn, between the discreet exercise and the abuse of it?

I can only say, therefore, on this subject, that every man is acquitted to his own conscience, who *bona fide* does not intend, and who sincerely does not believe, that by the law which he is about to pass, he interferes with the judges holding their offices during good behavior.

I am now brought, Mr. Chairman, to take notice of some remarks which fell from the gentleman from Virginia, which do not belong to the subject before us; but are of sufficient importance to deserve particular attention. He called our attention, in a very impressive manner, to the state of parties in this House, at the time when the act of the last session passed. He describes us in a state of blind paroxysm, incapable of discerning the nature or tendency of the measures we were pursuing; that a majority of the House were struggling to counteract the expression of the public will, in relation to the person who was to be the chief magistrate of the country.

I did suppose, sir, that this business was at an end; and I did imagine, that as gentlemen had accomplished their object, they would have been satisfied. But as the subject is again renewed, we must be allowed to justify our conduct. I know not what the gentleman calls an expression of the public will. There were two candidates for the office of President, who were presented to the House of Representatives with equal suffrages. The constitution gave us the right and made it our duty to elect that one of the two, whom we thought preferable. A public man is to notice the public will as constitutionally expressed. The gentleman from Virginia, and many others, may have had their preference; but that preference of the public will did not appear by its constitutional expression. Sir, I am not certain that either of those candidates had a majority of the country in his favor. Excluding the State of South Carolina, the country was equally divided. We know that parties in that State were nearly equally balanced, and the claims of both the candidates were supported by no other scrutiny into the public will, than our official return of votes. Those votes are very imperfect evidence of the true will of a majority of the nation. They resulted from political intrigue, and artificial arrangement.

When we look at the votes, we must suppose that every man in Virginia voted the same way. These votes are received as a correct expression of the public will. And yet we know, that if the votes of that State were apportioned accord-

least seven out of twenty-one would have been opposed to the successful candidates. It was the suppression of the will of one-third of Virginia, which enables gentlemen now to say, that the present chief magistrate is the man of the people. I consider that as the public will, which is expressed by constitutional organs. To that will I bow and submit. The public will, thus manifested, gave to the House of Representatives the choice of the two men for President. Neither of them was the man whom I wished to make President: but my election was confined by the constitution to one of the two, and I gave my vote to the one whom I thought was the greater and better man. That vote I repeated, and in that vote I should have persisted, had I not been driven from it by imperious necessity. The prospect ceased of the vote being effectual, and the alternative only remained of taking one man for President, or having no President at all. I chose, as I then thought, the lesser evil.

From the scene in this House, the gentleman carried us to one in the Senate. I should blush, sir, for the honor of the country, could I suppose that the law, designed to be repealed, owed its support in that body to the motives which have been indicated. The charge designed to be conveyed, not only deeply implicates the integrity of individuals of the Senate, but of the person who was then the chief magistrate. The gentleman, going beyond all precedent, has mentioned the names of members of that body, to whom commissions issued for offices not created by the bill before them, but which that bill, by the promotions it afforded, was likely to render vacant. He has considered the scandal of the transaction as aggravated by the issuing of commissions for offices not actually vacant, upon the bare presumption that they would become vacant by the incumbents accepting commissions for higher offices which were issued in their favor. The gentleman has particularly dwelt upon the indecent appearance of the business, from two commissions being held by different persons at the same time for the same office.

I beg that it will be understood that I mean to give no opinion as to the regularity of granting a commission for a judicial office, upon the probability of a vacancy before it is actually vacant: but I shall be allowed to say, that so much doubt attends the point, that an innocent mistake might be made on the subject. I believe, sir, it has been the practice to consider the acceptance of an office as relating to the date of the commission. The officer is allowed his salary from that date, upon the principle that the commission is a grant of the office, and the title commences with the date of the grant. This principle is certainly liable to abuse, but where there was a suspicion of abuse, I presume the government would depart from it. Admitting the office to pass by the commission, and the acceptance to relate to its date, it then does not appear very incorrect, in the case of a commission for the office of a circuit judge, granted to a district judge, as the acceptance of the commission for the former office relates to the date of the commission, to consider the latter office as vacant from the same time. The offices are incompatible. You cannot suppose the same person in both offices at the same time. From the moment, therefore, that you consider the office of circuit judge as filled by a person who holds the commission of district judge, you must consider the office of district judge as vacated. The grant is contingent. If the contingency happen, the office vests from the date of the commission; if the contingency does not happen, the grant is void. If this reasoning be sound, it was not irregular, in the late administration, after granting a commission to a district judge, for the place of a circuit judge, to make a grant of the office of the district judge, upon the contingency of his accepting the office of circuit judge.

I now return, sir, to that point of the charge which was personal in its nature, and of infinitely the most serious import. It is a charge as to which we can only ask, is it true? If it be true, it cannot be excused; it cannot be palliated; it is vile, profligate corruption, which every honest mind will execrate. But, sir, we are not to condemn, till we have evidence of the fact. If the offence be serious, the proof ought to be plenary. I will consider the evidence of the fact upon which the honorable member has relied, and I will show him by the application of it to a stronger case, that it is of a nature to prove nothing.

Let me first state the principal case. Two gentlemen of the Senate, Mr. Read, of South Carolina, and Mr. Green, of Rhode Island, who voted in favor of the law of last session, each received an appointment to the place of district judge, which was designed to be vacated by the promotion of the district judge to the office of circuit judge. The gentleman conveyed to us a distinct impression of his opinion, that there was an understanding between these gentlemen and the President, and that the offices were the promised price of their votes.

I presume, sir, the gentleman will have more charity in the case which I am about to mention, and he will for once admit that public men ought not to be condemned upon loose conclusions drawn from equivocal presumptions.

The case, sir, to which I refer, carries me once more to the scene of the presidential election. I should not have introduced it into this debate, had it not been called up by the honorable member from Virginia. In that scene I had my part; it was a part not barren of incident, and which has left an impression which cannot easily depart from my recollection. I know who were rendered important characters, either from the possession of personal means, or from the accident of political situation. And now, sir, let me ask the honorable member what his reflections and belief will be, when he observes, that every man, on whose vote the event

of the election hung, has since been distinguished by presidential favor. I fear, sir, I shall violate the decorum of parliamentary proceeding, in the mentioning of names; but I hope the example which has been set me will be admitted as an excuse. Mr. Charles Pinckney, of South Carolina, was not a member of the House, but he was one of the most active, efficient and successful promoters of the election of the present chief magistrate. It was well ascertained that the votes of South Carolina were to turn the equal balance of the scales. The zeal and industry of Mr. Pinckney had no bounds. The doubtful politics of South Carolina were decided, and her votes cast into the scale of Mr. Jefferson. Mr. Pinckney has since been appointed minister plenipotentiary to the court of Madrid; an appointment as high and honorable as any within the gift of the executive. I will not deny that this preferment is the reward of talents and services, although, sir, I have never yet heard of the talents or services of Mr. Charles Pinckney. In the House of Representatives I know what was the value of the vote of Mr. Claiborne, of Tennessee. The vote of a State was in his hands. Mr. Claiborne has since been raised to the high dignity of governor of the Mississippi Territory. I know how great and how greatly felt, was the importance of the vote of Mr. Linn, of New Jersey. The delegation of the State consists of five members. Two of the delegation were decidedly for Mr. Jefferson; two were decidedly for Mr. Burr. Mr. Linn was considered as inclining to one side, but still doubtful. Both parties looked up to him for the vote of New Jersey. He gave it to Mr. Jefferson, and Mr. Linn has since had the profitable office of supervisor of his district conferred upon him. Mr. Lyon, of Vermont, was in this instance an important man. He neutralized the vote of Vermont. His absence alone would have given the vote of a State to Mr. Burr. It was too much to give an office to Mr. Lyon; his character was low. But Mr. Lyon's son has been handsomely provided for in one of the executive offices. I shall add to the catalogue but the name of one more gentleman, Mr. Edward Livingston, of New York. I knew well, full well I knew the consequence of this gentleman. His means were not limited to his own vote; nay, I always considered more than the vote of New York within his power. Mr. Livingston has been made the attorney for the district of New York: the road of preferment has been opened to him, and his brother has been raised to the distinguished place of minister plenipotentiary to the French Republic.

This catalogue might be swelled to a much greater magnitude; but I fear, Mr. Chairman, were I to proceed further, it might be supposed, that I myself harbored the uncharitable suspicions of the integrity of the chief magistrate, and of the purity of the gentlemen whom he thought proper to promote, which it is my de-

orable member from Virginia. It would be doing me great injustice to suppose, that I have the smallest desire, or have had the remotest intention to tarnish the fame of the present chief magistrate; or of any of the honorable gentlemen who have been the objects of his favor, by the statement which I have made; my motive is of an opposite nature. The late President appointed gentlemen to office to whom he owed no personal obligations, but who only supported what has been considered as a favorite measure. This has been assumed as a sufficient ground, not only of suspicion, but of condemnation. The present executive, leaving scarcely an exception, has appointed to office, or has by accident indirectly gratified every man who had any distinguished means in the competition for the presidential office, of deciding the election in his favor. Yet, sir, all this furnishes too feeble a presumption to warrant me to express a suspicion of the integrity of a great officer, or of the probity of honorable men, in the discharge of the high functions which they had derived from the confidence of their country. I am sure, sir, in this case, the honorable member from Virginia is as exempt from any suspicion as myself. And I shall have accomplished my whole object, if I induce that honorable member, and other members of the committee, who entertain his suspicions as to the conduct of the late executive, to review the ground of those suspicions, and to consider, that, in a case furnishing much stronger ground for the presumption of criminality, they have an unshaken belief, an unbroken confidence, in the purity and fairness of the executive conduct.

I return again to the subject before the committee, from the unpleasant digression to which I was forced to submit, in order to repel insinuations which were calculated to have the worst effect, as well abroad as within the walls of this House. I shall now cursorily advert to some arguments of minor importance, which are supposed to have some weight by gentlemen on the other side. It is said, that if the courts are sanctuaries, and the judges cannot be removed by law, it would be in the power of a party to create a host of them, to live as pensioners on the country. This argument is predicated upon an extreme abuse of power, which can never fairly be urged to restrain the legitimate exercise of it: as well might it be urged, that a subsequent Congress had a right to reduce the salary of a judge, or of the President, fixed by a former Congress; because, if the right did not exist, one Congress might confer a salary of five hundred thousand, or a million of dollars, to the impoverishment of the country. It will be time enough to decide upon those extreme cases, when they occur. We are told, that the doctrine we contend for, enables one legislature to derogate from the power of another. That it attributes to a former a

This is not correct. We admit, that this Congress possesses all the power possessed by the last Congress. That Congress had a power to establish courts; so has the present. That Congress had not, nor did it claim the power to abolish the office of a judge while it was filled. Though they thought five judges, under the new system, sufficient to constitute the Supreme Court, they did not attempt to touch the office of either of the six judges. Though they considered it more convenient to have circuit judges in Kentucky and Tennessee than district judges, they did not lay their hands upon the offices of the six judges. We, therefore, deny no power to this Congress which was not denied to the last. An honorable member from Virginia seriously expressed his alarm, lest the principles we contended for should introduce into the country a privileged order of men. The idea of the gentleman supposes, that every office not at will, establishes a privileged order. The judges have their offices for one term; the President, the Senators, and members of this House, for different terms. While these terms endure, there is a privilege to hold the places, and no power exists to remove. If this be what the gentleman means by a privileged order, and he agrees, that the President, the Senators, and the members of this House, belong to privileged orders, I shall give myself no trouble to deny, that the judges fall under the same description; and I believe that the gentleman will find it difficult to show, that in any other manner they are privileged. I did not suppose, that this argument was so much addressed to the understandings of gentlemen upon this floor, as to the prejudices and passions of people out of doors.

It was urged with some impression, by the honorable member from Virginia, to whom I last referred, that the position, that the office of a judge might be taken from him by law, was not a new doctrine. That it was established by the very act now designed to be repealed, which was described, in glowing language, to have inflicted a gaping wound on the constitution, and to have stained, with its blood, the pages of our statute book. It shall be my task, sir, to close this gaping wound, and to wash from the pages of our statute book the blood with which they were stained. It will be an easy task to show to you the constitution without a wound, and the statute book without a stain.

It is, sir, the twenty-seventh section of the bill of the last session, which the honorable member considers as having inflicted the ghastly wound on the constitution, of which he has so feelingly spoken. That section abolishes the ancient circuit courts. But, sir, have we contended, or has the gentleman shown, that the constitution prohibits the abolition of a court, when you do not materially affect, or in any degree impair the independence of a judge? A court is nothing more than a place where a There is no doubt you may erect a new court and direct it to be holden by the judges of the Supreme or of the District Courts. And if it should afterwards be your pleasure to abolish that court, it cannot be said, that you destroy the offices of the judges by whom it was appointed that the courts should be holden.

Thus it was directed by the original judicial law, that a circuit court should be holden at Yorktown, in the district of Pennsylvania. This court was afterwards abolished, but it was never imagined that the office of any judge was affected. Let me suppose that a State is divided into two districts, and district courts established in each, but that one judge is appointed by law to discharge the judicial duties in both courts. The arrangement is afterwards found inconvenient, and one of the courts is abolished. In this case, will it be said, that the office of the judge is destroyed, or his independence affected? The error into which gentlemen have fallen on this subject, has arisen from their taking for granted what they have not attempted to prove, and what cannot be supported, that the office of a judge and any court in which he officiates, are the same thing. It is most clear, that a judge may be authorized and directed to perform duties in several courts, and that the discharging him from the performance of duty in one of those courts, cannot be deemed an infringement of his office. The case of the late circuit courts as plainly illustrates the argument, and as conclusively demonstrates its correctness, as any case which can be put. There were not nominally any judges of the circuit court. The court was directed to be holden by the judges of the Supreme and of the District Courts. The judges of these two courts were associated and directed to perform certain duties: when associated, and in the performance of those duties, they were denominated the circuit court. This court is abolished; the only consequence is, that the judges of the Supreme and District Courts are discharged from the performance of the joint duties which were previously imposed upon them. But is the office of one judge of the Supreme or of the District Courts infringed? Can any judge say, in consequence of the abolition of the circuit courts, I no longer hold my office during good behavior? On this point, it was further alleged by the same honorable member, that the law of the last session inflicted another wound on the constitution, by abolishing the district courts of Kentucky and Tennessee. The gentleman was here deceived by the same fallacy which misled him on the subject of the circuit courts. If he will give himself the trouble of carefully reviewing the provisions of the law, he will discern the sedulous attention of the legislature to avoid the infringement of the offices of those judges. I believe the gentleman went so far as to charge us with appointing by law those judges to new offices.

The law referred to, establishes a circuit

district of Ohio. The duties of the court of this circuit, are directed to be performed by a circuit judge and the two district judges of Kentucky and Tennessee. Surely it is competent for the legislature to create a court, and to direct that it shall be holden by any of the existing judges. If the legislature had done with respect to all the district judges, what they have done with respect to those of Kentucky and Tennessee, I am quite certain that the present objection would have appeared entirely groundless. Had they directed that all the circuit courts should be held by the respective judges within the circuits, gentlemen would have clearly seen, that this was only an imposition of a new duty, and not an appointment to a new office.

It will be recollected that, under the old establishment, the district judges of Kentucky and Tennessee, were invested generally with the powers of the circuit judges. The ancient powers of those judges are scarcely varied by the late law, and the amount of the change is, that they are directed to exercise those powers in a court formerly called a district, but now a circuit court, and at other places than those to which they were formerly confined. But the district judge nominally remains; his office both nominally and substantially exists, and he holds it now as he did before, during good behavior. I will refer gentlemen to different provisions in the late law, which will show beyond denial, that the legislature carefully and pointedly avoided the act of abolishing the offices of those judges.

The seventh section of the law provides, that the court of the sixth circuit shall be composed of a circuit judge, "and the judges of the district courts of Kentucky and Tennessee." It is afterwards declared, in the same section, "that there shall be appointed in the sixth circuit, a Judge of the United States, to be called a circuit judge, who, together with the district judges of Tennessee and Kentucky, shall hold the circuit courts hereby directed to be holden within the same circuit." And finally, in the same section, it is provided, "that whenever the office of district judge in the districts of Kentucky and Tennessee respectively, shall become vacant, such vacancies shall respectively be supplied by the appointment of two additional circuit judges in the said circuit, who, together with the circuit judge first aforesaid, shall compose the circuit court of the said circuit." When the express language of the law affirms the existence of the office and of the officer, by providing for the contingency of the officer ceasing to fill the office, with what face can gentlemen contend that the office is abolished? They who are not satisfied upon this point, I despair of convincing upon any other.

Upon the main question, whether the judges hold their offices at the will of the legislature, an argument of great weight, and according to

The legislative power of the government is not absolute but limited. If it be doubtful whether the legislature can do what the constitution does not explicitly authorize; yet there can be no question, that they cannot do what the constitution expressly prohibits. To maintain, therefore, the constitution, the judges are a check upon the legislature. The doctrine I know is denied, and it is, therefore, incumbent upon me to show that it is sound.

It was once thought by gentlemen, who now deny the principle, that the safety of the citizen and of the States, rested upon the power of the judges to declare an unconstitutional law void. How vain is a paper restriction if it confers neither power nor right. Of what importance is it to say, Congress are prohibited from doing certain acts, if no legitimate authority exists in the country to decide whether an act done is a prohibited act? Do gentlemen perceive the consequences which would follow from establishing the principle, that Congress have the exclusive right to decide upon their own powers? This principle admitted, does any constitution remain? Does not the power of the legislature become absolute and omnipotent? Can you talk to them of transgressing their powers, when no one has a right to judge of those powers but themselves? They do what is not authorized, they do what is inhibited, nay, at every step, they trample the constitution under foot; yet their acts are lawful and binding, and it is treason to resist them. How ill, sir, do the doctrines and professions of these gentlemen agree. They tell us they are friendly to the existence of the States; that they are the friends of federative, but the enemies of a consolidated general government, and yet, sir, to accomplish a paltry object, they are willing to settle a principle which, beyond all doubt, would eventually plant a consolidated government, with unlimited power, upon the ruins of the State governments.

Nothing can be more absurd than to contend, that there is a practical restraint upon a political body, who are answerable to none but themselves for the violation of the restraint, and who can derive, from the very act of violation, undeniable justification of their conduct.

If, Mr. Chairman, you mean to have a constitution, you must discover a power to which the acknowledged right is attached of pronouncing the invalidity of the acts of the legislature, which contravened the instrument.

Does the power reside in the States? Has the legislature of a State a right to declare an act of Congress void? This would be erring upon the opposite extreme. It would be placing the General Government at the feet of the State Governments. It would be allowing one member of the Union to control all the rest. It would inevitably lead to civil dissension and a dissolution of the general government. Will it be pretended, that the State Courts have the

I admit they have the right to declare an act of Congress void. But this right they enjoy in practice, and it ever essentially must exist, subject to the revision and control of the Courts of the United States. If the State Courts definitely possessed the right of declaring the invalidity of the laws of this government, it would bring us in subjection to the States. The judges of those courts, being bound by the laws of the State, if a State declared an act of Congress unconstitutional, the law of the State would oblige its courts to determine the law invalid. This principle would also destroy the uniformity of obligation upon all the States, which should attend every law of this government. If a law were declared void in one State, it would exempt the citizens of that State from its operation, whilst obedience was yielded to it in the other States. I go further, and say, if the States or State Courts had a final power of annulling the acts of this government, its miserable and precarious existence would not be worth the trouble of a moment to preserve. It would endure but a short time, as a subject of derision, and wasting into an empty shadow, would quickly vanish from our sight.

Let me now ask, if the power to decide upon the validity of our laws resides with the people. Gentlemen cannot deny this right to the people. I admit they possess it. But if, at the same time, it does not belong to the courts of the United States, where does it lead the people? It leads them to the gallows. Let us suppose that Congress, forgetful of the limits of their authority, pass an unconstitutional law. They lay a direct tax upon one State and impose none upon the others. The people of the State taxed, contest the validity of the law. They forcibly resist its execution. They are brought by the executive authority before the courts upon charges of treason. The law is unconstitutional, the people have done right, but the court are bound by the law, and obliged to pronounce upon them the sentence which it inflicts. Deny to the courts of the United States the power of judging upon the constitutionality of our laws, and it is vain to talk of its existing elsewhere. The infractors of the laws are brought before these courts, and if the courts are implicitly bound, the invalidity of the laws can be no defence. There is, however, Mr. Chairman, still a stronger ground of argument upon this subject. I shall select one or two cases to illustrate it. Congress are prohibited from passing a bill of attainder; it is also declared in the constitution, that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the party attainted." Let us suppose that Congress pass a bill of attainder, or they enact, that any one attainted of treason shall forfeit, to the use of the United States, all the estate which he held in any lands or tenements.

The party attainted is seized and brought before a federal court, and an award of execution passed against him. He opens the constitution and points to this line, "no bill of attainder or ex post facto law shall be passed." The attorney for the United States reads the bill of attainder. The court are bound to decide, but they have only the alternative of pronouncing the law or the constitution invalid. It is left to them only to say that the law vacates the constitution, or the constitution avoids the law. So, in the other case stated, the heir, after the death of his ancestor, brings his ejectment in one of the courts of the United States to recover his inheritance. The law by which it is confiscated is shown. The constitution gave no power to pass such a law. On the contrary, it expressly denied it to the government. The title of the heir is rested on the constitution, the title of the government on the law. The effect of one destroys the effect of the other: the court must determine which is effectual.

There are many other cases, Mr. Chairman, of a similar nature to which I might allude. There is the case of the privilege of habeas corpus, which cannot be suspended but in times of rebellion or invasion. Suppose a law prohibiting the issuing of the writ at a moment of profound peace. If, in such case, the writ were demanded of a court, could they say, it is true the legislature were restrained from passing the law suspending the privilege of this writ, at such a time as that which now exists, but their mighty power has broken the bonds of the constitution, and fettered the authority of the court? I am not, sir, disposed to vaunt, but standing on this ground, I throw the gauntlet to any champion upon the other side. I call upon them to maintain, that, in a collision between a law and the constitution, the judges are bound to support the law, and annul the constitution. Can the gentlemen relieve themselves from this dilemma? Will they say, though a judge has no power to pronounce a law void, he has a power to declare the constitution invalid?

The doctrine for which I am contending, is not only clearly inferable from the plain language of the constitution, but by law has been expressly declared and established in practice since the existence of the government.

The second section of the third article of the constitution expressly extends the judicial power to all cases arising under the constitution, the laws, &c. The provision in the second clause of the sixth article leaves nothing to doubt. "This constitution and the laws of the United States, which shall be made in pursuance thereof, &c., shall be the supreme law of the land." The constitution is absolutely the supreme law. Not so the acts of the legislature. Such only are the law of the land as are made in pursuance of the constitution.

I beg the indulgence of the committee one moment, while I read the following provision from the twenty-fifth section of the judicial act of the year 1789: "A final judgment or decree in any suit in the highest court of law or equity of a State, in which a decision in the suit could be had, where is drawn in question the validity

of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity, &c., may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon a writ of error." Thus, as early as the year 1789, among the first acts of the government, the legislature explicitly recognized the right of a State court to declare a treaty, a statute, and an authority exercised under the United States, void, subject to the revision of the Supreme Court of the United States; and it has expressly given the final power to the Supreme Court to affirm a judgment which is against the validity, either of a treaty, statute, or an authority of the government.

I humbly trust, Mr. Chairman, that I have given abundant proofs from the nature of our government, from the language of the constitution, and from legislative acknowledgment, that the judges of our courts have the power to judge and determine upon the constitutionality of our laws.

Let me now suppose that, in our frame of government, the judges are a check upon the legislature; that the constitution is deposited in their keeping. Will you say afterwards, that their existence depends upon the legislature? That the body whom they are to check has the power to destroy them? Will you say that the constitution may be taken out of their hands by a power the most to be distrusted, because the only power which could violate it with impunity? Can any thing be more absurd than to admit that the judges are a check upon the legislature, and yet to contend that they exist at the will of the legislature? A check must necessarily imply a power commensurate to its end. The political body, designed to check another, must be independent of it, otherwise there can be no check. What check can there be when the power designed to be checked can annihilate the body which it is to restrain?

I go further, Mr. Chairman, and take a stronger ground. I say, in the nature of things, the dependence of the judges upon the legislature, and their right to declare the acts of the legislature void, are repugnant, and cannot exist together. The doctrine, sir, supposes two rights—first, the right of the legislature to destroy the office of the judge, and the right of the judge to vacate the act of the legislature. You have a right to abolish by a law the offices of the judges of the circuit courts: they have a right to declare the law void. It unavoidably follows, in the exercise of these rights, either that you destroy their rights, or that they destroy yours. This doctrine is not a harmless absurdity, it is a most dangerous heresy. It is a doctrine which cannot be practised without producing not discord only, but bloodshed. If you pass the bill upon your table, the judges have a constitutional right to declare it void. I hope they will have courage to exercise that right; and if, sir, I am called upon to take my side, standing acquitted in my conscience and before my God, of all motives but the support of the constitution of my country, I shall not tremble at the consequences.

The constitution may have its enemies, but I know that it has also its friends. I beg gentlemen to pause, before they take this rash step. There are many, very many, who believe, if you strike this blow, you inflict a mortal wound on the constitution. There are many now willing to spill their blood to defend that constitution. Are gentlemen disposed to risk the consequences? Sir, I mean no threats: I have no expectation of appalling the stout hearts of my adversaries; but if gentlemen are regardless of themselves, let them consider their wives and children, their neighbors and their friends. Will they risk civil dissension, will they hazard the welfare, will they jeopardize the peace of the country, to save a paltry sum of money, less than thirty thousand dollars?

Mr. Chairman, I am confident that the friends of this measure are not apprised of the nature of its operation, nor sensible of the mischievous consequences which are likely to attend it. Sir, the morals of your people, the peace of the country, the stability of the government, rest upon the maintenance of the independence of the judiciary. It is not of half the importance in England, that the judges should be independent of the Crown, as it is with us that they should be independent of the legislature. Am I asked, would you render the judges superior to the legislature? I answer, no, but co-ordinate. Would you render them independent of the legislature? I answer, yes, independent of every power on earth, while they behave themselves well. The essential interests, the permanent welfare of society, require this independence; not, sir, on account of the judge; that is a small consideration, but on account of those between whom he is to decide. You calculate on the weaknesses of human nature, and you suffer the judge to be dependent on no one, lest he should be partial to those on whom he depends. Justice does not exist where partiality prevails. A dependent judge cannot be impartial. Independence is, therefore, essential to the purity of your judicial tribunals.

Let it be remembered, that no power is so sensibly felt by society, as that of the judiciary. The life and property of every man is liable to be in the hands of the judges. Is it not our great interest to place our judges upon such high ground that no fear can intimidate, no hope seduce them? The present measure humbles them in the dust, it prostrates them at the feet of faction, it renders them the tools of every dominant party. It is this effect which I deprecate, it is this consequence which I deeply deplore. What does reason, what does argument avail, when party spirit presides? Subject your bench to the influence of this spirit, and justice bids a final adieu to your tribunals. We are asked, sir, if the judges are to be independent of the people? The question presents a false and de-

and as long as we enjoy our freedom, we shall be divided into parties. The true question is, shall the judiciary be permanent, or fluctuate with the tide of public opinion? I beg, I implore gentlemen to consider the magnitude and value of the principle which they are about to annihilate. If your judges are independent of political changes, they may have their preferences, but they will not enter into the spirit of party. But let their existence depend upon the support of the power of a certain set of men, and they cannot be impartial. Justice will be trodden under foot. Your courts will lose all public confidence and respect.

The judges will be supported by their partisans, who, in their turn, will expect impunity for the wrongs and violence they commit. The spirit of party will be inflamed to madness: and the moment is not far off, when this fair country is to be desolated by a civil war.

Do not say that you render the judges dependent only on the people. You make them dependent on your President. This is his measure. The same tide of public opinion which changes a President, will change the majorities in the branches of the legislature. The legislature will be the instrument of his ambition, and he will have the courts as the instruments of his vengeance. He uses the legislature to remove the judges, that he may appoint creatures of his own. In effect, the powers of the government will be concentrated in the hands of one man, who will dare to act with more boldness, because he will be sheltered from responsibility. The independence of the judiciary was the felicity of our constitution. It was this principle which was to curb the fury of party on sudden changes. The first movements of power gained by a struggle, are the most vindictive and intemperate. Raised above the storm it was the judiciary which was to control the fiery zeal, and to quell the fierce passions of a victorious faction.

We are standing on the brink of that revolutionary torrent, which deluged in blood one of the fairest countries of Europe.

France had her national assembly, more numerous and equally popular with our own. She had her tribunals of justice, and her juries. But the legislature and her courts were but the instruments of her destruction. Acts of proscription and sentences of banishment and death were passed in the cabinet of a tyrant. Prostrate your judges at the feet of party, and you break down the mounds which defend you from this torrent.

I am done.* I should have thanked my God for greater power to resist a measure so destructive to the peace and happiness of the country. My feeble efforts can avail nothing. But it was my duty to make them. The meditated blow is mortal, and from the moment it is struck, we may bid a final adieu to the constitution.*

REPEAL OF THE EMBARGO.

The following speech was delivered by Mr. Bayard, in the United States Senate, February 14th, 1809, on his motion to amend the subjoined resolution, offered by Mr. Giles, by striking out that part which is in italics. *Resolved*, That the several laws laying an embargo on all ships and vessels in the ports and harbors of the United States, be repealed on the 4th day of March next, *except as to Great Britain and France and their dependencies; and that provision be made by law for prohibiting all commercial intercourse with those nations and their dependencies, and the importation of any article into the United States, the growth, produce or manufacture of either of the said nations, or of the dominions of either of them.*

It will be perceived, Mr. President, by the motion which I have made to amend the resolution, offered by the honorable gentleman from Virginia, that I do not approve of the course, which it seems the government have determined to pursue. The honorable gentleman has told us, it is not his plan, and I give him credit for the fairness and candor with which he has avowed the measure to which he would have resorted. He would have raised the embargo and declared war against England. Being opposed in this scheme by a majority of his friends, his next proposition was to issue letters of marque and reprisal; finding, however, that the other House had refused to go even so far, he had, on the principle of concession and conciliation with his friends, agreed to take the course proposed in the resolution, in hopes, that our vessels, going upon the ocean and being captured under the orders in council, would

* The utmost efforts of skill and the best exertions of eloquence were ineffectual, and on the 8th of March, 1802, the act to provide for the more convenient organization of the courts of the United States, was repealed.

Thus terminated the celebrated judiciary system; and with it, one of the most interesting discussions that has awakened the attention of the American people. Independent of the forcible and eloquent appeals made within the walls of Congress, addresses from various quarters of the Union were received in which the benefits of the new arrangement were portrayed and the danger and mischief of its

drag the nation into a war: when he presumed, the war being made upon us, we would agree to fight our enemy. Sir, it is upon this very ground, and considering this as its object, that I am opposed to the resolution. England is not our enemy, nor does a necessity exist to make her so. I am not going to deny, that we have many, and heavy complaints to make against her conduct, nor shall I contend, that causes do not exist, which might justify a war; but I mean to say, that policy forbids the measure, and that honor does not require it.

The gentleman has painted, in very glowing colors, the wrongs and insults which we have suffered from British violence; he has recorded, in his catalogue, the offensive acts of British agents, as well as the injurious pretensions and orders of the government. I mean not to defend, nor even to palliate any aggressions, public or private, against the rights or honor of our country; but, sir, I cannot conceal my surprise, that this gentleman, so much alive to British wrongs, should be insensible to every thing which we have suffered from France. The gentleman has exhausted the language of terms of invective and reproach against the British government and nation, but he has been silent as the grave, as to the French. How can it be, that what is wrong in Britain is right in France? And wherefore is it, that the same acts of France are borne with patience, which, proceeding from Britain, excite such a spirit of indignation? You have the orders in council to complain of; but have you not the decrees of His Imperial Majesty? We are told, that the orders in council give us laws, regulate our commerce, and degrade us to the state of colonies; but do they contain more, or do they extend as far as the imperial decrees? Do they make us more the colonies of Britain, than the decrees make us the colonies of France? And are we to invoke the spirit of liberty and patriotism to a resistance to Britain, while we are tamely yielding ourselves to French bondage? We are told of our vessels being forced into British ports and compelled to pay tribute; but nothing is said of their being invited into French harbors, and then seized and confiscated.

With all the complaints against the British orders, and the silence as to French decrees, ought we not to be surprised in discovering, that the orders are exceeded in severity and injustice by the decrees? Let it be remembered, that this system of outrage upon neutral rights originated, on the part of France, in the Berlin decree. That decree, in effect, forbids neutrals to trade to England, or her colonies, or to purchase, or to carry their manufactures or produce. In commencing this system, France justified its principle, and compelled her adversary to retaliate by acts of the same injustice against neutrals who submitted to it. Tell me which we have first and most to blame, the one who set the example, or him who followed it?

It is a consideration also, of great weight, that at the time when the Berlin decree issued, France was bound to the United States by a solemn treaty to permit the trade which that decree prohibits; a treaty, signed by Bonaparte himself, and expressly providing for the freedom and security of our commerce with his enemy, in the event of war: and if the orders in council are a violation of the law of nations, they are not, like the French decrees, a breach of plighted faith. The orders leave to us the direct colonial trade. Our intercourse is not interrupted with the colonies and dependencies of France; but the decrees interdict all neutral commerce with the colonies and dependencies of England, as well as with the mother country. Your very ships, which enter an English port, are denationalized, and are liable, after the lapse of any time, though performing a voyage otherwise innocent, to seizure and confiscation.

Another feature of injustice and iniquity, distinguishes the decrees from the orders. By the orders, our merchants are apprised of the commerce which is interdicted. Full time for notice of the prohibition is allowed, before the property is exposed, by a transgression of the orders, to be confiscated or seized. No such forbearance can be discovered in the decrees, which are to be indiscriminately executed upon the innocent and the guilty: upon those who never heard, or could have heard of them, in the same manner as upon those who knowingly violate them.

I hope, sir, it will not be understood, that I mean to defend the orders in council, or to advise this nation to submit to them; but I could wish to direct some portion of the warmth and indignation, which has been expressed against them, against those decrees which produced them, and which exceed them in iniquity and outrage.

The avowed object of the honorable gentleman from Virginia, is a war with England. On this subject, I make but one question; is it possible to avoid it with honor? If this possibility exists, the war ought to be avoided. And it is my opinion, that it does exist. To this opinion I am, in a great degree, led by a want of confidence in the sincerity of the disposition of our executive to settle our differences with Great Britain. Your measures have not been impartial as to the belligerents, and your negotiations have not been sincere as to England. The gentleman from Virginia has called this charge of insincerity a miserable vision. I believe, sir, it is a miserable and melancholy fact; and if you will have patience with me, I will furnish proof enough to support the belief of the most incredulous.

I mean to show, that your government has had it in its power to secure peace with Britain, by the settlement of the differences between the two nations, and that the means have not only been neglected, but means employed to prevent such a settlement from taking place.

It will be necessary for us to consider what

to three heads: first, the rule, as it is called, of the war of 1756: second, constructive blockades: third, impressment of seamen on board of American merchant vessels.

I do not mean to say, that there were no other causes of complaint, arising from the indiscretions and insolence of British commanders; but they had not the character of national differences, and would, probably, have soon ceased and been forgotten, if the points of controversy between the governments had been amicably arranged. To settle the differences, which I have stated, a negotiation was opened in London, in 1808, and carried on till December, 1806. It is remarkable, that while this negotiation was depending and progressing, our government had recourse to a step, in its nature calculated to repel, instead of to invite, the British government to a friendly settlement. In April, 1806, they passed a law prohibiting the importation of certain British goods. The acknowledged object of this law was to coerce Britain to agree to our own terms. Did this law evidence a disposition to be friendly upon our part; or was it calculated to inspire a friendly temper on the part of England? It was fuel to the flame of discord. The British government is not less high-spirited and proud than our own, and the attempt to force them to terms was the likeliest course which could have been pursued, by provoking retaliation, to widen the breach between the two countries. This measure enforced, when negotiation was going on and promised a favorable result, is no small proof, in my mind, that the executive was satisfied with the forms of negotiation, but wanted no treaty with England.

I proceed to inquire, whether our differences with Britain were not of a nature to be compromised; and if our government had been sincerely disposed, whether they might not have retained the relations of amity with that power.

First, as to the rule of 1756. This rule was founded on the principle, that a neutral nation could not acquire a right to trade, by the cession of one belligerent in time of war, which did not exist, but was withheld in time of peace. The rule was supported on the principle, that a neutral could not come in aid of a belligerent, and cover its property on the ocean, when it was incapable of protecting it itself.

I am not going to defend this rule, nor to inquire into its origin. Thus much I will say, that if it was the British rule of 1756, it was the express rule of the French maritime code in the years 1704 and 1744. I will not trouble you with reading the decrees of the French monarchs, which I have on the table, made in the years mentioned, and which prohibit to neutrals any but a direct trade to the colony of an enemy. Though the rule of 1756 may not be an ancient rule, yet we must admit, that it was not a new rule, introduced in the present war and contrived to ruin, or injure the American

France was unable to trade with her colonies; the United States became her carriers, and under our flag, the manufactures of the mother country were safely carried to the colonies, and the produce of the colonies transported to Europe. This trade was certainly as beneficial to France as profitable to the United States. Britain only was the sufferer, and the rule of 1756 was revived in order to take from French commerce the protection of a neutral flag. Our government were certainly right, in claiming the free enjoyment of this profitable trade, but the only question is, whether the neutral and belligerent pretension did not admit of adjustment, by each side making an equal concession of points of interest.

The treaty of 1806, which the President rejected, fairly compromised the dispute on this subject. The eleventh article of that treaty secured to the United States the carrying trade of France and her colonies, subject to terms somewhat inconvenient to the merchant, but rendering it no less beneficial to the nation. The treaty requires that goods, exported from France or her colonies in American vessels, shall be entered and landed in the United States; and when exported from France through the United States to her colonies, shall be liable to a duty of one *per cent.*, and from the colonies to France of two *per cent.*, to be paid into our own treasury. This regulation of benefit to the government, by the duty which it gave to it, was of little prejudice to the trade, and there is no room to doubt, that the trade, thus secured from the spoliations to which it was before subject, would have flourished beyond its former limits.

Our differences, therefore, as to the carrying trade so much harassed by the British rule of 1756, not only admitted of compromise, but was actually settled by an arrangement in the treaty of 1806, with which the nation would have been perfectly satisfied.

The second head of dispute regards the practice of constructive blockade. The complaint on this subject was, that blockades were formed by proclamations, and that neutrals were compelled to consider ports as blockaded, before which no force was stationed. That the principle of blockades was extended to unwarrantable limits, is most certainly true; and there is no question as to our having just cause to complain of the vexatious interruptions to which it exposed our trade. The present war between France and England is without a parallel between civilized nations; it is not a struggle for renown or for ordinary conquest, but on the part of Britain, for her independence and existence. Principles of neutrality or of right have been little regarded upon the land or upon the ocean; and the question with the belligerents has been less, what the law of nations permitted them to do, than what their strength enabled them to accomplish. It is unlawful for a neutral to attempt to enter a blockaded port;

unless a force adequate to the end is stationed before it. The blockades, therefore, which England created, simply by a proclamation, were an abuse, of which neutrals had just cause to complain.

The United States did complain, and these complaints were listened to by the British government. The tenth article of the treaty of 1806, has made provision on the subject; and though England has not renounced the principle of which we complain, yet it is qualified by the notice which is required to be given to the vessel attempting to enter a blockaded port, before she is exposed to seizure and confiscation. The provision in the treaty would no doubt have corrected, in a considerable degree, the abuse from which we had suffered, and it was our policy to have waited for better times for a completer remedy for the evil.

But, sir, the last head of dispute which I enumerated, was made the chief and most important ground of complaint against the British government; I mean the searching American vessels for British seamen. The right claimed by England was to seize her own seamen on board our private vessels. The right to search a public vessel, or to seize an American sailor, was never asserted by the government. The claim, however, which was insisted on, involved a point of equal interest and delicacy to both countries. There is nothing novel in the pretension, that a nation, engaged in war, has a right to recall her subjects from foreign countries or from foreign service to assist her in the war.

Every nation in Europe has claimed and exercised the right. Our government has not denied it; but the consequences of the manner of exercising it have formed the ground of our complaint. Has a belligerent a right to search a neutral vessel for her seamen? I should suppose not. This question between other nations is of small importance; between the United States and Britain, it is of great magnitude.

The sameness of manners, habits, language and appearance, render it always difficult and sometimes impossible to distinguish between an English and an American sailor. If the right to search for British seamen were admitted, there would no longer be security for the American sailor: the right admitted, I have no doubt our navigation would be ruined. As an American, therefore, I would never concede the principle. Let us see, however, how the case stands in relation to Britain. Her navy is the shield of her salvation; whatever impairs its strength diminishes her power and safety. Tenacious as she has ever been of her personal liberty at home, yet when men are wanted for her fleets, the *habeas corpus* sleeps. Her sailors are her right arm, which withers as she is deprived of them. From the seductions of our maritime service she has every thing to dread. Our merchants can give her seamen a dollar for every shilling which she is able to afford them.

and exposed less to hardships and danger. Let them find a secure asylum on board our merchant ships, and how soon will the decks of the English ships of war be thinned. Which has the most at stake on this subject, England or America? I will not decide the question; but this is evident, that neither will ever unconditionally relinquish the principle for which she has contended. At this crisis, it was impossible for our government to expect the formal abandonment, by the British government, of this right of search. What course, then, should they have pursued? They should have temporized on the point, as Britain was willing to do, and waited for a more propitious epoch, for the final arrangement of the dispute.

Your commissioners, who negotiated the treaty, found that it was impracticable to obtain the cession of the principle for which they contended, and upon their own responsibility, to their great honor, to preserve the peace of the two countries, accepted assurances from the British ministry, which, in their opinion, and I have no doubt in fact, would have effectually removed the abuses of which we complained. I beg pardon of the Senate for reading an extract from the letter of Messrs. Monroe and Pinkney, of the 3d of January, 1807, which contains the assurances to which I refer: "we are sorry to add, that this treaty contains no provision against the impressment of our seamen; our despatch of the 11th of November communicated to you the result of our labors on that subject, and our opinion, that although this government did not feel itself at liberty to relinquish formally, by treaty, its claim to search our merchant vessels for British seamen, its practice would, nevertheless, be essentially, if not completely abandoned. That opinion has been since confirmed by frequent conferences on the subject with the British commissioners, who have repeatedly assured us, that in their judgment we were made as secure against the exercise of their pretensions, by the policy which their government had adopted in regard to that very delicate and important question, as we could have been made by treaty. It is proper to observe, however, that the good effect of this disposition, and its continuance, may depend, in a great measure, on the means which may be taken by the Congress hereafter, to check desertions from the British service. If the treaty is ratified, and a perfect good understanding produced between the two nations, it will be easy for their governments, by friendly communications, to state to each other what they respectively desire, and in that mode to arrange the business as satisfactorily as it could be done by treaty." Such was the footing upon which our commissioners were wisely disposed to leave this delicate affair. And would to God that our President wishing, as sincerely as his friends profess for him, to accommodate the differences between the two countries, had

consequence of this excessive anxiety to secure our seamen? Why, that your service has lost more sailors in one year of embargo, than it would have lost in ten years of impressment.

But, sir, in this lies the secret—a secret I will dare to pronounce. Your President never meant to have a treaty with Great Britain. If he had intended it, he would have taken the treaty of the 31st of December, 1806. If he had intended it, he would never have fettered the commissioners with sine qua nons which were insuperable.

It was an invariable article in the instructions to form no treaty, unless the claim to search merchant vessels for deserters, was utterly abandoned; this was never expected, and at the arduous crisis, at which it was insisted upon, it was impossible to expect it. And yet rather than temporize on the point, rather than accept the actual abandonment of the principle, without its formal renunciation, a treaty, the work of years, negotiated by his favorite minister, and calculated to appease the animosities existing between the two nations, is rejected.

You will bear with me, sir, while I say that this precipitate and fatal measure is the cause of all the embarrassments which we have felt, which we are feeling, and which we are likely to suffer. I ask, why was this treaty rejected? We are told, for two reasons: first, because it contained no engagement against the impressment of American seamen on board merchant vessels: second, because of the collateral declaration of the British commissioners, that England retained the right to retaliate upon France the principles of her Berlin decree, if the United States should submit to its execution. I have shown from the public documents furnished to us by the President, the footing upon which our ministers placed the point of impressments.

Our commissioners considered the assurances given them by the British ministers a better pledge for the safety of our seamen than a formal provision in the treaty. But if these assurances had even not been given, the treaty would not have compromited our rights or prejudiced our interests on the subject; in the mean time it would have induced more friendly relations, and prepared both countries for such further concessions as their mutual interests might require. To me it is a matter both novel and surprising, to discover in our President this strong and unyielding attachment to the highest points of our maritime rights. I had thought before that he was not so friendly to our navy, to our merchants, and to our commerce. I had thought that he would rather our ships were exchanged for farming utensils and our seamen converted into husbandmen. But now, sir, it seems, so highly does he value our navigation, that he prefers hazarding all the calamities of war, rather than suffer one feather to be

seriously intended to conclude a treaty with England, when our commissioners were instructed to make no treaty, unless Britain formally consented that our merchant flag should protect every deserter from her navy? The insertion of this sine qua non in the instructions is sufficient to satisfy my mind, that there was no sincerity in the negotiation which was carried on with the British government.

We have been asked by the honorable gentleman from Virginia, Mr. Giles, whether it can be imagined that such men as King, Monroe and Pinkney, would have colluded with the executive, or if they would have not borne evidence of his insincerity, if such had been the fact. Mr. King, he tells us, is a federalist, to whom we have lately given proof of confidence and attachment. Mr. Monroe he represents of a disposition lately not to be guilty of concealment, through affection for the administration, and Mr. Pinkney is said also to be a federalist.

All this the gentleman may take as true. But Mr. King, sir, was never engaged in this negotiation; and as to Mr. Monroe and Mr. Pinkney, I most clearly acquit them of any collusion with the President; because, so far from colluding with him, they have acted against his secret and express instructions. Surely I have no reason to doubt the sincere disposition of these gentlemen to make a treaty with England, when they concluded one under the responsibility of acting against their orders. No, my charge of insincerity against the executive is founded upon the documents a long time secret, now public, and upon the nature of the objections which have uniformly obstructed the adjustment of our differences with Britain.

The second impediment to the ratification of the treaty, was the declaration of Lords Holland and Auckland which accompanied it. What did this paper impose upon us? Resistance to the Berlin decree; and will you permit me to ask, whether it was ever your intention to submit to that decree? You do not mean to submit to the orders in council, and does not the Berlin decree go to the extent of those orders? Are you better prepared or more disposed to submit to France than to England? No, I hope we shall agree to fight before we consent that either of those powers shall give laws to the ocean.

I know, at one time, it was pretended that the Berlin decree was designed only as a municipal regulation; municipal when it declared England and her dependencies in a state of blockade, and their manufactures and produce liable to capture. It is true that the minister of the United States in France, got some such explanation of the decree from the French minister of marine. He did not consider it as derogating from the treaty of 1800, between France and the United States. But when the emperor is applied to by the grand judge, his answer is, "that since he had not thought

tion, with respect to any thing whatsoever." When the minister of marine was applied to for his construction of the decree, he gave his opinion, but affected not to be the proper organ of communication on the subject. In this you see that craft and force were both united for the most destructive execution of the decree.

The decree was allowed to sleep for nearly a year; a public minister delivers his opinion that it was not to infract our treaty; and, after our property to an immense amount is allured by these deceitful appearances into French ports, his imperial majesty declares in effect, through his minister of justice, that the treaty with the United States was not expressed as an exception in the decree, and therefore its provisions were to form no obstruction to its execution. So, sir, we have probably lost some millions of dollars by our anxiety to consider this decree as a municipal regulation. Suppose, however, it had not designed what its terms so plainly express—the blockade of the British isles. In such case, what embarrassment would our government have incurred by agreeing to the proposition of the English commissioners, to resist the decree if executed against our neutral rights? If France had confined the execution of the decree to her own ports, Britain could not have complained of the execution of her own law, within her own jurisdiction, and we should have had nothing to which we were to oppose resistance. But suppose the decree had been executed on the ocean, and you had become bound to oppose its execution by force; would your undertaking have been greater than the offer you lately made to England, in case she would repeal her orders in council?

I shall hereafter have occasion to view this subject in another point of light; but at present I ask, did not Mr. Pinkney mean to tell Mr. Canning, under his instructions from the President, that if Great Britain would repeal her orders in council, the United States would resist the execution of the French decrees? This is stated in the letter of Mr. Canning to Mr. Pinkney, of the 23d of August, 1808, and admitted, as it is not denied, in the letter of Mr. Pinkney to Mr. Canning of the 8th of October, in the same year. Your government, then, would now agree to the terms which they so indignantly repelled when first proposed to them, and on the ground of which, in part, they refused the treaty which their ministers had negotiated. It would seem, then, that no other material ground remains for the rejection of the treaty, than the want of a formal clause to secure our merchant seamen against impressment.

Is it your intention ever to have a treaty with Britain, or are the nations always to continue in a state of strife and contention? You were offered the treaty of 1794, and you refused it. Messrs. Monroe and Pinkney negotiate a treaty in 1806; the President rejects it, and insists on a point in the most obnoxious form—which he knows will never be conceded, and without the concession of which no treaty is ever to be made. Does all this look like a sincere disposition to adjust our differences with England?

It is of importance, Mr. President, to consider, in the late negotiation, who were the men in power in the respective countries. Can our President expect ever to see an English administration more disposed to treat upon favorable terms with this country than the Fox administration? The name of Fox is the most grateful English name that is known to an American ear. From my childhood I have heard that Fox was the friend of America. He was the early champion of our rights, when Britain first attempted to deprive us of them. His voice was always raised in our favor, in opposition to the power of the crown. Fox was at the head of the ancient whig interest of England, and a firm supporter of the principles of freedom. He was, too, a philanthropist, and deemed in sentiment, by some, a citizen of the world. He was additionally, sir, a French citizen, as well as our worthy President.

I hope it will not be thought that I mention with any invidious view this last circumstance. I state it only for the material purpose of showing the community of character between these great men, which recommended them to the fraternization of the French people. If Mr. Jefferson was not willing to accept the treaty which Mr. Fox offered him, from what administration in England can he ever expect a better? And may I not ask, also, if he can look to other men in the United States in whom he will have more confidence for their skill and integrity, than in those whom he employed in the late negotiation? We have all heard, that Mr. Monroe was his early and bosom friend, and we have all seen that he has been his favorite minister.

Let us also not forget the time when the treaty was concluded: no time could have been more propitious; it was at the moment when England was sinking under the triumphs of her adversary. Bonaparte had just broken to pieces the power of Prussia, driven the Russians to their frontier, and converted their emperor from an enemy into an ally. If you are not satisfied with the terms which England was willing to grant you at a moment of depression, can you look for better when she has less to fear from your enmity, or to hope from your friendship?

You find, sir, that your President was favored by every circumstance in the negotiation of the treaty which he finally rejected. It is not a little remarkable that he should have undertaken to reject this treaty, without consulting the Senate, his constitutional advisers. He was in possession of a copy of the treaty while the Senate were in session; they were not allowed to see it: he would not trust their opinions upon it. They might have approved it; and the responsibility would have been still greater to have rejected it, after they had agreed to it.

my duty to express my conviction, though I may happen to be wrong.

To me it has always appeared that your President was taken by surprise, when he found a British treaty laid at his door. His instructions to his ministers precluded the possibility of a treaty, and it never entered his head that they would have been daring enough to conclude a treaty against his orders. But the ministers having obtained what they considered the substance, disregarded the form, and sent a treaty as little looked for as desired. I do not mean to contend that the President was bound to lay this treaty before the Senate, but in exercising the power to reject it, without their advice, he took upon himself a great reponsibility, and is answerable for all the consequences of an act exclusively his own. To this act, in my opinion, may be attributed the present embarrassments of our country. Had the treaty been accepted, our trade would have flourished as heretofore, and with it our agriculture, manufactures and the fisheries. But it pleased our chief magistrate to reject it, and every day has since added to the gloom which has spread over our country. In this condition was the state of our affairs, when an unexpected event occurred, calculated to inflame to the highest pitch the animosity of our citizens against the British government. I allude to the attack of the Leopard upon the Chesapeake, in June, 1807. In relation to this outrage, the people of America felt but one sentiment. A more wanton, flagitious and perfidious act was never perpetrated. It is an act which America never will nor ought to forgive, till it is expiated by adequate satisfaction. But still, sir, we must restrain our indignation, while we inquire whose act it was, and who is answerable for it. The material inquiry is, was it or has it become the act of the British government?

The British minister, as soon as the news of the occurrence reached him, voluntarily and unasked, declared, that it was unauthorized by the government. He disavowed it in parliament, and the king himself confirmed the disavowal. It rested, then, as the act of Admiral Berkeley. The nation, however, were bound to make us satisfaction for the injury done us by their public servant. If they refuse adequate satisfaction, they adopt the act. The government were sensible of this obligation, and they took steps to comply with it. They sent a special minister for the sole purpose of making reparation for the injury we had suffered. This minister we received, and agreed to consider the outrage which had been committed, as the act of Berkeley. Considered as the act of the government, it would have been an act of open war. You commence a negotiation as to the terms of reparation; but here the same spirits which rejected the treaty baffles every effort to accommodate this new cause of offence.

When informed of the attack upon one of our public vessels by a British man-of-war, under the orders of an admiral, our government had reason to apprehend that no individual, however high in rank, would have hazarded so daring an outrage, without the authority of his government.

With this view, and to preserve peace and tranquillity in our harbors, we may consider the President as justified in issuing his proclamation, interdicting the entrance of British armed ships into the waters of the United States. But, sir, the moment it was ascertained that the act of Berkeley was unauthorized; so soon as the government had solemnly disavowed it and offered reparation, the proclamation ought to have been withdrawn. Are you permitted to punish a nation for the acts of its subjects, in which it does not participate? The law and the practice of civilized nations, on this point, is explicit and uniform. When the subject of one power offends against the sovereignty of another, this will not justify retaliation upon other subjects of the same power with the one who offended. It has uniformly been our own doctrine, and it is the common interest of mankind to maintain it, that in such case you must apply to the sovereign of the party offending, and abstain from any act of hostility, till he refuses you reparation. This course our government did not pursue; for the act of an individual they retaliated against his nation.

Upon the grounds which have been stated, you may excuse the issuing of the proclamation; but what excuse is there for its continuance, when we acknowledge ourselves, in treating for reparation, that the act complained of, is the act of an individual, and not of his government? A proclamation like the one issued, without adequate cause, was a breach of neutrality, and a just cause of war. For, to admit into your ports, and grant succor to the armed ships of one belligerent, while you exclude those of the other, is not consistent with that impartiality which belligerents are entitled to claim from neutrals. The point was so understood, and so felt by the British government; and they required, as they had a right to do, that, as they had not committed the act complained of, that the proclamation, which had an operation or appearance of hostility against them, should be recalled. If they refused reparation, we had a right to redress ourselves; but had we a right to take the redress into our own hands, and, at the same time, to require them to make us reparation? When you ask justice, you must expect to do it. A nation should be as ready to perform its duties, as to insist upon its rights. The British government had given sufficient evidence of a disposition to grant satisfaction for the injury done us, by sending to the country a special minister for the purpose; that minister was instructed to make voluntary reparation, but to grant none under the coercion of the proclamation. In his first communication to the Secretary of State, he informed him, that his powers did not allow him to make reparation, unless the proclamation was withdrawn. The affair was then

managed with sufficient adroitness to catch the popularity of the country: when it was known that the proclamation must be first withdrawn, its revocation and the reparation were proposed by the secretary, as simultaneous acts. Why was this proclamation so tenaciously insisted on? If you had revoked it, and the reparation offered was deemed insufficient, you would have had no difficulty in renewing it. It is no task to our President, to issue a proclamation: at most, we contend only for a point of etiquette, a thing important, perhaps, in a monarchy, but very little respected among us republicans. Give me leave to say, that in this negotiation, I soon became persuaded that the difference in question was not to be settled by itself, but was to stand open in the general account. If there had been a sincere desire to settle it, the paltry measure of the proclamation would not have formed an obstacle for a moment.

I have here a new and great proof that the executive is not sincerely desirous of a full and friendly settlement of all differences with England. It may be difficult to trace the motive which governs; but I can plainly discover the same spirit now, which agitated the nation in 1795; a spirit then subdued by the mighty influence of Washington, but which has since risen with increased strength, and now dominates.

I consider, sir, that the measures of the administration have been, not only insincere, but extremely feeble; they will not settle their differences with England, and yet have not courage openly to quarrel with her; they pass a non-importation act to punish the impressment of seamen and the aggressions upon our carrying trade; they exclude, by proclamation, British armed ships from our waters, to avenge the outrage on the Chesapeake: and what benefit to ourselves or detriment to our adversary, have these measures produced? They are calculated to increase the animosity between the nations, but I know of no other effect they can produce. So far, indeed, have they been from constraining Britain to accede to our terms, that they have rendered her more regardless of our rights and interests. She has since given us new and more feeling causes of complaint, by her orders in council of the 7th of January, and the 11th of November, 1807. These orders take from us the trade of nearly all Europe. They are the counterpart of the French decrees. God forbid that I should justify them! I will never admit that France or England have a right to make laws for the ocean: nor shall I ever hesitate, when they insist upon the execution of such laws, to declare myself for war. I am as free as any gentleman in this Senate, to protest against submission to the decrees of France, or the orders of England; but is not submission to the decrees as disgraceful as submission to the orders? The gentleman from Virginia said nothing of the decrees,—nothing of a war with France,—

We have, sir, to choose our enemy between these two nations. We are hardly equal to a contention against both at the same time. How does the case stand in relation to them? The Emperor first issues his Berlin decree, interdicting our trade to England and her colonies. England then gave us notice, if you allow France to prevent your trading with us, we will not suffer you to trade with France. If you are tame enough to submit to a French decree, you will surely not be too proud to yield to a British order. Assure us that you will resist the execution of the decree, and we will not retort its principles upon you. This our government declined doing, and left England to pursue her own course. Her government then issues the order of the 11th of November, retaliating the Berlin decree. I do not defend this order; but if the administration had resisted, as they ought to have done, the Berlin decree, we should not have seen the order. What now is to be done? England insists on her orders, as a measure of retaliation against France. Prevail on France to repeal her decrees, or agree to resist the execution of them: and if England then executes her orders, I will be as free as any man to go to war with her.

No such course has been taken, but what have we done? Laid an embargo. And for what purpose did we lay the embargo? This is a subject of conjecture to some; but our government tells us, it was to preserve our ships, our sailors, and our mercantile capital. Some have said, to preserve them from the operation of the orders in council. When the embargo was laid, the orders in council were not known in this country. Of this fact I want no stronger proof, no stronger can exist, than that the President, in his message to Congress, in which he recommends the embargo, says not a word of these orders in council. No, the embargo was not produced by the orders in council, nor by any thing which we heard from England, but by news which had then been recently received from France.

We are told the embargo was to save our ships, our sailors, and mercantile capital. I do not believe that such was its object; but if such were its purpose, we have been miserably disappointed. The embargo, for a short period, might have been a prudent measure. As a step of precaution, to collect our seamen and mercantile capital, I should never have complained of it. But it is insulting to common sense, to propose it as a scheme of permanent security, as it must daily consume, and finally annihilate the objects of its preservation. Your ships once in, and the danger known, you should have left your merchants to their own discretion. They would have calculated the profits and the perils, and been determined by the balance of the account. No class of society is more capable of taking care of itself.

It is said we have preserved our seamen. The President has as gravely repeated this re-

to devise means to dispose of our surplus revenue, at a moment when it was evident that the situation of the country would drain the treasury of its last dollar.

Where are your sailors? They are not to be seen in your ports. One-half that were employed by you have passed into foreign service, and many that remain, are to be found begging in your roads and at your doors.

As to our ships and mercantile capital, the one-tenth part of the loss from decay and waste and want of employment, would have paid for an insurance against every danger to which they would have been exposed. It is not my intention, Mr. President, to detain you with any details on this subject, as I should be compelled to repeat the same things which have been stated by other gentlemen on a former occasion. But there are some general views of the subject, not undeserving of notice, which yet remain to be taken.

If the embargo were ever a measure of precaution, it certainly has long lost that character. As a measure of coercion, it was hopeless, unless completely executed. If the party to be coerced was partially supplied, the object was defeated.

Now I ask you, sir, if your government ought not to have been acquainted with its own powers, its own people, and its own situation, well enough to have known, that it was impossible for it to confine the whole produce of the country within its limits, for any length of time? Ought they not to have foreseen the vast temptations which have arisen and presented themselves, as well to our own citizens as to foreigners, to combine, in order to break or elude your laws? Ought they not to have known, that, with our extent of coast and frontiers, with our numerous waters, that a wretched gunboat navy, aided even by ten thousand regulars, was not capable of covering our borders and shutting up the numberless outlets of the country? Could they expect that patriotism was to feed and to clothe the people of the north; or, that thousands would submit to starve, in order to contribute to the success of an experiment?

We all know, that the opposition to the embargo, in the eastern States, is not the opposition of a political party, or of a few discontented men, but the resistance of the people to a measure which they feel as oppressive and regard as ruinous. The people of this country are not to be governed by force, but by affection and confidence. It is for them we legislate, and if they do not like our laws, it is our duty to repeal them.

It is madness to talk of forcing submission, when there is general dissatisfaction. Your government is in the hands of the people; it has no force but what it derives from them; and your enforcing laws are dead letters, when they have once been driven to resist your measures of oppression. Never was a system more completely tried than this embargo. Never were the sufferings which this miserable system has caused, if, in looking abroad, we could discover that the nations who have injured and offended us, felt its oppression only equally with ourselves. But when we find that we have been scourging ourselves for their benefit and amusement, when they can tell us, with indifference and contempt, that they feel for us, but that we must correct our own folly; instead of meeting with the poor comfort which we expected, we are overwhelmed with accumulated mortification.

Was this a measure against France? No; the emperor commends the magnanimous sacrifice which you have made of your commerce rather than submit to British tyranny on the ocean. His imperial majesty never approves what he does not like; and he never likes what does not comport with his own designs.

I consider it as admitted, that the embargo was intended to coerce England; and the gentleman from Virginia now contends that if it had been strictly executed, it would have had that effect. Nothing has happened that common foresight might not have foreseen. The gentleman has read to you extracts from an English pamphlet, published before the embargo was laid, which predicts the very evasions of the law, the discontents it would produce, and the opposition it would meet with, which we have all had the melancholy opportunity of witnessing. I know the pamphlet was referred to for another purpose—to show that British gold or influence had corrupted or seduced the Vermontese, before the embargo was imposed. The gentleman may believe the fact to be so if he pleases; but I say, sir, that your government here, with all its means of information, ought to have known as much about the condition of Vermont as a pamphleteer on the other side of the Atlantic.

It seems now to be admitted, and the fact is too evident to be denied, that the embargo has failed in its coercive effect upon Britain. The want of bread, cotton, or lumber, has neither starved her subjects, nor excited them to insurrection. Some gentlemen have had shrewdness enough to discover an effect in an English price current, which might, to be sure, have been owing to the embargo, or might have been produced by the operation on the market of some private speculations. But it has enriched Canada, and has taught the islands their policy and ability to live without us.

Would to God, Mr. President, that the embargo had done as little evil to ourselves as it has done to foreign nations! It is ourselves who are the victims of the miserable experiment. Your treasury will lose at least fifteen millions of dollars, and your country, in addition, not less than forty. This tax has not been so much felt, though it has not in truth been less paid, because the embargo has not taken the money out of our pockets, but only prevent-

tile to the genius of our government. It calls for an increase of your regular army, and a vast augmentation of your military force. Ten thousand bayonets were not sufficient to enforce it, but fifty thousand volunteers, (as I have seen by a bill on the table,) were to be invited to assist in its execution. That measure of an administration which arms citizen against citizen, or requires the soldier to act against the citizen, is baneful to liberty. If persevered in there would soon be an end of free government. The effect is also to be deprecated upon the spirit of your military. They are called upon to execute laws they are unable to construe, and, in obeying their orders, are exposed to the commission of murder. Your naval forces are sent out to cruise, not for enemies, but for defenceless fellow-citizens, and they return to boast not of a gallant battle, but of a miserable seizure, which may bring poverty upon some wretched family in their own country.

It has been often said in defence of the embargo, that the nation had nothing left but that measure, submission, or war. Can you distinguish between the embargo and submission? Can you pretend to say that it is a voluntary self-restriction imposed as a matter of choice? Can it be denied that it has been forced upon us by the conduct of one or both of the belligerents? And with a full knowledge of the fact, can you describe it as any thing but vile, abject submission? France tells you, you shall not trade to Britain; you obey her: Britain then tells you, you shall not trade to France; you submit. You have not resisted the decrees or orders, but have complied with the object of both. We have borne the burden of the embargo till it has almost broke our backs, and even when we are sinking under it, we pretend to say it was no task to bear it. In this case, it is then said, there only remained submission or war. Submission I put out of the case. I trust in God it never entered into the head of one American! But I deny that war is necessarily the alternative; and I never will admit it till I see sincere efforts made to accommodate our differences with England. The President, in his message at the opening of Congress, would give us the impression that Britain had refused the last and the fairest offer it was in the power of our government to make in order to preserve peace. It will be important for us to understand the nature and extent of that offer. The proposition no doubt was made by Mr. Pinkney, in conformity to his instructions. To avoid error, I will take the liberty of reading to the Senate the words of Mr. Pinkney to Mr. Canning on the subject, in his letter of the 23d of August last:—

"I had the honor to state to you, sir, that it was the intention of the President, in case Great Britain repealed her orders as regarded the United States, to exercise the power vested in him by the act of the last session of Congress, to declare by proclamation that the edicts of France had been revoked, and that they ceased to violate the neutral commerce of the United States under certain conditions, to suspend the operation of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, and the several supplementary acts thereto,' by suspending the embargo law and its supplements as regards Great Britain. I am authorized to give you this assurance in the most formal manner."

Now, sir, what is the amount of this boasted offer? Nothing more than the assurance of our minister of an intention of the President to remove the embargo, in case the orders in council were actually repealed. Great Britain was to repeal her orders, allow the President to make the most of that act with her enemy, and trust to his executing his good intention when it should suit his good pleasure. The offer to England related only to the embargo, when this experimental measure, so far from being injurious to her, was adding to her wealth and strength. It leaves her navigation without a rival on the ocean, and has restored to her more seamen than she could have impressed in ten years. Well may Mr. Canning say, there is no assignable relation between the removal of the embargo, and the repeal of the orders in council. The President had instructed his minister to assure the British government, that the embargo was designed solely as a municipal regulation, and not as an act in any degree hostile to them. The orders in council were a measure of hostility against France; and we offer to revoke a municipal regulation operating in favor of Britain, if she will relieve us from the pressure of a measure adopted against her enemy. But let me ask, was there any offer made to rescind the proclamation or to repeal the non-importation law? Two measures much more offensive and hostile to Great Britain than the embargo. With these laws in force, it was a mere mockery to offer the removal of the embargo. What more proof do we want, than this transaction affords, that the executive has not been sincere in his endeavors to restore a good understanding between this country and England. And therefore it is that I contend that war is not unavoidable with that nation. I confess, sir, I should think a war with England one of the greatest evils that could befall this country; not only from the sufferings which it would inflict upon it, but also from the fatal connection with France to which it would give birth.

We have seen what has been the course of the government in relation to Britain: and I will beg a few moments to examine what has been its conduct in regard to France? The last proposition made to Britain is well known; the documents fully disclose it; but what at the same time was proposed to the French government? This we know little of. We have not been furnished with the correspondence with that government on the subject. The transaction is covered with a dark and impenetrable veil. The President tells us in his message that the

gerents, and it would seem from what he hints, that the offer to France, in case she repealed her decrees, was to join her in the war against England. It cannot be denied that we have lost more by the spoliations, and have been more harassed under the arbitrary edicts of France, than of England. By the treaty of 1800, we gave up more than twenty millions of dollars which had been seized, and, against all right, confiscated in France. Since that time, we are officially informed, that an amount nearly equal has been seized and confiscated or sequestered. She has wantonly burnt our ships on the ocean and made no compensation. Her Berlin decree of the 21st of November, 1806, commenced the present system of outrage upon neutral rights. In effect, it interdicts all trade with England and her colonies. This is followed by the Milan decree of the 17th of December, 1807. Under this edict, an American vessel which has been searched or visited against her will, by a British cruiser, or is proceeding to or returning from England, is liable to be captured as good prize. And finally, to complete this monstrous system, comes the Bayonne decree, the 17th of April, 1808, which declares every American vessel found upon the ocean liable to seizure and confiscation. Opposed to these accumulated violations of our neutral rights, what steps has our government taken against France? Have they passed a non-importation act, issued a proclamation, or imposed an embargo? The last measure is general in its terms, but is avowedly against England alone. No, they have contented themselves with memorializing, remonstrating and protesting. Against England we took every step short of war, against France we have employed nothing but gentle words. Has your government then shown an equal resentment against the wrongs suffered from these two powers?

It may be from the habit of enduring; but we do not feel an aggression from France with the same quickness and sensibility that we do from England. Let us see, sir, the same conduct observed with regard to both belligerents; let us see the impediments to a friendly settlement with Britain removed; let us witness a sincere effort made to regulate the intercourse of the two nations by a treaty, formed on principles of mutual concession, and equal interest, and I will answer for it, if Great Britain persists in her orders, that you will find no division in this country on the question whether we shall submit to them or resist their execution.

Permit me, Mr. President, to detain you a few moments longer. I am sensible that I have already trespassed upon the indulgence of the Senate, and I shall hasten to conclude the remarks which I have thought it of importance to make upon the resolution which has been submitted.

The objects of the resolution are embargo, non-intercourse and non-importation as to one-half of the channel of your rivers is opened, the other is to be embargoed; and vessels may proceed to sea, but they must not pass through the embargoed waters. I can well conceive of one port in the United States being embargoed and the others open: but of an embargo which gives the right to every vessel in a harbor to leave it, I confess I have no comprehension. I should have supposed that the honorable gentleman might have ventured to repeal the embargo generally, and trusted to the provisions on the subject of non-intercourse to accomplish what seems to be the object in view, in partially retaining it. Sir, it is a strange infatuation, that the name of this odious measure should be preserved, when the thing itself is abandoned.

And what, sir, are we to gain by a non-intercourse? It can never benefit the nation; it is nothing more than a part of that miserable musquito system, which is to sting and irritate England into acts of hostility. I have no doubt she sees the object, and she will take care not to give us the advantage which would be derived from war being commenced on her part. But I ask, what will be the effect of non-intercourse? I see no other than that it will require two voyages instead of one, to transport our produce to the markets of the interdicted countries. You carry your merchandise to Lisbon, and there deposit it; and from thence it is carried in foreign ships to England and France. Who will pay the expense of this circuity of transportation? The United States. It will be deducted from the price of your produce. Can the gentleman contrive no system which will operate with less severity upon ourselves than upon those whom he deems our enemies? If the resolution has no design, but what is apparent on the face of it, it is evident that its sole operation is against ourselves. Its inevitable effect will be to reduce the profit of what we have to sell, and to increase the expense of what we have to purchase. I can perceive also, sir, that it will be a measure of unequal pressure upon different sections of the country; and that its weight will fall heaviest upon that part of the Union already too much galled to suffer any addition to its burden. The lumber, the live stock, the fish, and the articles of common exportation to the eastward, will not bear the expense of double freights. Will they thank you for repealing the embargo, and adopting a substitute which continues to shut the ports of the north, while it opens those of the south? Will they thank you for a measure which deprives them even of the miserable consolation of having fellow-sufferers in their distress? If this resolution be adopted, you do nothing to heal the wounds which you have inflicted. If New-England loses her trade, she will derive no comfort from its being under a non-intercourse, and not under an embargo law.

It is a part of the resolution, that we are to import no produce or merchandise from England or France, or their colonies. Do you

be executed in time of peace? As to the manufactures of England, she can make them the manufactures of any country in Europe: she will give you the exact marks, and stamps, and packages of any place to which your trade is open, and she will defy you to distinguish her fabrics from those they attempt to imitate. But, sir, the consequence chiefly to be dreaded from such a measure, would be the practice of smuggling, to which it would certainly give birth. Can you expect in one moment to change the habits of a whole country? We know, sir, the power of habit: it is a second nature. Can an act of Congress instantly change your nature? No, sir, they who can afford it, will have what they have been accustomed to. They will pay any price for articles, without which, perhaps, they can scarcely exist. Smuggling must follow, and will follow with forgery and perjury in its train. It is the honor and character of your trading people which now protects you from smuggling. Break down this sentiment, habituate them to perjury, destroy the disgrace attached to this violation of your law, and you lose half the security and means you have in the collection of your revenue.

The complaint has been made, that while we find fault with the measures proposed, we refuse to point out the course we would have the administration to pursue. I have, sir, no hesitation on my part, to disclose my opinion, or to offer the humble assistance of my advice on the subject. In a few words, I will tell you what I would do; place England and France upon the same footing, by repealing the non-importation act, rescinding the proclamation, and repealing the embargo. Then ask for, and insist upon adequate reparation for the affair of the Chesapeake. Make a treaty with Great Britain, if as good terms could be obtained as those in either of the treaties which have been refused. Agree to resist the execution of the Berlin decree, and if she afterwards persisted in her orders in council, declare war against her. Such would be my course. War would be the last resort; and I believe, in my conscience, we should never be driven to it, if the course were pursued with a sincere disposition to preserve peace.

Permit me, sir, to notice one remark of the honorable gentleman from Virginia, which had escaped me, and I am done. The gentleman told us, that the removal of the embargo was designed as a concession to our eastern brethren. I rejoiced to hear this sentiment of forbearance. Such sentiments give hopes that the Union may still be preserved. We have been led to the brink of a tremendous precipice; another false step, and we shall be lost in the abyss. Our safety is in treading back our steps. We have lost our way. Some ignis fatuus has beguiled us. There is a path of safety and honor—the path the nation once trod. Let us endeavor to regain it, and invoke the spirit of WASHINGTON to lead us once more into it!

THE ARMY AND NAVY.*

We have been reproached for having voted for an increase of the navy, while we are opposed to any augmentation of the army. I did vote for the four additional frigates, and I should have been willing to vote for four ships-of-the-line. The United States require, for the protection of their territory, a standing army of a certain amount. Our present military establishment exceeds ten thousand men. These are designed for the security of our persons and property upon land; and is not the person and property of the citizen entitled to protection on the ocean?

God has decided that the people of this country should be a commercial people. You read that decree in the sea-coast of seventeen hundred miles which he has given you; in the numerous navigable waters which penetrate the interior of the country; in the various ports and harbors scattered along your shores; in your fisheries; in the redundant productions of your soil; and more than all, in the enterprising and adventurous spirit of your people. It is no more a question whether the people of this country shall be allowed to plough the ocean, than it is whether they shall be permitted to plough the land. It is not in the power of this government, nor would it be if it were as strong as the most despotic upon the earth, to subdue the commercial spirit, or to destroy the commercial habits of the country.

Young as we are, our tonnage and commerce surpass those of every nation upon the globe but one, and if not wasted by the deprivations to which they were exposed by their defenceless situation, and the more ruinous restrictions to which this government subjected them, it would require not many more years to have made them the greatest in the world. Is this immense wealth always to be exposed as a prey to the rapacity of freebooters? Why will you protect your citizens and their property upon land, and leave them defenceless upon the ocean? As your mercantile property increases, the prize becomes more tempting to the cupid-

* This extract is taken from Mr. Bayard's Speech in the United States Senate, on the twelfth of February, 1810: on the "bill to engage a corps of volunteers for a short period in the service of the United States."

the ruins and aggressions which you have experienced will multiply, nor will they be restrained while we have no appearance of a naval force.

I have always been in favor of a naval establishment—not from the unworthy motives attributed by the gentleman from Georgia to a former administration, in order to increase patronage, but from a profound conviction that the safety of the Union and the prosperity of the nation depended greatly upon its commerce, which never could be securely enjoyed without the protection of naval power. I offer, sir, abundant proof for the satisfaction of the liberal mind of that gentleman, that patronage was not formerly a motive in voting an increase in the navy, when I give now the same vote, when surely I and my friends have nothing to hope, and for myself, I thank God, nothing to wish from the patronage it may confer.

You must and will have a navy; but it is not to be created in a day, nor is it to be expected, that in its infancy, it will be able to cope foot to foot with the full grown vigor of the Navy of England. But we are even now capable of maintaining a naval force formidable enough to threaten the British commerce, and to render this nation an object of more respect and consideration.

In another point of view, the protection of commerce has become more indispensable. The discovery is completely made, that it is from commerce that the revenue is to be drawn which is to support this government. A direct tax, a stamp-act, a carriage tax, and an excise, have been tried; and I believe, sir, after the lesson which experience has given on the subject, no set of men in power will ever repeat them again, for all they are likely to produce. The burden must be pretty light upon the people of this country, or the rider is in great danger. You may be allowed to sell your back lands for some time longer, but the permanent fund for the support of this government is the imports.

If the people were willing to part with commerce, can the government dispense with it? But when it belongs equally to the interest of the people and of the government to encourage and protect it, will you not spare a few of those dollars which it brings into your treasury, to defend and protect it?

In relation to the increase of a permanent military force, a free people cannot cherish too great a jealousy. An army may wrest the power from the hands of the people, and deprive them of their liberty. It becomes us, therefore, to be extremely cautious how we augment it. But a navy of any magnitude can never threaten us with the same danger. Upon land, at this time, we have nothing—and probably, at any future time, we shall have but little—to fear from any foreign power. It is upon the ocean we meet them; it is there our collisions arise; it is there we are most feeble, most vulnerable, and most exposed; it is there by consequence, that our safety and prosperity must require an augmented force.

Engd by W G. Jackman.

N.Y. D.Appleton & Co.

WILLIAM PINKNEY.

This celebrated man, a native of Annapolis, Maryland, was born on the seventeenth of March, 1764. At an early age he entered King William School, in his native town, and remained there until the completion of his thirteenth year. In this institution, and, subsequently, for a short period under the guidance of a private tutor, he acquired a thorough English education, and the rudiments of the classics. About this time his father, an adherent to the side of royalty during the war of the Revolution, was dispossessed of his property by confiscation; became reduced and dependent, and young Pinkney was obliged to relinquish his studies. From this time until he commenced the study of law with Judge Chase, in 1783, little is recorded of him except that he directed his attention to medicine, in which he soon found that he had mistaken his vocation.

He was admitted to the bar in 1786, and the same year removed to Harford county and commenced practice. "His very first efforts," says Wheaton, "seem to have given him a commanding attitude in the eye of the public. His attainments in the law of real property and the science of special pleading, then the two great foundations of legal distinction, were accurate and profound; and he had disciplined his mind by the cultivation of that species of logic, which, if it does not lead to the brilliant results of inductive philosophy, contributes essentially to invigorate the reasoning faculty, and to enable it to detect those fallacies which are apt to impose upon the understanding in the warmth and hurry of forensic discussion. His style in speaking was marked by an easy flow of natural eloquence and a happy choice of language. His voice was very melodious, and seemed a most winning accompaniment to his pure and effective diction. His elocution was calm and placid—the very contrast of that strenuous, vehement, and emphatic manner, which he subsequently adopted."

In the Spring of 1788 he was elected to represent the county of Harford in the Maryland convention, for the ratification of the Federal Constitution. The history of his career in that assembly is unfortunately lost. Shortly after the adjournment of the convention, he was chosen a member of the House of Delegates, and remained in that station until the year 1792. His speeches there upon the subject of the voluntary emancipation of slaves, breathe "all the fire of youth and a generous enthusiasm for the rights of human nature," yet they are not an earnest of those splendid powers of rhetoric and reasoning which were so eminently displayed in his subsequent years.

Mr. Pinkney married Miss Ann Maria Rodgers, a sister of Commodore Rodgers, in 1789. The next year he was elected a member of Congress, but declined serving in that office on account of his private and professional duties. In 1792, he became a member of the Executive Council of Maryland, and continued in that office until his election to the State Legislature, when he resigned. Amidst these several public duties he continued his professional pursuits with unabated vigor and attention, and gradually attained a prominent position in the eyes of the public, as a legislator and an erudite lawyer. "His acuteness, dexterity, and zeal, in the transaction of business," says one of his cotemporaries; "his readiness, spirit, and vigor in debate; the beauty and richness of his fluent elocution, adorned with the finest imagery drawn from classical lore and a vivid fancy; the manliness of his figure and the energy of his mien,

united with a sonorous and flexible voice, and a general animation and graceful delivery," were the qualities by which he attained that elevated position.

In 1796 he was associated with Christopher Gore in the commission on the part of the United States, under the seventh article of Jay's Treaty; and in the various discussions which arose during the continuance of the negotiations, took an active and important part. His written opinions, as published in his Life by Mr. Wheaton, are spoken of by that learned man as finished models of judicial eloquence, uniting powerful and comprehensive argument with a copious, pure and energetic diction.*

Mr. Pinkney returned to the United States in the month of August, 1804, and resumed the practice of his profession. Soon after he changed his residence from Annapolis to Baltimore, and in 1805 was appointed attorney-general of Maryland. Here he continued until the year 1806, when he was again sent on a mission to England, in conjunction with Mr. Monroe. During the next year the latter gentleman returned to America, and Mr. Pinkney was left to perfect the negotiations alone. The result is too well known to require but a notice here. In February, 1811, he took leave of the British court, and soon after embarked for Annapolis, where he arrived in the following June. On his arrival he was elected to the Senate of his native State, and, in the succeeding December, Mr. Madison tendered him the Attorney-Generalship of the United States. This office he accepted, and at once entered upon its duties, in the performance of which he evinced his characteristic ability.

During the violent and protracted controversy consequent upon the declaration of war in 1812, Mr. Pinkney maintained a vigorous defence of the policy of the administration. His pamphlet on that subject, over the signature of *Publius*, addressed to the inhabitants of Maryland, had a powerful effect. A few paragraphs from that production will show the character of his sentiments upon the then momentous and all absorbing question:—"That the war with England is irreproachably just," says he, "no man can doubt who exercises his understanding upon the question. It is known to the whole world, that when it was declared, the British government had not retracted or qualified any one of those maritime claims which threatened the ruin of American commerce, and disparaged American sovereignty. Every constructive blockade, by which our ordinary communication with European or other marts had been intercepted, was either perversely maintained, or made to give place only to a wider and more comprehensive impediment. The right of impressment in its most odious form, continued to be vindicated in argument and enforced in practice. The rule of the war of 1756, against which the voices of all America was lifted up in 1805, was still preserved, and had only become inactive because the colonies of France and her allies had fallen before the naval power of England. The Orders in Council of 1807 and 1809, which in their motive, principle, and operation, were utterly incompatible with our existence as a commercial people; which retaliated with tremendous effect upon a friend the impotent irregularities of an enemy; which established upon the seas a despotic dominion, by which power and right were confounded, and a system of monopoly and plunder raised, with a daring contempt of decency, upon the wreck of neutral prosperity and public law; which even attempted to exact a tribute, under the name of an impost, from the merchants of this independent land, for permission to become the slaves and instruments of that abominable system; had been adhered to (notwithstanding the acknowledged repeal of the Berlin and Milan decrees in regard to the United States) with an alarming appearance of a fixed and permanent attachment to those very qualities which fitted them for the work of oppression and filled us with dismay. Satisfaction, and even explanation, had been either steadily denied, or contemptuously evaded. Our complaints had been reiterated till we ourselves blushed to hear them, and till the insolence with which they were received recalled us to some sense of dignity. History does not furnish an example of such patience under such an accumulation of injuries and insults. * * * * * * * * * * * * * * * *

"'Nothing is more to be esteemed than peace,' (I quote the wisdom of Polybius,) 'WHEN IT LEAVES US IN POSSESSION OF OUR HONOR AND RIGHTS; but when it is joined with loss of free-

dom, or with infamy, nothing can be more detestable and fatal.' I speak with just confidence when I say that no federalist can be found who desires with more sincerity the return of peace than the republican government by which the war was declared. But it desires such a peace as the companion and instructor of Scipio has praised—a peace consistent with our rights and honor, and not the deadly tranquillity which may be purchased by disgrace, or taken in barter for the dearest and most essential claims of our trade and sovereignty. I appeal to you boldly: Are you prepared to purchase a mere cessation of arms by unqualified submission to the pretensions of England? Are you prepared to sanction them by treaty and to entail them upon your posterity, with the inglorious and timid hope of escaping the wrath of those whom your fathers discomfited and vanquished? Are you prepared, for the sake of a present profit, which the circumstances of Europe must render paltry and precarious, to cripple the strong wing of American commerce for years to come, to take from our flag its national effect and character, and to subject our vessels on the high seas, and the brave men who navigate them, to the municipal jurisdiction of Great Britain? I know very well that there are some amongst us (I hope they are but few) who are prepared for all this and more; who pule over every scratch occasioned by the war as if it were an overwhelming calamity, and are only sorry that it is not worse; who would skulk out of a contest for the best interests of their country to save a shilling or gain a cent; who, having inherited the wealth of their ancestors without their spirit, would receive laws from London with as much facility as woollens from Yorkshire, or hardware from Sheffield. But I write to the great body of the people, who are sound and virtuous, and worthy of the legacy which the heroes of the revolution have bequeathed them. For *them*, I undertake to answer, that the only peace which they can be made to endure, is that which may twine itself round the honor of the people, and with its healthy and abundant foliage give shade and shelter to the prosperity of the empire. * * * * * * * * * * * *

We are at war, and the single question is, whether you will fly like cowards from the sacred ground which the government has been compelled to take, or whether you will prove by your actions that you are descended from the loins of men who reared the edifice of American liberty, in the midst of such a storm as you have never felt.

"As the war was forced upon us by a long series of unexampled aggressions, it would be absolute madness to doubt that peace will receive a cordial welcome, if she returns without ignominy in her train, and with security in her hand. The destinies of America are commercial, and her true policy is peace; but the *substance* of peace had, long before we were roused to a tardy resistance, been denied to us by the ministry of England; and the *shadow* which had been left to mock our hopes and to delude our imaginations, resembled too much the frowning spectre of war to deceive any body. Every sea had witnessed, and continued to witness, the systematic persecution of our trade and the unrelenting oppression of our people. The ocean had ceased to be the safe highway of the neutral world; and our citizens traversed it with all the fears of a benighted traveller, who trembles along a road beset with banditti, or infested by the beasts of the forest. The government, thus urged and goaded, drew the sword with a visible reluctance; and, true to the pacific policy which kept it so long in the scabbard, it will sheathe it again when Great Britain shall consult her own interest, by consenting to forbear in future the wrongs of the past."

Soon after the declaration of war Mr. Pinkney was chosen to the command of a volunteer corps which had been raised in Baltimore for the defence of that place; and in 1814 he marched with his company to Bladensburg, where he was severely wounded in the engagement between a small body of Americans and the British, which took place on the twenty-fourth of August of that year. On the conclusion of peace he resigned his command, and devoted himself entirely to the practice of his profession, having previously retired from the office of Attorney General of the United States.

In 1815 he was associated with Mr. Dallas* in the celebrated case of the Nereide, before the

* Alexander J. Dallas was born in the island of Jamaica, on the 21st of June, 1759. His father was Robert C. Dallas, a native of Scotland, and a physician of some eminence. Young Dallas studied law. In 1780, he married a lady of

Supreme Court of the United States,* in which he delivered one of his most powerful arguments. The same year he was chosen to the lower House of Congress, to represent the city of Baltimore, and a short time subsequent to taking his seat, he offered, in an elaborate and eloquent speech, the bill to carry into effect the convention between the United States and Great Britain of July 1815. In March of the following year, he was again called into the diplomatic service of his country, by Mr. Monroe. He was now appointed on the double mission, as minister plenipotentiary to Russia, and special envoy to the court of Naples. This appointment he accepted with great satisfaction. He desired to retire for a time from the intense and unremitting labors of his profession, that he might refresh himself and return to it with increased vigor. In a conversation about this time he said:—"There are those among my friends who wonder that I will go abroad, however honorable the service. They know not how I toil at the bar; they know not all my anxious days and sleepless nights; I must breathe awhile; the bow for ever bent will break:" "Besides," he added, "I want to see Italy: the orators of Britain I have heard, but I want to visit that classic land, the study of whose poetry and eloquence is the charm of my life; I shall set my foot on its shores with feelings that I cannot describe, and return with new enthusiasm, I hope new advantages, to the habits of public speaking."

Mr. Pinkney sailed from the United States on board the Washington, ship of the line, and arrived at Naples on the twenty-sixth of July, 1816. Here he proceeded upon the business with which he was charged; which was to demand from the government of Naples indemnification for the losses which American merchants had experienced by the seizure and confiscation of their property in 1809, during the reign of Mur'at. After various conferences with the Neapolitan minister of Foreign Affairs, which ended in the refusal of the government of Naples to admit the justice of the demand, Mr. Pinkney repaired to St. Petersburgh. He remained at the Russian court two years, and at his own request, returned to America in 1818. His mode of life, the

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Devonshire, England; and after a short residence in London with Captain George Anson Byron, (who had shortly before married his sister, and who was the youngest son of Admiral Byron, and the uncle of the celebrated poet Lord Byron,) he embarked for Jamaica to recover his patrimonial inheritance in that Island. In this pursuit he was unsuccessful, and left Jamaica for the United States, and arrived at New York in June 1783. Determining to remain in this country, he removed to Philadelphia, and took the oath of allegiance to the Commonwealth of Pennsylvania, on the 17th of June, 1783. He was admitted to the bar of the Supreme Court of Pennsylvania in July, 1785, and to that of the Circuit Court of the United States in April, 1790.

In the political divisions of the country he attached himself to the Republican party, and was appointed in 1791 Secretary of the Commonwealth of Pennsylvania, by Governor Mifflin. In this station he continued until the year 1801, having been successively re-appointed by Governor Mifflin and Governor M'Kean. In 1801 he was appointed by President Jefferson the Attorney of the United States for the district of Pennsylvania. During the same year he was commissioned as Recorder of Philadelphia by the State government.

Besides the different official situations which he held, he accompanied the Governor of Pennsylvania as Aid-du-camp, and Paymaster General of the forces, in the expedition to suppress the western insurrection of 1794. On this occasion he conducted with singular diligence and activity, and his services were highly useful to the public cause.

In the early part of his professional career, having much leisure, he occupied himself with various literary undertakings, and prepared for the press the first volume of his valuable series of law reports. In 1795 he completed with universal approbation an edition of the laws of Pennsylvania, with notes, in three volumes folio. In October, 1814, he was appointed Secretary of the Treasury by President Madison, and acted as Secretary of War from the 22d of April, 1815, until the army was re-organized upon the peace establishment. His administration of the Treasury department gained him great credit.

While laboriously engaged in the trial of a cause at Trenton, New Jersey, he was attacked by a complaint to which he had for a long time been subject, and had barely time to reach his family in Philadelphia, when he died on the 16th of January, 1817.

Mr. Dallas possessed a mind highly gifted by nature, and richly cultivated with a great variety of useful and elegant knowledge. An early and frequent habit of writing had given him an uncommon facility in composition. His style, both in speaking and writing, was chaste and perspicuous: seldom embellished with rhetorical ornament, but always marked by good taste. The various public stations he had filled, his habits of diligent study, and intercourse with the most intelligent persons, had enabled him to acquire an extensive knowledge of mankind and of literature; which he imparted in his colloquial intercourse with peculiar facility and grace. His manners were highly polished, and his amiable disposition endeared him to a large circle of friends, and rendered him an ornament to the elegant society in which he moved. As an advocate he was distinguished for his patient industry—his accurate learning—and his diffusive and minute investigation of the subjects he undertook to discuss. When called to a seat in the national cabinet, besides his accustomed diligence, activity, and method in business, he displayed an energy of character not generally looked for, and showed that he possessed the bold and comprehensive views of a patriotic and enlightened statesman.—*Wheaton.*

character of his pursuits while in Russia, as well as an estimate of his talents and attainments can be well understood from the subjoined extract of a letter from a gentleman who was much in his society while in St. Petersburgh:—"I arrived in St. Petersburgh in the month of June, 1817. I carried a letter of introduction to Mr. Pinkney from our friend, Mr. Justice Story. Mr. P. received me at once with the greatest kindness and hospitality. He told me almost the first time I saw him, that he should not make a single dinner for me, or receive me with ceremony; but if I would consider myself a member of his family, and take a seat at his table constantly, when not otherwise engaged, he should be gratified. As I soon found he was in earnest, I accepted his offer almost to its full extent. I passed about two months in the city, lodging at the same hotel with him, and domesticated with his family. I saw him every day, and at almost every meal; and the recollections I have of the pleasure enjoyed in his society, are amongst those I shall longest retain.

"Of his past life, he did not speak much. I inferred, however, that he had always been a hard student, and considered himself a laborious and thorough scholar in those branches of human knowledge to which he had more particularly devoted himself. I remember that he once said to me, that he considered the late Mr. Chief Justice Parsons and himself the only men in America who had thoroughly studied and understood Coke Littleton. He appeared to estimate the legal acquirements of our professional men as of little extent, generally speaking, and to think he gave himself but little credit in thinking that he had learned more law than any other man in the country.

"He kept himself very much in private, living so, (as he said,) from motives of economy. He was in lodgings at the Hotel de l'Europe, and saw no company ceremoniously—that is, he gave no dinners, &c. He had made it known to the diplomatic circle there when he first arrived, that he should live in that style, and therefore could not reciprocate their civilities. They, however, visited him a good deal, and he accepted their invitations frequently. I understood from various quarters, and inferred from what I saw, that he stood very particularly well with the Emperor, his family, and principal ministers. His personal habits were very peculiar. His neatness, and attention to the fashionable costume of the day, were carried to an extreme, which exposed him while at home, to the charge of foppery and affectation. But it should be remembered how large a portion of his life he had spent abroad, and in the highest circles of European society. Though he undoubtedly piqued himself upon being a finished and elegant gentleman, yet his manners and habits of dress were, as it always seemed to me, acquired in Europe; and so far from being remarkable there, they were in exact accordance with the common and established usages of men of his rank and station. All who have been at any of the European courts know that their statesmen and ministers consider it a necessary part of their character to pay great attention to the elegancies and refinements of life,—and after a day passed in the laborious discharge of their duties, will spend their evenings in society, and contribute quite their share of pleasant trifling. It is their *maniere d'etre.*

"During the summer that I passed with Mr. Pinkney, his personal habits were very regular. He breakfasted late, and heartily. Then he retired to his study, and we saw him no more until dinner at six o'clock. The evening he passed with his family, or in visiting. He took very little exercise, eat and drank freely, and I thought suffered occasionally from the usual effects of a plethoric habit, with much indulgence as to food, and no attention to exercise. Undoubtedly his extreme attention to personal cleanliness contributed much to preserve his health. His family saw little company at home or abroad; he appeared to be extremely fond of them, and satisfied with passing his evenings in their society.

"As to his intellectual character, and his talents and attainments as a lawyer, a statesman, and an orator, I shall say nothing. I do not pretend to measure the extent of his mind, or to add any thing to the general voice which has placed him at the head of the great men of our country. As to his attainments and his tastes in minor matters—besides a competent share of classical learning, he had a general acquaintance with modern literature: but I do not believe that he was fond of light English literature; though he seemed to make it a point of keeping along with the age, and, therefore, read all the popular poems, reviews, and novels, and talked

about them very well. But his great forte, as to his literary accomplishments, was his thorough and exact acquaintance with the English language—with its best models of diction—with its significations, its grammar, and its pronunciation. Upon this he prided himself exceedingly, and well he might; for you know the singular art and skill with which he displayed his mastery over his own language—his power of using it with astonishing force, elegance and accuracy, in the simplest conversation upon common topics, in his legal arguments which were to instruct and influence the finest minds in the country, and in the debates of the Senate which were to affect permanently and vitally the destinies of the nation."

In 1820, after his return from Europe, having been elected by the Legislature of Maryland to the Senate of the United States, he took his seat in that body. On the fifteenth of February, of that year, he delivered his masterly speech on the Missouri Bill. In all the important measures that originated during his senatorial career, he took a prominent part; and at the same time, continued his professional labors with the severest application. It is said that his last illness was occasioned by an excessive effort in the preparation and delivery of an argument within a few days immediately preceding the attack.

In the spring of 1822, he was prostrated by a severe indisposition. He mentioned to a friend that he had sat up very late in the night on which he was taken ill, to read the *Pirates*, which was then just published, and made many remarks respecting it,—drawing comparisons between the two heroines, and criticising the narrative and style with his usual confident and decided tone, and in a way which showed that his imagination had been a good deal excited by the perusal. From this period till his death, he was a considerable part of the time in a state of delirium. But in his lucid intervals, his mind reverted to his favorite studies and pursuits, on which, whenever the temporary suspension of his bodily sufferings enabled him, he conversed with great freedom and animation. He seems, however, to have anticipated that his illness must have a fatal termination, and to have awaited the event with patient fortitude. After a course of the most acute suffering, he breathed his last on the night of the twenty-fifth of February.*

SPEECH IN THE CASE OF THE NEREIDE.†

If I were about to address this high tribunal with a view to establish a reputation as an advocate, I should feel no ordinary degree of resentment against the gentleman whom I am compelled to follow;‡ if indeed it were possible to feel resentment against one who never fails to plant a strong and durable friendship in the hearts of all who know him. He has dealt with this great cause in a way so masterly, and has presented it before you with such a provoking fulness of illustration, that his unlucky colleague can scarcely set his foot upon a single spot of it without trespassing on some one of those arguments which, with an admirable profusion, I had almost said prodigality of learning, he has spread over the whole subject. Time, however, which changes all things, and man more than any thing, no longer permits me to speak upon the impulse of ambition. It has left me only that of duty; better, perhaps, than the feverish impulse which it has supplanted; sufficient, as I hope, to urge me upon this and every other occasion to maintain the cause of truth by such exertions as may become a servant of the law in a forum like this. I shall

* In the preparation of this sketch, the editor has availed himself of the valuable work of Mr. Wheaton, published in 1826.

† At the session of the United States Supreme Court in 1815, was brought to a hearing the celebrated case of the Nereide, the claim in which had been rejected in the district court of New York, and the goods condemned upon the ground that they were captured on board of an armed enemy's vessel which had resisted the exercise of the right of search. This cause had excited uncommon interest on account of the very great importance and novelty of the questions of public law involved in it, as well as the reputation of the advocates by whom it was discussed.

The claimant, Mr. Pinto, was a native and resident merchant of Buenos Ayres, which had declared its independence of the parent country, although it had not yet been acknowledged as a sovereign State by the government of this country. Being in London, in 1813, he had chartered the British armed vessel in question, to carry his goods, and other the property of his father and sister, to Buenos Ayres,

ing squadron, was captured off the island of Madeira, after a short action, by the United States privateer Governor Tompkins.—*Wheaton's Life of Pinkney.*

be content, therefore, to travel after my learned friend over a part of the track which he has at once smoothed and illuminated, happy, rather than displeased, that he has facilitated and justified me in the celerity with which I mean to traverse it; more happy still if I shall be able as I pass along, to relieve the fatigue of your honors, the benevolent companions of my journey, by imparting something of freshness and novelty to the prospect around us. To this course, I am also reconciled by a pretty confident opinion, the result of general study as well as of particular meditation, that the discussion in which we are engaged has no claim to that air of intricacy which it has assumed; that, on the contrary, it turns upon a few very plain and familiar principles, which, if kept steadily in view, will guide us in safety through the worse than Cretan labyrinth of topics and authorities that seem to embarrass it, to such a conclusion as it may be fit for this court to sanction by its judgment.

I shall in the outset dismiss from the cause whatever has been rather insinuated with a prudent delicacy, than openly and directly pressed by my able opponents, with reference to the personal situation of the claimant, and of those with whom he is united in blood and interest. I am willing to admit that a Christian judicature may dare to feel for a desolate foreigner who stands before it, not for life or death indeed, but for the fortunes of himself and his house. I am ready to concede, that when a friendly and a friendless stranger sues for the restoration of his all to human justice, she may sometimes wish to lay aside a portion of her sternness, to take him by the hand, and exchanging her character for that of mercy, to raise him up from an abyss of doubt and fear to a pinnacle of hope and joy. In such circumstances, a temperate and guarded sympathy may not unfrequently be virtue. But this is the last place upon earth in which it can be necessary to state, that, if it be yielded to as a motive of decision, it ceases to be virtue, and becomes something infinitely worse than weakness. What may be the real value of Mr. Pinto's claim to our sympathy, it is impossible for us to be certain that we know; but thus much we are sure we know, that whatever may be its value in fact, in the balance of the law it is lighter than a feather shaken from a linnet's wing, lighter than the down that floats upon the breeze of summer. I throw into the opposite scale the ponderous claim of war; a claim of high concernment, not to us only, but to the world; a claim connected with the maritime strength of this maritime State, with public honor and individual enterprise, with all those passions and motives which can be made subservient to national success and glory in the hour of national trial and danger. I throw into the same scale the venerable code of universal law, before which it is the duty of this court, high as it is in dignity, and great as are its titles to reverence, to bow down with solemn treaty, binding upon the claimant and upon you. In a word, I throw into that scale the rights of belligerent America, and, as embodied with them, the rights of these captors, by whose efforts and at whose cost the naval exertions of the government have been seconded, until our once despised and drooping flag has been made to wave in triumph where neither France nor Spain could venture to show a prow. You may call these rights by what name you please. You may call them iron rights: I care not; it is enough for me that they are rights. It is more than enough for me that they come before you encircled and adorned by the laurels which we have torn from the brow of the naval genius of England: that they come before you recommended, and endeared, and consecrated by a thousand recollections which it would be baseness and folly not to cherish, and that they are mingled in fancy and in fact, with all the elements of our future greatness.

Mr. Pinkney contended that the property ought to be considered as good prize of war on the following grounds:

First. That the treaty of 1795, between the United States and Spain, contained a positive stipulation, adopting the maxim of what has sometimes been called the law of nations, that, "free ships make free goods;" and that although it did not expressly mention the converse proposition, that "enemy ships should make enemy goods," yet it did not negative that proposition: and as the two maxims had always been associated together in the practice of nations, the one was to be considered as implying the other.

Second. That by the Spanish prize code, neutral property, found on board enemies' vessels, was liable to capture and condemnation, and that this being the law of Spain, applied by her when belligerent to us and all other nations when neutral by the principle of reciprocity, the same rule was to be applied to the property of her subjects, which Mr. Pinto was to be taken to be, the Government of the United States not having at that time acknowledged the independence of the Spanish American colonies.

Third. That the claim of Mr. Pinto ought to be rejected on account of his unneutral conduct in hiring, and putting his goods on board of an armed enemy's vessel, which sailed under convoy, and actually resisted search.

After discussing the two first of the above-

I come now to the third and last question, upon which, if I should be found to speak with more confidence than may be thought to become me, I stand upon this apology, that I have never been able to persuade myself that it was any question at all. I have consulted upon it the reputed oracles of universal law, with a wish disrespectful to their high vocation, that they would mislead me into doubt. But—pia sunt, nullumque nefas oracula suadent. I have listened to the council for the claimant, with a hope produced by his reputation for abilities and learning, that his argument would shake from me the sturdy conviction which held me in its grasp, and would substitute for it that mild and convenient scepticism that excites without oppressing the mind, and summons an advocate to the best exertion of his faculties, without taking from him the prospect of success, and the assurance that his cause deserves it. I have listened, I say, and am as great an infidel as ever.

My learned colleague, in his discourse upon this branch of the subject, relied, in some degree, upon circumstances, supposed by him to be in evidence, but by our opponents believed to be merely assumed. I will not rely upon any circumstances but such as are admitted by us all. I take the broad and general ground, which does not require the aid of such special considerations as might be borrowed from the contested facts.

The facts, which are not contested, are these: the claimant, Manuel Pinto, intending to make a large shipment of British merchandise from London, where he then was, to Buenos Ayres, the place of his ordinary residence, for himself and other Spaniards, and moreover to take on freight, and with a view to a commission on the sales, and a share in the profits, in South America, other merchandise belonging to British subjects, chartered at a fixed price, in the summer of 1813, the British ship the Nereide, for those purposes. The Nereide was armed, either at the time of the charter or afterwards, with ten guns: and her armament was authorized by the British government, and recognized by the usual document. The merchandise being all laden, the ship sailed upon her voyage under British convoy, as the owner had, in the charter party, stipulated she should do, with the claimant, Pinto, and several passengers introduced, as I think, by him, on board, and with sixteen or seventeen hands. She parted convoy soon afterwards, and was met by the Governor Tompkins privateer, by which she was conquered, seized, and brought in as prize, after a resistance of several minutes, in the course of which the Nereide fired about twenty guns. Some of the passengers cooperated in this resistance, but Pinto did not, nor, as far as is known, did he encourage it.

I shall consider the case, then, as simply that of a neutral, who attempts to carry on his trade

force, with full knowledge that she has capacity to resist the commissioned vessels, and, if they lie in her way, to attack and subdue the defenceless merchant ships of the other belligerent, and with the further knowledge that her commander, over whom in this respect he has no control, has inclination and authority, and is bound by duty so to resist, and is inclined and authorized so to attack and subdue. I shall discuss it as the case of a neutral, who advisedly puts in motion, and connects his commerce and himself with a force thus qualified and conducted; who voluntarily identifies his commerce and himself with a hostile spirit, and authority, and duty, thus known to and uncontrollable by him; who steadily adheres to this anomalous fellowship, this unhallowed league between neutrality and war, until in an evil hour it falls before the superior force of an American cruiser, when, for the first time, he insists upon dissolving the connection, and demands to be regarded as an unsophisticated neutral, whom it would be barbarous to censure, and monstrous to visit with penalty. The gentlemen tell us that a neutral may do all this! I hold that he may not, and if he may, that he is a "chartered libertine," that he is legibus solutus, and may do any thing.

The boundaries which separate war from neutrality, are sometimes more faint and obscure than could be desired: but there never were any boundaries between them, or they must all have perished, if neutrality can, as this new and most licentious creed declares, surround itself upon the ocean with as much of hostile equipment as it can afford to purchase, if it can set forth upon the great common of the world, under the tutelary auspices, and armed with the power of one belligerent, bidding defiance to and entering the lists of battle with the other, and, at the same moment, assume the aspect and robe of peace, and challenge all the immunities which belong only to submission.

My learned friends must bear with me, if I say that there is in this idea such an appearance of revolting incongruity, that it is difficult to restrain the understanding from rejecting it without inquiry, by a sort of intellectual instinct. It is, I admit, of a romantic and marvellous cast, and may, on that account, find favor with those who delight in paradox; but I am utterly at a loss to conjecture how a well-regulated and disciplined judgment, for which the gentlemen on the other side are eminently distinguished, can receive it otherwise than as the mere figment of the brain of some ingenious artificer of wonders. The idea is formed by a union of the most repulsive ingredients. It exists by an unexampled reconciliation of mortal antipathies. It exhibits such a rare discordia rerum, such a stupendous society of jarring elements, or, to use an expression of Tacitus, of res insociabiles, that it throws into the shade

motley notion, and to forgive me for presuming to intimate, that if, after you have achieved it, you pronounce the notion to be correct, you will have gone a great way to prepare us, by the authority of your opinion, to receive as credible history, the worst parts of the mythology of the Pagan world. The Centaur and the Proteus of antiquity will be fabulous no longer. The prosopopœia, to which I invite you, is scarcely, indeed, within the power of fancy, even in her most riotous and capricious mood, when she is best able and most disposed to force incompatibilities into fleeting and shadowy combination; but if you can accomplish it, will give you something like the kid and the lion, the lamb and the tiger portentously incorporated, with ferocity and meekness co-existent in the result, and equal as motives of action. It will give you a modern Amazon, more strangely constituted than those with whom ancient fable peopled the borders of the Thermodon—her voice compounded of the tremendous shout of the Minerva of Homer, and the gentle accents of a shepherdess of Arcadia—with all the faculties and inclinations of turbulent and masculine war, and all the retiring modesty of virgin peace. We shall have in one personage the pharetrata Camilla of the Æneid, and the Penelan maid of the Metamorphosis. We shall have neutrality, soft and gentle and defenceless in herself, yet clad in the panoply of her warlike neighbors; with the frown of defiance upon her brow, and the smile of conciliation upon her lip; with the spear of Achilles in one hand, and a lying protestation of innocence and helplessness unfolded in the other. Nay, if I may be allowed so bold a figure, in a mere legal discussion, we shall have the branch of olive entwined around the bolt of Jove, and neutrality in the act of hurling the latter under the deceitful cover of the former!

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I must take the liberty to assert, that if this be law, it is not that sort of law which Hooker speaks of, when, with the splendid magnificence of eastern metaphor, he says, that "her seat is the bosom of God, and her voice the harmony of the world." Such a chimera can never be fashioned into a judicial rule fit to be tolerated or calculated to endure. You may, I know, erect it into a rule: and when you do, I shall, in common with others, do my best to respect it; but, until you do so, I am free to say, that in my humble judgment, it must rise upon the ruins of many a principle of peculiar sanctity and venerable antiquity, which "the wing of time has not yet brushed away," and which it will be your wisdom to preserve and perpetuate.

If I should be accused of having thus far spoken only or principally in metaphors, I trust I am too honest not to plead guilty, and certainly I am not ashamed to do so: for, though my metaphors, hastily conceived and hazarded, will scarcely bear the test of a severe and vigorous your indulgence, I have been betrayed into the use of them, by the composition of this mixed and (for a court of judicature,) uncommon audience. I trust that they will be pardoned upon the ground that they serve to mark out and illustrate my general views, and to introduce my more particular argument.

I will begin by taking a rapid glance at the effect which this imagined license to neutrals, to charter the armed commercial vessels of a belligerent, may produce upon the safety of the unarmed trade of the opposite belligerent; and I deceive myself greatly, if this will not of itself, dispose us to reject the supposition of such a license.

It will not be denied, that, if one neutral may hire such a vessel from a belligerent, every neutral may do so. The privilege does not exist at all, or it is universal. The consequence is that the seas may be covered with the armed ships of one of the parties to the war by the direct procurement and at the sole expense of those who profess to be no parties to it. What becomes, then, of the defenceless trade of the other party to the war? Is it not exposed by this neutral interference to augmented peril, and encountered by a new repulsion? Are not the evils of its predicament inflamed by it? Is not a more ample hostility, a more fearful array of force provided for its oppression? Can it now pass at all where before it passed with difficulty and hazard? Can it now pass without danger where before it was in perfect safety?

Suppose one of the contending powers to be greatly superior in maritime means to the other; what better expedient could be devised to make that superiority decisive and fatal, than to authorize neutrals to foster it into activity by subsidies under the name of freight, to draw it out upon the ocean, with a ripe capacity for mischief, to spread it far and wide over its surface, and to send it across every path which the commerce of the weaker belligerent might otherwise hope to traverse? Call you that neutrality which thus conceals beneath its appropriate vestment the giant limbs of war, and converts the charter party of the compting-house into a commission of marque and reprisals; which makes of neutral trade a laboratory of belligerent annoyance; which, with a perverse and pernicious industry, warms a torpid serpent into life, and places it beneath the footsteps of a friend with a more appalling lustre on its crest and added venom in its sting; which for its selfish purposes feeds the fire of international discord, which it should rather labor to extinguish, and in a contest between the feeble and the strong enhances those inequalities that give encouragement to ambition and triumph to injustice?

I shall scarcely be told that this is an imaginary evil. I shall not, in this court, hear it said, as I think it has elsewhere been said,* that the merchant vessel of a belligerent, (of Eng-

land especially,) armed under the authority of the state, and sailing under a passport which recognizes that armament, has not a right to attack, and, if she can, to capture such enemy vessels as may chance to cross her track.

[Mr. EMMET.—I shall maintain that she has no such right. She can capture only when she is herself assailed. She may be treated as a pirate, if she is the assailant. Where are the authorities that prove the contrary?]

Where are my authorities? They are every where. Common sense is authority enough upon such a point; and if the recorded opinions of jurists are required, they are already familiar to the learning of this court. The doctrine results in the clearest manner from the nature of solemn war, as it is viewed by the law of nations; and it should seem rather to be the duty of my opponents to produce authorities to show that this obvious corollary has been so restrained and qualified by civil regulations, or convention, or usage, as no longer to exist in the extent which I ascribe to it. But I undertake, myself, to produce ample proof that my doctrine is in its utmost extent correct.

It is stated in Rutherforth's Institutes, (vol. 2, p. 576—578,) that by the law of nations a solemn war makes all the members of the one contending state the enemies of all the members of the other, and, as a consequence, that by that law a declaration of war does in itself authorize every citizen or subject of the nation which issues it to act hostilely against every citizen or subject of the opposite nation. It is further stated in the same book, (p. 577, 578,) that, as the nation which has declared war has authority over its own subjects, it may restrain them from acting against the other nation in any other manner that the public shall direct, and, of course, that notwithstanding the general power implied in a declaration of war, it may happen that none can act in war except those who have particular orders or commissions for this purpose. But, (it is added,) "this restraint and the legal necessity which follows from it, that they who act should have particular orders or commissions for what they do, arises, not from the law of nations, or from the nature of war, but from the civil authority of their own country. A declaration of war is, in its own nature, a general commission to all the members of the nation to act hostilely against all the members of the adverse nation. And all restraints, that are laid upon this general commission, and make any particular orders or commissions necessary, come from positive and civil institution." I might now ask, in my turn, where are the authorities, or documents of any sort, that show the imposition or existence of these restraints upon English vessels, without which restraints the Nereide might lawfully have assailed, and (if strong enough) captured any American vessel that came in her way?

as it is laid down by Professor Rutherforth. (Vattel, Droit des Gens, liv. 5, ch. 15, s. 226.) He says, however, that a usage has grown up among the nations of Europe restrictive of the general right of the individual subjects of one power at war—"agir hostilement contre l'autre." "La nécessité d'un ordre particulier est si bien établi que lors même que la guerre est déclarée entre deux nations, si des paysans commettent d'eux-mêmes quelques hostilités, l'ennemi les traite sans ménagement, et les fait pendre, comme il feroit des voleurs ou des brigands." He adds, "Il en est de même de ceux *qui vont en course sur mer*. Une commission de leur prince, ou de l'amiral, peut seule les assurer, s'ils sout pris, d'étre traités comme des prisonniers faits dans une guerre en forme." This has been relied upon, it seems, as a point to show that vessels in the predicament of the Nereide can have no authority to *attack* such enemy merchant ships as they may meet upon the ocean. But does the qualification produced by the usage which Vattel describes, (admitting it to be as he supposes,) amount to this?

The rule in Vattel, as it applies to the peasantry of a country, is connected with another—that they shall not ordinarily be made the objects of hostility. This exemption implies a corresponding forbearance, on their part, to mingle without the orders of the state in offensive war; and they are punished if they violate the condition of the immunity. This apparent severity is real mercy; for its object is to keep the peasantry at home, and to confine the contentions, and, consequently, the direct effects of war to the troops who are appointed by the state to fight its battles. But a non-commissioned merchant vessel upon the high seas has nothing of this exemption. She cannot purchase it by forbearance; nay, she is at every moment the chosen object of hostility, as she is at every moment peculiarly exposed to it.

So far as the supposed usage applies to privateers, it has no bearing upon this case. It may be proper to confine to commissioned vessels the right of cruising for the mere purposes of war and prize. Yet it may be equally proper to leave to an armed merchant vessel the smaller and incidental right, (modified and checked in its exercise by such municipal regulations as each belligerent may and always does find it expedient to provide,) to act offensively against the public enemies, if she chances to encounter them. At any rate, as the armament of a merchant vessel is sanctioned by the state to which she belongs, and is evidenced by its passport, it must depend altogether upon the laws of that state, whether this sanction amounts to a permission to commit hostilities *in transitu* or not. And I think I may venture to assert that whatever inferences may be drawn from loose and general *dicta* to be found in a very few works upon the law of nations, no instance can be produced, in which a merchant ship, attack-

learned counsel for the claimant has allotted to such a proceeding, or has in any manner, been punished or even in any degree censured.

The notions of Azuni appear, (as far as any intelligible notions can be collected from his work, called a Treatise on the Maritime Law of Europe,) to be similar to those of Vattel, and, consequently, do not touch the point under consideration. This writer has not been able to satisfy himself as to the propriety of the practice of privateering; or rather he is the undisguised advocate, in different parts of his book, of the two opposite opinions, that it is a very bad practice and a very good one. Thus, in Part 2d, ch. 4, s. 13, (p. 232 of the translation,) he inveighs with an amiable vehemence against it, bringing the Abbé Mably to his assistance; and in the next chapter, (p. 350,) gives us a proud panegyric upon it, and stigmatizes its censurers (and of course himself and the "virtuous Mably,") as "pretended philosophers," and as shallow and malignant declaimers. Admit, however, that this member of a score of academies does seem to have been steadily of opinion, that a cruiser without a commission, or something equivalent to a commission, must be regarded as "a pirate or a sea-robber"—"*Per mare discurrit deprædandi causa*," is true, as he tells us, of a privateer as well as of a pirate. They differ, as he also assures us, in this; that the latter pursues all vessels indiscriminately, (as Casaregis expresses it,) "*sine patentibus alicujus principis, ex propria tantum ac privata auctoritate;*" or as Azuni himself phrases it, "without any commission or passport from any prince or sovereign state;" whilst the former attacks public enemies only, and has a special authority for that object. Now, although I am not convinced that a cruiser against public enemies is necessarily a pirate, because she wants a commission, and am even very sure of the contrary, I content myself with asking if all this is not (as well as what has been quoted from Vattel,) quite aside from the case of an armed merchant vessel sailing under the passport of the sovereign, to whose subjects she belongs, not a cruiser for prize or plunder, not *deprædandi causa*, but for commercial purposes, and upon a commercial voyage, and only using her authorized force as an assailant when an enemy more feeble than herself comes within her power?

But if a thousand such writers as Azuni, or even writers of a much higher order, had inculcated (as they do not,) the general idea that an armed merchant vessel ought only to defend herself, and can never attack without becoming criminal, I should still have this successful reply, that it is not for a general rule that I am bound to contend; that the Nereide was an English ship; and that it is, therefore, enough for me to show, upon this matter, the law of England, as it has always been held by her prize tribunals and acquiesced in by the rest of the world. I might, indeed, maintain that

of law and custom of that country upon a great maritime subject, I have gone very far to show the law and custom of Europe, or at least what they ought to be; but as my purpose does not require that I should occupy so wide a field, I shall use the English authorities merely as supporting the doctrine (unquestionable in itself), which I have quoted from Rutherforth and Vattel, and as proving that England has not introduced or made herself a party to those restraints to which the right of offensive warfare, possessed upon original principles, by her armed merchant vessels, is alleged to be subject; but, on the contrary, that her government and courts of prize always have asserted, in the most explicit manner, the existence of this right, and always have encouraged its practical exercise.

When the cases to which I am about to refer for this purpose, come to be considered, it will be proper to bear in mind the distinction between the right which a capturing ship acquires in the thing captured and the validity or legality of that capture. Without a constant attention to this distinction, which is manifestly the creature of municipal law, the English authorities cannot be understood. In England it depends upon the prize act and the royal proclamation, who shall be regularly entitled to the benefit of prizes. The property of all prizes is originally in the government, and it grants that property how and to whom it pleases. The interest in prize is guaranteed only to a commissioned captor. A non-commissioned vessel cannot, therefore, take for her own benefit, but she may take, (and that too as an assailant,) for the benefit of the king or lord high admiral, and may expect, and always does receive the whole or a part of the proceeds from the justice, or if you choose, the politic bounty of the crown, judicially not arbitrarily dispensed, as a reward for the capture. If this be so, there is no difference according to the English law, between a commissioned and a non-commissioned captor, so far as regards the legality of the seizures made by them of the property of enemies. The sole difference is that a commissioned captor has a positive title (derived from the previous act of the government) to the thing taken, and that the non-commissioned captor has no such positive title, but is referred altogether for his reward to what is called the discretion of the executive government, which, however, is not a capricious discretion, but is to be guided and carried into effect by the court of admiralty, with a view to the circumstances of each case.

The cases to which I shall refer, (principally in Robinson's Admiralty Reports,) will be found, as I trust, to be perfectly conclusive on this subject.

The case of the Haase, (Rob. Adm. Rep. vol. I. p. 286,) was that of an enemy ship, taken near the Cape of Good Hope, by a non-commissioned captor, and condemned by the high

ship, which was a South Sea whaler, was the assailant, and took possession of the prize without resistance. The court gave the whole of the proceeds to the captors upon the ground of peculiar merit in following part of the cargo, which was gunpowder, on shore. Now if this capture was piratical, the condemnation as prize, and the reward decreed to the captors by way of encouraging them and others to the perpetration of similar outrages, will require more apology than the judgments of that great man, Sir William Scott, are usually supposed to stand in need of.

In the same book, in a note to the case of the Rebeckah, p. 231, the orders in council of 1665, containing the grant to the lord high admiral of such prizes as are now called droits of admiralty, are set forth. The second article is, "that all enemies' ships and goods casually met at sea, and seized by any vessel not commissioned, do belong to the lord high admiral." I suppose that nobody can fail to perceive that this article expressly recognizes the validity of the seizures of which it speaks, without regarding who may be the assailants, it being sufficient that the ships and goods belong to "enemies," and are "casually met at sea." The article not only recognizes the validity of every such seizure, and its legal effect of producing prize of war for the crown, but founds upon it a beneficial grant to the lord high admiral. And the subsequent practice has been in conformity with the article, except only, that the office of lord high admiral being discontinued, the crown now takes the prize, as it originally took it, subject to the captor's claim in the nature of salvage or reward.

The case of the San Bernardo, in the same volume, p. 178, was that of a recapture, in 1799, of a Spanish ship out of the hands of the French, by an English non-commissioned vessel. The re-captured vessel being enemy's property, was condemned as a droit, and a reward out of the proceeds was decreed to the re-captors, although they were not, and could not, under the circumstances stated, be attacked by either the French vessel or the Spanish. Upon this case it is only necessary to remark, that if a non-commissioned vessel cannot capture an enemy's vessel without being first assailed, neither can she re-capture unless on the same condition, an enemy vessel from an enemy vessel. In truth, such a re-capture is rather a double capture, with reference to those upon whom it acts—since it acts upon two belligerents at the same time.

In the second volume of Robinson's Admiralty Reports, p. 284, in a note to the case of the Cape of Good Hope, the cases of the Spitfire and Glutton are reported. In both these cases, shares were allowed on account of the non-commissioned vessels, which not only assailed but chased for a considerable time, as droits of admiralty. These were cases of what is called co-operation between commissioned and non-commissioned vessels, and in these cases could more explicitly assert the equality, not in point of innocence only, but in legal effect, between the acts of a non-commissioned vessel and those of a commissioned vessel in attacking and subduing the ship of an enemy. If the acts of the non-commisioned vessels were on these occasions considered as piratical, or in any degree unlawful, or otherwise reprehensible, nothing could have been less admissible than to let in the crown to shares, on the foundation of those acts, to the prejudice of those who had an acknowledged right by their commission, by the king's proclamation, and by act of parliament, to make the captures for their own exclusive benefit. And this impropriety was particularly manifest in the case of the Spitfire, who, although she chased in concert with the Providence, does not appear to have contributed to the capture otherwise than constructively.

If it should be said that the authority of the non-commissioned auxiliary captors depended upon and arose out of the authority or out of the principal agency, of the commissioned captors with whom they acted, the answer is fourfold. First. That none of the other cases support such a notion. Secondly. That the authority of the commissioned captors was not a communicable authority. Thirdly. That if the non-commissioned captors acted in contemplation of law, under the authority of the commissions of the other ships, there could have been no question about droit; the whole would have been disposed of as prize under the act of Parliament. And, fourthly, that in the case of the Glutton, she having no commission at all, was, by reason of her being far to windward when the prize hove in sight, and of her using that advantage with promptitude and dexterity, without any orders from, or subserviency to, the ships that were commissioned, the main cause of the capture, and that it was certified by the commanders of the other ships that this was so, and that but for the Glutton the capture would have been impossible. The Glutton, the non-commissioned vessel, led, therefore, in this enterprise, and the others simply co-operated with her as a principal. So that the two cases, taken together, affirm distinctly the perfect legality of an attack by a non-commissioned captor, whether secondarily and in dependence upon, or primarily and as dux facti, independently of, a commissioned captor, who co-operates with him; and, consequently, they affirm that a non-commissioned vessel may alone attack, and if she is able, capture. And here it ought to be observed, that in the principal case, the Cape of Good Hope, the universal legality of attack and capture by non-commissioned vessels istaken, (as how could it be otherwise?) for granted by the court, and admitted by everybody. Indeed, I feel confident, that is now questioned for the first time.

To the cases already mentioned, may be

glish ship, with a French cargo on board, by non-commissioned persons who were not assailed. The ship was restored to her owner, but the cargo was condemned as a droit, and the whole proceeds, of small amount, were decreed to the captors. Another protected and rewarded piracy!

In the case of the Melomasne, Rob. Adm. Rep. vol. 5, p. 41, the law is laid down without any exception, and in the most precise terms, that a capture by a non-commissioned vessel is rightful, although it enures to the benefit of the king in his office of admiralty, in the manner already explained. Exclusively of the consideration that the court, in laying down the general rule in that case, does not limit it to the case of defence, as it would undoubtedly have done if it had conceived the rule to be subject to that limitation, even if the case in which it was pronouncing its judgment was not that of an attack, it is decisive that by its sentence it sustains the capture as a droit, by the non-commissioned captor, who was the sole assailant, and rejects the claim of Captain Aylmer of the Dragon, a king's ship, who claimed the prize against the admiralty, as having been made under his authority, which authority was considered by the court, however, as amounting to no authority at all, and therefore as leaving the case to be dealt with as that of a capture by a non-commissioned boat, and consequently a capture for the benefit of the crown.

It would be idle upon such a point, to accumulate authorities. It is sufficient to say that the high court of Admiralty of England, which has for many years been adorned by the most illustrious of jurists, and one of the most amiable of mankind, has been in the habit of offering bounties to piracy and temptations to licentious plunder, if my learned friend be warranted in his doctrine.

I could, if it were necessary, cite many other cases, some of which will be found in the appendix to the second volume of Dr. Brown's Civil and Admiralty Law, but I hold this matter to be too clear to be gravely contested in a tribunal like this.

I assume, then, the truth of the position with which, in this branch of the argument, I commenced, and I ask with confidence, if it is to be endured, that neutrals shall assemble, on the high road of trade for the purposes of any commerce, whether altogether their own, or partly their own and partly that of a belligerent, as would seem to be the case on this occasion, ships fitted for warlike purposes as well as for defence, belonging to, and commanded and managed by, the subjects of a belligerent, and therefore having power, as far as it goes, and inclination without limit or control, to harm the opposite belligerent by annoying his trade, as well as by resisting his right of search? I ask if it is to be endured, that neutrals shall thus make themselves the allies of the English law of droits, an important portion of the

enough in the actual state of the world without its aid?* It is with you to sanction this anomaly if you choose, and if you do sanction it, the nation must bear the consequences; but I have a firm persuasion that we shall not hastily be saddled with a doctrine so fatal in its tendency, especially as the authority of your judgment, great as it is, will not, undoubtedly will not, obtain for us a reciprocal sacrifice in any country upon earth.

He then proceeded to consider the opposite argument, that the text writers on the law of nations, having made no exception to the general right of neutrals to carry their goods in enemy ships, this right must extend even to armed vessels.

The learned gentlemen refer us, in the first place, to Bynkershoek, and Ward, and Azuni,* and other writers upon the law of nations, who are imagined to have given opinions upon this point. These writers do certainly concur in declaring that neutrals cannot be prevented from employing the vessels of either of the belligerents for the purpose of continuing their lawful commerce; but they lend no color to the doctrine that the armed vessels of a belligerent may, by being so employed, be made the means of withdrawing the cargo from the inspection of the other belligerent, as well as of augmenting the perils to which the unarmed trade of that belligerent would otherwise be exposed. The treatises which have been referred to would be very good authorities to prove, if it were denied that enemy ships do not necessarily make enemy goods. They go so far and no farther. The single purpose of their authors was to investigate and condemn the sweeping rule, adopted by several maritime States, and at one time approved by Grotius—"ex navibus res prædæ subjiciuntur." And this purpose did not call upon them to settle, or even consider, the matter of the present discussion. The question whether a hostile flag ought of itself to infect with a hostile character the goods of a friend, may be answered in the negative, without in the least affecting the question whether, if a hostile force be added to the flag, a neutral can advisedly hire it without responsibility for the consequences. The first question looks exclusively to the national character of a commercial vehicle; the second to a military adjunct, which in no degree contributes to constitute that character, or to form that vehicle. A ship is as much an enemy ship, and as completely a conveyance for neutral commodities, without an armament as with it. An armament makes her more than a mere commercial conveyance for the purposes of a

* Bynk. Quæst. Jur. Pub. l. 1, c. 13. Azuni, vol. 2, p. 194, 196, (Mr. Johnson's Translation.) Vattel, Droit des Gens, l. 3. c, 7, s. 116, et seq. Grotius, de J. Bac. P. l. 8, c. 6. Ward

neutral, by superinducing warlike accompaniments, and worse than such a conveyance, by introducing an incumbrance unfriendly, nautically speaking, to speed and safety. In a word, the general proposition that the character of the bottom does not, "ipso jure," fix the character of the goods, is entirely wide of a proposition which asserts the effect of hostile equipment and resistance, let the bottom be what it may; and, consequently, nothing is gained to the prejudice of the latter proposition, by showing that jurists are agreed in favor of the former.

But it is, nevertheless, possible that we may discover, either in the terms in which these great teachers of legal wisdom have enunciated the former proposition, or, in their reasonings upon it, a sufficiently clear indication of their opinion upon the subject of our inquiry. It is, indeed, to be expected, that their language and illustrations will point to a universal conclusion, spreading itself over every variety and combination of circumstances, if such a conclusion was intended; and, on the contrary, that, if a conclusion, applicable simply to the quality and character of the owner of the vehicle employed by a neutral merchant, was in view, we shall find the phraseology which expresses it, and the illustrations which recommend it, suited to that view.

The thirteenth chapter of the first book of Bynkershoek's Quæstiones Juris Publici, to which we have been referred, professes to treat "De amicorum bonis, in hostium navibus repertis," and by the statement of a doubt ascribed to Grotius—"an bona amicorum, in hostium navibus reperta, pro hostilibus essent habenda," announces the question to be disposed of. This question, resting upon the single fact, that the ship in which the friendly goods are found, belongs to an enemy, obviously inquires nothing more than whether, on that account, the goods may be confiscated; and throughout the chapter it is so treated. "Nam cur mihi non liceat uti nave amici mei, quanquam tui hostis, ad transvehendas merces meas?" "Quare si ejus navem operamque conduxerim, ut res meas trans mare vehat," &c.—"pro mercede ejus uti nave ad utilitatem meam," &c. In all this, and in whatever else the chapter contains, there is no allusion to any thing but the mere vehicle "ad transvehendas merces," and to the ownership of that vehicle. The phraseology is appropriate to define a merchant vessel in her ordinary state, with nothing to distinguish her but her enemy character. It is not adapted to convey the idea of a vessel which has passed into a new state by the union of faculties for war, with those for transportation.

As to the reasoning, it manifestly stops at the point I have mentioned. "Licet mihi cum hoste tuo commercia frequentare; quod si liceat, licebit quoque cum eo quoscunque contractus tui; sed mihi redde quod meum est, quia amicus tuus sum, et impositione rerum mearum nihil molitus sum in necem tuam." The general position that I have a right to trade with your enemy, and, consequently, to make contracts with him, is here found without any one of the limits which belong to it; but we know that Bynkershoek could not and did not mean to have it so understood. He was aware, and has elsewhere shown, that it was restricted by the state of war. He knew, for example, that a neutral could generally buy, sell, hire, and let to hire, from and to a belligerent; but not hire or sell to a belligerent a vessel of war, or even a passport; or contract to send him contraband, or to carry his despatches, or to supply his blockaded ports, or to disguise his goods as his own, or to send him goods to become his on their arrival, to save the risk of capture in transitu. We can only account for his arguing in this place, upon the general right, without noticing any modification which war imposed upon it, by supposing that he was reasoning upon the common condition of neutral traffic, unassociated with the use of force, or with any other hostile quality, and in no situation to come in collision with any of the parties to the war. And this supposition is confirmed by the quiet assumption, without proof, with which the observation last quoted concludes, that by the employment of the enemy ship, the neutral attempts nothing to the prejudice of the opposite belligerent. This assumption was not unnatural, if none but an unarmed vessel was in his mind; but if his view extended to a ship provided with warlike equipment, it was rather an extraordinary postulate for so able a reasoner as Bynkershoek to assume.

The passage in the controversial treatise published by Mr. Ward in 1801, on the relative rights and duties of belligerent and neutral powers,* which has been referred to on the other side, runs thus: "The right of an impartial neutral to continue his trade with each belligerent, so long as that trade can in no respect do injury to either, is certainly uncontested and incontestable; and it would be difficult to show the injury, or what interference there is in the war, by placing such goods as are sacred, from their neutrality, and have, therefore, a right of passage all over the world, under the care and protection of a belligerent flag. Something in point of prudence may be urged, to prevent their being exposed to the accidents of war; but if the neutral chooses to risk this, it is impossible, I think, to conceive a well-founded reason for supposing that any confusion of rights between him and the other belligerent can arise from the procedure. This, then, seems an innocent, and therefore a natural right in the neutral; as such formed one of the

* The title of this book is "An Essay on Contraband: being a continuation of the Treatise of the Relative Rights and Duties of Belligerent and Neutral Nations in Maritime

provisions of the "consolato," and as such was approved by Bynkershoek," &c., Q. J. Pub. c. xiv. p. 136. Now what is maintained in this passage is, that a neutral may trade in a belligerent vessel and under a belligerent flag, in opposition to the doctrine, that the national character of the ship ought to conclude that of the cargo—or as he elsewhere phrases it, "that all should obey the national character of the ship." The author states expressly, that the right of which he is speaking, and which only he had in his view, formed one of the provisions of the "consolato," and was approved by Bynkershoek. What right was approved by Bynkershoek, we have already seen; and every body knows that the "consolato" refers only to the property of the vessel, and makes no provision for the case of a military equipment which nothing but a direct provision could sanction. Besides, the main ground upon which Mr. Ward places the right is that the goods are sacred from their neutrality. Now it is impossible that this should be known without the exercise of that right of visitation and search, to which he insists that every belligerent is entitled; and consequently he must mean that the belligerent vessel which carries the goods, said to be neutral, is not to be in a situation to contest by force the exercise of that right. Moreover, the expressions, "so long as that trade can in no respect do injury to either," show his meaning to be that it is not to be a trade, which provides resistance to the right of search, and increases the hostile means of one of the belligerents on the seas. And, again, when in his reasoning he says, that he cannot conceive how the privilege which he admits can produce "any confliction of rights" between the neutral and the opposite belligerent, it is quite impossible that he should have in his mind the case of a deliberate resistance to that very right of visitation and search which it was the great object of his treatise to uphold.

In truth, Mr. Ward is in this place contending that the principle of "free ships free goods" is not "a natural right,"—and he endeavors to prove it by showing, among other things, that the principle which is usually associated with it in treaties,—that "enemy ships shall make enemy goods," is a violation of natural right. For this purpose it was not necessary to discuss or decide the present question; and, accordingly, he does not meddle with it, unless what he says about "the accidents of war," to which neutral property is exposed in belligerent vessels should be thought to touch it.

The first passage, referred to in Azuni's book, amounts only to this—that neutrals cannot be prevented from employing the vessels of either of the belligerents for the purpose of continuing their peace trade, unless by interfering in the war, "they depart from that perfect neutrality which they are bound to observe." It is a gratuitous supposition that this passage was meant to include vessels fitted for aggression worse than gratuitous. It is impliedly forbidden by the reference to the peace trade of the neutral as that which is to be authorized in the vessels alluded to, and by the exception of all cases in which the neutral interferes in the war, or in any degree deserts his neutrality.

Such a large exception goes the whole length of my doctrine, if it means any thing; and there was no necessity to make it special, unless it was presumed that common sense had left the world. It was too obvious to require any particular mention, that it was an interposition in the war, and inconsistent with pure neutrality to employ a vessel equipped for battle and certain to engage in it, to exempt the neutral from the observance of his known duties, if it could be done with a prospect of success, and certain also to act offensively, if a suitable occasion presented itself. It was enough to lay down the wide caution against any use or employment of hostile force, which not being capable of any check, on account of the direction to which it is subject, and the disposition which belongs to it, cannot be employed without embarking in the war and taking an unneutral attitude. We are told by Ward, vol. ii. p. 10, in the language of Hubner, who has been called "the great champion of neutral rights," that "Toute neutralite consiste dans une inaction entiere relativement a la guerre." And I know not how a neutral can be said to be wholly inactive relatively to the war, who allies himself by compact with warlike means and hostile dispositions and intentions, which, when he has once connected himself with them, he knows he cannot restrain, and to which he alone gives all the activity and all the power of mischief which they possess. It is difficult to conceive how he who has prepared and hired the power of warlike combat, with a knowledge that the desire, duty and determination to combat are united with that power, can be said to be thus inactive, and especially when combat has actually followed his arrangements as their regular consequence. Self-evident propositions do not require to be set forth in detail, and the wonder is that we should expect it. On the other hand, if a neutral can do this, it is but reasonable to suppose that his right to do so would be stated with precision even by such sciolists as Azuni.

But if the exception in Azuni does not plainly exclude, as I have no doubt it does, from the neutral's privileges, the employment of ships equipped for battle, it does at any rate reduce all that he says as an authority on the extent of that privilege to nothing, since the phraseology in which Azuni has defined the privilege, is at least as equivocal as the excepiton. An ambiguous general rule given by a feeble writer, who qualifies it by an ambiguous general exception, may afford matter for controversy, but can scarcely contribute to settle one.

Heineccius, Grotius, Hubner, Vattel, and others are quoted by Azuni, vol. ii. p. 194, 195, but they simply state, what doubtless Azuni

not mean to dispute, although it was once disputed, that friendly goods are not prize merely because taken in a vessel belonging to the enemy. It is impossible to make any thing like an authority, for the doctrine of the learned counsel, out of any or all of these loose "dicta," the subject of which was, as I have already said, the effect of the flag and ownership of the vessel upon the character of the cargo.

The other passage in Azuni which the counsel refers to is no more to his purpose than that which I have examined.

"Belligerents have no right over the effects of friends and neutrals, in whatever place they may be found, though within the territory or in the vessels of enemies. For this reason, when a maritime city is taken by assault, or in any other way, the belligerent cannot seize the neutral vessels found in the port, nor their cargoes, unless they are contraband of war, and unless the captains have taken up arms or voluntarily seconded the enemy in their resistance. For a stronger reason ought the goods of neutrals found on board the ship of an enemy, to be considered as free, since it cannot be regarded as the territory of the enemy."

Now there is nothing in this passage which requires to be noticed, save only what relates to neutral vessels and cargoes found in the port of a captured city, which seems to be much confided in by the learned counsel as favorable to his case! I shall concede that the law is as Azuni states it. I only marvel that it is thought to have any bearing upon the present subject.

It cannot be doubted that a neutral who is found on a lawful errand, in a captured place on land with which he has contracted no hostile obligations of any sort, (as is supposed in the case put by Azuni,) is innocent in every view, and cannot be the lawful object of hostility: if it were otherwise, every belligerent maritime city would be in a state of constructive blockade of a perfectly new invention. The supposed position of the neutral relatively to the captured place necessarily excludes the idea of penalty. He has not given or contributed to give to that place the military capacity which it has exerted. He did not erect or assist in erecting its fortifications, in levying or paying its garrison, in furnishing its arms or stores. He has not hired those fortifications with their appendages, or in any way produced or increased their means of annoyance or defence. He has no connection with the place, further than that he is in it upon a fair and altogether neutral motive, not injurious to any body, or capable of becoming so. But suppose that for the purposes of his trade, or for any other purpose, he had hired the fortresses, the troops, the cannon, the ammunition, the provisions and all the means and implements of war, with which, as with a military force, he had united himself and his concerns. Suppose that the fortifications had been erected for his accommodation, or being erected before, had become his by special covenant: that but for his views and conduct they had been impotent and harmless, or had not been there at all: suppose, in a word, that he is not only the tenant of them, but the creator of all that constitutes their faculty to mischief his friends, and that he has left the command of them to those who are at public enmity with these friends, without reserving any power in himself to counteract the effects of that enmity, and that then he has placed his property and himself under their auspices! Will the learned gentleman tell us that he and his property would then be neutral in the view of those by whom the place is assailed and captured, and against whom it has used the power which he has furnished, or contributed to furnish to it? I am sure he will not. Yet this is the analogous case. The Nereide was a movable fortress which the claimant brought upon the seas. She would not have been there but for him. Her armament was his armament. Her power was his power. He drew that armanent and that power into conflict, or into the opportunity of conflict with the opposite belligerent with a thorough conviction that conflict and opportunity would, and must be the same thing. From the master to the meanest sailor, every man on board fought at his cost and by his original procurement. But in the other case it is assumed by Azuni that the neutral has nothing to do with the matter. He entered the place before it was attacked. He had the clearest right to do so. He sought no protection from the force on which it relied for its defence. He did nothing towards the organization or maintenance of that force. He made no covenant with it or its owners. He did not employ it or assist in its operations: and, consequently had no more connection with it than if he and his property had been on the opposite point of the globe. The place would not have been the less attacked if he and his property had not been in it, nor would it have been better or worse defended. The whole transaction passes without involving or touching him in the slightest manner.

We have then, at the threshold, a wide distinction between Azuni's case and ours; but this is not all, although it is sufficient. The resistance of a city attacked by its enemies cannot be inconsistent with the obligations of a neutral who finds himself there, unless he mixes in it. What right of the assailing power is that resistance calculated to violate with regard to him? Certainly none. The right of visitation and search, (the only one that can be imagined to be material in this view,) does not apply to the subject. He is for the present rightfully out of the reach of it; and can, in fact, do nothing to facilitate visitation and search otherwise than by taking his goods out of port to the assailant, or by co-operating with the assailant to subdue the place. The first, undoubtedly, he is not obliged to do, and probably cannot and will not be permitted to do, even if there be time for it. The second would make him a traitor to

During the contention of two hostile forces, neither of which he has raised up, or fostered, or adopted, he is justified in remaining a mere spectator, and is bound to do so. The right of visitation and search, therefore, of which, indeed, the ocean is the only theatre, is not infringed on this occasion. What other right, then, is violated? I know of none: I have heard of none. But this is not so in our case, if we have succeeded or should yet succeed in proving that the claimant acted unlawfully, from the first preparation of his expedition to its last catastrophe; that he violated his neutral duties by employing hostile force at all; and that when this hostile force resisted the visitation and search of an American cruiser the climax of illegality was completed.

It is said, however, that Mr. Pinto, as a merchant of Buenos Ayres, had a peculiar justification for this armament in the danger to his property and himself produced by the cruisers of Carthagena; that it was the usage of this trade and the only adequate mode of carrying it on before the breaking out of the war between the United States and England; and that Mr. Pinto intended no resistance to United States cruisers.

As to his intentions, I do not profess to know with certainty what they were, and I suppose that his counsel know as little of the matter as I do. It may be very well for them and him to say that it was not his intention that the privateers of the United States should be resisted when they could be resisted with a prospect of success, and thus be prevented from interrupting a voyage which promised to be so lucrative by the capture of the vessel in which he was performing it; but I am not apprised of the proofs by which he could be judicially exculpated from such an intention if I choose, as my learned colleague has done, to press it against him. I do not think it material, however. For let his intentions in this particular have been what they might, the law infers from his conduct all that my argument requires. Mr. Pinto set in motion upon the Atlantic a warlike force, hostile by notorious duty to the United States, a duty which he was bound to know he could not neutralize and the effects of which he was also bound to know he could not check. Every man must be taken to intend, where intention is important, the natural and ordinary results of his own acts. The municipal law of our country, and every civilized country proceeds upon that rule so as always to create responsibility for those results. The particular intention does not need to be inquired into. It is enough that the result in question ought to have been foreseen. Thus, (to put a familiar case,) if a man rides a horse accustomed to strike, into a crowd, upon an errand ever so lawful, he is liable for the mischief which ensues whether he intended that mischief or not.

The natural consequences of Mr. Pinto's acts were, that if an American cruiser, (not of an resistance would be made, even if he should forbid it, to the right of that cruiser to examine his property; and that if he was met by an unarmed American vessel of sufficient value to tempt the commander of the Nereide, that vessel would be assailed. The first of these consequences has happened, and by every system of law known to mankind would be visited with penalty.

The right of Mr. Pinto to make a provision of defensive force against Carthagena cruisers, cannot serve him in this cause. If he armed for limited purposes, it was for him to take care that he suited his armament to those purposes, and that its exertions were confined to them. He could not arm in such a way as to give uncontrollable power, where there already existed the desire, to exceed those purposes to the injury of those against whom he had no right to arm. If he does so arm, all that I insist is, that he does it at his peril. If his purpose is exceeded from causes palpably inherent in the nature of the armament, and the direction under which it is placed, it cannot be unreasonable to say that he must at least answer for that surplus, if it were only upon the maxim "respondeat superior;" a maxim as universal in the law of prize as any maxim can be: for although in the municipal law, it generally imports only civil responsibility, in the "jus gentium" it produces confiscation. Even in the municipal law, it is a cardinal rule "sic utere tuo ut alienum non lœdas;" and this rule, applied to Mr. Pinto, would, of itself, restrict his right of arming, to a mode that would be compatible with the rights of others. He who should go into the streets accompanied by a mastiff of a surly and ungovernable temper, and accustomed to bite, (I mean no slur upon any body by this homely comparison,) even although he goes upon lawful business, and makes the dog his companion, with a view to his defence against some ruffian who has threatened him, must abide the consequences, if his associate bites those who are his master's friends, and who have, moreover, a right to stop him on his way for the purpose of some inquiry, and who have been bitten in the attempt to exercise that right.

As to what is said of the manner of carrying on this trade before the breaking out of the war between the United States and England—is it meant to tell us that a trader continues after the breaking out of a war to have all the rights which he possessed before, merely because he is a neutral? That the war does not affect all his previous rights or habits, I admit; but it does affect them largely, nevertheless; and it affects them exactly as far as his former rights and habits would now, in their exercise and continuance, be an interference in the war. Thus before the commencement of hostilities, he could carry articles usually denominated contraband of war. After hostilities commence, he does so at the hazard of seizure and confiscation, even if his peace-traffic had been

And why is this so? Simply because the carrying of such articles in peace, was injurious to nobody, but upon the breaking out of the war does injury to one of the belligerents with reference to the war. And various other instances might be given of the same class. If, indeed, that which was the previous trade of a neutral, has no relation in its substance or manner of conducting it to hostility, the war does not affect it otherwise than by producing detention for inquiry and search; but when it has that relation, as it always has, when by seeking the armed ships of a belligerent it generates collisions, the war invariably affects and reduces it.

Even if it be true, therefore, of which, however, there is no proof in the cause that British armed vessels had before been used in this trade, the moment the war broke out between the United States and England, the continuance of that practice became as completely unneutral as did the carrying of articles of contraband, and became liable to the same penal visitation. It would be idle to multiply words upon such a point.

It has further been suggested, that if Mr. Pinto had not used an armed ship of England, he could not have undertaken his voyage at all. Be it so. Although there is no evidence to countenance such an apology, I am willing, without reserve, to admit the fact, while I utterly deny the conclusion of law. We are fallen upon strange times, when every sort of absurdity—I beg my learned opponents to pardon the accidental freedom of this expression, and to believe that I respect them both too much to be willing to give umbrage to either. To one of them, indeed, I have heretofore given unintentional pain, by observations to which the influence of accidental excitement imparted the appearance of unkind criticism.* The manner in which he replied to those observations, reproached me by its forbearance and urbanity, and could not fail to hasten the repentance which reflection alone would have produced, and which I am glad to have so public an occasion of avowing. I offer him a gratuitous and cheerful atonement—cheerful, because it puts me to rights with myself, and because it is tendered not to ignorance ar. I presumption, but to the highest worth in intellect and morals, enhanced by such eloquence as few may hope to equal—to an interesting stranger whom adversity has tried, and affliction struck severely to the heart—to an exile whom any country might be proud to receive, and every man of a generous temper, would be ashamed to offend. I feel relieved by this atonement, and proceed with more alacrity. I say that it is passing strange, that, in the nineteenth century, we should have it insinuated that the provisions of public law, or of any law, are to bend before the private convenience of an individual trader. The law of nations did not compel Mr. Pinto to trade. It allowed him to do so, if he could with innocence. It did not convert his rights into obligations: it left them as it found them, except only that it impressed upon them, with a view to the state of war which had supervened, the conditions and qualifications annexed to his predicament as a neutral. If he could safely and advantageously trade in this new state of his rights, it was well; if not, it was either his duty to forbear to trade at all, or to make up his mind to defy the consequences. And is this such a harsh alternative? Is it not the dilemma to which God and the laws have reduced us all—and some of us more emphatically than others? Is not the vocation of every man in society more or less limited by positive institution, and does not the law of nations deal with, what I may call, a benignant profusion in such limitations? War brings to a neutral its benefits and its disadvantages. For its benefits, he is indebted to the lamentable discord and misery of his fellow-creatures, and he should, therefore, bear, not merely with a philosophic but with a Christian patience, the evils with which these benefits are alloyed. It is fortunate for the world that they are so alloyed, and heaven forbid that the time should ever arrive, when one portion of the human race should feel too deep an interest in perpetuating the destructive quarrels of their brethren.

But is there any thing new or peculiar in this alternative? What is the predicament of a neutral merchant domiciled before the war in one of the belligerent countries? Is he not called upon by the law of prize to cease to trade, or to trade upon belligerent responsibility? Does not that law tell him, "abandon your commerce, although it was begun in peace, and perhaps established by great sacrifices, prepare to find it treated as the commerce of the belligerent with whom you have identified yourself?" Does it not announce the same sentence to the dealer in articles of contraband; to the trader with ports which the belligerent chooses to blockade; to the ship-owner who has transport vessels to let to foreign governments? In those cases, it does not say, you shall not trade, or hire your ships as you were used to do; but merely, that if you do, and are captured, your property shall be forfeited, as if it were the property of enemies. I ask, if the man, who lives with innocence, in peace, upon the profits of carrying contraband articles, is less oppressed by the alternative which is presented to his choice, than Mr. Pinto by that which I hold was tendered to him, if his situation be truly stated, not exaggerated by his counsel? I ask if his situation was worse than that of any other neutral, whose ordinary peace-traffic is reduced or annihilated by the mighty instrumentality of war?

But it is said that the resistance which was

* In the case of the Mary, argued at the same term, in which Mr. Emmett (of counsel for the captors,) spoke, as Mr. Pinkney supposed, a little too harshly of one of the

the commander of the Nereide, by whom it was made, in fact. It was so. And can Mr. Pinto take refuge behind the peculiar rights of his associates without sharing the legal effects of their defeat? Nothing could be more intolerable than such a doctrine. A belligerent has a right to break a blockade if he can. But can a neutral, therefore, put himself under the shade of that right, and in case the belligerent master should make the attempt and succeed, take the profit, and if he fails, claim immunity from confiscation by an ingenious reinforcement of his own rights with those of the belligerent master? Or, if the conduct of the belligerent master shall be thought to be insufficient to impute to the owner of the cargo the "mens rea" in the case of blockade, by a sweeping presumption that the vessel is going into the blockaded port in the service of the cargo only —what shall we say to the case of contraband, which must be put on board by the owner with a knowledge that it will be exposed to the peril of capture, and if captured to the certainty of confiscation? A belligerent master has a right to carry contraband if he can; and only superior force can prevent him. But surely a neutral cannot so avail himself of that right as to ship in safety contraband articles in a belligerent vessel. If he could he would have a larger and more effectual right than that under which he takes shelter; for the belligerent's right is subject to be defeated by force, and so much of his property as is engaged in the enterprise becomes prize of war if he is conquered. Just as in this case his right of resistance is met on the other side by a right to attack and seize as prize, and every thing depends upon the issue of the combat. It is indeed self-evident that a neutral who is driven to rely upon the rights of war, vested in others, not himself, leans upon a broken reed if those rights fail of being successfully maintained against the opposite party to the war; and sure I am that no case can be imagined in which a neutral can cover himself with the right of a belligerent, whom he chooses to employ, and thus claim the combined advantages of a belligerent and a neutral character. If he can advance such a claim the cases of domicil have all been adjudged upon false principles, for they expressly affirm the contrary, and stand upon no other reason.

But the true light in which to view this point is, that the right of resistance vested in the belligerent master is precisely that which aggravates instead of taking away the guilt of the neutral charterer; or, in other words, is exactly the consideration which ought to make the resistance his own in the eye of the law, and consequently to render him and his property liable, to share the fate of the belligerent master and vessel.

It is indisputable that if Mr. Pinto, instead of chartering the Nereide, had hired a neutral ship, and the neutral master, without his concurrence, had resisted visitation and search, that as the neutral vessel. We have for this the express authority of Sir William Scott in the celebrated case of the Swedish convoy and others.* "The penalty for the violent contravention of this right, is the confiscation of the property" (cargo as well as vessel,) "so withheld from visitation and search."

Upon what ground is the cargo forfeited in that case? Upon the ground that the master's resistance withholds the cargo from visitation and search, and that the owner of it is answerable for the master's conduct in that respect, although the master is not, strictly speaking, the agent of the cargo, and the owner of the cargo is not generally affected by his acts in the view of a court of prize. The extension of the penalty of confiscation to all the property withheld by the resistance of the neutral master from visitation and search, whether it belongs to the owner of the vessel or not, proceeds, undoubtedly, from the importance attached to the right with which such resistance interferes—to a right without which all the other belligerent rights with which the law of prize is concerned are mere shadows. The owner of a neutral cargo forfeited by the resistance of the master of a neutral ship would seem to have some show of reason for his complaint against the rigor of such an indiscriminate punishment of the innocent and the guilty. He might urge with great plausibility that as he had not partaken in any manner the resistance, as he not only did not command but did not wish it, as he was justified when he shipped his goods in relying upon the presumption that a neutral master would fulfil his neutral duties and would not have recourse to hostile resistance to the right of visiting and searching his vessel and those goods, he ought not to be made accountable for that resistance. But with what plausibility can the charterer of a belligerent vessel which has by resistance withheld his property from visitation and search, claim to be exempted from the utmost severity of the rule? When he chartered such a vessel and shipped his goods had he any ground for presuming that the belligerent master would forbear resistance to an enemy cruiser? Did he not, on the contrary, know that he would resist and that it would be out of his power to prevent him? Did he not go to sea with an absolute assurance that his goods would be withheld from the visitation and search of the opposite belligerent by all the resistance that could be made? Nay, further; is not the neutral owner of the goods interested that resistance should be made even with reference to the vessel, when it can be made effectually; since, if the vessel be seized as prize, the voyage is broken up and the hopes of profit which depended upon it utterly blasted? Such was Mr. Pinto's predicament; and it will not be

* The Maria, Rob. Adm. Rep. vol. 1, p. 287. The Elsebe,

believed that he would see with disapprobation the repulse of a cruiser of this country attempting to capture the Nereide and to carry her any where but to Buenos Ayres.

With regard to a neutral, therefore, who charters an armed belligerent vessel, the penalty of confiscation for resistance by that vessel is unimpeachably just. If it is established that a neutral should be responsible for the resistance of the master of a neutral vessel, which he could not foresee, had no reason to expect, and no interest to produce, can it be unfit that he should be responsible for the regular and foreseen resistance of the master of an armed belligerent vessel chartered by him, which resistance he could not help foreseeing, which, if he did not direct he must have confidently expected, and which his interest required should be made as often as it happened to be practicable? It would be intolerable that he who has done every thing which by all reasonable calculation would subject his property to the full exercise of the right of visitation and search, shall be punished with confiscation for the disappointment of that calculation, and that he who has done every thing which was adapted to defeat that right, and who has spontaneously given himself an interest in defeating it, should be rewarded with restitution; or, to speak more correctly, by a concession of all the benefits of successful resistance and by an exemption from all its penal consequences in case of failure.

I stand upon all just principles of law and reason, therefore, when I say that the known right and inclination of the master of the Nereide, combined with his capacity, obtained at Pinto's expense, to resist a cruiser of the United States, is so far from being a foundation on which to build his innocence that it is the clearest and most conclusive inducement to consider his property as prize. If one were called upon to select a case in which the confiscation of the cargo of a resisting vessel was not only lawful, but equitable, it would be a case in which a neutral abusing the indulgence extended to him by the modern law of nations, to employ a belligerent vehicle, employs just such a vehicle as under belligerent command and conduct will inevitably be made to withdraw his property from examination, so far as its physical force can so withdraw it. And certainly a greater anomaly can scarcely be conceived than that I shall answer for the hostile conduct of him upon whose neutral and peaceful conduct I was warranted when I employed him, to rely; and yet shall not answer for the hostile conduct of him from whom I was warranted when I employed him in anticipating nothing but hostility and violence!

Mr. Pinkney then examined the case of the Swedish convoy in 1798, and insisted that there was no difference between a ship sailing under protection of a resisting convoy and goods found by the counsel for the claimant and by the court, in that case, that the distinction between an enemy convoy and a neutral convoy was unfavorable to the former, inasmuch as the enemy convoy stamped a primary character of hostility on all the vessels sailing under its protection, which presumption the counsel seemed to think might be rebutted, but which Sir William Scott considered to be a conclusive presumption; and that the distinction between hostile and neutral convoy, favorable to the latter, was, that where the convoying force was neutral, the captors must show an actual resistance, which in the case of the Maria was shown, among other things, by the instructions of the Swedish government, authorizing such resistance, which were relied upon, not as constituting a part of the offence, but as rendering it probable that there was actual resistance, whilst in the case of the Nereide, the intention to resist, independent of the fact, was rendered certain by the general hostile character of the force employed.*

The case of the Catharina Elizabeth, (Rob. Adm. Rep. vol. 5, p. 232,) has also been produced against us. It would seem, indeed, that my learned friend entertains some doubts of its applicability to that of the Nereide, since he rather invites our attention to the brief marginal summary of the reporter than to the case. The marginal note says: "Resistance by an enemy master will not affect the cargo, being the property of a neutral merchant;" and my learned friend taking or rather mistaking this for a universal position, is so well satisfied with it that he desires to look no further, and would have us trouble ourselves as little as possible with the reasoning of the court and the particular circumstances of the transaction, by which the reporter, certainly a very excellent and able man, took for granted that his note would be

* In Mr. Wheaton's report of this speech he remarks:—"I regret that I have not the means of restoring this part of the argument, which I understand was of great force and beauty: but it is irrecoverably lost. In the case of the Maria, the counsel for the claimant, in contending that the presumption arising from a hostile convoy was not conclusive against the ships and cargoes sailing under its protection, cited the case of the Sampson, Barney, before the Lords of Appeal, an asserted American ship taken under French convoy, and communicating with the French ships by signal for battle, which they said the lords had sent to farther proof to ascertain whether there had been an actual resistance. To which intimation Sir W. Scott observed: 'I do not admit the authority of that case to the extent to which you push it. That question is still reserved, although the lords might wish to know as much of the facts as possible.' And I may be excused for adding, that Mr. Justice Story, in his judgment in the case of the Nereide, states that the sentence of condemnation in the Sampson, Barney, was subsequently

qualified. Dr. Robinson meant only to say, that the resistance of the enemy master, on that occasion, did not affect the neutral cargo; presuming that the reader of his note would read the judgment to which it belonged, and in which he could not fail to find the nature of that occasion. This is what I have done, and what I trust your honors will do. "Territus insisto prioris margine ripæ,"* may come with a good grace from the learned counsel whose interest it is to take refuge there from the doctrine of the case itself; but it does not suit me. I shall, on the contrary, pass to the case from the margin.

Now what is that case? An enemy master endeavors to recover his captured property, or rather, as appears to have been the fact, to take the captured vessel; and Sir William Scott informs us that there is no harm in this, as regards the enemy master himself, and that it is quite clear that it cannot affect the neutral owner of the cargo. As to the enemy master, the quotation from Terence, "Lupum auribus teneo," explains the whole matter. If I capture an enemy I must take care to hold him. He is not forced, unless under parole, to acquiesce; and, if when opportunity offers he tries to withdraw himself and his property, or even to capture the captors, he does just what might be expected and what he has a right to do. He violates no duty, and infringes no obligation. I admit all this to be perfectly true; and I am ready to admit, if it will be of any service to the claimant, that the captain of the Nereide had a right not only to resist the Governor Tompkins, but to capture her if he could. What I object against the claimant is, not that the captain of the Nereide resisted unlawfully, with a view to his own rights, but that the claimant, whose property was liable to unresisted visitation and search, and whose rights and obligations were very different from those of the captain of the Nereide, had identified himself with him, and was a party to that resistance, inasmuch as he was the hirer of the force with which it was made, knowing its hostile character, and had associated it upon the ocean with his property, aware of the hostile control to which it was subject. For a force thus qualified, and so employed by a neutral, I say that he is responsible upon the plainest grounds of law and reason, if it be used, as from its nature it must be, in a way in which he is not authorized to use it. I say, further, that a neutral cannot at all employ such a force, placed under such hostile control, without guilt; and that he incurs the confiscation of his goods if they are found connected with it, although there be no resistance on account of its being hopeless. I say, further, that if a neutral will have a resort to force, it must at his peril be such as is not from its character hurtful to the opposite belligerent, or inconsistent with a peaceable compliance on his part with all his neutral duties. And, surely, there is nothing in the case of the Catharina Elizabeth which says otherwise.

Another case in the same collection, vol. 8, p. 278. The Despatch, tells us that if a neutral master endeavors to rescue or recover by force the captured property, it shall be condemned, because the captor is not bound as against a neutral to keep military possession of the thing captured, or justified in holding the neutral master and crew as prisoners. On the contrary, he is to rely upon the duty of the neutral to submit, and hope for restitution and compensation from a court of prize; and if this duty be violated by the neutral master and crew, confiscation is the result. This is explanatory of the judgment in the case of the Catharina Elizabeth, and is there used by Sir William Scott for that purpose. It shows, as the facts of the case also show, that the court intended to confine its decision in the Catharina Elizabeth to the case of an enemy master already captured, for whom, as he is in the custody of the captor, whose business it is, not to trust, but to guard and keep him, the neutral shipper is no longer answerable. That the enemy master ceases the moment he becomes a prisoner, and his vessel prize, to be, for any purpose, the agent, or in any sense the associate of the neutral owner of the cargo, and that their connection is utterly dissolved by the seizure, is perfectly clear. It would, therefore, be monstrous to fasten upon the neutral owner of the goods a continuing suretiship for the peaceful conduct of the enemy master, after he has passed into the state of a prisoner of war.

But in the consideration of the case of the Catharina Elizabeth, it must, in an especial manner, be borne in mind, that the French vessel was not armed at all, and of course not by or for the owner of the cargo; that she did not resist visitation, search or seizure; that the single circumstance upon which condemnation of the American cargo was urged, was some hostile attempt of the enemy master after capture consummated—which attempt was really and constructively his own personal act, not procured or facilitated, or influenced, directly or indirectly, remotely or immediately, by the owner of the cargo, to whom in law he had become a stranger. Who is it that can persuade himself that there is any resemblance between that case and the present, or that, if in that case there was supposed to be an arguable reason, if I may be allowed that expression, for visiting upon the neutral shipper the hostile conduct of the enemy master, the same tribunal would, in our case, have hesitated to condemn?

Observe the contrast between the two cases.

In our case, at the epoch of the resistance, the relation was subsisting in its full extent between him who made that resistance, and him who provides the means without providing any check upon the use of those means; in the

him to the direction of a hostile agent, who used it, as he could not but be sure he would, hostilely; in the other case, there was no original force; and that which was used was the personal force of the enemy master, and not that of the vessel. In our case, the force was exerted in direct opposition to the neutral's obligation of submission with reference to the cargo; and in the other, the neutral had already submitted, and his goods were in the quiet possession of the captors. In our case, a general capacity, legal and actual, of annoyance, as well as of resistance, had been given, by or for the neutral, to the vessel as a belligerent vessel, (a capacity which she preserved during her voyage,) for which alone, independently of resistance in fact, the neutral is, as I confidently contend, liable to the penalty of confiscation; in the other, the vessel was an ordinary, unarmed, commercial vehicle, which the neutral might hire and employ with perfect innocence and safety.

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The little strength, with which I set out, is at last exhausted, and I must hasten to a conclusion. I commit to you, therefore, without further discussion, the cause of my clients, identified with the rights of the American people, and with those wholesome rules which give to public law simplicity and system, and tend to the quiet of the world.

We are now, thank God, once more at peace. Our belligerent rights may, therefore, sleep for a season. May their repose be long and profound! But the time must arrive, when the interests and honor of this great nation will command them to awake, and when it does arrive, I feel undoubting confidence that they will rise from their slumber in the fulness of their strength and majesty, unenfeebled and unimpaired by the judgment of this high court.

The skill and valor of our infant navy, which has illuminated every sea, and dazzled the master states of Europe by the splendor of its triumphs, have given us a pledge, which, I trust, will continue to be dear to every American heart, and influence the future course of our policy, that the ocean is destined to acknowledge the youthful dominion of the West. I am not likely to live to see it, and, therefore, the more do I seize upon the enjoyment presented by the glorious anticipation. That this dominion, when God shall suffer us to wrest it from those who have abused it, will be exercised with such justice and moderation as will put to shame the maritime tyranny of recent times, and fix upon our power the affections of mankind, it is the duty of us all to hope; but it is equally our duty to hope that we shall not be so inordinately just to others as to be unjust to ourselves.

SPEECH ON THE MISSOURI QUESTION.

This speech on a bill for the admission of Missouri into the Union, with a clause prohibiting the introduction of slaves into the new State, was delivered by Mr. Pinkney in the United States Senate on the fifteenth of February, 1820.*

As I am not a very frequent speaker in this assembly, and have shown a desire, I trust, rather to listen to the wisdom of others than to lay claim to superior knowledge by undertaking to advise, even when advice, by being seasonable in point of time, might have some chance of being profitable, you will, perhaps, bear with me if I venture to trouble you once more on that eternal subject which has lingered here, until all its natural interest is exhausted, and every topic connected with it is literally worn to tatters. I shall, I assure you, sir, speak with laudable brevity—not merely on account of the feeble state of my health, and from some reverence for the laws of good taste which forbid me to speak otherwise, but also from a sense of justice to those who honor me with their attention. My single purpose, as I suggested yesterday, is to subject to a friendly, yet close examination, some portions of a speech, imposing, certainly, on account of the distinguished quarter from whence it came—not very imposing (if I may so say, without departing from that respect which I sincerely feel and intend to manifest for eminent abilities and long experience) for any other reason.

I believe, Mr. President, that I am about as likely to retract an opinion which I have formed, as any member of this body, who, being a lover of truth, inquires after it with diligence before he imagines that he has found it; but I suspect that we are all of us so constituted as that neither argument nor declamation, levelled against recorded and published decision, can easily discover a practicable avenue through which it may hope to reach either our heads or our hearts. I mention this, lest it may excite surprise, when I take the liberty to add, that the speech of the honorable gentleman from New York, upon the great subject with which it was principally occupied, has left me as great an infidel as it found me. It is possible, indeed, that if I had had the good fortune to hear that speech at an earlier stage of this debate, when

* See the speech of Rufus King on the same subject, at

that the analysis which it contained of the constitution, illustrated as it was by historial anecdote rather than by reasoning, would have been just as unsatisfactory to me then as it is now, I might not have been altogether unmoved by those warnings of approaching evil which it seemed to intimate, especially when taken in connection with the observations of the same honorable gentleman on a preceding day, "that delays in disposing of this subject, in the manner he desires, are dangerous, and that we stand on slippery ground." I must be permitted, however, (speaking only for myself,) to say, that the hour of dismay is passed. I have heard the tones of the larum bell on all sides, until they have become familiar to my ear, and have lost their power to appal, if, indeed, they ever possessed it. Notwithstanding occasional appearances of rather an unfavorable description, I have long since persuaded myself that the Missouri question, as it is called, might be laid to rest, with innocence and safety, by some conciliatory compromise at least, by which, as is our duty, we might reconcile the extremes of conflicting views and feelings, without any sacrifice of constitutional principle; and in any event, that the Union would easily and triumphantly emerge from those portentous clouds with which this controversy is supposed to have environed it.

I confess to you, nevertheless, that some of the principles announced by the honorable gentleman from New York,* with an explicitness that reflected the highest credit on his candor, did, when they were first presented, startle me not a little. They were not perhaps entirely new. Perhaps I had seen them before in some shadowy and doubtful shape,

> "If shape it might be called, that shape had none,
> Distinguishable in member, joint, or limb."

But in the honorable gentleman's speech they were shadowy and doubtful no longer. He exhibited them in forms so boldly and accurately defined—with contours so distinctly traced—with features so pronounced and striking, that I was unconscious for a moment that they might be old acquaintances. I received them as "novi hospites" within these walls, and gazed upon them with astonishment and alarm. I have recovered, however, thank God, from this paroxysm of terror, although not from that of astonishment. I have sought and found tranquillity and courage in my former consolatory faith. My reliance is that these principles will obtain no general currency; for, if they should, it requires no gloomy imagination to sadden the perspective of the future. My reliance is upon the unsophisticated good sense and noble spirit of the American people. I have what I may be allowed to call a proud and patriotic trust, that they will give countenance to no principles, which, if followed out to their obvious consequences, will not only shake the goodly fabric of the Union to its foundations, but reduce it to a melancholy ruin. The people of this country, if I do not wholly mistake their character, are wise as well as virtuous. They know the value of that federal association which is to them the single pledge and guarantee of power and peace. Their warm and pious affections will cling to it as to their only hope of prosperity and happiness, in defiance of pernicious abstractions, by whomsoever inculcated, or howsoever seductive or alluring in their aspect.

Sir, it is not an occasion like this, although connected, as contrary to all reasonable expectation it has been, with fearful and disorganizing theories, which would make our estimates, whether fanciful or sound, of natural law, the measure of civil rights and political sovereignty in the social state, that can harm the Union. It must, indeed, be a mighty storm that can push from its moorings this sacred ark of the common safety. It is not every trifling breeze, however it may be made to sob and howl in imitation of the tempest, by the auxiliary breath of the ambitious, the timid, or the discontented, that can drive this gallant vessel, freighted with every thing that is dear to an American bosom, upon the rocks, or lay it a sheer hulk upon the ocean. I may perhaps mistake the flattering suggestions of hope, (the greatest of all flatterers, as we are told,) for the conclusions of sober reason. Yet it is a pleasing error, if it be an error, and no man shall take it from me. I will continue to cherish the belief, in defiance of the public patronage given by the honorable gentleman from New York, with more than his ordinary zeal and solemnity, to deadly speculations, which, invoking the name of God to aid their faculties for mischief, strike at all establishments, that the union of these States is formed to bear up against far greater shocks than, through all vicissitudes, it is ever likely to encounter. I will continue to cherish the belief, that, although like all other human institutions it may for a season be disturbed, or suffer momentary eclipse by the transit across its disk of some malignant planet, it possesses a recuperative force, a redeeming energy in the hearts of the people, that will soon restore it to its wonted calm, and give it back its accustomed splendor. On such a subject I will discard all hysterical apprehensions—I will deal in no sinister auguries—I will indulge in no hypochondriacal forebodings. I will look forward to the future with gay and cheerful hope; and will make the prospect smile, in fancy at least, until overwhelming reality shall render it no longer possible.

I have said thus much, sir, in order that I may be understood as meeting the constitutional question as a mere question of interpretation, and as disdaining to press into the service of my argument upon it prophetic fears of any sort, however they may be countenanced by an avowal, formidable by reason of the high reputation of the individual by whom it has

* Mr. King.

been hazarded, of sentiments the most destructive, which if not borrowed from, are identical with, the worst visions of the political philosophy of France when all the elements of discord and misrule were let loose upon that devoted nation. I mean "the infinite perfectibility of man and his institutions," and the resolution of every thing into a state of nature. I have another motive, which, at the risk of being misconstrued, I will declare without reserve. With my convictions, and with my feelings, I never will consent to hold confederated America as bound together by a silken cord, which any instrument of mischief may sever, to the view of monarchical foreigners, who look with a jealous eye upon that glorious experiment which is now in progress amongst us in favor of republican freedom. Let them make such prophecies as they will, and nourish such feelings as they may: I will not contribute to the fulfilment of the former, nor minister to the gratification of the latter.

Sir, it was but the other day that we were forbidden, (properly forbidden I am sure, for the prohibition came from you,) to assume that there existed any intention to impose a prospective restraint on the domestic legislation of Missouri—a restraint to act upon it contemporaneously with its origin as a State, and to continue adhesive to it through all the stages of its political existence. We are now, however, permitted to know that it is determined by a sort of political surgery to amputate one of the limbs of its local sovereignty, and thus mangled and disparaged, and thus only, to receive it into the bosom of the constitution. It is now avowed that, while Maine is to be ushered into the Union with every possible demonstration of studious reverence on our part, and on hers with colors flying, and all the other graceful accompaniments of honorable triumph, this ill-conditioned upstart of the West, this obscure foundling of a wilderness that was but yesterday the hunting ground of the savage, is to find her way into the American family as she can, with an humiliating badge of remediless inferiority patched upon her garments, with the mark of recent, qualified manumission upon her, or rather with a brand upon her forehead to tell the story of her territorial vassalage, and to perpetuate the memory of her evil propensities. It is now avowed that, while the robust district of Maine is to be seated by the side of her truly respectable parent, co-ordinate in authority and honor, and is to be dandled into that power and dignity of which she does not stand in need, but which undoubtedly she deserves, the more infantine and feeble Missouri is to be repelled with harshness, and forbidden to come at all, unless with the iron collar of servitude about her neck, instead of the civic crown of republican freedom upon her brows, and is to be doomed for ever to leading-strings, unless she will exchange those leading-strings for shackles.

this odious and revolting distinction, and I am referred for the proofs of that power to various parts of the constitution, but principally to that part of it which authorizes the admission of new States into the Union. I am myself of opinion that it is in that part only that the advocates for this restriction can, with any hope of success, apply for a license to impose it; and that the efforts which have been made to find it in other portions of that instrument, are too desperate to require to be encountered. I shall, however, examine those other portions before I have done, lest it should be supposed by those who have relied upon them, that what I omit to answer I believe to be unanswerable.

The clause of the constitution which relates to the admission of new States is in these words: "The Congress may admit new States into this Union," &c., and the advocates for restriction maintain that the use of the word "may" imports discretion to admit or to reject; and that in this discretion is wrapped up another—that of prescribing the terms and conditions of admission in case you are willing to admit: "Cujus est dare ejus est disponere." I will not for the present inquire whether this involved discretion to dictate the terms of admission belongs to you or not. It is fit that I should first look to the nature and extent of it.

I think I may assume that if such a power be any thing but nominal, it is much more than adequate to the present object—that it is a power of vast expansion, to which human sagacity can assign no reasonable limits—that it is a capacious reservoir of authority, from which you may take, in all time to come, as occasion may serve, the means of oppression as well as of benefaction. I know that it professes at this moment to be the chosen instrument of protecting mercy, and would win upon us by its benignant smiles: but I know too it can frown, and play the tyrant, if it be so disposed. Notwithstanding the softness which it now assumes, and the care with which it conceals its giant proportions beneath the deceitful drapery of sentiment, when it next appears before you it may show itself with a sterner countenance and in more awful dimensions. It is, to speak the truth, sir, a power of colossal size—if indeed it be not an abuse of language to call it by the gentle name of a power. Sir, it is a wilderness of powers, of which fancy in her happiest mood is unable to perceive the far distant and shadowy boundary. Armed with such a power, with religion in one hand and philanthropy in the other, and followed with a goodly train of public and private virtues, you may achieve more conquests over sovereignties not your own, than falls to the common lot of even uncommon ambition. By the aid of such a power, skilfully employed, you may "bridge your way" over the Hellespont that separates State legislation from that of Congress; and you may do so for pretty much the same purpose with which Xerxes once bridged his way

Europe. He did so, in the language of Milton, "the liberties of Greece to yoke." You may do so for the analogous purpose of subjugating and reducing the sovereignties of States, as your taste or convenience may suggest, and fashioning them to your imperial will. There are those in this House who appear to think, and I doubt not sincerely, that the particular restraint now under consideration is wise, and benevolent, and good; wise as respects the Union—good as respects Missouri—benevolent as respects the unhappy victims whom with a novel kindness it would incarcerate in the south, and bless by decay and extirpation. Let all such beware, lest in their desire for the effect which they believe the restriction will produce, they are too easily satisfied that they have the right to impose it. The moral beauty of the present purpose, or even its political recommendations, (whatever they may be,) can do nothing for a power like this, which claims to prescribe conditions "ad libitum," and to be competent to this purpose, because it is competent to all. This restriction, if it be not smothered in its birth, will be but a small part of the progeny of that prolific power. It teems with a mighty brood, of which this may be entitled to the distinction of comeliness as well as of primogeniture. The rest may want the boasted loveliness of their predecessor, and be even uglier than "Lapland witches."

Perhaps, sir, you will permit me to remind you, that it is almost always in company with those considerations that interest the heart in some way or other, that encroachment steals into the world. A bad purpose throws no veil over the licenses of power. It leaves them to be seen as they are. It affords them no protection from the inquiring eye of jealousy. The danger is when a tremendous discretion like the present is attempted to be assumed, as on this occasion, in the names of pity, of religion, of national honor and national prosperity; when encroachment tricks itself out in the robes of piety, or humanity, or addresses itself to pride of country, with all its kindred passions and motives. It is then that the guardians of the constitution are apt to slumber on their watch, or, if awake, to mistake for lawful rule some pernicious arrogation of power.

I would not discourage authorized legislation upon those kindly, generous, and noble feelings which Providence has given to us for the best of purposes: but when power to act is under discussion, I will not look to the end in view, lest I should become indifferent to the lawfulness of the means. Let us discard from this high constitutional question, all those extrinsic considerations which have been forced into its discussion. Let us endeavor to approach it with a philosophic impartiality of temper—with a sincere desire to ascertain the boundaries of our authority, and a determination to keep our wishes in subjection to our allegiance to the constitution.

memorial, and speech, with which the press has lately groaned, is a foul blot upon our otherwise immaculate reputation. Let this be conceded—yet you are no nearer than before to the conclusion that you possess power which may deal with other subjects as effectually as with this. Slavery, we are further told, with some pomp of metaphor, is a canker at the root of all that is excellent in this republican empire, a pestilent disease that is snatching the youthful bloom from its cheek, prostrating its honor and withering its strength. Be it so—yet if you have power to medicine to it in the way proposed, and in virtue of the diploma which you claim, you have also power in the distribution of your political alexipharmics to present the deadliest drugs to every territory that would become a State, and bid it drink or remain a colony forever. Slavery, we are also told, is now "rolling onward with a rapid tide towards the boundless regions of the west," threatening to doom them to sterility and sorrow, unless some potent voice can say to it—thus far shalt thou go, and no farther. Slavery engenders pride and indolence in him who commands, and inflicts intellectual and moral degradation on him who serves. Slavery, in fine, is unchristian and abominable. Sir, I shall not stop to deny that slavery is all this and more; but I shall not think myself the less authorized to deny that it is for you to stay the course of this dark torrent, by opposing to it a mound raised up by the labors of this portentous discretion on the domain of others—a mound which you cannot erect but through the instrumentality of a trespass of no ordinary kind—not the comparatively innocent trespass that beats down a few blades of grass which the first kind sun or the next refreshing shower may cause to spring again—but that which levels with the ground the lordliest trees of the forest, and claims immortality for the destruction which it inflicts.

I shall not, I am sure, be told that I exaggerate this power. It has been admitted here and elsewhere that I do not. But I want no such concession. It is manifest that as a discretionary power it is every thing or nothing—that its head is in the clouds, or that it is a mere figment of enthusiastic speculation—that it has no existence, or that it is an alarming vortex ready to swallow up all such portions of the sovereignty of an infant State as you may think fit to cast into it as preparatory to the introduction into the union of the miserable residue. No man can contradict me when I say, that if you have this power, you may squeeze down a new-born sovereign State to the size of a pigmy, and then taking it between finger and thumb, stick it into some nitch of the Union, and still continue by way of mockery to call it a State in the sense of the constitution. You may waste it to a shadow, and then introduce it into the society of flesh and blood an object of scorn and derision. You may

ruddy and healthful members of the Union, that it may have leisure to mourn the lamentable difference between itself and its companions, to brood over its disastrous promotion, and to seek in justifiable discontent an opportunity for separation, and insurrection, and rebellion. What may you not do by dexterity and perseverance with this terrific power? You may give to a new State, in the form of terms which it cannot refuse, (as I shall show you hereafter,) a statute book of a thousand volumes—providing not for ordinary cases only, but even for possibilities; you may lay the yoke, no matter whether light or heavy, upon the necks of the latest posterity; you may send this searching power into every hamlet for centuries to come, by laws enacted in the spirit of prophecy, and regulating all those dear relations of domestic concern which belong to local legislation, and which even local legislation touches with a delicate and sparing hand. This is the first inroad. But will it be the last? This provision is but a pioneer for others of a more desolating aspect. It is that fatal bridge of which Milton speaks, and when once firmly built, what shall hinder you to pass it when you please for the purpose of plundering power after power at the expense of new States, as you will still continue to call them, and raising up prospective codes irrevocable and immortal, which shall leave to those States the empty shadows of domestic sovereignty, and convert them into petty pageants, in themselves contemptible, but rendered infinitely more so by the contrast of their humble faculties with the proud and admitted pretensions of those who having doomed them to the inferiority of vassals, have condescended to take them into their society and under their protection?

I shall be told, perhaps, that you can have no temptation to do all or any part of this, and, moreover, that you can do nothing of yourselves, or, in other words, without the concurrence of the new State. The last of these suggestions I shall examine by and by. To the first I answer, that it is not incumbent upon me to prove that this discretion will be abused. It is enough for me to prove the vastness of the power as an inducement to make us pause upon it, and to inquire with attention whether there is any apartment in the constitution large enough to give it entertainment. It is more than enough for me to show that vast as is this power, it is with reference to mere territories an irresponsible power. Power is irresponsible when it acts upon those who are defenceless against it—who cannot check it, or contribute to check it, in its exercise—who can resist it only by force. The territory of Missouri has no check upon its power. It has no share in the government of the Union. In this body it has no representative. In the other House it has, by courtesy, an agent, who may remonstrate, but cannot vote. That such an irre-

perience is a cheat, and fact a liar." The power which England claimed over the colonies was such a power, and it was abused—and hence the Revolution. Such a power is always perilous to those who wield it, as well as to those on whom it is exerted. Oppression is but another name for irresponsible power, if history is to be trusted.

The free spirit of our constitution and of our people, is no assurance against the propension of unbridled power to abuse, when it acts upon colonial dependants rather than upon ourselves. Free States, as well as despots, have oppressed those whom they were bound to foster—and it is the nature of man that it should be so. The love of power, and the desire to display it when it can be done with impunity, is inherent in the human heart. Turn it out at the door, and it will in again at the window. Power is displayed in its fullest measure, and with a captivating dignity, by restraints and conditions. The "pruritas leges ferendi" is an universal disease; and conditions are laws as far as they go. The vanity of human wisdom, and the presumption of human reason, are proverbial. This vanity and this presumption are often neither reasonable nor wise. Humanity, too, sometimes plays fantastic tricks with power. Time, moreover, is fruitful in temptations to convert discretionary power to all sorts of purposes.

Time, that withers the strength of man and "strews around him like autumnal leaves the ruins of his proudest monuments," produces great vicissitudes in modes of thinking and feeling. It brings along with it, in its progress, new circumstances—new combinations and modifications of the old—generating new views, motives, and caprices—new fanaticisms of endless variety—in short, new every thing. We ourselves are always changing—and what today we have but a small desire to attempt, tomorrow becomes the object of our passionate aspirations.

There is such a thing as enthusiasm, moral, religious, or political, or a compound of all three;—and it is wonderful what it will attempt, and from what imperceptible beginnings it sometimes rises into a mighty agent. Rising from some obscure or unknown source, it first shows itself a petty rivulet, which scarcely murmurs over the pebbles that obstruct its way—then it swells into a fierce torrent bearing all before it—and then again, like some mountain stream, which occasional rains have precipitated upon the valley, it sinks once more into a rivulet, and finally leaves its channel dry. Such a thing has happened. I do not say that it is now happening. It would not become me to say so. But if it should occur, woe to the unlucky territory that should be struggling to make its way into the Union at the moment when the opposing inundation was at its height, and at the same instant this wide Mediterranean

sentaneous rush, mingle with the turbid waters of the others!

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"New States may be admitted by the Congress into this Union." It is objected that the word "may" imports power, not obligation—a right to decide—a discretion to grant or refuse.

To this it might be answered that power is duty on many occasions. But let it be conceded that it is discretionary. What consequence follows? A power to refuse, in a case like this, does not necessarily involve a power to exact terms. You must look to the result which is the declared object of the power. Whether you will arrive at it, or not, may depend on your will; but you cannot compromise with the result intended and professed.

What then is the professed result? To admit a State into this Union.

What is that Union? A confederation of States equal in sovereignty—capable of every thing which the constitution does not forbid, or authorize Congress to forbid. It is an equal Union, between parties equally sovereign. They were sovereign, independently of the Union. The object of the Union was common protection for the exercise of already existing sovereignty. The parties gave up a portion of that sovereignty to insure the remainder. As far as they gave it up by the common compact they have ceased to be sovereign. The Union provides the means of defending the residue: and it is into that Union that a new State is to come. By acceding to it, the new State is placed on the same footing with the original States. It accedes for the same purpose, i. e. protection for their unsurrendered sovereignty. If it comes in shorn of its beams—crippled and disparaged beyond the original States, it is not into the original Union that it comes. For it is a different sort of Union. The first was Union "inter pares:" This is a Union between "disparates—between giants and a dwarf—between power and feebleness—between full proportioned sovereignties and a miserable image of power—a thing which that very Union has shrunk and shrivelled from its just size, instead of preserving it in its true dimensions.

It is into "this Union," i. e. the Union of the Federal Constitution, that you are to admit, or refuse to admit. You can admit into no other. You cannot make the Union, as to the new State, what it is not as to the old; for then it is not this Union that you open for the entrance of a new party. If you make it enter into a new and additional compact, is it any longer the same Union?

We are told that admitting a State into the Union is a compact. Yes—but what sort of a compact? A compact that it shall be a member of the Union, as the constitution has made it. You cannot new fashion it. You may make a compact to admit, but when admitted the original compact prevails. The Union is a and agents for the accomplishment of its objects. Vary that compact as to a new State—give new energy to that political power so as to make it act with more force upon a new State than upon the old—make the will of those agents more effectually the arbiter of the fate of a new State than of the old, and it may be confidently said that the new State has not entered into this Union, but into another Union. How far the Union has been varied is another question. But that it has been varied is clear.

If I am told that by the bill relative to Missouri, you do not legislate upon a new State—I answer that you do; and I answer further that it is immaterial whether you do or not. But it is upon Missouri, as a State, that your terms and conditions are to act. Until Missouri is a State, the terms and conditions are nothing. You legislate in the shape of terms and conditions, prospectively—and you so legislate upon it that when it comes into the Union it is to be bound by a contract degrading and diminishing its sovereignty, and is to be stripped of rights which the original parties to the Union did not consent to abandon, and which that Union (so far as depends upon it) takes under its protection and guarantee.

Is the right to hold slaves a right which Massachusetts enjoys? If it is, Massachusetts is under this Union in a different character from Missouri. The compact of Union for it, is different from the same compact of Union for Missouri. The power of Congress is different—every thing which depends upon the Union is, in that respect, different.

But it is immaterial whether you legislate for Missouri as a State or not. The effect of your legislation is to bring it into the Union with a portion of its sovereignty taken away.

But it is a State which you are to admit. What is a State in the sense of the constitution? It is not a State in the general—but a State as you find it in the constitution. A State, generally, is a body politic or independent political society of men. But the State which you are to admit must be more or less than this political entity. What must it be? Ask the constitution. It shows what it means by a State by reference to the parties to it. It must be such a State as Massachusetts, Virginia, and the other members of the American confederacy—a State with full sovereignty except as the constitution restricts it.

It is said that the word, "may," necessarily implies the right of prescribing the terms of admission. Those who maintain this are aware that there are no express words (such as "upon such terms and conditions as Congress shall think fit") words which it was natural to expect to find in the constitution, if the effect contended for were meant. They put it, therefore, on the word "may," and on that alone.

Give to that word all the force you please—what does it import? That Congress is not

that when you consent to admit into this Union a new State you can make it less in sovereign power than the original parties to that Union —that you can make the Union as to it what it is not as to them—that you can fashion it to your liking by compelling it to purchase admission into a Union by sacrificing a portion of that power which it is the sole purpose of the Union to maintain in all the plenitude which the Union itself does not impair? Does it follow that you can force upon it an additional compact not found in the compact of Union—that you can make it come into the Union less a State, in regard to sovereign power, than its fellows in that Union—that you can cripple its legislative competency, (beyond the constitution which is the pact of Union, to which you make it a party as if it had been originally a party to it,) by what you choose to call a condition, but which, whatever it may be called, brings the new government into the Union under new obligations to it, and with disparaged power to be protected by it?

In a word, the whole amount of the argument on the other side, is—that you may refuse to admit a new State, and that therefore if you admit, you may prescribe the terms.

The answer to that argument is—that even if you can refuse, you can prescribe no terms which are inconsistent with the act you are to do. You can prescribe no conditions which, if carried into effect, would make the new State less a sovereign State than, under the Union as it stands, it would be. You can prescribe no terms which will make the compact of Union between it, and the original States essentially different from that compact among the original States. You may admit, or refuse to admit: but if you admit, you must admit a State in the sense of the constitution—a State with all such sovereignty as belongs to the original parties: and it must be into this Union that you are to admit it, not into a Union of your own dictating, formed out of the existing Union by qualifications and new compacts, altering its character and effect, and making it fall short of its protecting energy in reference to the new State, whilst it acquires an energy of another sort—the energy of restraint and destruction.

I have thus endeavored to show, that even if you have a discretion to refuse to admit—you have no discretion, if you are willing to admit, to insist upon any terms that impair the sovereignty of the admitted State as it would otherwise stand in the Union by the constitution which receives it into its bosom. To admit or not, is for you to decide. Admission once conceded, it follows as a corollary that you must take the new State as an equal companion with its fellows—that you cannot recast or new model the Union pro hac vice—but that you must receive it into the actual Union, and recognize it as a parcener in the common inheritance, without any other shackles than bear—without any other extinction of power than is the work of the constitution acting indifferently upon all.

I may be told perhaps that the restriction, in this case, is the act of Missouri itself; that your law is nothing without its consent, and derives its efficacy from that alone.

I shall have a more suitable occasion to speak on this topic hereafter, when I come to consider the treaty which ceded Louisiana to the United States. But I will say a few words upon it now of a more general application than it will in that branch of the argument be necessary to use.

A territory cannot surrender to Congress by anticipation, the whole, or part, of the sovereign power, which, by the constitution of the Union, will belong to it when it becomes a State and a member of the Union. Its consent is, therefore, nothing. It is in no situation to make this surrender. It is under the government of Congress; if it can barter away a part of its sovereignty, by anticipation, it can do so as to the whole. For where will you stop? If it does not cease to be a State, in the sense of the constitution, with only a certain portion of sovereign power, what other smaller portion will have that effect? If you depart from the standard of the constitution, i. e. the quantity of domestic sovereignty left in the first contracting States, and secured by the original compact of Union, where will you get another standard? Consent is no standard,—for consent may be gained to a surrender of all.

No State or Territory, in order to become a State, can alienate or surrender any portion of its sovereignty to the Union, or to a sister State, or to a foreign nation. It is under an incapacity to disqualify itself for all the purposes of government left to it in the constitution, by stripping itself of attributes which arise from the natural equality of States, and which the constitution recognizes, not only because it does not deny them, but presumes them to remain as they exist by the law of nature and nations. Inequality in the sovereignty of States is unnatural, and repugnant to all the principles of that law. Hence we find it laid down by the text-writers on public law, that "Nature has established a perfect equality of rights between independent nations"—and that "whatever the quality of a free sovereign nation gives to one, it gives to another."* The constitution of the United States proceeds upon the truth of this doctrine. It takes the States as it finds them, free and sovereign alike by nature. It receives from them portions of their power for the general good, and provides for the exercise of it by organized political bodies. It diminishes the individual sovereignty of each, and transfers, what it subtracts, to the government which it creates: it takes from all alike, and leaves them relatively to each other equal in sovereign power.

The honorable gentleman from New York has put the constitutional argument altogether upon the clause relative to admission of new States into the Union. He does not pretend that you can find the power to restrain, in any extent, elsewhere. It follows that it is not a particular power to impose this restriction, but a power to impose restrictions ad libitum. It is competent to this, because it is competent to every thing. But he denies that there can be any power in man to hold in slavery his fellow-creature, and argues, therefore, that the prohibition is no restraint at all, since it does not interfere with the sovereign powers of Missouri.

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One of the most signal errors with which the argument on the other side has abounded, is this of considering the proposed restriction as if levelled at the introduction or establishment of slavery. And hence the vehement declamation, which, among other things, has informed us that slavery originated in fraud or violence.

The truth is, that the restriction has no relation, real or pretended, to the right of making slaves of those who are free, or of introducing slavery where it does not already exist. It applies to those who are admitted to be already slaves, and who (with their posterity) would continue to be slaves if they should remain where they are at present; and to a place where slavery already exists by the local law. Their civil condition will not be altered by their removal from Virginia, or Carolina, to Missouri. They will not be more slaves than they now are. Their abode, indeed, will be different, but their bondage the same. Their numbers may possibly be augmented by the diffusion, and I think they will. But this can only happen because their hardships will be mitigated, and their comforts increased. The checks to population, which exist in the older States, will be diminished. The restriction, therefore, does not prevent the establishment of slavery, either with reference to persons or place; but simply inhibits the removal from place to place (the law in each being the same) of a slave, or make his emancipation the consequence of that removal. It acts professedly merely on slavery as it exists, and thus acting restrains its present lawful effects. That slavery, like many other human institutions, originated in fraud or violence, may be conceded: but, however it originated, it is established among us, and no man seeks a further establishment of it by new importations of freemen to be converted into slaves. On the contrary, all are anxious to mitigate its evils, by all the means within the reach of the appropriate authority, the domestic legislatures of the different States.

It can be nothing to the purpose of this argument, therefore, as the gentlemen themselves have shaped it, to inquire what was the origin of slavery. What is it now, and who are they that endeavor to innovate upon what it now is (the advocates of this restriction who desire change by unconstitutional means, or its opponents who desire to leave the whole matter to local regulation,) are the only questions worthy of attention.

Sir, if we too closely look to the rise and progress of long sanctioned establishments and unquestioned rights, we may discover other subjects than that of slavery, with which fraud and violence may claim a fearful connection, and over which it may be our interest to throw the mantle of oblivion. What was the settlement of our ancestors in this country but an invasion of the rights of the barbarians who inhabited it? That settlement, with slight exceptions, was effected by the slaughter of those who did no more than defend their native land against the intruders of Europe, or by unequal compacts and purchases, in which feebleness and ignorance had to deal with power and cunning. The savages who once built their huts where this proud Capitol, rising from its recent ashes, exemplifies the sovereignty of the American people, were swept away by the injustice of our fathers, and their domain usurped by force, or obtained by artifices yet more criminal. Our continent was full of those aboriginal inhabitants. Where are they or their descendants? Either "with years beyond the flood," or driven back by the swelling tide of our population from the borders of the Atlantic to the deserts of the West. You follow still the miserable remnants, and make contracts with them that seal their ruin. You purchase their lands, of which they know not the value, in order that you may sell them to advantage, increase your treasure, and enlarge your empire. Yet further—you pursue as they retire; and they must continue to retire until the Pacific shall stay their retreat, and compel them to pass away as a dream. Will you recur to those scenes of various iniquity for any other purpose than to regret and lament them? Will you pry into them with a view to shake and impair your rights of property and dominion?

But the broad denial of the sovereign right of Missouri, if it shall become a sovereign State, to recognize slavery by its laws, is rested upon a variety of grounds, all of which I will examine.

It is an extraordinary fact, that they who urge this denial with such ardent zeal, stop short of it in their conduct. There are now slaves in Missouri whom they do not insist upon delivering from their chains. Yet if it is incompetent to sovereign power to continue slavery in Missouri, in respect of slaves who may yet be carried thither; show me the power that can continue it in respect of slaves who are there already. Missouri is out of the old limits of the Union, and beyond those limits, it is said, we can give no countenance to slavery, if we can countenance or tolerate it any where. It is plain, that there can

moment, but in virtue of some power to make or keep them so. What sort of power was it that has made or kept them so? Sovereign power it could not be, according to the honorable gentlemen from Pennsylvania and New Hampshire:* and if sovereign power is unequal to such a purpose, less than sovereign power is yet more unequal to it. The laws of Spain and France could do nothing—the laws of the territorial government of Missouri could do nothing towards such a result, if it be a result which no laws, in other words, no sovereignty, could accomplish. The treaty of 1803 could do no more, in this view, than the laws of France, or Spain, or the territorial government of Missouri. A treaty is an act of sovereign power, taking the shape of a compact between the parties to it; and that which sovereign power cannot reach at all, it cannot reach by a treaty. Those who are now held in bondage, therefore, in Missouri, and their issue, are entitled to be free, if there be any truth in the doctrine of the honorable gentlemen; and if the proposed restriction leaves all such in slavery, it thus discredits the very foundation on which it reposes. To be inconsistent is the fate of false principles—but this inconsistency is the more to be remarked, since it cannot be referred to mere considerations of policy, without admitting that such considerations may be preferred (without a crime) to what is deemed a paramount and indispensable duty.

It is here, too, that I must be permitted to observe, that the honorable gentlemen have taken great pains to show that this restriction is a mere work of supererogation by the principal argument on which they rest the proof of its propriety. Missouri, it is said, can have no power to do what the restriction would prevent. It would be void, therefore, without the restriction. Why then, I ask, is the restriction insisted upon? Restraint implies that there is something to be restrained: But the gentlemen justify the restraint by showing that there is nothing upon which it can operate! They demonstrate the wisdom and necessity of restraint, by demonstrating that with or without restraint, the subject is in the same predicament. This is to combat with a man of straw, and to put fetters upon a shadow.

The gentlemen must, therefore, abandon either their doctrine or their restriction—their argument or their object—for they are directly in conflict, and reciprocally destroy each other. It is evident, that they will not abandon their object, and of course, I must believe, that they hold their argument in as little real estimation as I myself do. The gentlemen can scarcely be sincere believers in their own principle. They have apprehensions, which they endeavor to conceal, that Missouri, as a State, will have power to continue slavery within its limits; and, if they will not be offended, I will venture to compare them, in this particular, with the duelist in Sheridan's comedy of the rivals, who affecting to have no fear whatever of his adversary, is, nevertheless, careful to admonish Sir Lucius to hold him fast.

Let us take it for granted, however, that they are in earnest in their doctrine, and that it is very necessary to impose what they prove to be an unnecessary restraint: how do they support that doctrine?

The honorable gentleman on the other side* has told us as a proof of his great position, (that man cannot enslave his fellow man, in which is implied that all laws upholding slavery are absolute nullities,) that the nations of antiquity, as well as of modern times, have concurred in laying down that position as incontrovertible.

He refers us in the first place to the Roman law, in which he finds it laid down as a maxim: "Jure naturali omnes homines ab initio liberi nasebantur." From the manner in which this maxim was pressed upon us, it would not readily have been conjectured that the honorable gentleman who used it had borrowed it from a slave-holding empire, and still less from a book of the Institutes of Justinian, which treats of slavery, and justifies, and regulates it. Had he given us the context, we should have had the modifications of which the abstract doctrine was in the judgment of the Roman laws susceptible. We should have had an explanation of the competency of that law, to convert, whether justly or unjustly, freedom into servitude, and to maintain the right of a master to the service and obedience of his slave.

The honorable gentleman might also have gone to Greece for a similar maxim and a similar commentary, speculative and practical.

He next refers us to Magna Charta. I am somewhat familiar with Magna Charta, and I am confident that it contains no such maxim as the honorable gentleman thinks he has discovered in it. The great charter was extorted from John, and his feeble son and successor, by haughty slave-holding barons, who thought only of themselves and the commons of England, (then inconsiderable,) whom they wished to enlist in their efforts against the crown. There is not in it a single word which condemns civil slavery. Freemen only are the objects of its protecting care. "Nullus liber homo," is its phraseology. The serfs, who were chained to the soil—the villeins regardant and in gross, were left as it found them. All England was then full of slaves, whose posterity would by law remain slaves as with us, except only that the issue followed the condition of the father instead of the mother. The rule was "Partus sequitur patrem"—a rule more favorable, undoubtedly, from the very precariousness of its application, to the gradual extinction of slavery, than ours, which has been drawn from the Roman law, and is of sure and unavoidable effect.

Still less has the petition of right, presented to Charles I., by the long Parliament, to do with the subject of civil slavery. It looked merely, as Magna Charta had not done before it, to the freemen of England—and sought only to protect them against royal prerogative and the encroaching spirit of the Stuarts.

As to the bill of rights, enacted by the Convention Parliament of 1688, it is almost a duplicate of the petition of right, and arose out of the recollection of that political tyranny from which the nation had just escaped, and the recurrence of which it was intended to prevent. It contains no abstract principles. It deals only with practical checks upon the power of the monarch, and in safeguards for institutions essential to the preservation of the public liberty. That it was not designed to anathematize civil slavery may be taken for granted, since at that epoch, and long afterwards, the English government inundated its foreign plantations with slaves, and supplied other nations with them as merchandise, under the sanction of solemn treaties negotiated for that purpose. And here I cannot forbear to remark that we owe it to that same government, when it stood towards us in the relation of parent to child, that involuntary servitude exists in our land, and that we are now deliberating whether the prerogative of correcting its evils belongs to the national or the State governments. In the early periods of our colonial history, every thing was done by the mother country to encourage the importation of slaves into North America, and the measures which were adopted by the Colonial Assemblies to prohibit it, were uniformly negatived by the crown. It is not therefore our fault, nor the fault of our ancestors, that this calamity has been entailed upon us; and notwithstanding the ostentation with which the loitering abolition of the slave trade by the British parliament has been vaunted, the principal consideration which at last reconciled it to that measure was, that by suitable care, the slave population in their West India islands (already fully stocked) might be kept up and even increased without the aid of importation. In a word, it was cold calculations of interest, and not the suggestions of humanity, or a respect for the philanthropic principles of Mr. Wilberforce, which produced their tardy abandonment of that abominable traffic.

Of the declaration of our independence, which has also been quoted in support of the perilous doctrines now urged upon us, I need not now speak at large. I have shown on a former occasion how idle it is to rely upon that instrument for such a purpose, and I will not fatigue you by mere repetition. The self-evident truths announced in the declaration of independence are not truths at all, if taken literally; and the practical conclusions contained in the same passage of that declaration prove that they were never designed to be so

The articles of confederation contain nothing on the subject; whilst the actual constitution recognizes the legal existence of slavery by various provisions. The power of prohibiting the slave trade is involved in that of regulating commerce, but this is coupled with an express inhibition to the exercise of it for twenty years. How then can that constitution which expressly permits the importation of slaves, authorize the national government to set on foot a crusade against slavery?

The clause respecting fugitive slaves is affirmative and active in its effects. It is a direct sanction and positive protection of the right of the master to the services of his slave as derived under the local laws of the States. The phraseology in which it is wrapped up still leaves the intention clear, and the words, "persons held to service or labor in one State under the laws thereof," have always been interpreted to extend to the case of slaves, in the various acts of Congress which have been passed to give efficacy to the provision, and in the judicial application of those laws. So also in the clause prescribing the ratio of representation—the phrase, "three-fifths of all other persons," is equivalent to slaves, or it means nothing. And yet we are told that those who are acting under a constitution which sanctions the existence of slavery in those States which choose to tolerate it, are at liberty to hold that no law can sanction its existence!

It is idle to make the rightfulness of an act the measure of sovereign power. The distinction between sovereign power and the moral right to exercise it, has always been recognized. All political power may be abused, but is it to stop where abuse may begin? The power of declaring war is a power of vast capacity for mischief, and capable of inflicting the most wide-spread desolation. But it is given to Congress without stint and without measure. Is a citizen, or are the courts of justice to inquire whether that, or any other law, is just, before they obey or execute it? And are there any degrees of injustice which will withdraw from sovereign power the capacity of making a given law?

But sovereignty is said to be deputed power. Deputed—by whom? By the people, because the power is theirs. And if it be theirs, does not the restriction take it away? Examine the constitution of the Union, and it will be seen that the people of the States are regarded as well as the States themselves. The constitution was made by the people, and ratified by the people.

Is it fit, then, to hold that all the sovereignty of a State is in the government of the State? So much is there as the people grant: and the people can take it away, or give more, or new model what they have already granted. It is this right which the proposed restriction takes from Missouri. You give them an immortal constitution, depending on your will, not on

be bound for ever by this restriction; and upon the same principle, any other restriction may be imposed. Where then is their power to change the constitution, and to devolve new sovereignty upon the State government? You limit their sovereign capacity to do it; and when you talk of a State, you mean the people as well as the government. The people are the source of all power—you dry up that source. They are the reservoir—you take out of it what suits you.

It is said that this government is a government of deputed powers. So is every government—and what power is not deputed remains. But the people of the United States can give it more if they please, as the people of each State can do in respect to its own government. And here it is well to remember that this is a government of enumerated, as well as deputed powers, and to examine the clause as to the admission of new States, with that principle in view. Now assume that it is a part of the sovereign power of the people of Missouri to continue slavery, and to devolve that power upon its government—and then to take it away—and then to give it again. The government is their creature—the means of exercising their sovereignty, and they can vary those means at their pleasure. Independently of the Union, their power would be unlimited. By coming into the Union, they part with some of it, and are thus less sovereign.

Let us then see whether they part with this power.

If they have parted with this portion of sovereign power, it must be under that clause of the national constitution which gives to Congress "power to admit new States into this Union." And it is said that this necessarily implies the authority of prescribing the conditions, upon which such new States shall be admitted. This has been put into the form of a syllogism which is thus stated:

Major. Every universal proposition includes all the means, manner, and terms of the act to which it relates.

Minor. But this is a universal proposition.

Conclusion. Therefore, the means, manner, and terms are involved in it.

But this syllogism is fallacious, and any thing else may be proved by it, by assuming one of its members which involves the conclusion. The minor is a mere postulate.

Take it in this way:

Major. None but a universal proposition includes in itself the terms and conditions of the act to be done.

Minor. But this is not such a universal proposition.

Conclusion. Therefore, it does not contain in itself the terms and conditions of the act.

In both cases the minor is a gratuitous postulate.

But I deny that a universal proposition as to a specific act, involves the terms and conditions of that act, so as to warrant its substitution for another and a different act in its place. The proposition contained in the clause is universal in one sense only. It is particular in another. It is universal as to the power to admit or refuse. It is particular as to the being or thing to be admitted, and the compact by which it is to be admitted. The sophistry consists in extending the universal part of the proposition in such a manner as to make out of it another universal proposition. It consists in confounding the right to produce or to refuse to produce a certain defined effect, with a right to produce a different effect by refusing otherwise to produce any effect at all. It makes the actual right the instrument of obtaining another right with which the actual right is incompatible. It makes, in a word, lawful power the instrument of unlawful usurpation. The result is kept out of sight by this mode of reasoning. The discretion to decline that result, which is called a universal proposition, is singly obtruded upon us. But in order to reason correctly, you must keep in view the defined result, as well as the discretion to produce or to decline to produce it. The result is the particular part of the proposition; therefore, the discretion to produce or decline it, is the universal part of it. But because the last is found to be universal, it is taken for granted that the first is also universal. This is a sophism too manifest to impose.

But discarding the machinery of syllogisms as unfit for such a discussion as this, let us look at the clause with a view of interpreting it by the rules of sound logic and common sense.

The power is "to admit new States into this Union;" and it may be safely conceded that here is discretion to admit or refuse. The question is, what must we do if we do any thing? What must we admit, and into what? The answer is a State—and into this Union.

The distinction between federal rights and local rights, is an idle distinction. Because the new State acquires federal rights, it is not, therefore, in this Union. The Union is a compact; and is it an equal party to that compact, because it has equal federal rights?

How is the Union formed? By equal contributions of power. Make one member sacrifice more than another, and it becomes unequal. The compact is of two parts,

1. The thing obtained—federal rights.
2. The price paid—local sovereignty.

You may disturb the balance of the Union, either by diminishing the thing acquired, or increasing the sacrifice paid.

What were the purposes of coming into the Union among the original States? The States were originally sovereign without limit, as to foreign and domestic concerns. But being incapable of protecting themselves singly, they entered into the Union to defend themselves against foreign violence. The domestic concerns of the people were not, in general, to be acted on by it. The security of the power, of

of the great objects of the Union. The Union is a means, not an end. By requiring greater sacrifices of domestic power, the end is sacrificed to the means. Suppose the surrender of all, or nearly all, the domestic powers of legislation were required; the means would there have swallowed up the end.

The argument that the compact may be enforced, shows that the federal predicament is changed. The power of the Union not only acts on persons or citizens, but on the faculty of the government, and restrains it in a way which the constitution no where authorizes. This new obligation takes away a right which is expressly "reserved to the people or the States," since it is no where granted to the government of the Union. You cannot do indirectly what you cannot do directly. It is said that this Union is competent to make compacts. Who doubts it? But can you make this compact? I insist that you cannot make it, because it is repugnant to the thing to be done.

The effect of such a compact would be to produce that inequality in the Union, to which the constitution, in all its provisions, is adverse. Every thing in it looks to equality among the members of the Union. Under it, you cannot produce inequality. Nor can you get beforehand of the constitution, and do it by anticipation. Wait until a State is in the Union, and you cannot do it: yet it is only upon the State in the Union that what you do begins to act.

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But it seems, that although the proposed restriction may not be justified by the clause of the constitution which gives power to admit new States into the Union, separately considered, there are other parts of the constitution which, combined with that clause, will warrant it. And first, we are informed that there is a clause in this instrument which declares that Congress shall guarantee to every State a republican form of government; that slavery and such a form of government are incompatible; and finally, as a conclusion from these premises, that Congress not only have a right, but are bound to exclude slavery from a new State. Here again, sir, there is an edifying inconsistency between the argument and the measure which it professes to vindicate. By the argument it is maintained that Missouri cannot have a republican form of government, and at the same time tolerate negro slavery. By the measure it is admitted that Missouri may tolerate slavery, as to persons already in bondage there, and be nevertheless fit to be received into the Union. What sort of constitutional mandate is this which can thus be made to bend, and truckle, and compromise as if it were a simple rule of expediency that might admit of exceptions upon motives of countervailing expediency. There can be no such pliancy in the peremptory provisions of the constitution. They cannot be obeyed by moieties and violated in the same ratio. They must be followed out to their full extent, or treated with that decent neglect which has at least the merit of forbearing to render contumacy obtrusive by an ostentatious display of the very duty which we in part abandon. If the decalogue could be observed in this casuistical manner, we might be grievous sinners, and yet be liable to no reproach. We might persist in all our habitual irregularities, and still be spotless. We might, for example, continue to covet our neighbors' goods, provided they were the same neighbors whose goods we had before coveted—and so of all the other commandments.

Will the gentlemen tell us that it is the quantity of slaves, not the quality of slavery, which takes from a government the republican form? Will they tell us (for they have not yet told us) that there are constitutional grounds (to say nothing of common sense) upon which the slavery which now exists in Missouri may be reconciled with a republican form of government, while any addition to the number of its slaves (the quality of slavery remaining the same) from the other States, will be repugnant to that form, and metamorphose it into some nondescript government disowned by the constitution? They cannot have recourse to the treaty of 1803 for such a distinction, since independently of what I have before observed on that head, the gentlemen have contended that the treaty has nothing to do with the matter. They have cut themselves off from all chance of a convenient distinction in or out of that treaty, by insisting that slavery beyond the old United States is rejected by the constitution, and by the law of God as discoverable by the aid of either reason or revelation; and moreover that the treaty does not include the case, and if it did could not make it better. They have therefore completely discredited their own theory by their own practice, and left us no theory worthy of being seriously controverted. This peculiarity in reasoning of giving out a universal principle, and coupling with it a practical concession that it is wholly fallacious, has indeed run through the greater part of the arguments on the other side; but it is not, as I think, the more imposing on that account, or the less liable to the criticism which I have here bestowed upon it.

There is a remarkable inaccuracy on this branch of the subject into which the gentlemen have fallen, and to which I will give a moment's attention without laying unnecessary stress upon it. The government of a new State, as well as of an old State, must, I agree, be republican in its form. But it has not been very clearly explained what the laws which such a government may enact can have to do with its form. The form of the government is material only as it furnishes a security that those laws will protect and promote the public happiness, and be made in a republican spirit The people being, in such a government, the fountain of all power, and their servants being periodically responsible to them for its exercise, the consti-

tution of the Union takes for granted, (except so far as it imposes limitations,) that every such exercise will be just and salutary. The introduction or continuance of civil slavery is manifestly the mere result of the power of making laws. It does not in any degree enter into the form of the government. It presupposes that form already settled, and takes its rise not from the particular frame of the government, but from the general power which every government involves. Make the government what you will in its organization and in the distribution of its authorities, the introduction or continuance of involuntary servitude by the legislative power which it has created can have no influence on its pre-established form, whether monarchical, aristocratical, or republican. The form of government is still one thing, and the law, being a simple exertion of the ordinary faculty of legislation by those to whom that form of government has intrusted it, another. The gentlemen, however, identify an act of legislation sanctioning involuntary servitude with the form of government itself, and then assure us that the last is changed retroactively by the first, and is no longer republican!

But let us proceed to take a rapid glance at the reasons which have been assigned for this notion that involuntary servitude and a republican form of government are perfect antipathies. The gentleman from New Hampshire* has defined a republican government to be that in which all the men participate in its power and privileges: from whence it follows that where there are slaves, it can have no existence. A definition is no proof, however, and even if it be dignified (as I think it was) with the name of a maxim, the matter is not much mended. It is Lord Bacon who says "that nothing is so easily made as a maxim;" and certainly a definition is manufactured with equal facility. A political maxim is the work of induction, and cannot stand against experience, or stand on any thing but experience. But this maxim, or definition, or whatever else it may be, sets fact at defiance. If you go back to antiquity, you will obtain no countenance for this hypothesis; and if you look at home you will gain still less. I have read that Sparta, and Rome, and Athens, and many others of the ancient family, were republics. They were so in form undoubtedly —the last approaching nearer to a perfect democracy than any other government which has yet been known in the world. Judging of them also by their fruits, they were of the highest order of republics. Sparta could scarcely be any other than a republic, when a Spartan matron could say to her son just marching to battle, "Return victorious, or return no more." It was the unconquerable spirit of liberty, nurtured by republican habits and institutions, that illustrated the pass of Thermopylæ. Yet slavery was not only tolerated in Sparta, but was established by one of the fundamental laws of Lycurgus, having for its object the encouragement of that very spirit. Attica was full of slaves—yet the love of liberty was its characteristic. What else was it that foiled the whole power of Persia at Marathon and Salamis? What other soil than that which the genial sun of republican freedom illuminated and warmed, could have produced such men as Leonidas and Miltiades, Themistocles and Epaminondas? Of Rome it would be superfluous to speak at large. It is sufficient to name the mighty mistress of the world, before Sylla gave the first stab to her liberties and the great dictator accomplished their final ruin, to be reminded of the practicability of union between civil slavery and an ardent love of liberty cherished by republican establishments.

If we return home for instruction upon this point, we perceive that same union exemplified in many a State, in which "liberty has a temple in every house, an altar in every heart," while involuntary servitude is seen in every direction. Is it denied that those States possess a republican form of government? If it is, why does our power of correction sleep? Why is the constitutional guaranty suffered to be inactive? Why am I permitted to fatigue you, as the representative of a slaveholding State, with the discussion of the "nugæ canoræ" (for so I think them) that have been forced into this debate contrary to all the remonstrances of taste and prudence? Do gentlemen perceive the consequences to which their arguments must lead if they are of any value? Do they reflect that they lead to emancipation in the old United States—or to an exclusion of Delaware, Maryland, and all the South, and a great portion of the West from the Union? My honorable friend from Virginia has no business here, if this disorganizing creed be any thing but the production of a heated brain. The State to which I belong, must "perform a lustration"—must purge and purify herself from the feculence of civil slavery, and emulate the States of the North in their zeal for throwing down the gloomy idol which we are said to worship, before her senators can have any title to appear in this high assembly. It will be in vain to urge that the old United States are exceptions to the rule—or rather (as the gentlemen express it), that they have no disposition to apply the rule to them. There can be no exceptions by implication only, to such a rule; and expressions which justify the exemption of the old States by inference, will justify the like exemption of Missouri, unless they point exclusively to them, as I have shown they do not. The guarded manner, too, in which some of the gentlemen have occasionally expressed themselves on this subject, is somewhat alarming. They have no disposition to meddle with slavery in the old United States. Perhaps not —but who shall answer for their successors? Who shall furnish a pledge that the principle once ingrafted into the constitution, will not

the whole land? It is the natural office of such a principle to wrestle with slavery, wheresoever it finds it. New States, colonized by the apostles of this principle, will enable it to set on foot a fanatical crusade against all who still continue to tolerate it, although no practicable means are pointed out by which they can get rid of it consistently with their own safety. At any rate, a present forbearing disposition, in a few or in many, is not a security upon which much reliance can be placed upon a subject as to which so many selfish interests and ardent feelings are connected with the cold calculations of policy. Admitting, however, that the old United States are in no danger from this principle—why is it so? There can be no other answer (which these zealous enemies of slavery can use) than that the constitution recognizes slavery as existing or capable of existing in those States. The constitution, then, admits that slavery and a republican form of government are not incongruous. It associates and binds them up together, and repudiates this wild imagination which the gentlemen have pressed upon us with such an air of triumph. But the constitution does more, as I have heretofore proved. It concedes that slavery may exist in a new State, as well as in an old one—since the language in which it recognizes slavery comprehends new States as well as actual. I trust then that I shall be forgiven if I suggest, that no eccentricity in argument can be more trying to human patience, than a formal assertion that a constitution, to which slave-holding States were the most numerous parties, in which slaves are treated as property as well as persons, and provision is made for the security of that property, and even for an augmentation of it by a temporary importation from Africa, a clause commanding Congress to guarantee a republican form of government to those very States, as well as to others, authorizes you to determine that slavery and a republican form of government cannot co-exist.

But if a republican form of government is that in which all the men have a share in the public power, the slave-holding States will not alone retire from the Union. The constitutions of some of the other States do not sanction universal suffrage, or universal eligibility. They require citizenship, and age, and a certain amount of property, to give a title to vote or to be voted for; and they who have not those qualifications are just as much disfranchised, with regard to the government and its power, as if they were slaves. They have civil rights indeed (and so have slaves in a less degree;) but they have no share in the government. Their province is to obey the laws, not to assist in making them. All such States must therefore be forisfamiliated with Virginia and the rest, or change their system: For the constitution being absolutely silent on those subjects, will afford them no protection. The Union might thus be reduced from an Union to an unit. Who does not see that such conclusions flow from false notions—that the true theory of a republican government is mistaken—and that in such a government rights, political and civil, may be qualified by the fundamental law, upon such inducements as the freemen of the country deem sufficient? That civil rights may be qualified as well as political, is proved by a thousand examples. Minors, resident aliens, who are in a course of naturalization—the other sex, whether maids, or wives, or widows, furnish sufficient practical proofs of this.

Again—if we are to entertain these hopeful abstractions, and to resolve all establishments into their imaginary elements in order to recast them upon some Utopian plan, and if it be true that all the men in a republican government must help to wield its power, and be equal in rights, I beg leave to ask the honorable gentleman from New Hampshire—and why not all the women? They too are God's creatures, and not only very fair but very rational creatures; and our great ancestor, if we are to give credit to Milton, accounted them the "wisest, virtuousest, discreetest, best;" although to say the truth he had but one specimen from which to draw his conclusion, and possibly if he had had more, would not have drawn it at all. They have, moreover, acknowledged civil rights in abundance, and upon abstract principles more than their masculine rulers allow them in fact. Some monarchies, too, do not exclude them from the throne. We have all read of Elizabeth of England, of Catharine of Russia, of Semiramis, and Zenobia, and a long list of royal and imperial dames, about as good as an equal list of royal and imperial lords. Why is it that their exclusion from the power of a popular government is not destructive of its republican character? I do not address this question to the honorable gentleman's gallantry, but to his abstraction, and his theories, and his notions of the infinite perfectibility of human institutions, borrowed from Godwin and the turbulent philosophers of France. For my own part, sir, if I may have leave to say so much in the presence of this mixed uncommon audience, I confess I am no friend to female government, unless indeed it be that which reposes on gentleness, and modesty and virtue, and feminine grace and delicacy—and how powerful a government that is, we have all of us, as I suspect, at some time or other experienced! But if the ultra republican doctrines which have now been broached should ever gain ground among us, I should not be surprised if some romantic reformer, treading in the footsteps of Mrs. Wolstoncraft, should propose to repeal our republican law salique, and claim for our wives and daughters a full participation in political power, and to add to it that domestic power, which in some families, as I have heard, is as absolute and unrepublican as any power can be.

I have thus far allowed the honorable gentlemen to avail themselves of their assumption

that the constitutional command to guarantee to the States a republican form of government, gives power to coerce those States in the adjustment of the details of their constitutions upon theoretical speculations. But surely it is passing strange that any man, who thinks at all, can view this salutary command as the grant of a power so monstrous; or look at it in any other light than as a protecting mandate to Congress to interpose with the force and authority of the Union against that violence and usurpation, by which a member of it might otherwise be oppressed by profligate and powerful individuals, or ambitious and unprincipled factions.

In a word, the resort to this portion of the constitution for an argument in favor of the proposed restriction, is one of those extravagancies (I hope I shall not offend by this expression) which may excite our admiration, but cannot call for a very rigorous refutation. I have dealt with it accordingly, and have now done with it.

We are next invited to study that clause of the constitution which relates to the migration or importation, before the year 1808, of such persons as any of the States then existing should think proper to admit. It runs thus: "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 one thousand eight hundred and eight, but a tax or duty may be imposed on such importation not exceeding ten dollars for each person."

It is said that this clause empowers Congress, after the year 1808, to prohibit the passage of slaves from State to State, and the word "migration" is relied upon for that purpose.

I will not say that the proof of the existence of a power by a clause which, as far as it goes, denies it, is always inadmissible; but I will say that it is always feeble. On this occasion, it is singularly so. The power, in an affirmative shape, cannot be found in the constitution; or if it can, it is equivocal and unsatisfactory. How do the gentlemen supply this deficiency? by the aid of a negative provision in an article of the constitution in which many restrictions are inserted ex abundanti cautela, from which it is plainly impossible to infer that the power to which they apply would otherwise have existed. Thus—"No bill of attainder or ex post facto law shall be passed." Take away the restriction—could Congress pass a bill of attainder, the trial by jury in criminal cases being expressly secured by the constitution? The inference, therefore, from the prohibition in question, whatever may be its meaning, to the power which it is supposed to restrain, but which you cannot lay your finger upon with any pretensions to certainty, must be a very doubtful one. But the import of the prohibition is also doubtful, as the gentlemen themselves admit. So that a doubtful power is to be made certain by a yet more doubtful negative upon power—or rather a doubtful negative, where there is no evidence of the corresponding affirmative, is to make out the affirmative and to justify us in acting upon it, in a matter of such high moment, that questionable power should not dare to approach it. If the negative were perfectly clear in its import, the conclusion which has been drawn from it would be rash, because it might have proceeded, as some of the negatives in whose company it is found evidently did proceed, from great anxiety to prevent such assumptions of authority as are now attempted. But when it is conceded that the supposed import of this negative (as to the term migration) is ambiguous, and that it may have been used in a very different sense from that which is imputed to it, the conclusion acquires a character of boldness, which, however some may admire, the wise and reflecting will not fail to condemn.

In the construction of this clause, the first remark that occurs is, that the word migration is associated with the word importation. I do not insist that "noscitur a sociis" is as good a rule in matters of interpretation as in common life—but it is, nevertheless, of considerable weight when the associated words are not qualified by any phrases that disturb the effect of their fellowship; and unless it announces, (as in this case it does not,) by specific phrases combined with the associated term, a different intention. Moreover, the ordinary unrestricted import of the word migration is what I have here supposed. A removal from district to district, within the same jurisdiction, is never denominated a migration of persons. I will concede to the honorable gentlemen, if they will accept the concession, that ants may be said to migrate when they go from one ant-hill to another at no great distance from it. But even then they could not be said to migrate, if each ant-hill was their home in virtue of some federal compact with insects like themselves. But, however this may be, it should seem to be certain that human beings do not migrate, in the sense of a constitution, simply because they transplant themselves, from one place, to which that constitution extends, to another which it equally covers.

If this word migration applied to freemen and not to slaves, it would be clear that removal from State to State would not be comprehended within it. Why then, if you choose to apply it to slaves, does it take another meaning as to the place from whence they are to come?

Sir, if we once depart from the usual acceptation of this term, fortified as it is by its union with another in which there is nothing in this respect equivocal, will gentlemen please to intimate the point at which we are to stop? Migration means, as they contend, a removal from State to State, within the pale of the common government. Why not a removal also from county to county within a particular State—

farm—from hovel to hovel? Why not any exertion of the power of locomotion? I protest I do not see, if this arbitrary limitation of the natural sense of the term migration be warrantable, that a person to whom it applies may not be compelled to remain immovable all the days of his life (which could not well be many) in the very spot, literally speaking, in which it was his good or his bad fortune to be born.

Whatever may be the latitude in which the word "persons" is capable of being received, it is not denied that the word "importation" indicates a bringing in from a jurisdiction foreign to the United States. The two "termini" of the importation, here spoken of, are a foreign country and the American Union—the first the "terminus a quo," the second the "terminus ad quem." The word migration stands in simple connexion with it, and of course is left to the full influence of that connexion. The natural conclusion is, that the same "termini" belong to each, or in other words, that if the importation must be abroad, so also must be the migration—no other "termini" being assigned to the one which are not manifestly characteristic of the other. This conclusion is so obvious, that to repel it, the word migration requires, as an appendage, explanatory phraseology, giving to it a different beginning from that of importation. To justify the conclusion that it was intended to mean a removal from State to State, each within the sphere of the constitution in which it is used, the addition of the words from one to another State in this Union, were indispensable. By the omission of these words, the word "migration" is compelled to take every sense of which it is fairly susceptible from its immediate neighbor "importation." In this view it means a coming, as "importation" means a bringing, from a foregin jurisdiction into the United States. That it is susceptible of this meaning, nobody doubts. I go further. It can have no other meaning in the place in which it is found. It is found in the constitution of this Union—which, when it speaks of migration as of a general concern, must be supposed to have in view a migration into the domain which itself embraces as a general government.

Migration, then, even if it comprehends slaves, does not mean the removal of them from State to State, but means the coming of slaves from places beyond their limits and their power. And if this be so, the gentlemen gain nothing for their argument by showing that slaves were the objects of this term.

An honorable gentleman from Rhode Island,* whose speech was distinguished for its ability, and for an admirable force of reasoning, as well as by the moderation and mildness of its spirit, informed us, with less discretion than in general he exhibited, that the word "migration" was introduced into this clause at the instance of some of the Southern States, who wished by its instrumentality to guard against a prohibition by Congress of the passage into those States of slaves from other States. He has given us no authority for this supposition, and it is, therefore, a gratuitous one. How improbable it is, a moment's reflection will convince him. The African slave-trade being open during the whole of the time to which the entire clause in question referred, such a purpose could scarcely be entertained; but if it had been entertained, and there was believed to be a necessity for securing it, by a restriction upon the power of Congress to interfere with it, is it possible that they who deemed it important would have contented themselves with a vague restraint, which was calculated to operate in almost any other manner than that which they desired? If fear and jealousy, such as the honorable gentleman has described, had dictated this provision, a better term than that of "migration," simple and unqualified, and joined too with the word "importation," would have been found to tranquillize those fears and satisfy that jealousy. Fear and jealousy are watchful, and are rarely seen to accept a security short of their object, and less rarely to shape that security, of their own accord, in such a way as to make it no security at all. They always seek an explicit guaranty; and that this is not such a guaranty this debate has proved, if it has proved nothing else.

Sir, I shall not be understood by what I have said to admit that the word migration refers to slaves. I have contended only that if it does refer to slaves it is in this clause synonymous with importation; and that it cannot mean the mere passage of slaves, with or without their masters, from one State in the Union to another.

But I now deny that it refers to slaves at all. I am not for any man's opinions or his histories upon this subject. I am not accustomed "jurare in verba magistri." I shall take the clause as I find it, and do my best to interpret it.

After going through with that part of his argument relating to this clause of the constitution, Mr. Pinkney concluded his speech by expressing a hope that (what he deemed) the perilous principles urged by those in favor of the restriction upon the new State would be disavowed or explained, or that at all events the application of them to the subject under discussion would not be pressed, but that it might be disposed of in a manner satisfactory to all by a proscriptive prohibition of slavery in the territory to the north and west of Missouri.

* Mr. Burrill.

ALBERT GALLATIN.

THE parents of Albert Gallatin were residents of Geneva, in Switzerland, where he was born on the twenty-ninth of January, 1761.* During infancy he was left an orphan, and was educated under the guidance of an estimable and highly accomplished woman, a distant relative and intimate friend of his mother. He pursued his more advanced studies, with diligence and earnestness, in the educational institutions of his native place, and in the year 1779, graduated at the Geneva University with honor; giving great promise of future eminence. In speaking of his school days, in the latter years of his life, "he often alluded to such of his companions as had subsequently distinguished themselves. He felt peculiar pride in the many great men to whom his native country had given birth, or who had flourished there, such as Sismondi, the historian, Decandolle, the botanist, Agassiz, the naturalist, now among us, and De Lolme and Dumont, the writers on legislation. Müller, the historian, was his instructor in history. De Lolme, he said, was in the class above him, and possessed a great faculty for languages, which enabled him to write his book on the English Constitution, after a residence of only a year in England. Dumont, the disciple and translator of Bentham, and friend of Mirabeau, was in the class below him. Dumont, he said, was not remarkable at school for any thing but the elegance of his French compositions and his facility in verse-making. He had no original genius, but at the same time had an exact estimate of his own powers; and the task of licking Bentham's lucubrations into shape was one that he was admirably fitted to perform."†

Resolved to emigrate to America, Mr. Gallatin, at the age of nineteen, embarked for Boston. The motive for this step can best be understood by the following letter from the Duke de la Rochefoucauld D'Enville to Doctor Franklin, published in the works of the latter, edited by Jared Sparks, L.LD.:

"*La Rocheguyon, 22d May,* 1780.

"SIR,—The residence of your grandson at Geneva, makes me hope that the citizens of that town may have some claim to your kind attention. It is with this hope that I ask it for two young men, whom the love of glory and of liberty draws to America. One of them is named Gallatin; he is nineteen years of age, well informed for his age, of an excellent character thus far, with much natural talent. The name of the other, Serre. They have concealed their project from their relatives, and therefore we cannot tell where they will land. It is supposed, however, that they are going to Philadelphia, or to the continental army. One of my friends gives me this information, with the request that I will urge you to favor them with a recommendation. I shall share in his gratitude, and I beg you, sir, to be assured of the sentiments with which I have the honor to be, &c.,

"LA ROCHEFOUCAULD D'ENVILLE."

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* Mr. Gallatin derived his name of Albert from his maternal grandfather, Albert Rolaz Seigneur du Rosez, of the Pays de Vaud. He was, on the part of both his parents, allied to some of the most distinguished families of Geneva and Switzerland; and, among others, to M. Necker and his celebrated daughter, Madame de Staël. His ancestor John Gallatin, Secretary to the Duke of Savoy, emigrated to Geneva in the early part of the sixteenth century, embraced the Reforma-

Off the coast of New England the vessel in which Mr. Gallatin was a passenger was delayed by adverse weather, and finally obliged to stop at Cape Ann. Here the young traveller was glad to set foot on shore, and determined to continue the rest of his journey by land. On the fourteenth of July, 1780, he arrived at the town of Boston, where he became acquainted with a family from his native country, and, in a few days after, accompanied them to Machias, in the district of Maine. There learning that Captain John Allen, the commandant of the fort at that place, was enlisting a company of volunteers for the defence of the Passamaquoddy, he joined the troops and accompanied them to the frontier. On this expedition, money being wanted to supply the garrison, Mr. Gallatin made advances to the government, taking an order on the same from which he ultimately realized about one-third its value. "The sum I advanced," said he, in after life, "though small, was to me a very large one, as it was nearly all the money I had; but the case was an urgent one, and I felt happy in having it in my power to do this."

In 1781, Mr. Gallatin left the vicinity of Machias and went to Boston. Early in the spring of the next year, he was chosen a teacher of the French language in Harvard College. He remained in this station until the close of the war in 1783; when he removed to Virginia. Here while engaged in prosecuting an extensive claim of a foreign house against the State, he attracted the attention and secured the friendship of many of the most prominent men of the time, among whom was Patrick Henry, "from whom he received several marks of personal friendship, and who predicted that Mr. Gallatin would rise to distinction as a statesman, and strongly advised him to settle in the west,—which in those days did not imply a more remote residence than the neighborhood of the Ohio." This advice seems to have been received with favor, for we find him, in 1785, purchasing with his moderate patrimony from Europe, extensive tracts of land in western Virginia, with the intention of forming a large settlement there. He was, however, prevented from perfecting this project by a renewal of Indian hostilities.

It is probable that it was during the examination of those lands that the following interview* occurred between General Washington and the subject of the present sketch: "Mr. Gallatin said he first met General Washington at the office of a Land Agent, near the Kenawha river, in north-western Virginia, where he (Mr. G.) had been engaged in surveying. The office consisted of a log-house, 14 feet square, in which was but one room. In one corner of this was a bed for the use of the agent. General Washington, who owned large tracts of land in this region, was then visiting them in company with his nephew, and at the same time examining the country with a view of opening a road across the Alleghanies. Many of the settlers and hunters familiar with the country had been invited to meet the General at this place, for the purpose of giving him such information as would enable him to select the most eligible pass for the contemplated road. Mr. Gallatin felt a desire to meet this great man, and determined to await his arrival.

"On his arrival General Washington took his seat at a pine table in the log-cabin, or rather Land Agent's office, surrounded by the men who had come to meet him. They all stood up, as there was no room for seats. Some of the more fortunate, however, secured quarters on the bed. They then underwent an examination by the General, who wrote down all the particulars stated by them. He was very inquisitive, questioning one after the other, and noting down all they said. Mr. Gallatin stood among the others in the crowd, though quite near the table, and listened attentively to the numerous queries put by the General, and very soon discovered from the various relations which was the only practicable pass through which the road could be made. He felt uneasy at the indecision of the General, when the point was so evident to him, and without reflecting on the impropriety of it, suddenly interrupted him, saying, 'Oh, it is plain enough, such a place (a spot just mentioned by one of the settlers) is the most practicable.' The good people stared at the young surveyor (for they only knew him as such) with surprise, wondering at his boldness in thrusting his opinion unasked upon the General. The interruption put a sudden stop to General Washington's inquiries. He laid down his pen, raised his eyes

* Related by Mr. John Russell Bartlett, in his remarks before the New York Historical Society, on the death of Mr.

from his paper, and cast a stern look at Mr. Gallatin, evidently offended at the intrusion of his opinion, but said not a word. Resuming his former attitude, he continued his interrogations for a few minutes longer, when, suddenly stopping, he threw down his pen, turned to Mr. Gallatin, and said, 'You are right, sir.'

"It was so on all occasions with General Washington," remarked Mr. Gallatin to me. "He was slow in forming an opinion, and never decided until he knew he was right."

"To continue the narrative: the General stayed here all night, occupying the bed alluded to, while his nephew, the land agent, and Mr. Gallatin, rolled themselves in blankets and buffalo skins, and lay upon the bare floor. After the examination mentioned, and when the party went out, General Washington inquired who the young man was who had interrupted him, made his acquaintance, and learned all the particulars of his history. They occasionally met afterwards, and the General urged Mr. Gallatin to become his land agent; but as Mr. Gallatin was then, or intended soon to become, the owner of a large tract of land, he was compelled to decline the favorable offer made him by General Washington."

In 1786, Mr. Gallatin purchased a farm on the banks of the Monongahela, in Fayette County, Pennsylvania, and there established his residence. Three years after he was elected by the people of his adopted county to the Pennsylvania convention for the amendment of the State Constitution; and at that time commenced his political career as a member of the Democratic party.* In 1790 he was chosen a member of the State Legislature, and continued in that office until his attendance at Congress, in 1793. In Congress he remained but two months. His citizenship being questioned, his seat was contested, and after a warm and violent controversy, it was decided that he was ineligible.

In May, 1794, he returned to his home in Pennsylvania. Shortly after, the western insurrection against the excise broke out, in the suppression of which he exercised a most important part. On the fourteenth of the following October, he was again elected to the legislature from his own county, and the same day, "on the sole ground of his early and bold efforts to arrest the insurrection,—having himself no notice of the fact until after his election,"— he was chosen a member of Congress for the district of Washington and Alleghany Counties. During the excitement consequent upon this event, the Legislature of Pennsylvania set aside the elections for that body. This had no other effect than the immediate re-election of the ejected members, and to give to Mr. Gallatin the opportunity to make a public statement of all the facts connected with the insurrection. This was done in an elaborate and able speech, delivered in January, 1795, and subsequently published.

In December, 1795, Mr. Gallatin took his seat in Congress, and continued there by re-election, from the same district, during three terms. He was chosen for a fourth term, but was prevented from continuing his congressional duties; being called upon by President Jefferson to take the chair of the United States Treasury. His course in Congress, as well as his services in the financial affairs of the country, are too well known to require particular notice here. He was opposed to the increase of the national debt,—advocated internal improvements,—was the originator of the National Road, and to a great degree the author of the public lands system. On the offer of the Russian mediation in 1813, he retired from the cabinet, in which he had served with great honor and usefulness during the presidential terms of Jefferson and Madison, to take part in the negotiations with Great Britain. In 1816 he was appointed minister to the Court of France, and continued in that capacity until 1823, during the same time being twice deputed on extraordinary missions: in 1817 to the Netherlands, where he was associated with Doctor Eustis, and in 1818 to England with Mr. Rush. In 1826 he was appointed Minister Plenipotentiary to the Court of Great Britain, where his services were of the utmost importance to the country he represented. "With respect to the estimation in which he was held throughout his diplomatic career," says his biographer, "it may be safely said that no American abroad in that capacity ever maintained a higher position, in every point of view. He was usually looked to as the head of the diplomatic

corps, in which he had for colleagues, at the two great capitals of Europe, not a few of the most distinguished men of the times. His spotlessness of private character, eminent talents, extent and minuteness of general information, and fine conversational powers, could not fail everywhere to attach to his person the most distinguished social consideration; while on the part of the governments to which he was accredited, the manly uprightness and good faith characterizing all his official conduct, in the full spirit of the American diplomacy, secured him the highest respect and confidence. A peculiar elegance of courtesy and tact, maintained without compromise of the high-toned republicanism of his political sentiments, also served in no small degree to conciliate the good will and good feeling of all parties, as well to the country as to its representative—of which he had, on more than one occasion, striking and gratifying proofs."

Mr. Gallatin returned to the United States in the winter of 1827, and established his residence at the city of New York. From this time he took no part in the management of public affairs, with the exception of the preparation of the argument, in behalf of the United States, to be laid before the King of the Netherlands, on the subject of the North-Eastern Boundary. In 1831 he published *Considerations on the Currency and Banking System of the United States*, in which he advocated the suppression of small notes, and the advantages of a regulated Bank of the United States. In 1838 he rendered valuable and important public service, in effecting the resumption of specie payments by the banks of New York, after the financial crisis of 1836.

The latter years of Mr. Gallatin's life were devoted chiefly to the study of the natural features, productions and aboriginal languages of America. In 1836 he published a *Synopsis of the Indian Tribes in the United States, east of the Rocky Mountains, in the British and Russian Possessions.* In 1842 he was elected the first President of the Ethnological Society, in the founding of which institution he was mainly instrumental, and the next year he was chosen to the Presidency of the New York Historical Society, both of which offices he continued to fill until his death. During the excitement attending the north-western boundary question, in 1846, which seemed to threaten a rupture between England and the United States, he published a pamphlet on the subject, in which he advocated a moderate course, which would prevent "the scandalous spectacle, perhaps not unwelcome to some of the beholders, of an unnatural and unnecessary war." This production accomplished beneficial results. His later pamphlets, *War with Mexico* and *Peace with Mexico*, are written in the same spirit of moderation, impartiality and benevolence.

On the twelfth of August, 1849, Mr. Gallatin died at the village of Astoria, near New York.

THE BRITISH TREATY.

A Treaty of Amity, Commerce and Navigation between the United States and Great Britain, was concluded on the nineteenth of November, 1794. Subsequently it was ratified by the President. On the second of March, 1796, the President proclaimed it the law of the land, and the same day communicated it to the House of Representatives in order that the necessary appropriations might be made to carry it into effect. On the twenty-sixth of April following, in Committee of the Whole on the subjoined resolution: "*Resolved*, as the opinion of this Committee, that it is expedient to pass the laws necessary for carrying into effect the Treaty with Great Britain;" Mr. Gallatin spoke thus:*

MR. CHAIRMAN: I will not follow some of the gentlemen who have preceded me, by dwelling upon the discretion of the legislature; a question which has already been the subject of our deliberations, and been decided by a solemn vote. Gentlemen who were in the minority on that question may give any construction they please to the declaratory resolution of the House; they may again repeat that to refuse to carry the treaty into effect is a breach of the public faith which they conceive as being pledged by the President and Senate. This has been the ground on which a difference of opinion has existed since the beginning of the discussion. It is because the House thinks that the faith of the nation cannot, on those subjects submitted to the power of Congress, be pledged by any con-

* See Mr. Madison's remarks on the British Treaty, at page 144 in the first volume of this work; also Mr. Giles' speech in

and Mr. Madison's remarks on the same subject, at page 144 in the first volume of this work; also Mr. Giles' speech in

stituted authority other than the legislature, that they resolved that in all such cases it is their right and duty to consider the expediency of carrying a treaty into effect. If the House think the faith of the nation already pledged they cannot claim any discretion; there is no room left to deliberate upon the expediency of the thing. The resolution now under consideration is merely "that it is expedient to carry the British treaty into effect," and not whether we are bound by national faith to do it. I will therefore consider the question of expediency alone; and thinking as I do that the House has full discretion on this subject, I conceive that there is as much responsibility in deciding in the affirmative as in rejecting the resolution, and that we shall be equally answerable for the consequences that may follow from either.

It is, however, true that there was a great difference between the situation of this country in the year 1794, when a negotiator was appointed, and that in which we are at present; and that consequences will follow the refusal to carry into effect the treaty in its present stage, which would not have attended a refusal to negotiate and to enter into such a treaty. The question of expediency, therefore, assumes before us a different and more complex shape than when before the negotiator, the Senate or the President. The treaty, in itself and abstractedly considered, may be injurious; it may be such an instrument as in the opinion of the House ought not to have been adopted by the Executive; and yet such as it is we may think it expedient under the present circumstances to carry it into effect. I will therefore first take a view of the provisions of the treaty itself, and in the next place, supposing it is injurious, consider, in case it is not carried into effect, what will be the natural consequences of such refusal.

The provisions of the treaty relate either to the adjustment of past differences, or to the future intercourse of the two nations. The differences now existing between Great Britain and this country arose either from non-execution of some articles of the treaty of peace or from the effects of the present European war. The complaints of Great Britain in relation to the treaty of 1783 were confined to the legal impediments thrown by the several States in the way of the recovery of British debts. The late treaty provides adequate remedy on that subject; the United States are bound to make full and complete compensation for any losses arising from that source, and every ground of complaint on the part of Great Britain is removed.

Having thus done full justice to the other nation, America has a right to expect that equal attention shall be paid to her claims arising from infractions of the treaty of peace, viz., compensation for the negroes carried away by

been objected to as groundless, I will observe that I am not satisfied that the construction given by the British government to that article of the treaty, is justified even by the letter of the article. That construction rests on the supposition that slaves come under the general denomination of booty, and are alienated the moment they fall into the possession of an enemy, so that all those who were in the hands of the British when the treaty of peace was signed, must be considered as British and not as American property, and are not included in the article. It will, however, appear by recurring to Vattel when speaking of the right of "Postliminium," that slaves cannot be considered as a part of the booty which is alienated by the act of capture, and that they are to be ranked rather with real property, to the profits of which only the captors are entitled. Be that as it may, there is no doubt that the construction given by America is that which was understood by the parties at the time of making the treaty. The journals of Mr. Adams, quoted by a gentleman from Connecticut, Mr. Coit, prove this fully; for when he says that the insertion of this article was alone worth the journey of Mr. Laurens from London, can it be supposed that he would have laid so much stress on a clause, which, according to the new construction now attempted to be given, means only that the British would commit no new act of hostility—would not carry away slaves at that time in possession of Americans? Congress recognized that construction by adopting the resolution which has been already quoted, and which was introduced upon the motion of Mr. Alexander Hamilton; and it has not been denied that the British ministry during Mr. Adams' embassy also agreed to it.

But when our negotiator had, for the sake of peace, waved that claim: when he had also abandoned the right which America had to demand an indemnification for the detention of the posts, although he had conceded the right of a similar nature, which Great Britain had for the detention of debts; when he had thus given up every thing which might be supposed to be of a doubtful nature, it might have been hoped that our last claim—a claim on which there was not and there never had been any dispute—the western posts should have been restored according to the terms of the treaty of peace. Upon what ground the British insisted, and our negotiator conceded, that this late restitution should be saddled with new conditions, which made no part of the original contract, I am at a loss to know. British traders are allowed by the new treaty to remain within the posts without becoming citizens of the United States; and to carry on trade and commerce with the Indians living within our boundaries without being subject to any control from our government. In vain is it said that if that

if that condition is harmless at present it is not possible to foresee whether, under future circumstances, it will not prove highly injurious; and whether harmless or not, it is not less a permanent and new condition imposed upon us. But the fact is, that by the introduction of that clause, by obliging us to keep within our jurisdiction as British subjects, the very men who have been the instruments used by Great Britain to promote Indian wars on our frontiers; by obliging us to suffer those men to continue their commerce with the Indians living in our territory, uncontrolled by those regulations, which we have thought necessary in order to restrain our own citizens in their intercourse with these tribes, Great Britain has preserved her full influence with the Indian nations. By a restoration of the posts under that condition we have lost the greatest advantage that was expected from their possession, viz. future security against the Indians. In the same manner have the British preserved the commercial advantages which result from the occupancy of those posts, by stipulating as a permanent condition, a free passage for their goods across our portages without paying any duty.

Another article of the new treaty which is connected with the provisions of the treaty of 1783, deserves consideration; I mean what relates to the Mississippi. At the time when the navigation of that river to its mouth was by the treaty of peace declared to be common to both nations, Great Britain communicated to America a right which she held by virtue of the treaty of 1763, and as owner of the Floridas; but since that cession to the United States, England has ceded to Spain her claim on the Floridas, and does not own at the present time an inch of ground, either on the mouth or on any part of that river. Spain now stands in the place of Great Britain, and by virtue of the treaty of 1783 it is to Spain and America, and not to England and America that the navigation of the Mississippi is at present to be common. Yet, notwithstanding this change of circumstances, we have repeated that article of the former treaty in the late one, and have granted to Great Britain the additional privilege of using our ports on the eastern side of the river, without which, as they own no land thereon, they could not have navigated it. Nor is this all. Upon a supposition that the Mississippi does not extend so far northward as to be intersected by a line drawn due west from the Lake of the Woods, or, in other words, upon a supposition that Great Britain has not a claim even to touch the Mississippi, we have agreed, not upon what will be the boundary line, but that we will hereafter negotiate to settle that line. Thus leaving to future negotiation what should have been finally settled by the treaty itself, in the same manner as all other differences were, is calculated for the sole purpose, either of laying the foundation of future disputes or of recognizing a claim in Great Britain on the waters of the Mississippi, even if their boundary line leaves to the southward the sources of that river. Had not that been the intention of Great Britain the line would have been settled at once by the treaty, according to either of the two only rational ways of doing it in conformity to the treaty of 1783, that is to say, by agreeing that the line should run from the northernmost sources of the Mississippi, either directly to the western extremity of the Lake of the Woods, or northwardly till it intersected the line to be drawn due west from that lake. But by repeating the article of the treaty of 1783; by conceding the free use of our ports on the river, and by the insertion of the fourth article, we have admitted that Great Britain, in all possible events, has still a right to navigate that river from its source to its mouth. What may be the future effects of these provisions, especially as they regard our intercourse with Spain, it is impossible at present to say; but although they can bring us no advantage they may embroil us with that nation: and we have already felt the effect of it in our late treaty with Spain, since we were obliged on account of that clause of the British treaty, to accept as a gift and a favor the navigation of that river which we had till then claimed as a right.

The seventh article of the treaty is intended to adjust those differences which arose from the effects of the present European war. On that article it may also be observed, that whilst it provides a full compensation for the claims of the British, it is worded in such a manner, when speaking of the indemnification for spoliations committed on the American commerce, as will render it liable to a construction very unfavorable to our just claims on that ground. The commissioners, to be appointed by virtue of that article, are to take cognizance and to grant redress only in those cases where, by reason of irregular or illegal captures or condemnations, made under color of authority or commissions from the King of Great Britain, losses have been incurred, and where adequate compensation cannot now be actually obtained by the ordinary course of judicial proceedings. If Great Britain should insist that, since the signing of the treaty, they had, by admitting appeals to their superior courts, afforded a redress by the ordinary course of judicial proceedings; if those courts were to declare, that the captures complained of, were neither illegal, nor made under color, but by virtue of authority or commissions from the king, and if that construction should prevail with the commissioners; the indemnification which our plundered merchants would actually receive, in consequence of the provisions of this article, would fall very short of their expectations and of their just claims. Yet this article, considering the relative situation of the two countries, at the time when the negotiation took place, is as much as could reasonably have been expected by America. When a weak nation has to con-

deal if the national honor is saved even by the shadow of an indemnification, and by an apparent concession on the part of the aggressor; and however objectionable the article might appear at first view, I am, on the whole, satisfied with it.

The remaining provisions of the treaty have no connection with past differences; they make no part of the convention which was the avowed object of Mr. Jay's mission: they apply solely to the future intercourse of the two nations as relating to commerce and navigation; and had they been entirely omitted, our differences would have been nevertheless adjusted. It is agreed on all hands, that, so far as relates to our commerce with Great Britain, we want no treaty. The intercourse, although useful perhaps to both parties, is more immediately necessary to England, and her own interest is a sufficient pledge of her granting us at all times a perfect liberty of commerce to her European ports. If we want to treat with her, it must be in order to obtain some intercourse with her colonies, and some general security in our navigation.

The twelfth and thirteenth articles were obtained by our negotiator with a view to the first object. The twelfth article, however, which relates to our intercourse with the West Indies, is found upon examination to be accompanied by a restriction of such nature, that what was granted by Great Britain as a favor, has been rejected by the Senate as highly injurious. The thirteenth article, which relates to the East Indies, and remains a part of the treaty, is, like the twelfth, conferring a favor limited by restrictions, and so far as I can depend on the opinion of the best informed judges on this subject, these restrictions put the trade in a more disadvantageous situation than it was before the treaty. As the West India article declares, that we shall not re-export any produce of those islands to Europe, so the East India article, at the same time that it grants us the privilege which we enjoyed before, and which we enjoyed because it was the interest of the East India Company to grant it to us—that of being admitted into the British seaports there—prohibits our carrying any articles from thence to any place except to America; which regulation amounts to a total prohibition to export East India articles to China, or to obtain freights back to Europe; and upon the whole I cannot help thinking, from what has fallen on this floor, and what I have heard elsewhere, from gentlemen of great commercial knowledge, that if the East India commerce had been as generally understood in America as the West India trade, that so much boasted of article would have met the same fate in the Senate with the twelfth article.

But if, leaving commercial regulations, we shall seek in the treaty for some provisions securing to us the free navigation of the ocean against any future aggressions on our trade, to what has been said on the subject of contraband articles: it is, indeed, self-evident, that, connecting our treaty with England on that subject with those we have made with other nations, it amounts to a positive compact to supply that nation exclusively with naval stores whenever they may be at war. Had the list of contraband articles been reduced—had naval stores and provisions, our two great staple commodities, been declared not to be contraband, security would have been given to the free exportation of our produce; but instead of any provision being made on that head, an article of a most doubtful nature, and on which I will remark hereafter, has been introduced. But I mean, for the present, to confine my observations to the important question of free bottoms making free goods. It was with the utmost astonishment that I heard the doctrine advanced on this floor, that such a provision, if admitted, would prove injurious to America, inasmuch as in case of war between this country and any other nation, the goods of that nation might be protected by the English flag. It is not to a state of war that the benefits of this provision would extend; but it is the only security which neutral nations can have against the legal plundering on the high seas, so often committed by belligerent powers. It is not for the sake of protecting an enemy's property; it is not for the sake of securing an advantageous carrying trade; but it is in order effectually to secure ourselves against sea aggressions, that this provision is necessary. Spoliations may arise from unjust orders, given by the government of a belligerent nation to their officers and cruisers, and these may be redressed by application to and negotiation with that order. But no complaints, no negotiations, no orders of government itself, can give redress when those spoliations are grounded on a supposition, that the vessels of the neutral nation have an enemy's property on board, as long as such property is not protected by the flag of the neutral nation; as long as it is liable to be captured, it is not sufficient, in order to avoid detention and capture, to have no such property on board. Every privateer, under pretence that he suspects an enemy's goods to be part of a cargo, may search, vex and capture a vessel; and if in any corner of the dominions of the belligerent power, a single judge can be found inclined, if not determined, to condemn, at all events, before his tribunal; all vessels so captured will be brought there, and the same pretence which caused the capture will justify a condemnation. The only nation who persists in the support of this doctrine, as making part of the law of nations, is the first maritime power of Europe, whom their interest, as they are the strongest, and as there is hardly a maritime war in which they are not involved, leads to wish for a continuation of a custom, which gives additional strength to their overbearing dominion over the seas. All the other nations have different sentiments and a

in the year 1780, so fully convinced were the neutral nations of the necessity of introducing that doctrine of free bottoms making free goods, that all of them, excepting Portugal, who was in a state of vassalage to, and a mere appendage of Great Britain, united in order to establish the principle, and formed for that purpose the alliance known by the name of the armed neutrality. All the belligerent powers, except England, recognized and agreed to the doctrine. England itself, was obliged, in some measure, to give for awhile, a tacit acquiescence. America, at the time, fully admitted the principle, although then at war.

Mr. Gallatin quoted on this subject the journals of Congress of the year 1780, page 210, and of the year 1781, page 80.

It has been introduced into every other treaty we have concluded since our existence as a nation. Since the year 1780, every nation, so far as my knowledge goes, has refused to enter into a treaty of commerce with England, unless that provision was inserted. Russia, for that reason, would not renew their treaty, which had expired in 1786; although I believe, that during the present war, and in order to answer the ends of the war, they formed a temporary convention, which I have not seen, but which, perhaps, does not include that provision. England consented to it in her treaty with France, in 1788, and we are the first neutral nation who has abandoned the common cause, given up the claim, and by a positive declaration inserted in our treaty, recognized the contrary doctrine. It has been said, that under the present circumstances, it could not be expected that Great Britain would give up the point; perhaps so; but the objection is not, that our negotiator has not been able to obtain that principle, but that he has consented to enter into a treaty of commerce, which we do not want, and which has no connection with an adjustment of our differences with Great Britain, without the principle contended for, making part of that treaty. Unless we can obtain security for our navigation, we want no treaty; and the only provision which can give us that security, should have been the "sine qua non" of a treaty. On the contrary, we have disgusted all the other neutral nations of Europe, without whose concert and assistance there is but little hope that we shall ever obtain that point; and we have taught Great Britain that we are disposed to form the most intimate connections with her, even at the expense of recognizing a principle the most fatal to the liberty of commerce, and to the security of our navigation.

But, if we could not obtain any thing which might secure us against future aggressions, should we have parted, without receiving any equivalent, with those weapons of self-defence, which, although they could not repel, might, in some degree, prevent any gross attacks upon our trade—any gross violation of our rights as a neutral nation? We have no fleet to oppose or to punish the insults of Great Britain; but, from our commercial relative situation, we have it in our power to restrain her aggressions, by restrictions on her trade, by a total prohibition of her manufactures, or by a sequestration of the debts due to her. By the treaty, not satisfied with receiving nothing, not satisfied with obtaining no security for the future, we have, of our own accord, surrendered those defensive arms, for fear they might be abused by ourselves. We have given up the two first, for the whole time during which we might want them most, the period of the present war; and the last, the power of sequestration, we have abandoned for ever; every other article of the treaty of commerce is temporary; this perpetual.

I shall not enter into a discussion of the immorality of sequestering private property. What can be be more immoral than war; or plundering on the high seas, legalized under the name of privateering? Yet self-defence justifies the first, and the necessity of the case may, at least in some instances, and where it is the only practicable mode of warfare left to a nation, apologize even for the last. In the same manner, the power of sequestration may be resorted to, as the last weapon of self-defence, rather than to seek redress by an appeal to arms. It is the last peace measure that can be taken by a nation; but the treaty, by declaring, that in case of national differences it shall not be resorted to, has deprived us of the power of judging of its propriety, has rendered it an act of hostility, and has effectually taken off that restraint, which a fear of its exercise laid upon Great Britain.

Thus it appears that by the treaty, we have promised full compensation to England for every possible claim they may have against us, that we have abandoned every claim of a doubtful nature, and that we have consented to receive the posts, our claim to which was not disputed, under new conditions and restrictions never before contemplated—that after having obtained by those concessions an adjustment of past differences, we have entered into a new agreement, unconnected with those objects, which have heretofore been subjects of discussion between the two nations; and that by this treaty of commerce and navigation, we have obtained no commercial advantage which we did not enjoy before, we have obtained no security against future aggressions, no security in favor of the freedom of our navigation, and we have parted with every pledge we had in our hands, with every power of restriction, with every weapon of self-defence which is calculated to give us any security.

There is yet another article, which stands by itself, unconnected either with adjustment of past disputes, or with commercial regulations; I mean the ninth article, which provides that British subjects now holding lands in the United States shall continue to hold them, and may sell

or devise the same; and that neither they, nor their heirs or assigns shall, so far as may respect the said lands, and the legal remedies incident thereto, be regarded as aliens. I am not a lawyer, and, in expressing an opinion, I mean nothing more than to communicate my doubts, and ask for an explanation. There would be no difficulty in finding the meaning of the article, did it apply only to those British subjects, who have acquired lands under the laws of the States; but the former connection of this country with England, renders the subject difficult to be explained, even by men of legal abilities; for its explanation must depend on the consequences of a principle unknown to the laws of England. The principle of the English law is, that no subject can shake his allegiance, that is to say, that no man who was once a citizen, can become an alien. Yet, by the effect of the revolution, British subjects, who, before 1776, had a right to hold lands in America, as part of the British Empire, have become aliens in the United States, and the effect of that alienage upon their titles to such lands, and how far that effect is changed by the operation of the treaty, seem to me to be questions of a very nice nature. I will, however, beg leave to suggest what to me appears to be the effect of the treaty. So far as lands have been confiscated by the laws of any State, and those laws carried into effect, and so far as such lands having been considered as escheated, an office has been found, and the escheat been completed, I conceive the treaty will create no alteration; but where the lands have not been confiscated, either because no laws had been passed for that purpose, or because they had not been carried into effect before the treaty of 1783, and where the legal formalities of finding an office, &c., necessary to complete an escheat have been neglected, it seems to me the treaty may operate in three ways. Firstly, it will prevent any State from completing an escheat by finding an office, &c., when they have neglected doing it. Secondly, it will enable the British subjects to sell or devise, and therefore to convert their life estate into a fee-simple for ever. And thirdly, it will enable those subjects to institute suits in courts for the recovery of those lands, providing them with a legal remedy, they had not before, since their alienage would have been a sufficient bar against bringing real actions. If the treaty may be supposed to have that effect, its tendency so far as relates, not to private estates, but to the former proprietary estates, may prove vexatious and injurious to several of the States. It will strengthen the proprietary claims of the Penn family, not in Pennsylvania, but in the State of Delaware. It may have some effect on the decision of the Fairfax claim in Virginia, and even on such parts of the lands of Maryland, which have been sold, although formerly the property of the Baltimore family, of that State and of the south-western territory, may be revived by the treaty; for although a law has pssed in that State to confiscate the lands of all the British subjects who should be absent on a certain day, yet the proprietary lands were not meant to be comprehended within that provision; the commissioners who were to sell the confiscated property, never disposed of a single acre of the lands, which were granted by another law of the State as vacant and not as confiscated lands, without having been actually escheated to the State by an office being found or any other formality whatever; and they are even expressly distinguished from land to be confiscated by the very act passed for the purpose of confiscating.

Mr. Gallatin here read the clause of the act he alluded to.

Supposing, however, every thing I have said on this subject as very doubtful, it is not less true that this article, under an appearance of reciprocity, grants a positive advantage to Great Britain without any equivalent being given—is, if not an infraction, at least a restriction over the legislative powers, and an exception to the laws of the different States on a subject of a delicate nature—may involve not only some of our citizens, but even several of the States in complex lawsuits and serious embarrassment, and although it may thus create much mischief, can give us no possible benefit.

From the review I have taken of the treaty, and the opinions I have expressed, it is hardly necessary for me to add, that I look upon the instrument as highly injurious to the interests of the United States, and that I earnestly wish it never had been made; but whether in its present stage, the House ought to refuse to carry it into effect, and what will be the probable consequences of a refusal, is a question which requires the most serious attention, and which I will now attempt to investigate.

Should the treaty be finally defeated, either new negotiations will be more successful or Great Britain will refuse to make a new arrangement, and leave things in the situation in which they now are, or war will be the consequence. I will, in the course of my observations, make some remarks on the last supposition. I do not think that the first will be very probable at present, and I am of opinion that under the present circumstances, and until some change takes place in our own or in the relative political situation of the European nations, it is to be apprehended that in such a case, new negotiations will either be rejected or prove unsuccessful. Such an event might have perhaps followed a rejection of the treaty even by the Senate or by the President. After the negotiator employed by the United States had once affixed his signature it must have become very problematical, unless he had exceeded his

I conceive that the hopes of obtaining better conditions by a new negotiation are much less in the present stage of the business than they were when the treaty was in its inchoate form before the Executive; and in order to form a just idea of the consequences of a rejection at present, I will contemplate them upon this supposition, which appears to me most probable, to wit, that no new treaty will take place for a certain period of time.

In mentioning my objections to the treaty itself, I have already stated the advantages which in my opinion would result to the United States from the non-existence of that instrument; I will not repeat, but proceed at once to examine what losses may accrue that can be set off against those advantages.

As I am not sensible that a single commercial advantage has been obtained by the treaty, I cannot mention the loss of any, as a mischief that may attend its rejection. If, however, the East India article is supposed to be beneficial, it must, on the other hand, be conceded that we have enjoyed every benefit arising from it for a number of years, without treaty, and consequently because it was the interest of the East India company that we should enjoy them, and that it is not probable that circumstances will so far change there during the short period to which this article is limited as to induce that company to adopt a different policy towards us.

The indemnification to be obtained from Great Britain for spoliations on our trade, if considered as a national reparation for a national aggression, is certainly, as I have already stated it, an important object gained by the treaty. But if it is to be viewed as a money transaction, and its loss as a national loss of money, it will be well to examine whether in this point of view, viz. of money, we should not be gainers on the whole by not carrying the treaty into effect. I have made no objections to that article of the treaty which relates to British debts. Whatever the amount may be, if it is just that we should pay them it must be just to pay that amount; but when we are examining the situation in which we should be if we had no treaty, when we are calculating the losses we are to experience by obtaining no compensation for our claims, it is right to consider the amount of those claims, and to compare it with the probable amount of the claims of the other party, and of the sums of money which a non-execution of the treaty and a refusal on the part of Great Britain to do us justice, to indemnify us for our own losses and to enter into new negotiations, would justify us in withholding. That subject has already undergone a full discussion, and I will recall the attention of the committee only to the demand of Great Britain for interest on the British debts. It is well known that our courts have uniformly refused to allow to the British creditors the interest which has accrued on their demands during the late war, that is to say, tended that those decisions cannot be considered as legal impediments, yet it has been insisted by Great Britain that they are. The two governments have come to issue on this point, as may be seen by recurring to the printed correspondence of Mr. Jefferson. It is one of the points to which the jurisdiction of the commissioners must extend, since, on account of the decisions of our courts, it is one of the cases where compensation could not be obtained, and has been refused by the ordinary course of judicial proceedings; and for greater security the commissioners are, by the treaty, empowered to take into their consideration all claims, whether of principal or interest, or balances of principal or interest. These commissioners must be considered less as judges than as political agents, who will come with a determination to support the claims contended for by their respective nations. They will, therefore, disagree on the subject of war interest, and it will be left solely to the fifth commissioner, that is to say, to lot, to decide whether that interest shall be paid by the United States or not. Eight years interest amounts to one-half of the whole amount of debts due by America to Great Britain at the beginning of the war; for it must be remarked that this claim extends to all debts whether good or bad, because it has been refused on all, and can be recovered by the ordinary course of judicial proceedings on none. What those debts amount to is very uncertain. I have seen a variety of calculations on this subject. If they are estimated as they have been by some, at five millions sterling, one-half of them will amount to more than twelve millions of dollars; and when we take into consideration the amount of principal we shall have to pay, on the principles stated by a gentleman from Virginia, Mr. Nicholas, his calculation of near fifteen millions of dollars in the whole, will not seem exaggerated. But even taking the amount of those debts at the lowest estimate, the amount of war interest, and of the principal we shall have to pay, far exceeds the amount which the most sanguine among us expected to recover from the government of Great Britain by virtue of the treaty, on account of the spoliations committed on our trade.

The only positive loss, therefore, which in my opinion will arise from our having no treaty is that of the western posts. I have already stated that, surrendered in the manner settled by the treaty, I conceive them to be of very insignificant value in a commercial point of view, and of very little use, if any, as a security against the Indians; for it must be remembered that our own laws, for the purpose of preserving peace with those tribes, have enacted under severe penalties that our own citizens shall on no account whatever, cross over the boundary line between them and ourselves, although within the territory ceded to us by Great Britain, unless they have special licenses from our government. It is therefore our own opinion

dians if ever our own citizens have a free and uncontrolled intercourse with them. And yet it is a positive condition of the treaty that the British traders settled at Detroit and in the other posts—men who from habit are attached to Great Britain, and inimical to the United States: who have given repeated proofs of that enmity: who possess an unbounded influence amongst the Indians, and have been the chief promoters of the Indian war—that these men may remain there as British subjects, and that they and all other British subjects may have the privilege for ever to pass over that line, which we have forbidden our citizens to cross, and may continue to carry on with the Indians living within our territory, a free trade and commerce uncontrolled by our laws and by those regulations which we have imposed, or may impose on our citizens; in other words, we have agreed that these men may preserve their baneful influence over the Indians, and their allegiance to Great Britain; and we may therefore expect that influence to be exerted which suits the interest and will be in conformity to the directions of their sovereign. I must, therefore, repeat that as I think that at any time since 1789 we might have had the posts without these conditions, provided we had then agreed, as we have by the late treaty, to make a compensation for the British debts, I had much rather that we could again be placed in the situation in which we were two years ago; and I will not hesitate to declare that in my opinion our claim to the posts and the chance we had to obtain them by negotiation, in the year 1793, was better than their possession upon the terms of the treaty. But as the question now is not what would be best to be done if no treaty had been made; as the negotiator has put us in a worse situation than we were before that treaty; as the subject of the present examination is the consequences that will follow if no treaty at all is made; and as one of those consequences will undoubtedly be a further detention of the posts, and less hope to obtain them in future, I will certainly agree that it is better to have them, even encumbered with these conditions, than not to have them at all. For although they may not be of an immediate advantage, either as a commercial object or as giving security against the Indians, their possession will enable us to prevent a further extension of the British settlements within our territory and by forming settlements of our own, to acquire by degrees sufficient strength in that quarter to have nothing to fear either from the British or from the Indians.

The further detention of the posts, the national stain that will result from receiving no reparation for the spoliations on our trade, and the uncertainty of a final adjustment of our differences with Great Britain, are the three evils which strike me as resulting from a rejection of the treaty; and when to those considerations I add the advantages that will arise from union of sentiments, however injurious and unequal I conceive the treaty to be, however repugnant it may be to my feelings, and perhaps to my prejudices, I feel induced to vote for it, and will not give my assent to any proposition which will imply its rejection. But the conduct of Great Britain since the treaty was signed, the impressment of our seamen and their uninterrupted spoliations on our trade, especially by seizing our vessels laden with provisions, a proceeding which they may perhaps justify by one of the articles of the treaty, are such circumstances as may induce us to pause awhile, in order to examine whether it is proper, immediately and without having obtained any explanation thereon, to adopt the resolution on the table, and to pass, at present, all the laws necessary to carry the treaty into effect.

The eighteenth article of the treaty, the provision article, as it is called, has already been fully investigated by a gentleman from Virginia, Mr. Nicholas, and I have been astonished that those gentlemen who have spoken in favor of the treaty have given no direct answer to his remarks on that point. The second clause of that article declares that "whenever provisions, becoming contraband according to the existing laws of nations, shall for that reason be seized; the same shall not be confiscated, but the owners indemnified." This clause of the article does not contemplate provisions or other articles not generally contraband, when attempted to be carried to a besieged place; for the third clause of the same article provides for the last mentioned case, and declares, "that a vessel thus laden and sailing for a besieged place shall not be detained, nor her cargo, if not contraband, confiscated, unless after notice she shall again attempt to enter;" which implies, that in case of notice thus given, provisions may be confiscated, whilst the provisions contemplated in the second clause are not to be confiscated. It is, therefore, admitted by that article, that there are cases other than that of provisions and other articles not generally contraband, carried to a beseiged place, in which those provisions and articles may be regarded as contraband. It is admitting a principle unknown to the laws of nations, infringing our neutrality, destructive of our trade, and liable to every misconstruction. The British have shown what they meant by provisions becoming contraband according to the existing laws of nations, when they have taken our vessels laden with provisions, and given us an indemnification, of ten per centum. So immediately connected is that proceeding of the British with this article, that even the gentleman from Connecticut, Mr. Hillhouse, could not separate them in his own mind; and when speaking of the indemnification we are to obtain in such cases, as are contemplated by the article, he repeatedly called it "ten per centum;" thinking only of the compensation given

ten per centum are not to be found in the clause itself. It is not, however, material at present to decide whether a fair construction of the article justifies the conduct of the British or not. The fact is uncontroverted; they still continue to impress our seamen and to capture our vessels. If they pretend to justify this conduct by the treaty, it becomes necessary to obtain an explanation of the doubtful articles; if there is nothing in the treaty to justify it, their acts are acts of hostility and an infraction of the treaty; and, even according to the doctrine of those gentlemen who think that in common cases the House has no discretion, the treaty once broken by one party is no longer binding on the other; and it is the right as well as the duty of this House not to proceed to pass the laws necessary to carry it into effect, until satisfactory assurances are obtained that these acts shall cease, and until Great Britain has evinced a friendly disposition towards us.

Whatever evils may follow a rejection of the treaty, they will not attend a postponement. To suspend our proceedings will not throw us into a situation which will require new negotiations, new arrangements on the points already settled and well understood by both parties. It will be merely a delay, until an explanation of the late conduct of the British towards us may be obtained, or until that conduct may be altered. If, on the contrary, we consent to carry the treaty into effect, under the present circumstances, what will be our situation in future? It is by committing the most wanton and the most unprovoked aggressions on our trade; it is by seizing a large amount of our property as a pledge for our good behavior, that Great Britain has forced the nation into the present treaty. If by threatening new hostilities, or rather by continuing her aggressions, even after the treaty is made, she can force us also to carry it into effect, our acquiescence will be tantamount to a declaration that we mean to submit in proportion to the insults that are offered to us; and this disposition being once known, what security have we against new insults, new aggressions, new spoliations, which probably will lay the foundation of some additional demands on the part of the aggressor, and of some additional sacrifices on ours? It has been said, and said with truth, that to put up with the indignities we have received without obtaining any reparation, which will probably be the effect of defeating the treaty, is highly dishonorable to the nation. In my opinion it is still more so not only tamely to submit to a continuation of these national insults, but while they thus continue uninterrupted, to carry into effect the instrument we have consented to accept as a reparation for former ones. When the general conduct of Great Britain towards us from the beginning of the present war is considered; when the means by which she has produced still held over us, is in my opinion a dereliction of national interest, of national honor, of national independence.

But it is said, that war must be the consequence of our delaying to carry the treaty into effect. Do the gentlemen mean, that if we reject the treaty, if we do not accept the reparation there given to us, in order to obtain redress, we have no alternative left but war? If we must go to war in order to obtain reparation for insults and spoliations on our trade, we must do it, even if we carry the present treaty into effect; for this treaty gives us no reparation for the aggressions committed since it was ratified, has not produced a discontinuance of those acts of hostility, and gives us no security that they shall be discontinued. But the arguments of those gentlemen, who suppose that America must go to war, apply to a final rejection of the treaty, and not to a delay. I do not propose to refuse the reparation offered by the treaty, and to put up with the aggressions committed; I have agreed, that that reparation, such as it is, is a valuable article of the treaty; I have agreed, that, under the present circumstances, a greater evil will follow a total rejection of, than an acquiescence in the treaty. The only measure, which has been mentioned, in preference of the one now under discussion, is a suspension, a postponement whilst the present spoliations continue, in hopes to obtain for them a similar reparation, and assurances that they shall cease.

But is it meant to insinuate that it is the final intention of those, who pretend to wish only for a postponement, to involve this country in a war? There has been no period during the present European war, at which it would not have been equally weak and wicked to adopt such measures, as must involve America in the contest, unless forced into it for the sake of self-defence; but, at this time, to think of it would fall but little short of madness. The whole American nation would rise in opposition to the idea; and it might at least have been recollected, that war cannot be declared, except by Congress, and that two of the branches of government are sufficient to check the other in any supposed attempt of this kind.

If there is no necessity imposed upon America to go to war, if there is no apprehension she will, by her own conduct, involve herself in one, the danger must arise from Great Britain, and the threat is, that she will make war against us if we do not comply. Gentlemen first tell us that we have made the best possible bargain with that nation; that she has conceded every thing, without receiving a single iota in return, and yet they would persuade us, that she will make war against us in order to force us to accept that contract so advantageous to us, and so injurious to herself. It will not be contended, that a delay, until an amicable ex-

her. If another campaign takes place, it is acknowledged, that all her efforts are to be exerted against the West Indies. She has proclaimed her own scarcity of provisions at home, and she must depend on our supplies to support her armament. It depends upon us to defeat her whole scheme, and this is a sufficient pledge against open hostility, if the European war continues. If peace takes place, there will not be even the appearance of danger; the moment when a nation is happy enough to emerge from one of the most expensive, bloody and dangerous wars in which she ever has been involved, will be the last she would choose to plunge afresh into a similar calamity.

But to the cry of war, the alarmists do not fail to add that of confusion; and they have declared, even on this floor, that if the resolution is not adopted, government will be dissolved. Government dissolved in case a postponement takes place! The idea is too absurd to deserve a direct answer. But I will ask those gentlemen, by whom government is to be dissolved? Certainly not by those who may vote against the resolution; for although they are not perhaps fortunate enough to have obtained the confidence of the gentlemen who voted against them, still it must be agreed, that those who succeed in their wishes, who defeat a measure they dislike, will not wish to destroy that government, which they hold so far in their hands as to be able to carry their own measures. For them to dissolve government, would be to dissolve their own power. By whom, then, I again ask, is the government to be dissolved? The gentlemen must answer—by themselves—or they must declare, that they mean nothing but to alarm. Is it really the language of those men, who profess to be, who distinguish themselves by the self-assumed appellation of friends to order, that if they do not succeed in all their measures, they will overset government—and have all their professions been only a veil to hide their love of power, a pretence to cover their ambition? Do they mean, that the first event, which shall put an end to their own authority, shall be the last act of government? As to myself, I do not believe that they have such intentions; I have too good an opinion of their patriotism to allow myself to admit such an idea a single moment; but I think myself justifiable in entertaining a belief, that some amongst them, in order to carry a favorite, and what they think to be an advantageous measure, mean to spread an alarm which they do not feel; and I have no doubt, that many have contracted such a habit of carrying every measure of government as they please, that they really think that every thing must be thrown into confusion, the moment they are thwarted in a matter of importance. I hope that experience will in future cure their fears. But, at all events, be the wishes and intentions of the members of this House what

States, from one end of the continent to the other, are strongly attached to their constitution; they would restrain and punish the excesses of any party, of any set of men in government, who would be guilty of the attempt; and on them I will rest as a full security against every endeavor to destroy our union, our constitution, or our government.

But although I am not afraid of a dissolution, I feel how highly desirable is a more general union of sentiment; I feel the importance of an agreement of opinion between the different branches of government, and even between the members of the same branch. I would sacrifice much to obtain that object; it has been one of the most urging motives with me to be in favor, not of a rejection, but only of a suspension, of a delay. But even, as a matter of opinion, it is difficult to say, which mode of proceeding in this House, will best accord with the general sentiments of the people. So far as relates to the petitions before us, the number of signatures against the treaty, exceeds, at the moment I am speaking, the number of those in favor of the treaty. Amongst the last, some have come from one part of the Union, where, it seems, both from the expressions in the petition itself, and from the proceedings there, that a great inducement in the petitioners to sign, was a wish to carry the treaty with Spain into effect, as they appear to suppose that its fate depends upon that of the British Treaty. How they would act upon the British treaty alone, and unconnected with the other, I do not know, nor have I any evidence which enables me to form an opinion thereon. All I know is, that until the Spanish treaty was made, they were perfectly silent on the subject of the other treaty, and never expressed an opinion upon it alone.

True it is, that an alarm, which has produced a combination, has lately taken place amongst the merchants of this and some other seaports. What effect it will have, and how successful they will eventually be, in spreading this alarm amongst the people at large, I cannot tell; but there are circumstances accompanying their petition, which, in my opinion, much diminish the weight they otherwise might have had. They have undoubtedly a right to petition upon every public measure where they think themselves interested, and their petitions deserve equal regard with those of their fellow-citizens throughout the United States. But, on this occasion, in order to create an alarm, in order to induce the people to join them, in order to force the House to pass the laws relative to the treaty, they have formed a dangerous combination, and affected to cease insuring vessels, purchasing produce, and transacting any business. A gentleman from New York, Mr. Williams, has been so much alarmed himself, that he has predicted a fall in the price of every kind of produce, and seems indeed to have supposed that the clamors of a few individuals

supplies of provisions. Yet, it has so happened, and it is a complete proof that the whole is only an alarm, that whilst we have been debating, the price of flour, which was of very dull sale two weeks ago, has risen in equal proportion with the supposed fears of the purchasers. I cannot help considering the cry of war, the threats of a dissolution of government, and the present alarm, as designed for the same purpose, that of making an impression on the fears of this House. It was through the fear of being involved in a war, that the negotiation with Great Britain originated; under the impression of fear, the treaty has been negotiated and signed; a fear of the same danger, that of war, has promoted its ratification; and now, every imaginary mischief, which can alarm our fears, is conjured up, in order to deprive us of that discretion, which this House thinks they have a right to exercise, and in order to force us to carry the treaty into effect.

If the people of the United States wish this House to carry the treaty into effect immediately, and notwithstanding the continued aggressions of the British, if their will was fairly and fully expressed, I would immediately acquiesce; but since an appeal has been made to them, it is reasonable to suspend a decision until their sentiments are known. Till then I must follow my own judgment; and as I cannot see that any possible evils will follow a delay, I shall vote against the resolution before the committee, in order to make room, either for that proposed by my colleague, Mr. Maclay, or for any other, expressed in any manner whatever, provided it embraces the object I have in view, to wit, the suspension of the final vote—a postponement of the laws necessary to carry the treaty into effect, until satisfactory assurances are obtained, that Great Britain means, in future, to show us that friendly disposition, which it is my earnest wish may at all times be cultivated by America towards all other nations.

JAMES HILLHOUSE.

The Rev. James Hillhouse, the first of the family who emigrated to America, was a native of Londonderry, Ireland, where he was born in 1687. He was educated at the University of Glasgow. On the decease of his father and the descent of the family estate to his eldest brother, he sailed for New England, arriving there some time previous to 1720. Two years after he was installed the first pastor of the second church in New London, Connecticut. He is spoken of as "a great proficient in human and divine learning, of a true magnanimity, bearing all the troubles of life with a patient resignation to the will of God." After spending many years in great usefulness, "declaring his dependence on the veracity of Christ's promises, that he had experienced, and commending his soul to God, he fell asleep" on the fifteenth of December, 1740.

This eminent divine, a short time after his installation, married Mary Fitch, one of his parishioners, and was blessed with two sons, William and James Abraham.* William, the eldest, was born in 1728, and became noted in the public service of his native State. During the war of the Revolution, he served as a major in the second regiment of horse raised by Connecticut, was a member of the State Council and Legislature, for many years was a judge of the county court, and held other offices of trust and honor.

His son James, the subject of the present sketch, was born at Montville, in New London county, on the twenty-first of October, 1754. When quite a youth he was adopted by his uncle, James Abraham Hillhouse, and removed to New Haven, where he received his education. In 1773, after leaving college, he entered the office of his uncle and commenced the study of the law. Two years afterward this uncle died, and young Hillhouse succeeded, in a great measure, to his extensive business. Respecting this period of his life, little is known. About this time he manifested an ardent desire to enter the service of his country as a soldier, and "was prevented from accompanying Arnold in his memorable expedition to Quebec, only by the absolute interdict of those friends whose will he was bound to respect."

In the early part of July, 1779, the town of New Haven was invaded by the British under General Tryon. When the information that the enemy was landing at West Haven reached the town, a great number of the inhabitants fled to the neighboring hills. Some remained, hoping to escape any molestation by staying quietly in their houses, while a large number prepared themselves to meet the enemy and harass them as much as possible. Mr. Hillhouse was among the latter. He commanded a small company of young men, some of whom were students of

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* James A. Hillhouse was born on the 12th of May, 1730. He was educated at Yale College, where he graduated in 1749. He was soon after chosen to the office of a tutor in that institution, and held that position for six years, with the highest approbation and esteem. Here he became an intimate associate of the celebrated Ezra Stiles. He settled in New Haven, and appeared at the bar "where his powers of reasoning and eloquence excited general admiration. In 1792, he was elected a member of the Council of the State of Connecticut, and in this department was eminent for his abilities and integrity. Anxious for the liberties of his country, he firmly opposed, in the spirit of true patriotism, ministerial tyranny on the one hand, and lawless anarchy on the other. His Christian life and conversation were truly exemplary, and he was adorned with the graces of meekness, charity and humility." He died on the third of October, 1775: his wife survived him and died in July, 1822.—*Holmes' Life of Ezra Stiles*: *Connecticut Historical Collections*: *Caulkins' History of New London.*

Yale College, and marched out to oppose the enemy. They met the advanced guards of the British on the parade, near the church in West Haven, fired upon them and forced a retreat to the main body; but owing to superior numbers, the little band was soon after compelled to leave the field. That Mr. Hillhouse's services at this critical period were of great importance. cannot be denied. "It is not too much to say," writes Doctor Bacon, "that it was owing in no small measure to his sagacity in planning and intrepidity in executing those hasty and imperfect measures of defence which alone were practicable, that New Haven was saved from the flames."

At the age of twenty-five years, he was elected by his townsmen to the Legislature of Connecticut, and continued in the service of the State, either as a representative or in the council for eleven years. During the same period, he was three times chosen to the Continental Congress, but always declined serving in that capacity. In 1782, he was appointed treasurer of Yale College, and held the office until the day of his death.

On the twenty-fourth of October, 1791, he took his seat in the House of Representatives of the United States, as a member from his native State, and two days after, was appointed with Mr. Boudinot, Mr. Giles, Mr. Gerry, and others, on a Committee of Elections. His first remarks in Congress appear in the debate upon *the Ratio of Representation*. In 1794, he was transferred to the Senate, and remained there until 1810. He took a prominent part in all the important debates, acquiring a sterling reputation for diligence, influence, and usefulness. Wherever he had a duty to perform, he was always ready and foremost.

His resolution submitted to the Senate on the twelfth day of April, 1808, proposing certain amendments to the Federal Constitution, in regard to the mode of choosing members of Congress and the President of the United States, was one of the most noted measures of his senatorial career. He proposed a lower House of Congress chosen annually by the people; a Senate, the members of which should be elected once in three years; and a President with much less power than at present is given to that officer, who should be annually selected from among the Senators by lot. These propositions he supported in an able and extended speech. The measure excited considerable observation at the time, and has been the subject of a great variety of opinions among many of the most distinguished men of America. Chief Justice Marshall, in answer to a letter from Mr. Hillhouse written in the spring of 1830, thus speaks of the subject:—"I read your speech, when first published, with great pleasure and attention, but was not then a convert to either of the amendments it suggested. In truth there is something so captivating in the idea of a chief executive magistrate who is the choice of a whole people, that it is extremely difficult to withdraw the judgment from its influence. The advantages which ought to result from it are manifest. They strike the mind at once, and we are unwilling to believe that they can be defeated, or that the operation of choosing can be attended with evils which more than counterbalance the actual good resulting from the choice. It is humiliating, too, to admit that we must look in any degree to chance for that decision which ought to be made by the judgment. These strong, and apparently rational convictions can be shaken only by long observation and painful experience. Mine are, I confess, very much shaken, and my views of this subject have changed a good deal since 1808. I consider it, however, rather as an affair of curious speculation, than of probable fact. Your plan comes in conflict with so many opposing interests and deep-rooted prejudices, that I should despair of its success were its utility still more apparent than it is:—All those who are candidates for the Presidency, either immediately or remotely, and they are more numerous than is imagined, and are the most powerful members of the community, will be opposed to it. The body of the people will also most probably be in opposition; for it will be difficult to persuade them that any mode of choice can be preferable to election, mediate or immediate, by themselves. The ardent politicians of the country, not yet moderated by experience, will consider it as an imputation on the great republican principle, that the people are capable of governing themselves, if any other mode of appointing a chief magistrate be substituted for that which depends on their agency. I believe, therefore, that we must proceed with our present system till its evils become still more obvious; perhaps, indeed, till the experiment shall become impracticable, before we shall be willing to change it.

"My own private mind has been slowly and reluctantly advancing to the belief that the present mode of choosing the chief magistrate threatens the most serious danger to the public happiness. The passions of men are inflamed to so fearful an extent, large masses are so embittered against each other, that I dread the consequences. The election agitates every section of the United States, and the ferment is never to subside. Scarcely is a President elected, before the machinations respecting a successor commence. Every political question is affected by it. All those who are in office, all those who want office, are put in motion. The angriest, I might say the worst passions, are roused and put into full activity. Vast masses, united closely, move in opposite directions, animated with the most hostile feelings towards each other. What is to be the effect of all this? Age is, perhaps, unreasonably timid. Certain it is that I now dread consequences which I once thought imaginary. I feel disposed to take refuge under some less turbulent and less dangerous mode of choosing the chief magistrate, and my mind suggests none less objectionable than that you have proposed."

William H. Crawford, the distinguished statesman and jurist, viewed the plan with favor and lent to it his support; as will be observed in the accompanying extract of a letter from him to Mr. Hillhouse:—"I recollect distinctly the proposition of amendment to the Constitution, which you submitted to the Senate twenty-two years ago, and which I then seconded. At that time I had not made up my mind definitely upon the principle of the amendment. Reflection and experience have convinced me that the amendment is correct. I am now entirely convinced that great talents are not necessary for the chief magistracy of this nation. A moderate share of talents, with integrity of character and conduct, is all that is necessary. Under the principle of your amendment I think there is little probability that a President would be elected, weaker than Col. ———, or with less practical common sense than Mr. ———. But I am not certain that the nation is prepared for such an amendment. There is something fascinating in the idea of selecting the best talents in the nation for the chief magistrate of the Union. The view which ought to decide in favor of the principle of your amendment is seldom taken. The true view is this: elective chief magistrates are not, and cannot, in the nature of things, be the best men in the nation; while such elections never fail to produce mischief to the nation. The evils of such elections have generally induced civilized nations to submit to hereditary monarchy. Now the evil which is incident to this form of government, is that of having the oldest son of the monarch for ruler, whether he is a fool, a rascal, or a madman. I think no man who will reflect coolly upon the subject, but would prefer a President chosen by lot out of the Senate, to running the risk of having a fool, a rascal or a madman, in the oldest son of the wisest and most benevolent sovereign that ever lived. When the amendment is considered in this point of view, I think it will find favor, especially when it must be admitted that the election of a President in this manner will be productive of as little turmoil and agitation as the accession of the son to the father in hereditary monarchies. The more I reflect upon the subject, the more I am in favor of your amendment." Added to the respectful consideration of Mr. Marshall and Mr. Crawford, Mr. Hillhouse's propositions received the attention of Mr. Madison and the approbation of Chancellor Kent.*

In 1810 Mr. Hillhouse having been appointed by the Connecticut Legislature commissioner of the School Fund, resigned his seat in the Senate, and returned to New Haven. By his skill, industry, perseverance and fidelity he raised the fund out of an entangled and embarrassed condition, and on retiring from the office in 1825, left it increased twofold. His efforts in behalf of Yale College were continual and untiring. Through his influence a grant was made to that institution, by the State legislature, "at a time when perhaps nothing else could have saved it from total ruin," and thus the once "humble and feeble institution" has been placed in the honorable and prominent position which it now occupies among the literary and educational institutions of the world.

Nor were his energies devoted entirely to the interests of his adopted town. In the great work

of internal improvement he embarked with vigor and enthusiasm. For six years after his resignation of his office as commissioner of the school fund, he was engaged in the construction of the Farmington and Hampshire Canal, and only relinquished his charge a few months previous to his death. Those few months were spent in revising his private papers, arranging his correspondence, and the usual duties of his office in connection with Yale College. He died of apoplexy, on the twenty-ninth of December, 1832. He had been during the morning of that day attending a meeting of the prudential committee of the college, apparently in his usual health. About noon he returned to his house, and sat down, reading letters received that morning. Without speaking to any one, he rose from his chair and entered his bed-room. As it was not his practice to lie down during the day, a member of the family followed him in a moment, and found him lying in the bed already dead.*

SPEECH IN THE CASE OF JOHN SMITH.

Mr. Hillhouse delivered the following argument in the Senate of the United States, on the ninth of April, 1808, on the following resolution. "*Resolved*, that John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr, against the peace, union and liberties of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States; and that he be therefore, and hereby is, expelled from the Senate of the United States."

The cause before the Senate has been so fully heard and so ably discussed, that it was my intention to have given a silent vote, had not the gentleman from Massachusetts, Mr. Adams, declared in so pointed a manner, that even voting on a resolution would sanction the report of the committee which accompanied it; a report containing principles which I can never sanction by my vote; principles which go to discredit all our criminal tribunals, and those rules of proceeding and of evidence which govern the decision of courts; rules which alone can shield innocence and protect an accused individual against governmental prosecution, or the overwhelming power of a formidable combination of individuals determined on his destruction—principles which would plant a dagger in the bosom of civil liberty.

Of the many erroneous principles contained in that report, there is but one which I shall think it necessary particularly to notice. The question says, "the report upon the trial of a criminal cause before the courts of common law, is not between guilt and innocence, but between guilt and the possibility of innocence." This is a principle which I can never sanction, nor in the smallest degree countenance by my vote. In every country where civil liberty and individual rights are regarded, the common law rule is, that the trial is between innocence and guilt; and that every person is to be deemed innocent until his guilt is proved; a rule, which so long as we shall preserve our liberties, cannot be abandoned. Once admit that the person accused is to be presumed guilty, and to be put to prove the possibility of his innocence, and the same circumstances that would otherwise go to establish innocence, would be converted into proof of guilt. In the present case, admit the presumption of innocence, and many parts of the conversations and conduct of the member accused, which are now relied on as a proof of his guilt, may be accounted for, as being exactly what an honest, unsuspecting man would have said and done; but upon the supposition that he was engaged in Aaron Burr's conspiracy, many presumptions of his guilt may be drawn from them. This has been the ground assumed by the gentleman from Massachusetts, and on this he has built his argument. In this way the accused member by doing what was commendable, and what was his duty as a good citizen to do, has furnished evidence of his guilt.

As to the two precedents referred to, and which appear on the journals of the Senate, they are misapprehended, and the facts entirely misstated in the report of the committee. In one case I was an actor in the scene, being then a Senator, and have a perfect recollection of the facts, and know the statement to be wholly erroneous. Referring to the case of William Blount the report says:

"In all these points the committee perceive the admission of a species of evidence, which in courts of criminal jurisdiction would be ex-

* New York Gazette of January 4th, 1833. No extended account of Mr. Hillhouse has yet been published. The best sketch of his life and services was written by Doctor Leonard Bacon, of New Haven, and published in the Quarterly

of a high misdemeanor,' although no presentment or indictment had been found against him, and no prosecution at law was ever commenced upon the case."

By the journals of the Senate it appears that —"On motion, Mr. Martin and Mr. Cocke of the Senate, being sworn, severally testified, on the inspection of the letter said to be written by Mr. Blount, that it was his handwriting, they being acquainted therewith, and having seen him write."

This entry of the journal corresponds with my recollection of the fact. This was legal testimony, and the only testimony admitted on the trial.

Here Mr. Adams called for the reading of that part of the journal which states that Mr. Blount was requested by the President of the Senate to declare whether or not he was the author of the letter. The journal was read, and was as follows, viz.:

The president requested of Mr. Blount to "declare whether or not he was the author of the letter, a copy of which was communicated with the message of the President of the United States of the 3d instant. Mr. Blount declined an answer."

Mr. A. said that this was evidence not admissible in a court of law.

Mr. Hillhouse proceeded.

I sat in judgment on that case, and know that Mr. Blount's declining to answer was not considered as evidence: The question was asked, because Mr. Blount might have no objection to answer; he might have supposed the contents harmless, or have been able to give a satisfactory explanation thereof—he being a member of their own body—it was not more than civil to give him this opportunity before they proceeded to prove the letter upon him. It was impossible the Senate should have made the inquiry for the purpose of drawing from Mr. Blount an accusation of himself; or that they should be capable of converting his refusal to answer into proof of guilt, in direct violation of that fundamental principle of civil liberty, that no man shall be compelled to accuse himself. The rule goes so far as to protect even a witness from being obliged to answer any question which may go to criminate himself. What is said respecting the comparison of his handwriting, appears by the journal, not to have taken place in the Senate, or on the trial, but before the committee who made the report, and the preparatory arrangements for the trial.

In regard to the other precedent, the report of the committee goes on to say:

"The event (the expulsion of William Blount) occurred in July, 1797. About fifteen months gation by the Senate of a charge against one of the members of that State of perjury, which had been made in several newspaper publications, but for which no prosecution had been commenced. The Senate did adopt, by a majority of sixteen votes to eight, the report of the committee, purporting that the Senate had no jurisdiction to try the charge, and that the memorial of the Kentucky Legislature should be dismissed. There were indeed sufficient reasons of a different kind assigned in the same report, for not pursuing the investigation in that particular case any further; and your committee believe, that in the reasoning of that, some principles were assumed, and some inferences drawn, which were altogether unnecessary for the determination of that case, which were adopted without a full consideration of all their consequences, and the inaccuracy of which was clearly proved by the departure from them in the instance which was so soon afterwards to take place. It was the first time that a question of expulsion had ever been agitated in Congress, since the adoption of the Constitution. And the subject being thus entirely new, was considered perhaps too much with reference to the particular circumstances of the moment, and not enough upon the numerous contingencies to which the general question might apply. Your committee state this opinion with some confidence, because of the sixteen Senators, who in March, 1796, voted for the report dismissing the memorial of the Kentucky legislature; eleven on the subsequent occasion, in July, 1797, voted also for the report, which concluded with a resolution for the expulsion of Mr. Blount. The other five were no longer present in the Senate. Yet if the principles advanced in the first report had been assumed as the ground of proceeding at the latter period, the Senate would have been as impotent of jurisdiction upon the offence of Mr. Blount, as they had supposed themselves upon the allegations against Mr. Marshall.

Mr. President, I was not then of the Senate, but feel for the character of its members, and regret extremely, that, in drawing this report, it should have been deemed necessary to mention the then Senate, which was composed of many of the most respectable characters of our country, in a manner that seems reproachful, and to imply that the majority were governed in their votes by political or party considerations. Could it be necessary to state, in such a pointed manner, that, of the sixteen Senators who, fifteen months before, voted for the dismissal of the Kentucky memorial, eleven voted for the expulsion of Mr. Blount, the other five being no longer present, both cases involving the same principles. Was it necessary to insinuate that that subject was considered perhaps too much with reference to the particular circumstances of the moment? It is still more unfortunate that such reproachful insinuations

Marshall, it is manifest that its principles are entirely misapprehended. That part of the report reads thus:

Mr. Marshall is solicitous that a full investigation of the subject should take place in the Senate, and urges the principle, that "consent takes away error," as applying on this occasion to give the Senate jurisdiction. But, as no person appears to prosecute, and there is no evidence adduced to the Senate, nor even a specific charge, the committee think any further inquiry by the Senate would be improper. If there were no objections of this sort, the committee would still be of opinion that the memorial could not be sustained. They think that, in a case of this kind, no person can be held to answer for an infamous crime, unless on a presentment or an indictment of a grand jury; and that, in all such prosecutions, the accused ought to be tried by an impartial jury of the State and district wherein the crime shall have been committed. If, in the present case, the party has been guilty in the manner suggested no reason has been alleged by the memorialists why he has not long since been tried in the State and district where he has committed the offence. Until he is legally convicted the principles of the constitution and of the common law, concur in presuming that he is innocent; and the committee are compelled by a sense of justice to declare, that, in their opinion, this presumption in favor of Mr. Marshall, is not diminished by recriminating publications which manifest strong resentment against him. And they are also of opinion, that, as the constitution does not give jurisdiction to the Senate, the consent of the party cannot give it; and that, therefore, the said memorial ought to be dismissed.

Mr. President, the principle laid down in this report, as I then, and now understand it, is, that the constitution not having given to the Senate criminal jurisdiction, the consent of the party could not give it. That it could not refer to the power of expulsion is manifest, because the jurisdiction of the Senate in cases of expulsion, is, by the constitution, express and unlimited; provided, only, that there be the concurrence of two-thirds. When the report says "the constitution does not give jurisdiction to the Senate, the consent of the party cannot give it," it must be understood to be an answer to Mr. Marshall's application for a trial to vindicate his character. The Senate not finding any occasion to pursue the inquiry for the purpose of exercising their censorial power of expulsion, assumed the principle, and in my opinion correctly, that, to establish the principle of innocence or guilt for any other purpose they have no jurisdiction; the consent of the party could not give jurisdiction. To assume such jurisdiction, would be to convert the Senate into a criminal tribunal, which, by the constitution, is reserved to the common law courts. pulsion from the exercise of criminal jurisdiction, will be sufficiently manifest from a reference to the memorial and report, from which it will further appear, that charge was grounded on what had taken place in the courts of appeals of Kentucky, eighteen months previous to Mr. Marshall's having been appointed a Senator, and had been the subject of newspaper discussion, and was fully known to the legislature, when the appointment was made. In the present case, suppose the Senate had been satisfied that no inquiry was necessary for the purpose of exercising their censorial power of expulsion, and Mr. Smith had requested the Senate to institute an inquiry for the purpose of giving him an opportunity of vindicating his innocence, would not the Senate give him the same answer as was given in the case of Mr. Marshall? "No person can be held to answer for an infamous crime, unless on a presentment or indictment of a grand jury," &c.; "that as the constitution does not give jurisdiction to the Senate, the consent of the party cannot give it." That the Senate have no power, by the constitution, to transform themselves into a court of criminal jurisdiction to try any offence whatever, but a right, only, to inquire into such facts as may be necessary to enable them to exercise the power of expulsion. That the constitutional authority of the Senate to expel a member is not the jurisdiction of a court instituted for the trial and punishment of crimes, but a political power, to be exercised only when necessary for preserving the purity of this branch of the legislature, is evident from the consideration that it does not exempt a person from the liability to be tried and punished by the criminal tribunals of the country. The use that is attempted to be made of this precedent, shows in a strong point of light the impropriety and impolicy of attempting to settle abstract questions, or to detail reasons not necessary for coming to a proper result in the case before us, being liable to be misunderstood or misstated.

I do most fully agree with the gentleman from Massachusetts that the Senate, for the purpose of exercising their censorial power of expulsion, have cognizance of the case before us. That for that purpose, they have cognizance of all crimes and offences, and are not bound to wait for the proceedings of the courts of common law. I further admit, that the same degree of evidence is not necessary to justify an expulsion of a member, as to convict him before a court and jury. For example, on a charge of treason, two witnesses are necessary to a conviction. On such a charge, I should not hesitate to expel a member on the testimony of a single witness of irreproachable character. What I insist on is, that the evidence admitted must be legal evidence, and such as would be admissible in a court of law;

Were I, in deciding this case, to be governed by political or party considerations, I should incline to vote in favor of the resolution on your table. But, when we reflect, that agreeing to the resolution is to disrobe a Senator of his honor, to doom a fellow-citizen, an amiable family, and an innocent posterity, to perpetual infamy and disgrace, party or political considerations ought not, cannot influence the decision. Impartial justice and the testimony, alone, must govern, and, I flatter myself, will govern every member of the Senate in the vote he is about to give.

Elias Glover, having volunteered in giving his deposition, when no accusation existed, was to be considered rather an accuser than a witness. An ex parte deposition, taken under such circumstances, could not by me be considered as evidence on a question of expulsion, had not the accused member and his counsel agreed to its admission, by which I was bound to consider it as evidence. And in my mind it is so material, that if the force of it had been destroyed by counter testimony, I must have voted for the resolution before us. But I have listened with pleasure, for it always gives me pleasure when a person accused can prove his innocence, to the evidence adduced, which has completely done away the force of Glover's deposition. The gentleman from Massachusetts admits, and every member who has spoken seems to agree, that no reliance can be placed upon it; I shall therefore lay that out of the case; as also the other reference attempting a direct proof of a participation in Aaron Burr's conspiracy; as in this also I fully agree with the gentleman from Massachusetts, that it amounts to very little. It is the conduct and confessions of Mr. Smith, by which his guilt is endeavored to be established; and when such talents and eloquence as are possessed by the gentleman from Massachusetts are brought to bear upon, and urged with so much energy and force against an individual accused of being concerned in plots and conspiracies against the government of his country, charges peculiarly calculated to excite jealousy and suspicion, innocence itself could hardly expect to escape. After hearing his able and eloquent argument, I was much gratified by the motion of the gentleman from Virginia, Mr. Giles, to postpone. I wished for one night to consider the subject; I was not then prepared to make a reply.

The gentleman from Massachusetts has relied on the conversations, confessions, and conduct of Mr. Smith to prove his guilt, but he does not take the whole conversations and confessions together; and it is a rule of law, always admitted, and never to be departed from, that when the confession of the party is taken, the whole must be taken together; and not to make out proof of guilt by selecting different detached parts, leaving out other parts that go to explain what, otherwise, might appear criminal. A

in this case. If all Mr. Smith's conversations and confessions are taken together, there can remain little doubt of his innocence.

The first circumstance in Mr. Smith's conduct which is laid hold on, and on which the gentleman of Massachusetts has built his argument to establish his guilt, is, that Mr. Smith has confessed that in September, 1806, he gave Aaron Burr a hospitable reception under his roof, for four or five days; that he afterwards saw him again in Cincinnati and Kentucky. What was there suspicious in all this? Who was Aaron Burr? And what was the situation of Mr. Smith in relation to him, that extending to him the rights of hospitality should excite suspicion, and fix the imputation of crime? Aaron Burr was a man who had stood high in the confidence of the people of the United States—a man who had been associated with the present chief magistrate, and had received an equal number of votes of the electors for President—a man who had been by the voice of his country placed in the second office in the nation—a man who for four years filled the chair you now occupy, and presided over this Senate with impartiality and dignity; and in a manner to command universal approbation. So great was the ascendency which he had acquired in this body, that towards the close of his term of service a bill was passed granting him for life the privilege of sending and receiving letters and packets through the mail free of postage, a privilege which had never been extended to any but a President of the United States and Mrs. Washington. So great was the confidence of the majority of the Senate in Aaron Burr, as to produce an unusual zeal, no doubt a laudable zeal, for passing the bill. It was pressed in an unusual manner; and we were called to a decision when he was himself in the chair; he who could almost look down opposition. Under such circumstances it was painful to oppose the bill; and nothing but a strong sense of duty could have impelled any one to make opposition. The yeas and nays on the journal will show how great a portion of the Senate, of which number was Mr. Smith, had so high a confidence in Mr. Burr. At that time, I had no more suspicion than the majority of Colonel Burr's having any treasonable designs; though, in opposition to the bill, I did state it as a possible case, that a Vice President, ambitious of rising to the first office in the nation, and meeting with disappointment, might become disaffected and engaged in treasonable plots to overturn the government, and avail him of his privilege and the mail to circulate his treason into every corner of the Union. The bill was arrested in the House of Representatives.

The Senate also adopted the following:

Resolved, unanimously, That the thanks of the Senate be presented to Aaron Burr, in testimony of the impartiality, dignity, and ability

conduct, in the discharge of the arduous and important duties assigned him as President of the Senate."

I was happy on this occasion to unite in what I considered a just tribute of applause for his conduct as President of the Senate.

This was the close of Aaron Burr's political career; this was the last public office he sustained in the nation, and from that time, till Mr. Smith received the pencilled note asking for the hospitality of his house for a few days; it was not publicly known that he had done any thing to take off the impression which his official conduct as Vice President, and those public acts of the Senate, had made. Under these circumstances, and considering the intimacy and friendship, which had been contracted while they had been associated in the same political body, the Senate of the United States, what could Mr. Smith do? What did his early impressions, all the habits of his life, and the honorable feeling and sentiments of a gentleman imperiously demand of him to do? The answer will be anticipated; he could do no otherwise than extend to him the rights of hospitality, receive and treat him as a gentleman. Had he been an entire stranger he could not have done otherwise, without being considered as having disgraced his native state, for he was born in Virginia, so famed for hospitality, not only to friends, but to strangers. Had Mr. Smith done otherwise than he did, would he not have been disowned as unworthy to be called a Virginian? This act of hospitality and politeness is now considered as a crime, which is to fix indelible disgrace on Mr. Smith and his family.

The next thing relied on is, that Mr. Smith being informed of the project and schemes of Mr. Burr, concealed them. The gentleman from Massachusetts has told us that if Mr. Smith had come forward and testified before the grand jury of Kentucky, Burr would have been convicted, and his treasonable plot, which has done so much mischief, arrested. The disclosure which Mr. Smith states to have been made to him, and there is no proof on the subject but what comes from himself, is as follows, viz: Col. Burr said to him, "Mr. Smith, my object in a few months will be disclosed; you will not find it dishonorable or inimical to this government. I feel superior to the mean artifices which are ascribed to me; calumniators I do not notice, for as fast as you will put one down, another will rise up. This much I will venture to tell you; if there should be war between the United States and Spain, I shall head a corps of volunteers, and be the first to march into the Mexican provinces; if peace should be preserved, which I do not expect, I shall settle my Washita lands, and make society as pleasant about me as possible." Now I ask, Mr. President, was there any thing criminal, was there any thing unlawful in all this? Was there any thing to excite suspicion that Aaron Burr was about to levy war against the Union, or invade the territory of a friendly power, in amity with the United States? Was it not, on the contrary, expressly said not to be dishonorable or inimical to the government? Was there any reason to suppose our government would not, in the event of war with Spain, accept the services of a corps of volunteers, when the policy seems to have been to rely on volunteers, and laws have frequently passed calling for, and authorizing the employment of such force? The evidence of Mr. Smith, had he appeared before the grand jury, instead of criminating Colonel Burr must have operated in his favor; for, to have headed a corps of volunteers under such circumstances would have been laudable. Has Mr. Smith ever manifested any unwillingness to disclose what he knew of Burr's project? On the contrary, has he not always done it freely, when there was a fit occasion, not only to his friends, but the officers of government?

But the gentleman from Massachusetts has compared the case of Mr. Smith with that of Commodore Truxton, and stated that upon Burr's disclosing his plans to the latter, he was asked this all-important question—"Is the executive of the United States privy to or concerned in the prjoect?" This, says he, ought to have been the conduct of Mr. Smith; this would have been his conduct if he had been an innocent and honest man. I little thought that Commodore Truxton's deposition would have been resorted to in this case; a deposition which had not been read; a deposition not taken on the trial in the presence of Mr. Smith, nor in any way relating to his case. It must be an uncommon zeal that could have induced any one, possessing the legal knowledge of the gentleman from Massachusetts, to have resorted to that as evidence. But, sir, the answer to this is plain. Mr. Burr did not go as far with Mr. Smith as with Commodore Truxton,—otherwise Mr. Smith would probably have asked him the same question. But so much reliance having been had on Commodore Truxton's deposition to prove Mr. Smith's guilt, on the score of omissions, as well as of what he has done, I must be permitted to read a part of that deposition; it is in these words, viz:

"About the beginning of the winter of 1805–6, Colonel Burr returned from the western country and came to Philadelphia. He frequently in conversation mentioned to me certain speculations in western lands. These conversations were uninteresting to me, and I did not pay much attention to them. Colonel Burr requested me to get the navy of the United States out of my head, as he had something in view, both honorable and profitable, which he wished to propose to me. I considered this as nothing more than a desire to get me interested in land speculations. These conversations were frequently repeated; and some time in the month of July 1806, Colonel Burr observed

more of those men at Washington. He observed that he wished to see or to make me (I do not recollect which) admiral; for he contemplated an expedition into Mexico, in the event of a war with Spain, which he thought inevitable. He asked me if the Havana could not be easily taken in the event of a war. I told him that it would require the co-operation of a naval force. Mr. Burr observed that might be obtained. He pursued the inquiry as to Carthagena and La Vera Cruz—what personal knowledge I had of those places, and what would be the best mode of attacking by sea and land. I gave my opinion very freely. Mr. Burr then asked me if I would take the command of a naval expedition. I asked him if the executive of the United States was privy to, or concerned in the project. He answered me emphatically that they were not. I asked him that question because the executive had been charged with a knowledge of Miranda's expedition. I told Colonel Burr that I would have nothing to do with it; that Miranda's project had been intimated to me, and that I had declined any agency in those affairs. Mr. Burr observed that, in the event of a war, he intended to establish an independent government in Mexico; that Wilkinson of the army, and many officers of the navy, would join. I replied that I could not see how any of the officers of the United States could join. He said that General Wilkinson had projected the expedition, and that he himself had matured it; that many greater men than Wilkinson were concerned (or would join); and thousands to the westward."

Mr. President, notwithstanding Colonel Burr had gone much further in communicating his plans and projects to Commodore Truxton than he had done to Mr. Smith, and notwithstanding those insinuations of weaning him from the navy, forgetting those men at Washington, &c., —which must have excited suspicion in the mind of a man of Commodore Truxton's discernment, that Colonel Burr's project was unlawful, and not known to or approved by the government—yet Commodore Truxton in whose honor and integrity I have the highest confidence, did not put the question which the gentleman from Massachusetts relies on so much, and approves so highly as evincing his integrity; and for not asking which, Mr. Smith is suspected of a participation in guilt. It was when Colonel Burr asked Commodore Truxton directly if he would take the command of a naval expedition, and not till then, that he put the question. Had Colonel Burr asked Mr. Smith to engage supplies of provisions, gunboats, arms or men, for his expedition, then, and not till then, could it be suspected that Mr. Smith should have asked such a question. So far from saying any thing to excite Mr. Smith's suspicion, Colonel Burr had expressly declared his object was not dishonorable or inimical to this government. That

tion of Mr. McRae in the same deposition, viz: "Were the remarks which were made on your relation with the navy, calculated to fill your bosom with resentments against the government?"

Ans. "My bosom was already full enough, but certainly Colonel Burr spoke in concert with my feelings."

General Eaton's deposition has been introduced under like circumstances, and for the same purpose as that of Commodore Truxton. He testifies that:

"During the winter of 1805–6, I cannot be positive as to the distinct point of time, yet during that winter, at the city of Washington, Colonel Burr signified that he was organizing a secret expedition to be moved against the Spanish provinces on the south-western frontiers of the United States; I understood, under the authority of the general government. From our existing controversies with Spain, and from the tenor of the President's address to both Houses of Congress, a conclusion was naturally drawn that war with that country was inevitable. I had then just returned from the coast of Africa; and having been for many years employed on our own frontiers, and on a foreign coast still more barbarous and obscure, I knew not the extent of the reputation which Colonel Burr sustained in the consideration of his country. The distinguished rank which he had held in society, and the strong marks of confidence which he had received from his fellow-citizens, gave me no right to doubt of his patriotism. As a military character, I had been acquainted with him, but not personally; and I knew none in the United States in whom a soldier might more surely confide his honor than in Colonel Burr. In case of enmity to this country, from whatever quarter it might come, I thought it my duty to obey so honorable a call as was proposed to me. Under impressions like these, I did engage to embark in the enterprise, and did pledge my faith to Colonel Burr. At several interviews, it appeared to be the intention of Colonel Burr to instruct me, by maps and other documents, of the feasibility of penetrating to Mexico. At length, from certain indiscreet expressions and inuendoes, I admitted a suspicion that Colonel Burr had other objects. He used strong expressions of reproach against the administration of the general government, accused them of want of character, want of energy, want of gratitude. He seemed desirous of irritating my resentment by reiterating certain injurious strictures cast upon me on the floor of Congress, on certain transactions on the coast of Africa, and by dilating on the injuries which I had sustained from the delays in adjusting my accounts for money advanced for the United States; and talked of pointing out to me modes of honorable indemnity. I will not conceal here that Colonel Burr had good grounds to believe me disaffected towards the

Eaton was also deceived, so completely deceived, as to engage himself in the enterprise. Here is also evidence of the estimation in which Aaron Burr was held at Washington, the seat of the general government, where Congress were assembled, and Mr. Smith was attending as a member of the Senate, the forepart of the year 1806, the very year when Mr. Smith is to be suspected of a crime for extending the rights of hospitality to Colonel Burr: nor does General Eaton suspect the views and projects of Colonel Burr to be unlawful or improper, until he began to use strong expressions of reproach against the administration. General Eaton was also a man dissatisfied with the administration.

It is asked how it was possible for Colonel Burr to have been so long with Mr. Smith, and not have disclosed to him his plans, as he had done to others. The reason is obvious; Commodore Truxton was dissatisfied with the government, and full of resentment; he was therefore the man most likely for Aaron Burr to apply to, expecting, no doubt, to engage him in his projects; to him he would be likely to communicate his sentiments and feelings with freedom. Far otherwise was the case of Mr. Smith. He was enjoying the sunshine of the government; he was going on in the full tide of prosperity; his fellow-citizens had bestowed on him the highest honors in their gift. He was a Senator of the United States. The administration had extended to him their patronage and favor, by giving him contracts for supplying the army and building gunboats—lucrative employments. Aaron Burr could not expect this man to engage in any treasonable plot against the government, until he should have made him willing to sacrifice all his honors and all his prospects; and to make the communication without engaging him was to defeat all his prospects; knowing that Mr. Smith could have no possible wish for a change, he would be the last to whom he would dare to make a disclosure of his projects. There were reasons, and strong reasons, why he should wish to preserve the confidence of Mr. Smith, which made it important to him to be on good terms with him, so long as he was attempting to blind the eyes of the people, and make them believe he was acting in concert with the government; to do which there could not have been a more ready expedient than to take up his lodgings at the house of the contractor for the army of the United States, and to appear to possess his confidence. All his art, all his address, therefore, would be made use of to deceive Mr. Smith, and make him believe his views and projects were fair and honorable. This will fully explain the appearance of confidence which seems to have existed between Mr. Smith and Colonel Burr, as well as their correspondence, previous to the President's proclamation.

The gentleman from Massachusetts thinks the so ridiculous, and the disguise so thin, that Mr. Smith must have seen through it, and known that Aaron Burr's projects were unlawful; and from that circumstance draws presumption of guilt. Is it surprising that Mr. Smith in his situation, and with the information he possessed, should believe this story, when a gentleman of Commodore Truxton's discernment, and after having had a much more full development of Colonel Burr's views and projects, believed it, and which in his deposition he affirms to be the fact? In answer to the following question put by Colonel Burr, "Had you reason to doubt my intention to settle lands?" Commodore Truxton answered, "If there was no war, I took it for granted that was your intention." Nor is it so astonishing as the gentleman seems to think it, that Smith should consent to let his two sons go with Colonel Burr. It is the wish of every parent to see his children well established; and what is more profitable, or promises a more advantageous and certain establishment than the settlement of new lands? People are generally induced very readily to believe what they wish, and is it at all surprising that Mr. Smith should be easily induced to think well of a project which was proposed to benefit his own sons? Surely his participation in Aaron Burr's treason cannot be presumed from such circumstances.

The conduct of Mr. Smith, from the first moment that official information was given to the people of the United States, that Aaron Burr's projects were treasonable or unlawful, was such as, instead of exciting suspicion of his being an accomplice, merits the applause of his country. Not like a timid traitor, affrighted at the rustling of a leaf, did he endeavor to conceal the intercourse and correspondence between him and Aaron Burr; or like a bold traitor attempt to defeat the measures adopted to counteract the project and arrest of the culprits; or to paralyze exertion by casting ridicule upon them, as did that prime patriot Glover, the accuser of Mr. Smith. No, sir; the day after the President's proclamation arrived, he writes a letter to the secretary of war informing him of the substance of Aaron Burr's communication to him. He finds that the militia called into service on this occasion were destitute of arms, and unable to obtain them from the public stores of the United States, though application had been made for that purpose by the commanding officer; and that without arms they could render no service. He goes in the night to the keeper of the arms and endeavors to persuade him to deliver them out, who still refused, though shown the President's proclamation, without an order from the secretary of war; fearing he might lose his office for acting without orders. Under these circumstances, this same John Smith, charged with being an associate of Aaron Burr in this very treason, pledged his own private obligations for ten thousand dollars to indemnify the

done, not after Aaron Burr was arrested, or there was a prospect of the project's being defeated, but immediately, on the first alarm excited by the President's proclamation, and the spirited and patriotic exertions of the State of Ohio.

The gunboats which Mr. Smith was building, and which his accusers have intimated were intended for Colonel Burr, were afterwards carried down the river to New Orleans, and delivered to the order of General Wilkinson; and all the provisions purchased by Mr. Smith appear to have been fairly and promptly delivered to our army; not a man—not a musket—not a barrel of flour—not a single article of provision of any kind—or any thing that could aid or comfort Colonel Burr in his expedition, has ever been furnished to him or any of his agents. How, then, has Mr. Smith participated in the treason of Aaron Burr? I find no evidence of that fact. I can discern no reasonable ground to suspect any such participation.

The testimony of Colonel Taylor, whom I deem a man of honor and truth, furnished one other ground from which a presumption is attempted to be drawn to implicate Mr. Smith. He says, that in conversing with Mr. Smith about certain political publications in a newspaper, signed the Querist, in which a division of the Union and a separation of the western from the Atlantic States was advocated, he understood Mr. Smith to advance these sentiments as his own. Mr. Smith says he only described them as the sentiments of the writer. Suppose Colonel Taylor's recollection to be correct, what crime was there in advancing mere speculative opinions, or expressing his sentiments on that or any other subject, provided he violated no law? Are we not in a free country, in which it is lawful to speculate on the science of government as well as any other? If that privilege be denied, ours will no longer deserve the name of a free country. But is it not possible that Colonel Taylor may be mistaken? How often do we find conversations that take place among friends to be misunderstood and incorrectly stated? Every day's experience shows us that even in public debate in this Senate, the observations of gentlemen are so misstated as to require explanation. But Dr. Sellman's deposition removes all doubt; he says, and he is admitted to be a man of good character, that he understood Mr. Smith only to have repeated, not his own sentiments, but those of the Querist. Dr. Sellman testifies:

"The first persons I approached were Mr. John Smith and Colonel James Taylor. After attending some time to the conversation, I noticed a reference was occasionally made to a publication or publications that had appeared in the Marietta paper. For some time I was at a loss to determine whether those gentlemen were expressing their own opinions or those tion, though it did appear to me to be a detail of the opinions set forth in that publication. As it is now impressed on my mind, I believe, to more fully satisfy myself, I asked a question. Nor can I perfectly remember whether I intended the question particularly for Mr. Smith, or both of the gentlemen, but believe it was intended for Mr. Smith. Do you expect or apprehend an early separation of the Union? To which Mr. Smith replied, 'Not in my lifetime; and I hope and pray to God I may never live to see it, whether it takes place sooner or later.'"

Here can be no mistake; so far from engaging in a treasonable plot to sever the Union, he deprecated such an event in the most solemn manner. Where, then, is the evidence whereon we can ground so important a vote as that which shall adopt the resolution on your table? A vote which is to disrobe a Senator of his office and honor? Nothing but jealousy, that jealousy which frequently attaches itself to a charge of treason and conspiracy, and must in this case have taken place in the mind of the gentleman from Massachusetts, could have induced a belief that there was evidence to prove on Mr. Smith a participation in the conspiracy of Aaron Burr. That master of the human heart, Shakspeare, says—

"——— Trifles light as air,
Are, to the jealous, confirmations strong
As proofs of holy writ."

The truth of this is remarkably verified in the case before us. Is there not some reason to apprehend that there has been too great a disposition to convert suspicion into proof? Ought we not to be on our guard when it is proved that there has been a powerful combination of men, calling themselves a republican society, to ruin Mr. Smith, the individuals of which, when called before a magistrate to testify, declare that they are bound to secrecy by a solemn obligation to the society, which is paramount to their oaths, when sworn as witnesses, and which will not admit of their disclosing any facts, or their proceedings, any farther than they are permitted to be made public by the society? And in sundry of the depositions on your table they have accordingly refused to answer questions, and in some instances, to testify at all. Such a society disgraces the name of republican, by acting on principles tyrannical and oppressive.

I have detained the Senate longer than I intended; but to Mr. Smith the cause is all-important, and we ought to pause before we condemn a fellow Senator upon the ground of mere suspicion—direct proof there is not; we ought not hastily to agree to a resolution which shall fix perpetual infamy on a fellow man, an amiable family, and his unoffending posterity; for the infamy which will be attached by a vote

Engd by W. G. Jackman.

John Randolph

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JOHN RANDOLPH.

JOHN RANDOLPH, of Roanoke, one of the most eminent of those scholars, statesmen, and orators, who belong to Virginia, was the third and youngest son of John Randolph and Frances, a daughter of Colonel Theodoric Bland,* of the family bearing that name in the West Riding of Yorkshire. He was born at Cawson's, the seat of his grandfather, near the junction of the Appomatox and James rivers, in Virginia, on the second day of June, 1773. When scarcely three years old his father died, leaving him to the sole care of his excellent mother. By her he was taught to read, and his mind was early imbued with the lessons of religion and duty. "When I could first remember," says he to a friend, "I slept in the same bed with my widowed mother—each night, before putting me to bed, I repeated on my knees before her the Lord's Prayer and the Apostle's Creed—each morning kneeling in the bed I put up my little hands in prayer in the same form. Years have since passed away; I have been a skeptic, a professed scoffer, glorying in my infidelity, and vain of the ingenuity with which I could defend it. Prayer never crossed my mind, but in scorn. I am now conscious that the lessons above mentioned, taught me by my dear and revered mother, are of more value to me than all that I have learned from my preceptors and compeers. On Sunday, I said my catechism, a great part of which at the distance of thirty-five years, I can yet repeat."

In September, 1778, Mrs. Randolph married Mr. St. George Tucker, a native of Bermuda, and retired to the family estate of the Randolphs, at Matoax, two miles above Petersburg, where she continued to reside until the time of her death. "A more amiable and exemplary step-father than Mr. Tucker, could not be found." The instruction of the children, which, since the death of their father, had been acquired at the hands of their mother, was now undertaken by Mr. Tucker. To that object he devoted all the leisure he could command in the midst of his professional duties, and always manifested the deepest interest in the welfare and improvement of his pupils. The extreme youth and delicate constitution of little John at this time rendered his confinement to study impracticable, and he was allowed to follow his own inclinations. But he was not idle. Before he was ten he read Voltaire's History of Charles XII., and the Spectator. "I read Humphrey Clinker, also," he says, in the *Letters to Dudley*, "that is, Win's and Tabby's Letters with great delight, for I could spell at that age pretty correctly. Reynard, the Fox, came next, I think; then Tales of the Genii and Arabian Nights. This last, and Shakspeare, were my idols. I had read them, with Don Quixote, Gil Blas, Quintus Curtius, Plutarch, Pope's Homer, Robinson Crusoe, Gulliver, Tom Jones, Orlando Furioso, and Thomson's Seasons, before I was eleven years of age; also, Goldsmith's Roman History, and an old histo-

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* Colonel Bland was an active promoter of the Revolution. When Lord Dunmore, in the spring of 1775, under instructions from England, undertook to disarm the people, by secretly withdrawing the muskets and powder from the magazine in Williamsburg, Colonel Bland was among the first to rouse the country to resistance. As munitions of war were scarce, he, his son Theodoric Bland, junior, and his son-in-law John Randolph, father of the late John of Roanoke, sold forty negroes, and with the money purchased powder for the use of the colony. Endowed with an ample fortune and a manly character, having been for a series of years in succession, lieutenant of the county of Prince George, clerk of the court, and representative in the House of Burgesses, he possessed a commanding influence among the people. His house was the centre of a wide circle of friends and relations, who had pledged their lives, fortunes, and sacred honor, to the cause of independence.—*Garland's Life of Randolph.*

of Braddock's War. At about eleven, (1784–5,) Percy's Reliques and Chaucer became great favorites, and Chatterton and Rowley. I then read Young and Gay, &c. Goldsmith I never saw till 1787."

During the winter of 1781, John was sent with his brothers to a school in Orange county, where he remained until the latter part of the following year. The facts of this year of his life are not recorded. On retiring from this school, he was placed in the primary department of William and Mary College. Here he made considerable progress in the classics, "learned to repeat the Westminster Greek Grammar by heart," and increased his knowledge of the French language. But, his health failing, he was compelled to relinquish his books, and, in the spring of 1784, in company with his parents he visited the Island of Bermuda. After an absence of eighteen months, he returned to Virginia, and, in 1787, entered Princeton College. Dissatisfied with this institution, he removed the next year to Columbia College, in New York city. Of his career in this place little is known.

From the time he left college until his appearance in opposition to Patrick Henry, at the Charlotte Court, in March, 1799, Mr. Randolph was engaged in the duties of his estate, in visiting the southern cities, and in acquiring a knowledge of the political affairs of the world. The exciting topics in 1799, were the alien and sedition laws. The Virginia Legislature had passed resolutions declaring those laws unconstitutional. Mr. Henry viewed the step with apprehension and alarm, and anxious to preserve the Union of his country which seemed to be threatened with danger, he left the retirement of his home and offered himself as a candidate for the State Legislature. At the March Court, he appeared on the election ground, and delivered one of his most eloquent and touching appeals. When he had finished, young Randolph, who was a candidate for Congress, rose to reply. It was his first attempt at public speaking. He spoke three hours; the people all that time, standing on their feet, hung with breathless silence on his words. His youthful appearance, boyish tones, distinct and thrilling utterance; his grace; his bold and manly thoughts, struck them with astonishment.* The result of the contest was the election of both of the speakers; Mr. Henry to the State Legislature and Mr. Randolph to the Congress of the United States.

Mr. Randolph took his seat in Congress in December, 1799, and soon became a prominent and active member. His first appearance in debate was on the tenth of January, 1800, at the time Mr. Nicholas's resolution for reducing the army was before the House. At the opening of the first session of Congress under the administration of President Jefferson, he was placed at the head of the Committee of Ways and Means, one of the most considerable and laborious positions in Congress. In February, 1802, in accordance with the recommendation of the President, he reported a bill to repeal the laws of the last session with respect to the judiciary, and, in the debate on the subject, delivered a powerful and effective speech. This bill, after a warm and protracted discussion, in which nearly all the celebrated men in Congress took a part, was passed early in March, by a large majority. In the other important measures which originated or were discussed in this session, Mr. Randolph was constantly and indefatigably engaged. He introduced a resolution, directing the Secretary of the Treasury to lay before the House a list of the exports to the Mediterranean, distinguishing those of the growth of the United States;—took part in the debates on the Apportionment Bill, the navigation of the Mississippi, and the purchase of Louisiana. His agency in these measures is too well understood to require particular notice in this place.

In January, 1804, he offered a resolution that a committee be appointed to inquire into the official conduct of Judge Chase of the Supreme Court of the United States, and report whether he had so acted in his judicial capacity as to require the interposition of the House. This was the foundation of the celebrated impeachment of Judge Chase. Although Mr. Randolph's resolution met with a strong opposition, it was finally carried; articles of impeachment were reported, but for want of time, were continued to the next session. In November, 1804, they were again reported, and Mr. Randolph was appointed to conduct the trial. On the fourteenth

* Mr. Henry's speech on this occasion will be found at page 12, of the first volume of this collection. A spirited resume of Mr. Randolph's remarks is given in Mr. Garland's life of that celebrated man.

of February, 1805, he appeared at the bar of the Senate and opened the case, in a speech occupying one hour and a half. The result of this novel and exciting trial is well known. During the same session, Mr. Randolph delivered his celebrated speech on the Yazoo Question, a full account of which will be found in Mr. Garland's interesting volume.

Pending the difficulties between the United States and Great Britain, in 1805–6, many plans of action were proposed both in the Senate and House of Representatives. Mr. Gregg's resolution, the prominent one in the House, suggested a prohibition of all intercourse between the two nations, until England would consent to arrange the matters in dispute on fair terms. This professed to be a peace measure; but many of its friends discussed it as a war measure; Mr. Randolph so regarded it, and on the fifth day of March, 1806, he delivered an able and eloquent speech against it. By many, this effort was regarded as his most forcible and patriotic. It caused general remark in England, where it was republished, soon after its delivery, with a comprehensive introduction by the author of the celebrated pamphlet, *War in Disguise.* Mr. Randolph combated, with energy and resolution, every measure that tended to weaken the bonds of peace between the United States and Great Britain. His speech on an increase in the army, delivered in the lower House of Congress, on the tenth of December, 1811, contributed to that end.

Early in April, 1812, President Madison sent in a secret message recommending an immediate embargo. The Committee of Foreign Relations, anticipating the message, had already prepared a bill, which was read twice, reported to the Committee of the Whole, referred back to the House, and immediately put on its passage. The question was asked by one of the members whether the bill was to be considered as a peace measure, or a precursor to war. He was answered that it was understood as a war measure; "and it is meant," said the member, "that it shall lead directly to it." Approbation of the message and the proposition before the House was then expressed by different members, when Mr. Randolph rose and made the following remarks:*—

"I am so impressed with the importance of the subject, and the solemnity of the occasion, that I cannot be silent. Sir, we are now in conclave; the eyes of the surrounding world are not upon us: we are shut up here from the light of heaven, but the eyes of God are upon us. He knows the spirit of our minds. Shall we deliberate upon this subject with the spirit of sobriety and candor, or with that spirit which has too often characterized our discussions upon occasions like the present? We ought to realize that we are in the presence of that God who knows our thoughts and motives, and to whom we must hereafter render an account for the deeds done in the body. I hope, sir, the spirit of party, and every improper passion, will be exorcised, that our hearts may be as pure and clean as fall to the lot of human nature.

"I am confident in the declaration, Mr. Chairman, that this is not a measure of the Executive; but that it is engendered by an extensive excitement upon the Executive—* * * *

"I will appeal to the sobriety and reflection of the House, and ask, what *new* cause of war for the last twelve months? What *new* cause of embargo within that period? The affair of the Chesapeake is settled.—No new principles of blockade interpolated into the laws of nations. I suppose every man of candor and sober reflection will ask why we did not go to war twelve months ago? Or will it be said we ought to make up, by our promptness now, for our slowness then? Or will it be said, that if the wheat for which we have received two dollars a bushel had been rotting in our barns, we should have been happier and richer? What would the planter say if you were to ask him which he would prefer,—the honorable, chivalrous course advocated by the Speaker, with the consequences which must attend it, the sheriff at his back, and the excise collector pressing him? He would laugh in your face. It is not generally wise to dive into futurity; but it is wise to profit by experience, although it may be unpleasant. I feel much concerned to have the bill on the table for one hour." That privilege was not allowed, however; the bill was hurried through, and in a short time became a law. At the close of his term Mr. Randolph retired to his estate on the Roanoke River.

In 1816, he again took his seat in Congress, where he distinguished himself by a strong oppo-

* Life of John Randolph of Roanoke, by Hugh A. Garland. Vol. I. page 298.

sition to the Bank of the United States. He opposed it as unconstitutional, inexpedient, and dangerous. "I declare to you, sir," said he, "that I am the holder of no stock whatever, except live stock, and had determined never to own any—but, if this bill passes, I will not only be a stockholder to the utmost of my power, but will advise every man over whom I have any influence, to do the same, because it is the creation of a great privileged order of the most hateful kind to my feelings, and because I would rather be the master than the slave. If I must have a master, let him be one with epaulettes—something that I can fear and respect, something that I can look up to—but not a master with a quill behind his ear." Mr. Randolph was equally strong and vehement in his opposition to the "revenue bill," of this session.

During the summer of 1816, after his return to Roanoke, Mr. Randolph's health, which for some time had been declining, became more feeble, and the following winter he suffered extremely. An anecdote of this period of his life, is related by Mr. Roane, who was a member of Congress from Virginia during the session of 1816–17. "I remember," says he, "that one morning Mr. Lewis came into the House of Representatives and addressed Mr. Tyler and myself, who were the youngest members from Virginia, and said we must go to Georgetown to Mr. Randolph. We asked for what; he said that Mr. Randolph had told him that he was determined not to be buried as beau Dawson had been, at the public expense, and he had selected us young bloods to come to him and take charge of his funeral. We went over immediately. When we entered Mr. Randolph's apartments he was in his morning gown. He rose and shook us by the hand. On our inquiries after his health, he said, 'Dying! dying! dying! in a dreadful state.' He inquired what was going on in Congress. We told him that the galleries were filling with people of the District, and that there was considerable excitement on the re-chartering of the batch of banks in the District. He then broke off, and commenced upon another subject, and pronounced a glowing eulogium upon the character and talents of Patrick Henry. After sitting for some time, and nothing being said on the business on which we had been sent to him, we rose and took our leave. When we got to the door, I said, 'I wish, Mr. Randolph, you could be in the House to-day.' He shook his head—'Dying, sir, dying!' When we had got back to the House of Representatives, Mr. Lewis came in and asked how we had found Mr. Randolph. We laughed, and said as well as usual—that we had spent a very pleasant morning with him, and had been much amused by his conversation. Scarcely a moment after, Mr. Lewis exclaimed, 'There he is!' and there to be sure he was. He had entered by another door, having arrived at the Capitol almost as soon as we did. In a few moments he rose and commenced a speech, the first sentence of which I can repeat verbatim.—'Mr. Speaker,' said he, 'this is Shrove Tuesday. Many a gallant cock has died in the pit on this day, and I have come to die in the pit also.' He then went on with his speech, and after a short time turned and addressed the crowd of 'hungry expectants,' as he called them—tellers, clerks, and porters in the gallery."

Mr. Randolph continued his legislative duties until the spring of 1821, when he obtained leave of absence, and sailed for England in search of health. On his arrival, he met a flattering and distinguished reception. "The plainness of his appearance," says a London paper, "his republican simplicity of manners, and easy and unaffected address, attracted much attention." After travelling extensively in England and Scotland, he returned to the United States in November, 1822, and the following December took his seat in Congress. Here he remained until the close of the session, but never took part in the debates.

At the opening of the eighteenth Congress, Mr. Randolph appeared at his place, and entered zealously into the various discussions of the day. He opposed Mr. Webster, Mr. Clay, and others in the debate on the Greek Question; delivered an elaborate speech against a contemplated scheme of internal improvements, which originated with Mr. Monroe, and was supported by Mr. Clay, and combated the Tariff in all its stages. After he had given up all hope of success in his efforts against the latter measure, he wrote thus to a friend: "I am satisfied (now) that nothing can avail to save us. Indeed, I have long been of that opinion. 'The ship will neither wear nor stay, and she may go ashore, and be ——,' as Jack says."

Shortly after the adjournment of Congress, Mr. Randolph again visited Europe, spending the latter part of the summer of 1824 among the mountains of Switzerland. He returned to New

York the same year, and in April of the year following was re-elected to the House of Representatives. Being detained at home by his private affairs, he did not reach the seat of Government until after Christmas, 1825. In the mean time, he was elected to fill a vacancy in the United States Senate. About this time he fought a duel with Mr. Clay. He continued in the Senate until March, 1827, participating largely in the debates of that body. The following April he was again returned to the House of Representatives.

On the accession of General Jackson to the Presidency, he announced his determination to retire from public life, and declined to be a candidate for any office. But he was obliged to sacrifice this determination. In October, 1829, he was a member of the Virginia Convention to amend the Constitution of that State; and, in May of the next year, was sent, by President Jackson, on a mission to Russia.

He returned to his native country in the fall of 1831, much reduced in health. "Ah, sir," said he to a friend who met him on his landing, "I am going at last; the machine is worn out; nature is exhausted, and I have tried in vain to restore her." From this time his energies continued to waste away, and after a long period of intense suffering, he died (June 24th, 1833) at Philadelphia, whither he had gone to take passage to England.*

SPEECH ON MR. GREGG'S RESOLUTION.

This speech, on a motion for the non-importation of British merchandise, offered by Mr. Gregg in the House of Representatives, in 1806, during the dispute between Great Britain and the United States, was made by Mr. Randolph, on the fifth day of March of that year.†

I am extremely afraid, sir, that so far as it may depend on my acquaintance with details connected with the subject, I have very little right to address you: for, in truth, I have not yet seen the documents from the treasury, which were called for some time ago, to direct the judgment of this House in the decision of the question now before you; and indeed, after what I have this day heard, I no longer require that document, or any other document; indeed, I do not know that I ever should have required it, to vote on the resolution of the gentleman from Pennsylvania. If I had entertained any doubts, they would have been removed by the style in which the friends of the resolution have this morning discussed it. I am perfectly aware, that upon entering on this subject, we go into it manacled, handcuffed, and tongue-tied. Gentlemen know that our lips are sealed on subjects of momentous foreign relations, which are indissolubly linked with the present question, and which would serve to throw a great light on it in every respect relevant to it. I will, however, endeavor to hobble over the subject, as well as my fettered limbs and palsied tongue will enable me to do it.

I am not surprised to hear this resolution discussed by its friends as a war measure. They say, it is true, that it is not a war measure; but they defend it on principles which would justify none but war measures, and seem pleased with the idea that it may prove the forerunner of war. If war is necessary; if we have reached this point, let us have war. But while I have life, I will never consent to these incipient war measures, which in their commencement breathe nothing but peace, though they plunge us at last into war. It has been well observed by the gentleman from Pennsylvania, behind me (Mr. J. Clay), that the situation of this nation in 1793, was in every respect different from that in which it finds

* An interesting and valuable account of the life and services of Mr. Randolph, has been written by Mr. Hugh A. Garland, to which those who desire a more particular history of that celebrated man, are referred.

† Mr. Gregg offered his resolution on the 29th of January, 1806. It was as follows:—"Whereas Great Britain impresses citizens of the United States, and compels them to serve on board her ships of war, and also seizes and condemns vessels belonging to the citizens of the United States, and their cargoes, being the *bona fide* property of American citizens, not contraband of war, and not proceeding to places besieged or blockaded, under the pretext of their being engaged in time of war in a trade with her enemies, which was not allowed in time of peace:

"And whereas the government of the United States has repeatedly remonstrated to the British government against these injuries, and demanded satisfaction therefor, but without effect: Therefore—*Resolved*, That until equitable and satisfactory arrangements on these points shall be made between the two governments, it is expedient that, from and after the — day of — next, no goods, wares or merchandise, of the growth, product or manufacture of Great Britain, or any of the colonies or dependencies thereof, ought to be imported into the United States; provided, however, that whenever arrangements deemed satisfactory by the President of the United States shall take place, it shall be lawful for him by proclamation to fix a day on which the prohibition aforesaid shall cease."—*History of Congress.*

itself in 1806. Let me ask, too, if the situation of England is not since materially changed? Gentlemen, who, it would appear from their language, have not got beyond the horn-book of politics, talk of our ability to cope with the British navy, and tell us of the war of our revolution. What was the situation of Great Britain then? She was then contending for the empire of the British channel, barely able to maintain a doubtful equality with her enemies, over whom she never gained the superiority until Rodney's victory of the 12th of April. What is her present situation? The combined fleets of France, Spain, and Holland, are dissipated; they no longer exist. I am not surprised to hear men advocate these wild opinions, to see them goaded on by a spirit of mercantile avarice, straining their feeble strength to excite the nation to war, when they have reached this stage of infatuation, that we are an over-match for Great Britain on the ocean. It is mere waste of time to reason with such persons. They do not deserve any thing like serious refutation. The proper arguments for such statesmen are a strait waistcoat, a dark room, water-gruel, and depletion.

It has always appeared to me that there are three points to be considered, and maturely considered, before we can be prepared to vote for the resolution of the gentleman from Pennsylvania. First. Our ability to contend with Great Britain for the question in dispute: Secondly. The policy of such a contest: and Thirdly. In case both these shall be settled affirmatively, the manner in which we can, with the greatest effect, re-act upon and annoy our adversary.

Now the gentleman from Massachusetts (Mr. Crowninshield), has settled at a single sweep, to use one of his favorite expressions, not only that we are capable of contending with Great Britain on the ocean, but that we are actually her superior. Whence does the gentleman deduce this inference? Because, truly, at that time, when Great Britain was not mistress of the ocean, when a North was her prime minister, and a Sandwich the first lord of her admiralty; when she was governed by a counting-house administration, privateers of this country trespassed on her commerce. So too did the cruisers of Dunkirk. At that day Suffrein held the mastery of the Indian seas. But what is the case now? Do gentlemen remember the capture of Cornwallis on land, because De Grasse maintained the dominion of the ocean? To my mind no position is more clear, than that if we go to war with Great Britain, Charleston and Boston, the Chesapeake and the Hudson, will be invested by British squadrons. Will you call on the Count de Grasse to relieve them? or shall we apply to Admiral Gravina, or Admiral Villeneuve, to raise the blockade? But you have not only a prospect of gathering glory, and, what seems to the gentleman from Massachusetts much dearer, to make a conquest of Canada and Nova Scotia. Indeed? Then, sir, we shall catch a Tartar. I confess, however, I have no desire to see the senators and the representatives of the Canadian French, or of the tories and refugees of Nova Scotia, sitting on this floor, or that of the other House—to see them becoming members of the Union, and participating equally in our political rights. And on what other principle would the gentleman from Massachusetts be for incorporating those provinces with us? Or on what other principle could it be done under the constitution? If the gentleman has no other bounty to offer us for going to war, than the incorporation of Canada and Nova Scotia with the United States, I am for remaining at peace.

What is the question in dispute? The carrying-trade. What part of it? The fair, the honest, and the useful trade that is engaged in carrying our own productions to foreign markets, and bringing back their productions in exchange? No, sir; it is that carrying trade which covers enemy's property, and carries the coffee, the sugar, and other West India products, to the mother country. No, sir; if this great agricultural nation is to be governed by Salem and Boston, New York and Philadelphia, and Baltimore and Norfolk and Charleston, let gentlemen come out and say so; and let a committee of public safety be appointed from those towns to carry on the government. I, for one, will not mortgage my property and my liberty to carry on this trade. The nation said so seven years ago; I said so then, and I say so now. It is not for the honest carrying-trade of America, but for this mushroom, this fungus of war, for a trade which, as soon as the nations of Europe are at peace, will no longer exist; it is for this that the spirit of avaricious traffic would plunge us into war.

I am forcibly struck on this occasion by the recollection of a remark made by one of the ablest, if not honestest, ministers that England ever produced. I mean Sir Robert Walpole, who said that the country gentlemen, poor, meek souls! came up every year to be sheared; that they laid mute and patient whilst their fleeces were taking off; but that if he touched a single bristle of the commercial interest, the whole stye was in an uproar. It was indeed shearing the hog—"great cry, and little wool."

But we are asked, are we willing to bend the neck to England; to submit to her outrages? No, sir; I answer, that it will be time enough for us to tell gentlemen what we will do to vindicate the violation of our flag on the ocean, when they shall have told us what they have done, in resentment of the violation of the actual territory of the United States by Spain, the true territory of the United States, not your new-fangled country over the Mississippi, but the good old United States—part of Georgia, of the old thirteen states, where citizens have been taken, not from our ships, but from our actual territory. When gentlemen

shall be ready to tell them what I will do relative to our dispute with Britain, on the law of nations, on contraband, and such stuff.

I have another objection to this course of proceeding.—Great Britain, when she sees it, will say the American people have great cause of dissatisfaction with Spain. She will see by the documents furnished by the President, that Spain has outraged our territory, pirated upon our commerce, and imprisoned our citizens; and she will inquire what we have done. It is true, she will receive no answer; but she must know what we have not done. She will see that we have not repelled these outrages, nor made any addition to our army and navy, nor even classed the militia. No, sir; not one of our militia generals in politics has marshalled a single brigade.

Although I have said it would be time enough to answer the question, which gentlemen have put to me, when they shall have answered mine; yet, as I do not like long prorogations, I will give them an answer now. I will never consent to go to war for that which I cannot protect. I deem it no sacrifice of dignity to say to the Leviathan of the deep, we are unable to contend with you in your own element, but if you come within our actual limits, we will shed our last drop of blood in their defence. In such an event, I would feel, not reason; and obey an impulse which never has—which never can deceive me.

France is at war with England: suppose her power on the continent of Europe no greater than it is on the ocean. How would she make her enemy feel it? There would be a perfect non-conductor between them. So with the United States and England; she scarcely presents to us a vulnerable point. Her commerce is carried on, for the most part, in fleets; where in single ships, they are stout and well armed; very different from the state of her trade during the American war, when her merchantmen became the prey of paltry privateers. Great Britain has been too long at war with the three most powerful maritime nations of Europe, not to have learnt how to protect her trade. She can afford convoy to it all; she has eight hundred ships in commission: the navies of her enemies are annihilated. Thus, this war has presented the new and curious political spectacle of a regular annual increase (and to an immense amount) of her imports and exports, and tonnage and revenue, and all the insignia of accumulating wealth, whilst in every former war, without exception, these have suffered a greater or less diminution. And wherefore? Because she has driven France, Spain, and Holland, from the ocean. Their marine is no more. I verily believe that ten English ships of the line would not decline a meeting with the combined fleets of those nations. I forewarn the gentleman from Massachusetts, and his constituents of Salem, that all their golden hopes are vain. I forewarn them of the Good Hope (or now doubling it) to capture and confiscation; of their unprotected sea-port towns, exposed to contribution or bombardment. Are we to be legislated into a war by a set of men, who, in six weeks after its commencement, may be compelled to take refuge with us in the country?

And for what? a mere fungus—a mushroom production of war in Europe, which will disappear with the first return of peace—an unfair truce. For is there a man so credulous as to believe that we possess a capital, not only equal to what may be called our own proper trade, but large enough also to transmit to the respective parent states, the vast and wealthy products of the French, Spanish, and Dutch colonies? 'Tis beyond the belief of any rational being. But this is not my only objection to entering upon this naval warfare. I am averse to a naval war with any nation whatever. I was opposed to the naval war of the last administration, and I am as ready to oppose a naval war of the present administration, should they meditate such a measure. What! shall this great mammoth of the American forest leave his native element, and plunge into the water in a mad contest with the shark? Let him beware that his proboscis is not bitten off in the engagement. Let him stay on shore, and not be excited by the muscles and perriwinkles on the strand, or political bears, in a boat to venture on the perils of the deep. Gentlemen say, will you not protect your violated rights? and I say, why take to water, where you can neither fight nor swim? Look at France; see her vessels stealing from port to port, on her own coast; and remember that she is the first military power of the earth, and as a naval people, second only to England. Take away the British navy, and France tomorrow is the tyrant of the ocean.

This brings me to the second point. How far is it politic in the United States to throw their weight into the scale of France at this moment?—from whatever motive to aid the views of her gigantic ambition—to make her mistress of the sea and land—to jeopardize the liberties of mankind. Sir, you may help to crush Great Britain—you may assist in breaking down her naval dominion, but you cannot succeed to it. The iron sceptre of the ocean will pass into his hands who wears the iron crown of the land. You may then expect a new code of maritime law. Where will you look for redress? I can tell the gentleman from Massachusetts, that there is nothing in his rule of three that will save us, even although he should out-do himself, and exceed the financial ingenuity which he so memorably displayed on a recent occasion.* No, sir; let the battle

* In a debate on a bill fixing the prices which the commissioners of the sinking fund should not exceed, in their purchases of public debts, Mr. Crowninshield had asserted, that the three per cents. were worth only half as much as the

of Actium be once fought, and the whole line of sea-coast will be at the mercy of the conqueror. The Atlantic, deep and wide as it is, will prove just as good a barrier against his ambition, if directed against you, as the Mediterranean to the power of the Cæsars. Do I mean, when I say so, to crouch to the invader? No, I will meet him at the water's edge, and fight every inch of ground from thence to the mountains, from the mountains to the Mississippi. But after tamely submitting to an outrage on your domicile, will you bully and look big at an insult on your flag three thousand miles off?

But, sir, I have yet a more cogent reason against going to war for the honor of the flag in the narrow seas, or any other maritime punctilio. It springs from my attachment to the principles of the government under which I live. I declare, in the face of day, that this government was not instituted for the purposes of offensive war. No; it was framed, to use its own language, for the common defence and the general welfare, which are inconsistent with offensive war. I call that offensive war, which goes out of our jurisdiction and limits, for the attainment or protection of objects, not within those limits, and that jurisdiction. As, in 1798, I was opposed to this species of warfare, because I believed it would raze the constitution to the very foundation; so, in 1806, am I opposed to it, and on the same grounds. No sooner do you put the constitution to this use—to a test which it is by no means calculated to endure, than its incompetency to such purposes becomes manifest and apparent to all. I fear, if you go into a foreign war for a circuitous unfair carrying-trade, you will come out without your constitution. Have you not contractors enough in this House? Or do you want to be overrun and devoured by commissaries, and all the vermin of contract? I fear, sir, that what are called the energy-men will rise up again—men who will burn the parchment. We shall be told that our government is too free; or, as they would say, weak and inefficient. Much virtue, sir, in terms. That we must give the President power to call forth the resources of the nation; that is, to filch the last shilling from our pockets—to drain the last drop of blood from our veins. I am against giving this power to any man, be he who he may. The American people must either withhold this power, or resign their liberties. There is no other alternative. Nothing but the most imperious necessity will justify such a grant. And is there a powerful enemy at our doors? You may begin with a first consul; from that chrysalis state he soon becomes an emperor. You have your choice. It depend upon your election, whether you will be a free, happy, and united people at home, or the light of your executive majesty shall beam across the Atlantic, in one general blaze of the public liberty.

For my part, I never will go to war but in self-defence. I have no desire for conquests—no ambition to possess Nova Scotia—I hold the liberties of this people at a higher rate. Much more am I indisposed to war, when among the first means for carrying it on, I see gentlemen propose the confiscation of debts due by government to individuals. Does a bona fide creditor know who holds his paper? Dare any honest man ask himself the question? 'Tis hard to say whether such principles are more detestably dishonest, than they are weak and foolish. What, sir; will you go about with proposals for opening a loan in one hand, and a sponge for the national debt in the other? If, on a late occasion, you could not borrow at a less rate of interest than eight per cent. when the government avowed that they would pay to the last shilling of the public ability, at what price do you expect to raise money with an avowal of these nefarious opinions?—God help you! if these are your ways and means for carrying on war—if your finances are in the hands of such a chancellor of the exchequer. Because a man can take an observation, and keep a log-book and a reckoning; can navigate a cock-boat to the West Indies, or the East; shall he aspire to navigate the great vessel of state—to stand at the helm of public councils? "Ne sutor ultra crepidam." What are you going to war for? For the carrying trade. Already you possess seven-eighths of it. What is the object in dispute? The fair, honest trade, that exchanges the produce of our soil for foreign articles for home consumption? Not at all.

You are called upon to sacrifice this necessary branch of your navigation, and the great agricultural interest, whose handmaid it is, to jeopardize your best interests, for a circuitous commerce, for the fradulent protection of belligerent property under your neutral flag. Will you be goaded by the dreaming calculations of insatiate avarice, to stake your all for the protection of this trade? I do not speak of the probable effects of war on the price of our produce; severely as we must feel, we may scuffle through it. I speak of its reaction on the constitution. You may go to war for this excrescence of the carrying-trade—and make peace at the expense of the constitution. Your executive will lord it over you, and you must make the best terms with the conqueror that you can. But the gentleman from Pennsylvania (Mr. Gregg) tells you, that he is for acting in this, as in all things, uninfluenced by the opinion of any foreign minister whatever—foreign, or, I presume, domestic. On this head I am willing to meet the gentleman, am unwilling to be dic-

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the ratio of their respective rates of interest, and not compounded of principal and interest. Thus, if the three per cents. are at sixty, the true value of the six per cents. would be one hundred and twenty, and of the eight per cents. one hundred and sixty, according to this novel financial dis-

Is he willing to act on the same independent footing? I have before protested, and I again protest, against secret, irresponsible, overruling influence. The first question I asked when I saw the gentleman's resolution was, "Is this a measure of the cabinet?" Not an open declared cabinet, but an invisible, inscrutable, unconstitutional cabinet—without responsibility, unknown to the constitution. I speak of back-stairs influence, of men who bring messages to this House, which, although they do not appear on the journals, govern its decisions. Sir, the first question that I asked on the subject of British relations was, what was the opinion of the cabinet? What measures will they recommend to Congress? (well knowing that whatever measures we might take, they must execute them, and therefore that we should have their opinion on the subject.)—My answer was (and from a cabinet minister too), "There is no longer any cabinet." Subsequent circumstances, sir, have given me a personal knowledge of the fact. It needs no commentary.

But the gentleman has told you that we ought to go to war, if for nothing else, for the fur trade. Now, sir, the people on whose support he seems to calculate, follow, let me tell him, a better business; and let me add, that whilst men are happy at home reaping their own fields, the fruits of their labor and industry, there is little danger of their being induced to go sixteen or seventeen hundred miles in pursuit of beavers, raccoons or opossums—much less of going to war for the privilege. They are better employed where they are. This trade, sir, may be important to Britain, to nations who have exhausted every resource of industry at home—bowed down by taxation and wretchedness. Let them, in God's name, if they please, follow the fur trade. They may, for me, catch every beaver in North America. Yes, sir, our people have a better occupation—a safe, profitable, honorable employment. Whilst they should be engaged in distant regions in hunting the beaver, they dread, lest those whose natural prey they are, should begin to hunt them—should pillage their property, and assassinate their constitution. Instead of these wild schemes, pay off your public debt, instead of prating about its confiscation. Do not, I beseech you, expose at once your knavery and your folly. You have more lands than you know what to do with—you have lately paid fifteen millions for yet more. Go and work them—and cease to alarm the people with the cry of wolf, until they become deaf to your voice, or at least laugh at you.

Mr. Chairman, if I felt less regard for what I deem the best interests of this nation, than for my own reputation, I should not, on this day, have offered to address you; but would have waited to come out, bedecked with flowers and bouquets of rhetoric, in a set speech. But, sir, I dread lest a tone might be given to the mind of the committee, that will pardon me, but I did fear from all that I could see, or hear, that they might be prejudiced by its advocates (under pretence of protecting our commerce) in favor of this ridiculous and preposterous project—I rose, sir, for one, to plead guilty—to declare in the face of day that I will not go to war for this carrying-trade. I will agree to pass for an idiot, if this is not the public sentiment; and you will find it to your cost, begin the war when you will.

Gentlemen talk of 1793. They might as well go back to the Trojan war. What was your situation then? Then every heart beat high with sympathy for France—for republican France! I am not prepared to say, with my friend from Pennsylvania, that we were all ready to draw our swords in her cause, but I affirm that we were prepared to have gone great lengths. I am not ashamed to pay this compliment to the hearts of the American people, even at the expense of their understandings. It was a noble and generous sentiment, which nations, like individuals, are never the worse for having felt. They were, I repeat it, ready to make great sacrifices for France. And why ready? because she was fighting the battles of the human race against the combined enemies of their liberty—because she was performing the part which Great Britain now, in fact, sustains—forming the only bulwark against universal dominion.—Knock away her navy, and where are you? Under the naval despotism of France, unchecked, unqualified by any antagonizing military power—at best but a change of masters. The tyrant of the ocean, and the tyrant of the land, is one and the same; lord of all, and who shall say him nay, or wherefore doest thou this thing? Give to the tiger the properties of the shark, and there is no longer safety for the beasts of the forests, or the fishes of the sea. Where was this high anti-Britannic spirit of the gentleman from Pennsylvania, when his vote would have put an end to the British treaty, that pestilent source of evil to this country? and at a time, too, when it was not less the interest than the sentiment of this people to pull down Great Britain and exalt France. Then, when the gentleman might have acted with effect, he could not screw his courage to the sticking-place. Then, England was combined in what has proved a feeble, inefficient coalition, but which gave just cause of alarm to every friend of freedom. Now, the liberties of the human race are threatened by a single power, more formidable than the coalesced world, to whose utmost ambition, vast as it is, the naval force of Great Britain forms the only obstacle. I am perfectly sensible and ashamed of the trespass I am making on the patience of the committee; but as I know not whether it will be in my power to trouble them again on this subject, I must beg leave to continue my crude and desultory observations. I am not ashamed to confess that they are so.

At the commencement of this session we received a printed message from the President of

the United States, breathing a great deal of national honor and indication of the outrages we had endured, particularly from Spain. She was specially named and pointed at. She had pirated upon your commerce, imprisoned your citizens, violated your actual territory, invaded the very limits solemnly established between the two nations, by the treaty of San Lorenzo. Some of the State legislatures (among others the very State on which the gentleman from Pennsylvania relies for support) sent forward resolutions pledging their lives, their fortunes, and their sacred honor, in support of any measures you might take in vindication of your injured rights. Well, sir, what have you done? You have had resolutions laid upon your table—gone to some expense of printing and stationery—mere pen, ink, and paper, and that's all. Like true political quacks, you deal only in handbills and nostrums. Sir, I blush to see the record of our proceedings; they resemble nothing but the advertisements of patent medicines. Here you have the "Worm-destroying Lozenges," there, "Church's Cough Drops,"—and, to crown the whole, "Sloan's Vegetable Specific," an infallible remedy for all nervous disorders and vertigoes of brain-sick politicians; each man earnestly adjuring you to give his medicine only a fair trial. If, indeed, these wonder-working nostrums could perform but one half of what they promise, there is little danger of our dying a political death, at this time at least. But, sir, in politics as in physic, the doctor is ofttimes the most dangerous disease—and this I take to be our case at present.

But, sir, why do you talk of Spain? There are no longer Pyrenees. There exists no such nation—no such being as a Spanish king or minister. It is a mere juggle played off for the benefit of those who put the mechanism into motion. You know, sir, that you have no differences with Spain—that she is the passive tool of a superior power, to whom, at this moment, you are crouching. Are your differences indeed with Spain? And where are you going to send your political panacea (resolutions and handbills excepted), your sole arcanum of government—your king cure-all?—To Madrid? No—you are not such quacks as not to know where the shoe pinches—to Paris. You know at least where the disease lies, and there apply your remedy. When the nation anxiously demands the result of your deliberations, you hang your heads and blush to tell. You are afraid to tell. Your mouth is hermetically sealed. Your honor has received a wound which must not take air. Gentlemen dare not come forward and avow their work, much less defend it in the presence of the nation. Give them all they ask, that Spain exists, and what then? After shrinking from the Spanish jackall, do you presume to bully the British lion? But here it comes out. Britain is your rival in trade, and governed, as you are, by counting-rival. For Spain and France you are carriers—and from customers every indignity is to be endured. And what is the nature of this trade? Is it that carrying-trade which sends abroad the flour, tobacco, cotton, beef, pork, fish, and lumber of this country, and brings back in return foreign articles necessary for our existence or comfort? No, sir; 'tis a trade carried on, the Lord knows where or by whom:—now doubling Cape Horn, now the Cape of Good Hope. I do not say that there is no profit in it—for it would not then be pursued—but 'tis a trade that tends to assimilate our manners and government to those of the most corrupt countries of Europe. Yes, sir; and when a question of great national magnitude presents itself to you, causes those who now prate about national honor and spirit, to pocket any insult—to consider it as a mere matter of debt and credit, a business of profit and loss—and nothing else.

The first thing that struck my mind when this resolution was laid on the table was, "unde derivatur?" a question always put to us at school—whence comes it? Is this only the putative father of the bantling he is taxed to maintain, or indeed the actual parent, the real progenitor of the child? or is it the production of the cabinet? But I knew you had no cabinet; no system. I had seen despatches, relating to vital measures, laid before you, the day after your final decision on those measures, four weeks after they were received; not only their contents, but their very existence, all that time, unsuspected and unknown to men, whom the people fondly believe, assist, with their wisdom and experience, at every important deliberation. Do you believe that this system, or rather this no system, will do? I am free to answer it will not. It cannot last. I am not so afraid of the fair, open, constitutional, responsible influence of government; but I shrink intuitively from this left-handed, invisible, irresponsible influence, which defies the touch, but pervades and decides every thing. Let the executive come forward to the legislature; let us see whilst we feel it. If we cannot rely on its wisdom, is it any disparagement to the gentleman from Pennsylvania to say that I cannot rely upon him? No, sir, he has mistaken his talent. He is not the Palinurus on whose skill the nation, at this trying moment, can repose their confidence. I will have nothing to do with this paper; much less will I endorse it, and make myself responsible for its goodness. I will not put my name to it. I assert that there is no cabinet, no system, no plan. That which I believe in one place, I shall never hesitate to say in another. This is no time, no place for mincing our steps. The people have a right to know; they shall know the state of their affairs—at least, as far as I am at liberty to communicate them. I speak from personal knowledge. Ten days ago, there had been no consultation; there existed no opinion

an express disavowal of any opinion whatsoever, on the great subject before you: and I have good reason for saying, that none has been formed since. Some time ago a book was laid on our tables, which, like some other bantlings, did not bear the name of its father. Here I was taught to expect a solution of all doubts; an end to all our difficulties. If, sir, I were the foe, as I trust I am the friend, to this nation, I would exclaim, "Oh! that mine enemy would write a book." At the very outset, in the very first page, I believe, there is a complete abandonment of the principle in dispute. Has any gentleman got the work? (It was handed by one of the members.) The first position taken, is the broad principle of the unlimited freedom of trade, between nations at peace, which the writer endeavors to extend to the trade between a neutral and a belligerent power; accompanied, however, by this acknowledgment: "But, inasmuch as the trade of a neutral with a belligerent nation might, in certain special cases, affect the safety of its antagonist, usage, founded on the principle of necessity, has admitted a few exceptions to the general rule." Whence comes the doctrine of contraband, blockade, and enemy's property? Now, sir, for what does that celebrated pamphlet, "War in Disguise," which is said to have been written under the eye of the British Prime Minister, contend, but this "principle of necessity." And this is abandoned by this pamphleteer, at the very threshold of the discussion. But as if this were not enough, he goes on to assign as a reason for not referring to the authority of the ancients, that "the great change which has taken place in the state of manners, in the maxims of war, and in the course of commerce, make it pretty certain"—(what degree of certainty is this?) "that either nothing will be found relating to the question, or nothing sufficiently applicable to deserve attention in deciding it." Here, sir, is an apology of the writer for not disclosing the whole extent of his learning (which might have overwhelmed the reader), in the admission, that a change of circumstances ("in the course of commerce") has made, and, therefore, will now justify, a total change of the law of nations. What more could the most inveterate advocate of English usurpation demand? What else can they require to establish all, and even more than they contend for? Sir, there is a class of men (we know them very well), who, if you only permit them to lay the foundation, will build you up, step by step, and brick by brick—very neat and showy, if not tenable arguments. To detect them, 'tis only necessary to watch their premises, where you will often find the point at issue totally surrendered, as in this case it is. Again: is the "mare liberum" any where asserted in this book—that free ships make free goods? No, sir; the right of search is acknowledged; that enemy's property is lawful prize, is sealed and delivered. And after abandoning these principles, what becomes of the doctrine that a mere shifting of ing at another port, changes the property? Sir, give up this principle, and there is an end to the question. You lie at the mercy of the conscience of a court of admiralty. Is Spanish sugar, or French coffee, made American property by the mere change of the cargo, or even by the landing and payment of the duties? Does this operation effect a change of property? And when those duties are drawn back, and the sugars and coffee re-exported, are they not, as enemy's property, liable to seizure upon the principles of the "examination of the British doctrine," &c. And is there not the best reason to believe, that this operation is performed in many, if not in most cases, to give a neutral aspect and color to the merchandise?

I am prepared, sir, to be represented as willing to surrender important rights of this nation to a foreign government. I have been told that this sentiment is already whispered in the dark, by time-servers and sycophants; but if your clerk dared to print them, I would appeal to your journals!—I would call for the reading of them; but that I know they are not for profane eyes to look upon. I confess that I am more ready to surrender to a naval power a square league of ocean, than to a territorial one a square inch of land, within our limits; and I am ready to meet the friends of the resolution on this ground, at any time. Let them take off the injunction of secrecy. They dare not. They are ashamed and afraid to do it. They may give winks and nods, and pretend to be wise, but they dare not come out, and tell the nation what they have done. Gentlemen may take notes, if they please; but I will never, from any motives short of self-defence, enter upon war. I will never be instrumental to the ambitious schemes of Bonaparte; nor put into his hands what will enable him to wield the world; and on the very principle that I wished success to the French arms, in 1793. And wherefore? Because the case is changed. Great Britain can never again see the year 1760. Her continental influence is gone for ever. Let who will be uppermost on the continent of Europe, she must find more than a counterpoise for her strength. Her race is run. She can only be formidable as a maritime power: and even as such, perhaps not long. Are you going to justify the acts of the last administration, for which they have been deprived of the government, at our instance? Are you going back to the ground of 1798–9?

I ask of any man who now advocates a rupture with England, to assign a single reason for his opinion, that would not have justified a French war in 1798. If injury and insult abroad would have justified it, we had them in abundance then. But what did the republicans say at that day? That under the cover of a war with France, the executive would be armed with a patronage and power which might enable it to master our liberties. They deprecated foreign war and navies, and standing armies, and loans,

ences were accommodated without a war. And what is there in the situation of England that invites to war with her? 'Tis true she does not deal so largely in perfectibility, but she supplies you with a much more useful commodity—with coarse woollens. With less professions indeed, she occupies the place of France in 1793. She is the sole bulwark of the human race against universal dominion. No thanks to her for it. In protecting her own existence, she insures theirs. I care not who stands in this situation, whether England or Bonaparte—I practise the doctrines now, that I professed in 1798. Gentlemen may hunt up the journals if they please—I voted against all such projects under the administration of John Adams, and I will continue to do so under that of Thomas Jefferson. Are you not contented with being free and happy at home? Or will you surrender these blessings, that your merchants may tread on Turkish and Persian carpets, and burn the perfumes of the east in their vaulted rooms? Gentlemen say, 'tis but an annual million lost, and even if it were five times that amount, what is it compared with your neutral rights? Sir, let me tell them a hundred millions will be but a drop in the bucket, if once they launch without rudder or compass, into this ocean of foreign warfare. Whom do they want to attack—England? They hope it is a popular thing, and talk about Bunker's Hill, and the gallant feats of our revolution. But is Bunker's Hill to be the theatre of war? No, sir, you have selected the ocean—and the object of attack is that very navy which prevented the combined fleets of France and Spain from levying contributions upon you in your own seas—that very navy which, in the famous war of 1798, stood between you and danger.

Whilst the fleets of the enemy were pent up in Toulon, or pinioned in Brest, we performed wonders, to be sure; but, sir, if England had drawn off, France would have told you quite a different tale. You would have struck no medals. This is not the sort of conflict that you are to count upon, if you go to war with Great Britain. "Quem Deus vult perdere prius dementat." And are you mad enough to take up the cudgels that have been struck from the nerveless hands of the three great maritime powers of Europe? Shall the planter mortgage his little crop, and jeopardize the constitution in support of commercial monopoly, in the vain hope of satisfying the insatiable greediness of trade? Administer the constitution upon principles for the general welfare, and not for the benefit of any particular class of men. Do you meditate war for the possession of Baton Rouge, or Mobile, places which your own laws declare to be within your limits? Is it even for the fair trade that exchanges your surplus products, for such foreign articles as you require? No, sir, 'tis for a circuitous traffic—an "ignis fatuus." And against whom? A nation from whom you have any thing to fear? I speak as to our liberties—I say you have nothing, or next to nothing, to fear—to the aggrandizement of one against which you have every thing to dread. I look to their ability and interest—not to their disposition. When you rely on that, the case is desperate. Is it to be inferred from all this, that I would yield to Great Britain? No; I would act towards her now, as I was disposed to do towards France in 1798–9—treat with her; and for the same reason, on the same principles. Do I say treat with her? At this moment you have a negotiation pending with her government. With her you have not tried negotiation and failed, totally failed, as you have done with Spain, or rather France. And wherefore, under such circumstances, this hostile spirit to the one, and this (I won't say what), to the other?

But a great deal is said about the laws of nations. What is national law, but national power guided by national interest? You yourselves acknowledge and practise upon this principle where you can, or where you dare; with the Indian tribes, for instance. I might give another and more forcible illustration. Will the learned lumber of your libraries add a ship to your fleet, or a shilling to your revenue? Will it pay or maintain a single soldier? And will you preach and prate of violations of your neutral rights, when you tamely and meanly submit to the violation of your territory? Will you collar the stealer of your sheep, and let him escape that has invaded the repose of your fireside; has insulted your wife and children under your own roof? This is the heroism of truck and traffic—the public spirit of sordid avarice. Great Britain violates your flag on the high seas. What is her situation? Contending, not for the dismantling of Dunkirk, for Quebec, or Pondicherry, but for London and Westminster—for life. Her enemy violating, at will, the territories of other nations—acquiring thereby a colossal power, that threatens the very existence of her rival. But she has one vulnerable point to the arms of her adversary, which she covers with the ensigns of neutrality. She draws the neutral flag over the heel of Achilles. And can you ask that adversary to respect it at the expense of her existence?—and in favor of whom?—an enemy that respects no neutral territory of Europe, and not even your own? I repeat that the insults of Spain towards this nation have been at the instigation of France: that there is no longer any Spain. Well, sir, because the French Government do not put this into the Moniteur, you choose to shut your eyes to it. None so blind as those who will not see. You shut your own eyes, and to blind those of other people, you go into conclave, and slink out again and say—"a great affair of State!"—*C'est une grande affaire d'Etat!* It seems that your sensibility is entirely confined to the extremities. You may be pulled by the nose and ears, and never feel it; but let your strong box be attacked, and you are all nerve—"Let us go to war!" Sir, if

to carry it on, perhaps I might give it: but my rights and liberties are involved in the grant, and I will never surrender them whilst I have life. The gentleman from Massachusetts (Mr. Crowninshield), is for sponging the debt. I can never consent to it. I will never bring the ways and means of fraudulent bankruptcy into your committee of supply. Confiscation and swindling shall never be found among my estimates, to meet the current expenditure of peace or war. No, sir. I have said with the doors closed, and I say so when they are open, "pay the public debt." Get rid of that dead weight upon your Government, that cramp upon all your measures, and then you may put the world at defiance. So long as it hangs upon you, you must have revenue, and to have revenue, you must have commerce—commerce, peace. And shall these nefarious schemes be advised for lightening the public burthens? will you resort to these low and pitiful shifts? will you dare even to mention these dishonest artifices, to eke out your expenses, when the public treasure is lavished on Turks and infidels; on singing boys, and dancing girls; to furnish the means of bestiality to an African barbarian?

Gentlemen say, that Great Britain will count upon our divisions. How! What does she know of them? Can they ever expect greater unanimity than prevailed at the last Presidential election? No, sir, 'tis the gentleman's own conscience that speaks. But if she cannot calculate upon your divisions, at least she may reckon upon your pusillanimity. She may well despise the resentment that cannot be excited to honorable battle on its own ground—the mere effusion of mercantile cupidity. Gentlemen talk of repealing the British treaty. The gentleman from Pennsylvania should have thought of that before he voted to carry it into effect. And what is all this for? A point which Great Britain will not abandon to Russia, you expect her to yield to you. Russia indisputably the second power of continental Europe, with half a million of hardy troops, with sixty sail of the line, thirty millions of subjects, a territory more extensive even than our own—Russia, sir, the store-house of the British navy—whom it is not more the policy and the interest, than the sentiment of that Government, to soothe and to conciliate; her sole hope of a diversion on the continent—her only efficient ally. What this formidable power cannot obtain with fleets and armies, you will command by writ—with pot-hooks and hangers. I am for no such policy. True honor is always the same. Before you enter into a contest, public or private, be sure you have fortitude enough to go through with it. If you mean war, say so, and prepare for it. Look on the other side—behold the respect in which France holds neutral rights on land—observe her conduct in regard to the Franconian estates of the King of Prussia: I say nothing of the petty powers—of the Elector of Baden, or of the Swiss: I at a moment too, when its neutrality was the object of all others nearest to the heart of the French Emperor. If you make him monarch of the ocean, you may bid adieu to it for ever. You may take your leave, sir, of navigation—even of the Mississippi. What is the situation of New Orleans, if attacked to-morrow? Filled with a discontented and repining people, whose language, manners, and religion, all incline them to the invader—a dissatisfied people, who despise the miserable governor you have set over them—whose honest prejudices, and basest passions alike take part against you. I draw my information from no dubious source—from a native American, an enlightened member of that odious and imbecile government. You have official information that the town and its dependencies are utterly defenceless and untenable—a firm belief, that apprised of this, Government would do something to put the place in a state of security, alone has kept the American portion of that community quiet. You have held that post—you now hold it by the tenure of the naval predominance of England, and yet you are for a British naval war.

There are now two great commercial nations. Great Britain is one—we are the other. When you consider the many points of contact between our interests, you may be surprised that there has been so little collision. Sir, to the other belligerent nations of Europe your navigation is a convenience, I might say, a necessary. If you do not carry for them they must starve, at least for the luxuries of life, which custom has rendered almost indispensable. And, if you cannot act with some degree of spirit towards those who are dependent upon you, as carriers, do you reckon to browbeat a jealous rival, who, the moment she lets slip the dogs of war, sweeps you, at a blow, from the ocean? And, cui bono? for whose benefit?—The planter? Nothing like it. The fair, honest, real American merchant? No, sir—for renegadoes; to-day American—to-morrow, Danes. Go to war when you will, the property, now covered by the American, will then pass under the Danish, or some other neutral flag. Gentlemen say, that one English ship is worth three of ours: we shall therefore have the advantage in privateering. Did they ever know a nation get rich by privateering? This is stuff for the nursery. Remember that your products are bulky—as has been stated—that they require a vast tonnage. Take these carriers out of the market—what is the result? The manufactures of England, which (to use a finishing touch of the gentleman's rhetoric) have received the finishing stroke of art, lie in a small comparative compass. The neutral trade can carry them. Your produce rots in the warehouse—you go to Statia or St. Thomas's, and get a striped blanket for a joe, if you can raise one—double freight, charges, and commissions. Who receives the profit?—The carrier. Who pays it?—The consumer. All your produce

same accumulated charges, with this difference: that there the burthen falls on the home price. I appeal to the experience of the last war, which has been so often cited. What, then, was the price of produce, and of broadcloth?

But you are told England will not make war—she has her hands full. Holland calculated in the same way, in 1781. How did it turn out? You stand now in the place of Holland, then—without her navy, unaided by the preponderating fleets of France and Spain—to say nothing of the Baltic powers. Do you want to take up the cudgels where these great maritime powers have been forced to drop them? to meet Great Britain on the ocean, and drive her off its face? If you are so far gone as this, every capital measure of your policy has hitherto been wrong. You should have nurtured the old, and devised new systems of taxation—have cherished your navy. Begin this business when you may, land-taxes, stamp-acts, window-taxes, hearth-money, excise, in all its modifications of vexation and oppression, must precede, or follow after. But, sir, as French is the fashion of the day, I may be asked for my *projet*. I can readily tell gentlemen what I will not do. I will not propitiate any foreign nation with money. I will not launch into a naval war with Great Britain, although I am ready to meet her at the Cow-pens, or Bunker's Hill. And for this plain reason. We are a great land animal, and our business is on shore. I will send her no money, sir, on any pretext whatsoever, much less on pretence of buying Labrador, or Botany Bay, when my real object was to secure limits, which she formally acknowledged at the peace of 1783. I go further—I would (if any thing) have laid an embargo. This would have got our own property home, and our adversary's into our power. If there is any wisdom left among us, the first step towards hostility will always be an embargo. In six months all your mercantile megrims would vanish. As to us, although it would cut deep, we can stand it. Without such a precaution, go to war when you will, you go to the wall. As to debts, strike the balance to-morrow, and England is, I believe, in our debt.

I hope, sir, to be excused for proceeding in this desultory course. I flatter myself I shall not have occasion again to trouble you—I know not that I shall be able—certainly not willing, unless provoked in self-defence. I ask your attention to the character of the inhabitants of that southern country, on whom gentlemen rely for the support of their measure. Who and what are they? A simple agricultural people, accustomed to travel in peace to market, with the produce of their labor. Who takes it from us? Another people devoted to manufactures—our sole source of supply. I have seen some stuff in the newspapers about manufactures in Saxony, and about a man who is no longer the chief of a dominant faction. The greatest man ness of cunning people to wrap up and disguise in well-selected phrases, doctrines too deformed and detestable to bear exposure in naked words;—by a judicious choice of epithets, to draw the attention from the lurking principle beneath, and perpetuate delusion. But a little while ago, and any man might be proud to be considered as the head of the republican party. Now, it seems, 'tis reproachful to be deemed the chief of a dominant faction. Mark the magic words! Head, chief. Republican party, dominant faction. But as to these Saxon manufactures. What became of their Dresden china? Why, the Prussian bayonets have broken all the pots, and you are content with Worcestershire or Staffordshire ware. There are some other fine manufactures on the continent, but no supply, except, perhaps, of linens, the article we can best dispense with. A few individuals, sir, may have a coat of Louviers cloth, or a service of Sevres china—but there is too little, and that little too dear, to furnish the nation. You must depend on the fur trade in earnest, and wear buffalo hides and bear-skins.

Can any man, who understands Europe, pretend to say that a particular foreign policy is now right, because it would have been expedient twenty, or even ten years ago, without abandoning all regard for common sense? Sir, it is the statesman's province to be guided by circumstances, to anticipate, to foresee them—to give them a course and a direction—to mould them to his purpose. It is the business of a counting-house clerk to peer into the day-book and ledger, to see no further than the spectacles on his nose, to feel not beyond the pen behind his ear—to chatter in coffee-houses, and be the oracle of clubs. From 1783 to 1793, and even later (I don't stickle for dates), France had a formidable marine—so had Holland—so had Spain. The two first possessed thriving manufactures and a flourishing commerce. Great Britain, tremblingly alive to her manufacturing interests and carrying-trade, would have felt to the heart any measure calculated to favor her rivals in these pursuits—she would have yielded then to her fears and her jealousy alone. What is the case now? She lays an export duty on her manufactures, and there ends the question. If Georgia shall (from whatever cause) so completely monopolize the culture of cotton as to be able to lay an export duty of three per cent. upon it, besides taxing its cultivators, in every other shape that human or infernal ingenuity can devise, is Pennsylvania likely to rival her, or take away the trade?

But sir, it seems that we, who are opposed to this resolution, are men of no nerves—who trembled in the days of the British treaty—cowards (I presume) in the reign of terror! Is this true? Hunt up the journals; let our actions tell. We pursue our unshaken course. We care not for the nations of Europe, but make foreign relations bend to our political

Pharsalia, or the lieutenants of a modern Alexander, playing at piquet, or all-fours, for the empire of the world. 'Tis poor comfort to us, to be told that France has too decided a taste for luxurious things to meddle with us; that Egypt is her object, or the coast of Barbary, and at the worst we shall be the last devoured. We are enamored with neither nation—we would play their own game upon them, use them for our interest and convenience. But with all my abhorrence of the British government, I should not hesitate between Westminster-Hall and a Middlesex-jury, on the one hand, and the wood of Vincennes, and a file of Grenadiers, on the other. That jury-trial which walked with Horne Tooke, and Hardy, through the flames of ministerial persecution, is, I confess, more to my taste, than the trial of the Duke d' Enghien.

Mr. Chairman, I am sensible of having detained the committee longer than I ought—certainly much longer than I intended. I am equally sensible of their politeness, and not less so, sir, of your patient attention. It is your own indulgence, sir, badly requited indeed, to which you owe this persecution. I might offer another apology for these undigested, desultory remarks; my never having seen the treasury documents. Until I came into the House this morning, I have been stretched on a sick bed. But when I behold the affairs of this nation, instead of being where I hoped, and the people believed they were, in the hands of responsible men, committed to Tom, Dick, and Harry—to the refuse of the retail trade of politics—I do feel, I cannot help feeling, the most deep and serious concern. If the executive government would step forward and say, "such is our plan—such is our opinion, and such are our reasons in support of it," I would meet it fairly, would openly oppose, or pledge myself to support it. But without compass or polar star, I will not launch into an ocean of unexplored measures, which stand condemned by all the information to which I have access. The constitution of the United States declares it to be the province and duty of the President "to give to Congress, from time to time, information of the state of the Union, and recommend to their consideration such measures as he shall judge expedient and necessary." Has he done it? I know, sir, that we may say, and do say, that we are independent (would it were true); as free to give a direction to the executive as to receive it from him. But do what you will, foreign relations—every measure short of war, and even the course of hostilities, depend upon him. He stands at the helm, and must guide the vessel of State. You give him money to buy Florida, and he purchases Louisiana.—You may furnish means—the application of those means rests with him. Let not the master and mate go below when the ship is in distress, and throw the responsibility upon the cook and the cabin-boy. I said so when your doors were shut: I scorn to say less now that they are open. Gentlemen may say what they please. They may put an insignificant individual to the ban of the Republic; I shall not alter my course. I blush with indignation at the misrepresentations which have gone forth in the public prints of our proceedings, public and private. Are the people of the United States, the real sovereigns of the country, unworthy of knowing what, there is too much reason to believe, has been communicated to the privileged spies of foreign governments? I think our citizens just as well entitled to know what has passed, as the Marquis Yrujo, who has bearded your President to his face, insulted your government within its own peculiar jurisdiction, and outraged all decency. Do you mistake this diplomatic puppet for an automaton? He has orders for all he does. Take his instructions from his pocket to-morrow, they are signed "Charles Maurice Talleyrand." Let the nation know what they have to depend upon. Be true to them, and (trust me) they will prove true to themselves and to you. The people are honest; now at home at their ploughs, not dreaming of what you are about. But the spirit of inquiry, that has too long slept, will be, must be, awakened. Let them begin to think; not to say such things are proper because they have been done—but what has been done? and wherefore?—and all will be right.

SPEECH ON THE TARIFF.

Mr. Randolph delivered this speech on the Tariff Bill, in the House of Representatives of the United States, on the fifteenth of April, 1824.*

I am, Mr. Speaker, practising no deception upon myself, much less upon the House, when I say, that if I had consulted my own feelings and inclinations, I should not have troubled the House exhausted as it is, and as I am, with any further remarks upon this subject. I come to the discharge of this task, not merely with reluctance, but with disgust; jaded, worn down, abraded I may say, as I am by long attendance upon this body, and continued stretch of the attention upon this subject. I come to it, how-

* See Mr. Clay's speech on the same subject, in the subsequent pages of this volume: also, "Benton's Thirty Years' View," Vol. 1, page 99.

wishes of those whose wishes are to me, in all matters touching my public duty, paramount law; I speak with those reservations of course, which every moral agent must be supposed to make to himself.

It was not more to my surprise, than to my disappointment, that on my return to the House, after a necessary absence of a few days, on indispensable business, I found it engaged in discussing the general principle of the bill, when its details were under consideration. If I had expected such a turn in the debate, I would, at any private sacrifice, however great, have remained a spectator and auditor of that discussion. With the exception of the speech, already published, of my worthy colleague on my right, Mr. P. P. Barbour, I have been nearly deprived of the benefit of the discussion which has taken place. Many weeks have been occupied with this bill (I hope the House will pardon me for saying so) before I took the slightest part in the deliberations of the details; and I now sincerely regret that I had not firmness enough to adhere to the resolution which I had laid down to myself, in the early stage of the debate, not to take any part in the discussion of the details of the measure. But, as I trust, what I now have to say upon this subject, although more and better things have been said by others, may not be the same that they have said, or may not be said in the same manner; I here borrow the language of a man who has been heretofore conspicuous in the councils of the country; of one who was unrivalled for readiness and dexterity in debate; who was long without an equal on the floor of this body; who contributed as much to the revolution of 1801, as any man in this nation, and derived as little benefit from it; as, to use the words of that celebrated man, what I have to say is not that which has been said by others, and will not be said in their manner, the House will, I trust, have patience with me during the time that my strength will allow me to occupy their attention. And I beg them to understand, that the notes which I hold in my hand are not the notes on* which I mean to speak, but of what others have spoken, and from which I will make the smallest selection in my power.

* Here permit me to say, that I am obliged and with great reluctance, to differ from my worthy colleague, who has taken so conspicuous a part in this debate, about one fact, which I will call to his recollection, for I am sure it was in his memory, though sleeping. He has undertaken to state the causes by which the difference in the relative condition of various parts of the Union has been produced; but my worthy colleague has omitted to state the "primum mobile" of the commerce and manufactures to which a portion of the country that I need not name, owes its present prosperity and wealth. That "primum mobile" was southern capital. I speak not now of transactions "quorum pars minima fui," but of things which, nevertheless, I have a contemporaneous recollection. I say consequence of the enormous depreciation of the evidences of the public debt of this country —the debt proper of the United States, (to which must be added an item of not less than twenty millions of dollars for the State debts assumed by the United States), being bought up and almost engrossed by the people of what were then called the Northern States—a measure which nobody dreamt any thing about, of which nobody had the slightest suspicion— I mean the assumption of the State debts by the federal government—these debts being bought up for a mere song, a capital of eighty millions of dollars, or, in other words, a credit to that amount, bearing an interest of six per cent. per annum (with the exception of nineteen millions, the interest of that debt which bore an interest of three per cent.)—a capital of eighty millions of dollars was poured in a single day into the coffers of the North; and to that cause we may mainly ascribe the difference so disastrous to the South, between that country and the other portion of this Union, to which I have alluded. When we, roused by the sufferings of our brethren of Boston, entered into the contest with the mother country, and when we came out of it—when this constitution was adopted, we were comparatively rich; they were positively poor. What is now our relative situation? They are flourishing and rich; we are tributary to them, not only through the medium of the public debt of which I may have spoken, but also through the medium of the pension list, nearly the whole amount of which is disbursed in the Eastern States—and to this creation of a day is to be ascribed the difference of our relative situation (I hope my worthy colleague will not consider any thing that I say as conflicting with his general principles, to which I heartily subscribe). Yes, sir, and the price paid for the creation of all that portion of this capital, which consisted of the assumed debts of the States, was the immense boon of fixing the seat of government where it now is. And I advert to this bargain, because I wish to show to every member of this House, and, if it were possible, to every individual of this nation, the most tremendous and calamitous results of political bargaining.

Sir, when are we to have enough of this tariff question? In 1816 it was supposed to be settled. Only three years thereafter, another proposition for increasing it was sent from this House to the Senate, baited with a tax of four cents per pound on brown sugar. It was fortunately rejected in that body. In what manner this bill is baited, it does not become me to say; but I have too distinct a recollection of the vote in committee of the whole, on the duty upon molasses, and afterwards of the vote in the House on the same question; of the votes of more than one of the States on that question, not to mark it well. I do not say that the change of the vote on that question was effected

by one man's electioneering against his own motion. I am very glad, Mr. Speaker, that old Massachusetts Bay and the province of Maine and Sagadahock, by whom we stood in the days of the Revolution, now stand by the South, and will not aid in fixing on us this system of taxation, compared with which the taxation of Mr. Grenville and Lord North was as nothing. I speak with knowledge of what I say, when I declare, that this bill is an attempt to reduce the country south of Mason and Dixon's line, and east of the Alleghany mountains, to a state of worse than colonial bondage; a state to which the domination of Great Britain was, in my judgment, far preferable; and I trust I shall always have the fearless integrity to utter any political sentiment which the head sanctions and the heart ratifies; for the British Parliament never would have dared to lay such duties on our imports, or their exports to us, either "at home" or here, as is now proposed to be laid upon the imports from abroad. At that time we had the command of the market of the vast dominions then subject, and we should have had those which have since been subjected to the British empire; we enjoyed a free trade eminently superior to any thing that we can enjoy, if this bill shall go into operation. It is a sacrifice of the interests of a part of this nation to the ideal benefit of the rest. It marks us out as the victims of a worse than Egyptian bondage. It is a barter of so much of our rights, of so much of the fruits of our labor, for political power to be transferred to other hands. It ought to be met, and I trust it will be met, in the southern country, as was the stamp act, and by all those measures, which I will not detain the House by recapitulating, which succeeded the stamp act, and produced the final breach with the mother country, which it took about ten years to bring about, as I trust, in my conscience, it will not take as long to bring about similar results from this measure, should it become a law.

All policy is very suspicious, says an eminent statesman, that sacrifices the interest of any part of a community to the ideal good of the whole; and those governments only are tolerable, where, by the necessary construction of the political machine, the interests of all the parts are obliged to be protected by it. Here is a district of country extending from the Patapsco to the Gulf of Mexico, from the Alleghany to the Atlantic; a district which, taking in all that part of Maryland lying south of the Patapsco and east of Elk river, raises five sixths of all the exports of this country that are of home growth. I have in my hand the official statements which prove it, but which I will not weary the House by reading—in all this country—yes, sir, and I bless God for it; for with all the fantastical and preposterous theories about the rights of man (the *theories*, not the rights themselves, I speak of), there is nothing but region, we are, as to our counsels in regard to this measure, but as one man; that there exists on the subject but one feeling and one interest. We are proscribed and put to the bar; and if we do not feel, and, feeling, do not act, we are bastards to those fathers who achieved the revolution: then shall we deserve to make our bricks without straw. There is no case on record, in which a proposition like this, suddenly changing the whole frame of a country's polity, tearing asunder every ligature of the body politic, was ever carried by a lean majority of two or three votes, unless it be the usurpation of the septennial act, which passed the British parliament by, I think, a majority of one vote, the same that laid the tax on cotton bagging. I do not stop here, sir, to argue about the constitutionality of this bill; I consider the constitution a dead letter. I consider it to consist, at this time, of the power of the General Government and the power of the States: that is the constitution. You may entrench yourself in parchment to the teeth, says lord Chatham, the sword will find its way to the vitals of the constitution. I have no faith in parchment, sir; I have no faith in the "abracadabra" of the constitution; I *have* faith in the power of that commonwealth of which I am an unworthy son; in the power of those Carolinas, and of that Georgia, in her ancient and utmost extent, to the Mississippi, which went with us through the valley of the shadow of death in the war of our independence. I have said that I shall not stop to discuss the constitutionality of this question, for that reason and for a better; that there never was a constitution under the sun in which, by an unwise exercise of the powers of the government, the people may not be driven to the extremity of resistance by force. "For it is not, perhaps, so much by the assumption of unlawful powers as by the unwise or unwarrantable use of those which are most legal, that governments oppose their true end and object; for there is such a thing as tyranny as well as usurpation." If, under a power to regulate trade, you prevent exportation; if with the most approved spring lancets, you draw the last drop of blood from our veins; if, "secundum artem," you draw the last shilling from our pockets, what are the checks of the constitution to us? A fig for the constitution! When the scorpion's sting is probing us to the quick, shall we stop to chop logic? Shall we get some learned and cunning clerk to say whether the power to do this is to be found in the constitution, and then if he, from whatever motive, shall maintain the affirmative, like the animal whose fleece forms so material a portion of this bill, quietly lie down and be shorn?

Sir, events now passing elsewhere which plant a thorn in my pillow and a dagger in my heart, admonish me of the difficulty of governing with sobriety any people who are over head and ears in debt. That state of things begets a temper

tionably laboring under great distress; but we cannot legislate it out of that distress. We may, by your legislation, reduce all the country south and east of Mason and Dixon's line, the whites as well as the blacks, to the condition of Helots: you can do no more. We have had placed before us in the course of this discussion foreign examples and authorities; and among other things, we have been told, as an argument in favor of this measure, of the prosperity of Great Britain. Have gentlemen taken into consideration the peculiar advantages of Great Britain? Have they taken into consideration, that not excepting Mexico and that fine country which lies between the Orinoco and Caribbean sea, England is decidedly superior in point of physical advantages, to every country under the sun? This is unquestionably true. I will enumerate some of those advantages. First, there is her climate. In England such is the temperature of the air that a man can there do more days' work in the year, and more hours' work in the day, than in any other climate in the world; of course I include Scotland and Ireland in this description. It is in such a climate only that the human animal can bear without extirpation the corrupted air, the noisome exhalations, the incessant labor of these accursed manufactories. Yes, sir, accursed; for I say it is an accursed thing, which I will neither taste nor touch nor handle. If we were to act here on the English system, we should have the yellow fever at Philadelphia and New York, not in August merely, but from June to January, and from January to June. The climate in *this* country alone, were there no other natural obstacle to it, says aloud, You shall not manufacture! Even our tobacco factories, admitted to be the most wholesome of any sort of factories, are known to be, where extensive, the very nidus (if I may use the expression) of yellow fever and other fevers of similar type. In another of the advantages of Great Britain, so important to her prosperity, we are almost on a par with her, if we know how properly to use it. "Fortunatos nimium sua si bona norint"—for, as regards defence, we are, to all intents and purposes, almost as much an island as England herself. But *one* of her insular advantages we can never acquire. Every part of that country is accessible from the sea. There, as you recede from the sea you do not get further from the sea. I know that a great deal will be said of our majestic rivers, about the father of floods and his tributary streams; but with the Ohio, frozen up all the winter and dry all the summer, with a long, tortuous, difficult and dangerous navigation thence to the ocean, the gentlemen of the west may rest assured that they will never derive one particle of advantage from even a total prohibition of foreign manufactures. You may succeed in reducing *us* to your own level of misery; but if we were to *agree* to become your slaves, you never can derive one farthing of advantage from this bill. What parts of the Union derive advantage from it? Those parts only where there is a water power in immediate contact with navigation, such as the vicinities of Boston, Providence, Baltimore and Richmond. Petersburg is the last of these as you travel south. You take a bag of cotton up the river to Pittsburgh, or to Zanesville, to have it manufactured and sent down to New Orleans for a market, and before your bag of cotton has got to the place of manufacture, the manufacturer of Providence has received his returns for the goods made from his bag of cotton purchased at the same time that you purchased yours. No, sir, gentlemen may as well insist that because the Chesapeake Bay, "mare nostrum" our Mediterranean sea, gives us every advantage of navigation, we shall exclude from it every thing but steamboats and those boats called κατ' ἐξοχήν, *per emphasin*, *par excellence*, Kentucky boats—a sort of huge square, clumsy, wooden box. And why not insist upon it? Haven't you "the power to REGULATE COMMERCE?" Would not that too be a "REGULATION OF COMMERCE?" It would, indeed, and a pretty regulation it is; and so is this bill. And, sir, I marvel that the representation from the great commercial state of New York should be in favor of this bill. If operative—and if inoperative why talk of it?—if operative, it must, like the embargo of 1807—1809, transfer no small portion of the wealth of the London of America, as New York has been called, to Quebec and Montreal. She will receive the most of her imports from abroad, down the river. I do not know any bill that could be better calculated for Vermont than this bill; because, through Vermont, from Quebec, Montreal and other positions on the St. Lawrence, we are, if it passes, unquestionably to receive our supplies of foreign goods. It will no doubt suit the Niagara frontier.

But, sir, I must not suffer myself to be led too far astray from the topic of the peculiar advantages of England as a manufacturing country. Her vast beds of coal are inexhaustible; there are daily discoveries of quantities of it, greater than ages past have yet consumed; to which beds of coal her manufacturing establishments have been transferred, as any man may see who will compare the present population of her towns with what it was formerly. It is to these beds of coal that Birmingham, Manchester, Wolverhampton, Sheffield, Leeds, and other manufacturing towns owe their growth. If you could destroy her coal in one day, you would cut at once the sinews of her power. Then, there are her metals, and particularly tin, of which she has the exclusive monopoly. Tin, I know, is to be found in Japan, and perhaps elsewhere; but in practice England has now the monopoly of that article. I might go further, and I might say that England possesses an advantage, "quoad hoc," in her institutions; for *there* men are compelled to pay their debts. But *here*, men are not only not compelled to pay their debts, but they are protected in the refusal to pay

obligations; and after being convicted of embezzling the public money, and the money of others of which they were appointed guardians and trustees, they have the impudence to obtrude their unblushing fronts into society, and elbow honest men out of their way. There, though all men are on a footing of equality on the high way, and in the courts of law, at will and at market, yet the castes in Hindoostan are not more distinctly separated, one from the other, than the different classes of society are in England. It is true that it is practicable for a wealthy merchant or a manufacturer, or his descendants, after having through two or three generations, washed out what is considered the stain of their original occupation, to emerge by slow degrees into the higher ranks of society; but this rarely happens. Can you find men of vast fortune, in this country, content to move in the lower circles—content as the ox under the daily drudgery of the yoke? It is true, that in England, some of these wealthy people take it into their heads to buy seats in parliament. But when they get there, unless they possess great talents, they are mere nonentities; their existence is only to be found in the red book which contains a list of the members of parliament. Now, sir, I wish to know if, in the western country, where any man may get beastly drunk for three pence sterling—in England you cannot get a small wine-glass of spirits under twenty-five cents; one such drink of grog as I have seen swallowed in this country would there cost a dollar—in the western country, where every man can get as much meat and bread as he can consume, and yet spend the best part of his days, and nights too, perhaps, on the tavern benches, or loitering at the cross roads asking the news; can you expect the people of such a country, with countless millions of wild land and wild animals besides, can be cooped up in manufacturing establishments, and made to work sixteen hours a day, under the superintendence of a driver, yes, a driver, compared with whom a southern overseer is a gentleman and a man of refinement; for, if they do not work, these work-people in the manufactories, they cannot eat; and among all the punishments that can be devised (put death even among the number), I defy you to get as much work out of a man by any of them, as when he knows that he must work before he can eat.

But, sir, if we follow the example of England in one respect, as we are invited to do, we must also follow it in another. If we adopt her policy, we must adopt her institutions also. Her policy is the result of her institutions, and our institutions must be the result of our policy, assimilated to hers. We cannot adopt such an exterior system as that of England, without adopting also her interior policy. We have heard of her wealth, her greatness, her glory; but her eulogist is silent about the poverty, wretchedness, and misery of the lowest orders. Show me the country, say gentlemen, which ties and protection on manufactures. Sir, show me any country, beyond our own, which has risen to glory or to greatness, without an established church, or without a powerful aristocracy, if not an hereditary nobility. I know no country in Europe, except Turkey, without hereditary nobles. Must we, too, have these Corinthian ornaments of society, because those countries of greatness and glory have given it to them? But, after we shall have destroyed all our foreign trade; after we shall have, by the prevention of imports, cut off exports—thus keeping the promise of the constitution to the ear, and breaking it to the hope—paltering with the people in a double sense—after we shall have done this, we are told "we shall only have to resort to an excise; we have only to change the mode of collection of taxes from the people; both modes of taxation are voluntary." Very voluntary! The exciseman comes into my house, searches my premises, respects not even the privacy of female apartments, measures, gauges, and weighs every thing, levies a tax upon every thing, and then tells me the tax is a voluntary one on my part, and that I am, or ought to be, content. Yes, voluntary, as Portia said to Shylock, when she played the judge so rarely—Art thou content, Jew? Art thou content?

These taxes, however, it seems, are voluntary, "as being altogether upon consumption." By a recent speech on this subject, the greater part of which I was so fortunate as to hear, I learn that there have been only two hundred capital prosecutions in England, within a given time, for violations of the revenue laws. Are we ready, if one of us, too poor to own a saddle-horse, should borrow a saddle, and clap it on his plough-horse, to ride to church or court, or mill, or market, to be taxed for a surplus saddle-horse, and surcharged for having failed to list him as such? Are gentlemen aware of the inquisitorial, dispensing, arbitrary, and almost papal power of the commissioners of excise? I shall not stop to go into a detail of them; but I never did expect to hear it said, on this floor, and by a gentleman from Kentucky too, that the excise system was a mere scare-crow, a bug-bear; that the sound of the words constituted all the difference between a system of excise and a system of customs; that both meant the same thing: "Write them together; yours is as fair a name; sound them; it doth become the mouth as well;" here, sir, I must beg leave to differ; I do not think it does: "Weigh them; it is as heavy;" that I grant—"conjure with them;"—excise "will start a spirit as soon as" customs. This I verily believe, sir, and I wish, with all my heart, if this bill is to pass, if new and unnecessary burdens are to be wantonly imposed upon the people, that we were to return home with the blessed news of a tax or excise, not less by way of "minimum," than fifty cents per gallon upon whiskey. And here, if I did not consider an

of the old law books, "caput lupinum," and that it was almost as meritorious to shoot such a hell-hound of tyranny, as to shoot a wolf or a mad-dog; and if I did not know that any thing like an excise in this country is in effect utterly impracticable,—I myself, feeling, seeing, blushing for my country, would gladly vote to lay an excise on this abominable liquor, the lavish consumption of which renders this the most drunken nation under the sun; and yet we have refused to take the duties from wines, from cheap French wines particularly, that might lure the dog from his vomit, and lay the foundation of a reformation of the public manners. Sir, an excise system can never be maintained in this country. I had as lief be a tithe proctor in Ireland, and met on a dark night in a narrow road by a dozen white-boys, or peep-of-day boys, or hearts of oak, or hearts of steel, as an excise man in the Alleghany mountains, met, in a lonely road, or by-place, by a backwoodsman, with a rifle in his hand. With regard to Ireland, the British chancellor of the exchequer has been obliged to reduce the excise in Ireland on distilled spirits, to comparatively nothing to what it was formerly, in consequence of the impossibility of collecting it in that country. Ireland is, not to speak with statistical accuracy, about the size of Pennsylvania, containing something like twenty-five thousand square miles of territory, with a population of six millions of inhabitants, nearly as great a number as the whole of the white population of the United States; with a standing army of twenty thousand men; with another standing army, composed of all those classes in civil life, who, through the instrumentality of that army, keep the wretched people in subjection: under all these circumstances, even in Ireland, the excise cannot be collected. I venture to say that no army that the earth has ever seen; not such a one as that of Bonaparte, which marched to the invasion of Russia, would be capable of collecting an excise in this country; not such a one (if you will allow me to give some delightful poetry in exchange for very wretched prose) as Milton has described—

> "Such forces met not, nor so wide a camp,
> When Agrican, with all his northern powers
> Besieged Albracca, as romances tell,
> The city of Calliphrone, from whence to win
> The fairest of her sex, Angelica,
> His daughter, sought by many prowest knights,
> Both Paynim and the peers of Charlemagne;"

not such a force, nor even the troops with which he compares them, which were no less than "the legend fiends of hell" could collect an excise here. If any officer of our government were to take the field *a still-hunting*, as they call it in Ireland, among our southern or western forests and mountains, I should like to see the throwing off of the hounds. I have still so much of the sportsman about me, that I should like to see the breaking cover, and

And what are we now about to do? For what was the constitution formed? To drive the people of any part of this Union from the plough to the distaff? Sir, the Constitution of the United States never would have been formed, and if formed, would have been scouted, "una voce," by the people, if viewed as a means for effecting purposes like this. The constitution was formed for external purposes, to raise armies and navies, and to lay uniform duties on imports, to raise a revenue to defray the expenditure for such objects. What are you going to do now? To turn the constitution wrong side out; to abandon foreign commerce and exterior relations—I am sorry to use this Frenchified word—the foreign affairs, which it was established to regulate, and convert it into a municipal agent, to carry a system of espionage and excise into every log-house in the United States. We went to war with Great Britain for free trade and sailors' rights; we made a treaty of peace, in which I never could, with the aid of my glasses, see a word about either the one or the other of these objects of contention: we are now determined never to be engaged in another for such purposes; for we are ourselves putting an end to them. And, by the way of comfort in this state of things, we have been told, by the doctor as well as the apothecary, that much cannot be immediately expected from this new scheme; that years will pass away before its beneficial effects will be fully realized. And to whom is this told? To the consumptive patient it is said, Here is the remedy; persevere in it for a few years, and it will infallibly cure your disorder; and this infallible remedy is prescribed for pulmonary consumption, which is an opprobrium of physicians, and has reached a stage, that, in a few months, not to say days, must inevitably terminate the existence of the patient. This is to be done, too, on the plea that the people who call for this measure are already ruined. I will do any thing, sir, in reason, to relieve these persons; but I can never agree, because they are ruined, and we are half ruined only, that we shall be entirely ruined, for the contingent possibility of their relief. We have no belief in this new theory; new, for it came in with the French revolution, and that is of modern date—of the transfusion of blood from a healthy animal to a sick one; and if there is to be such a transfusion for the benefit of these ruined persons now, we refer the gentlemen to bulls and goats for supplies of blood, for we should be the veriest asses to permit them to draw our own.

We are told, however, that we have nothing to do but to postpone the payment of the public debt for a few years, and wait for an accumulation of wealth, for a new run of luck,

> "Rusticus expectat dum defluat amnis, at ille
> Labitur, et labetur in omne volubilis ævum."

This postponement of the public debt is no

Lilly hath it, in the future in *rus*, "about to be" paid. We have gone on postponing paying the national debt, and our own debts, until individual credit is at an end; until property, low as it is reduced in price by our fantastic legislation; can no longer be bought but for ready money. Here is one, and there the other. I am describing a state of society which I know to exist in a part of the country, and which I hear, with concern, does exist in a greater degree, in a much larger portion of the country, than I pretend to be personally acquainted with.

In all beneficial changes in the natural world—and the sentiment is illustrated by one of the most beautiful effusions of imagination and genius that I ever read—in all those changes, which are the work of an all-wise, all-seeing, and superintending Providence, as in the insensible gradation by which the infant bud expands into manhood, and from manhood to senility; or, if you will, to caducity itself—you find nature never working but by gradual and imperceptible changes; you cannot see the object move, but take your eye from it for a while, and, like the index of that clock, you can see that it has moved. The old proverb says, God works good, and always by degrees. The devil, on the other hand, is bent on mischief, and always in a hurry. He cannot stay: his object is mischief, which can best be effected suddenly, and he must be gone to work elsewhere. But we have the comfort, under the pressure of this measure, that at least no force is exercised upon us; we are not obliged to buy goods of foreign manufacture. It is true, sir, that gentlemen have not said you shall not send your tobacco or cotton abroad; but they have said the same thing in other words; by preventing the importation of the returns which we used to receive, and without which the sale or exchange of our produce is impracticable, they say to us, You shall sell only to us, and we will give you what we please; you shall buy only of us, but at what price we please to ask. But no force is used! You are at full liberty not to buy or to sell. Sir, when an English judge once told a certain curate of Brentford, that the court of chancery was open equally to the rich and the poor, Horne Tooke replied, "So, my lord, is the London tavern." You show a blanket or a warm rug to a wretch that is shivering with cold, and tell him, You shall get one no where else, but you are at liberty not to buy mine.

No Jew, who ever tampered with the necessities of a profligate young heir, lending him money at a usury of cent. per cent., ever acted more paternally than the advocates of this bill, to those upon whom it is to operate. I advise you, young man, for your good, says the usurer. I do these things very reluctantly, says Moses—these courses will lead you to ruin. But, no force—no, sir, no force, short of Russian despotism, shall induce me to purchase, or, knowing

throats. On this, we of the south are as resolved as were our fathers about the tea, which they refused to drink; for this is the same old question of the stamp act in a new shape, viz: whether they, who have no common feeling with us, shall impose on us, not merely a burdensome but a ruinous tax, and that by way of experiment and sport. And I say again, if we are to submit to such usurpations, give me George Grenville, give me Lord North for a master. It is in this point of view that I most deprecate the bill. If, from the language I have used, any gentleman shall believe I am not as much attached to this Union as any one on this floor, he will labor under a great mistake. But there is no magic in this word union. I value it as the means of preserving the liberty and happiness of the people. Marriage itself is a good thing, but the marriages of Mezentius were not so esteemed. The marriage of Sinbad, the Sailor, with the corpse of his deceased wife, was a union; and just such a union will this be, if, by a bare majority in both Houses, this bill shall become a law. And, I ask, sir, whether it will redound to the honor of this House, if this bill should pass, that the people should owe their escape to the act of any others rather than to us? Shall we, when even the British parliament are taking off taxes by wholesale—when all the assessed taxes are diminished fifty per cent.—when the tax on salt is reduced seven eighths, with a pledge that the remainder shall come off, and the whole would have been repealed, but that it was kept as a salvo for the wounded pride of Mr. Chancellor of the Exchequer, who, when asked—Why keep on this odious tax, which brings but a paltry hundred and fifty thousand per annum? answered by subterfuge and evasion, as I have heard done in this House, and drew back upon his resources, his majority—how will it answer for the people to have to look up for their escape from oppression, not to their immediate representatives, but to the representatives of the States, or, possibly, to the executive? And, permit me here to say, and I say it freely, because it is true, that I join as heartily as any man, in reprehending "the cold, ambiguous support of the executive government to this bill." I do not use my own words; I deprecate as much as any member of this House can do, that the executive of this country should lend to this bill, or to any other bill, a cold and ambiguous support, or support of any sort, until it comes before him in the shape of a law, unless it be a measure which he, in his constitutional capacity, may have invited Congress to pass. I may be permitted to say, and I will say, that, in case this bill should be unhappily presented to him for his signature—and as an allusion has been made to him in debate, I presume I may repeat it—I hope he will recollect how much the country that gave him birth has done for him, and the little, not to say, worse than nothing, that, during his ad-

of our government, to the whole spirit and letter of our confederation—I say of our confederation—Blessed be God, it is a confederation, and that it contains within itself the redeeming power which has more than once been exercised—and that it contains within itself the seeds of preservation, if not of this Union, at least of the individual commonwealths of which it is composed.

But, sir, not satisfied with an appeal to the example of Great Britain, whom we have been content hitherto very sedulously to censure and to imitate—as I once heard a certain person say that it was absolutely necessary for persons of a peculiar character to be extremely vehement of censure of the very vice of which they are themselves guilty—the example of Russia has been introduced, the very last, I should suppose, that would be brought into this House on this or any other question. A gentleman from South Carolina (Mr. Poinsett), whose intelligence and information I very much respect, but the feebleness of whose voice does not permit him to be heard as distinctly as could be wished, remarked the other day, and having it on my notes, I will, with his leave, repeat it—"Russia is cursed with a paper money, which, in point of depreciation and its consequent embarrassment to her, can boast of no advantage, I believe, even over that of Kentucky—so cursed, that it is impossible, until her circulation is restored to a healthful state, she can ever take her station as a commercial or manufacturing nation, to any extent." Nay, more, Russia, with the exception of few of her provinces, consists, like the interior of America, of a vast inland continent, desolated and deformed by prairies, or steppes, as they are there called, inhabited by a sparse population; and, as an appeal has been made to experience, I ask any gentleman to show me an instance of any country under the sun that has, under these circumstances, taken a stand as a manufacturing or great commercial nation. These great rivers and inland seas cut a mighty figure on the map; but, when you come to consider of capacities for foreign commerce, how unlike the insular situation of Great Britain, or the peninsular situation of almost the whole continent of Europe, surrounded or penetrated as it is by inland seas and gulfs! May I be pardoned for adverting to the fact—I know that comparisons are extremely odious—that, when we look to Salem and Boston, to parts of the country where skill, and capital, and industry, notoriously exist, we find opposition to this bill; and that, when we look to countries which could sooner build one hundred pyramids, such as that of Cheops, than manufacture one cambric needle, or a paper of Whitechapel pins, or a watch spring, we hear a clamor about this system for the protection of manufactures. The merchants and manufacturers of Massachusetts, New Hampshire, the province of Maine, and Sagadahock repel this bill, whilst men in hunting shirts, with deer-skin leggins for manufactures—men with rifles on their shoulders, and long knives in their belts, seeking in the forests to lay in their next winter's supply of bear-meat. But it is not there alone the cry is heard. It is at Baltimore—decayed, deserted Baltimore, whose exports have more than one half decreased, while those of Boston have four times increased—it is decayed and deserted Baltimore that comes here and asks us for the protection of those interests which have grown up during the late war—privateering among the number, I presume. Philadelphia, too, in a state of atrophy, asks for the measure—Philadelphia, who never can, pass what bill you please, have a foreign trade to any great amount, or become a great manufacturing town, for which she wants all the elements of climate, coal, and capital—this city, now overbuilt, swollen to the utmost extent of the integument, and utterly destitute of force or weight in the Union, wants this bill for the protection of the domestic industry of her free blacks, I presume. New York, too, is now willing to build up Montreal and Quebec at her expense—to convert the Hudson into a theatre for rival disputants about steamboats in the courts below stairs, and for them, and such as them, with a coasting license to ply upon. The true remedy, and the only one, for the iron manufacturer of Pennsylvania, who has nothing but iron to sell—and that, they tell us, is worth nothing—would be to lay on the table of this House a declaration of war in blank, and then go into a committee of the whole, to see what nation in the world it would be most convenient to go to war with—for, fill the blank with the name of what power you please, it must be a sovereign State, and though it have not a seaman or a vessel in the world, its commissions are as good and valid in an admiralty court, as those of the lord high admiral of Great Britain. In this way you will put our furnaces in blast, and your paper-mills into full operation; and many, very many, who, during the last war, transported flour on horseback for the supply of your army, at the cost of a hundred dollars per barrel, and who have since transported provisions in steamboats up and down the Missouri river—very many such individuals would thus be taken out of the very jaws of bankruptcy and lifted up to opulence, at the expense of that people, at whose expense, also, you are now about to enable these iron manufacturers to fill their pockets. New England does not want this bill. Connecticut, indeed, molasses having been thrown overboard to lighten the ship, votes for this bill. A word in the ear of the land of steady habits—I voted against that tax, on the principle, which has always directed my public life, not to compromise my opinions—not to do evil that good may come of it—let me tell the land of steady habits, that, after this bill shall be fairly off the shore; after we shall have cleared decks and made ready for action again; after she shall have imposed on me the onerous burden of this

on again this duty on molasses—not at this day—this is not the last tariff measure; for in less than five years, I would, if I were a betting man, wager any odds that we have another tariff proposition, worse by far than that, amendments to which gentlemen had strangled yesterday by the bowstring of the previous question. Fair dealing leads to safe counsels and safe issues. There is a certain left-handed wisdom, that often overreaches its own objects, which grasps at the shadow, and lets go the substance. We shall not only have this duty on molasses, I can tell the gentleman from Connecticut, but we shall have, moreover, an additional bounty on intoxication by whiskey, in the shape of an additional duty on foreign distilled spirits.

The ancient commonwealth of Virginia, one of whose unworthy sons, and more unworthy representatives, I am, must now begin to open her eyes to the fatal policy which she has pursued for the last forty years. I have not a doubt, that they who were the agents for transferring her vast, and boundless, and fertile country to the United States, with an express stipulation, in effect, that not an acre of it should ever enure to the benefit of any man from Virginia, were as respectable, and kind-hearted, and hospitable, and polished, and guileless Virginia gentlemen, as ever were cheated out of their estates by their overseers; men who, as long as they could command the means, by sale of their last acre, or last negro, would have a good dinner, and give a hearty welcome to whomsoever chose to drop in to eat, friend or stranger, bidden or unbidden. What will be the effect of this bill on the Southern States? The effect of this policy is, what I shudder to look at; the more because the next census is held up "in terrorem" over us. We are told, you had better consent to this—we are not threatened exactly with general Gage and the Boston port bill; but we are told by gentlemen, we shall, after the next census, so saddle, and bridle, and martingale you, that you will be easily regulated by any bit, or whip, however severe, or spurs, however rank, of domestic manufacture that we choose to use. But this argument, sir, has no weight in it with me. I do not choose to be robbed now, because, after I am once robbed, it will be easier to rob me again. "Obsta principiis" is my maxim—because every act of extension of the system operates in a twofold way, decreasing the strength and means of the robbed, and increasing those of the robber. This is as true as any proposition in mathematics. Gentlemen need not tell us, we had better give in at once. No, sir, we shall not give in; no, we shall hold out—we shall not give in. We do not mean to be threatened out of our rights by the menace of another census. We are aware of our folly, and it is our business to provide against the consequences of it; but not in this way. When I recollect that the tariff of 1816 was followed by that of 1819–20, and that by this measure of 1823–4, I cannot long to be exempt from the demands of these sturdy beggars who will take no denial. Every concession does but render every fresh demand and new concession more easy. It is like those dastard nations who vainly think to buy peace. When I look back to what the country of which I am a representative was, and when I see what she is—when I recollect the expression of Lord Cornwallis, applied to Virginia, "that great and unterrified colony," which he was about to enter, not without some misgivings of his mind as to the result of the invasion—when I compare what she was when this House of Representatives first assembled in the city of New York, and what she now is, I know, by the disastrous contrast, that her councils have not been governed by statesmen. They might be admirable professors of a university, powerful dialecticians "ex cathedra," but no sound counsels of wise statesmen could ever lead to such practical ill results as are exhibited by a comparison of the past and present condition of the ancient colony and dominion of Virginia.

In the course of this discussion, I have heard, I will not say with surprise, because "nil admirari" is my motto—no doctrine that can be broached on this floor, can ever, hereafter, excite surprise in my mind—I have heard the names of Say, Ganilh, Adam Smith, and Ricardo, pronounced not only in terms, but in a tone of sneering contempt, visionary theorists, destitute of practical wisdom, and the whole clan of Scotch and Quarterly reviewers lugged in to boot. This, sir, is a sweeping clause of proscription. With the names of Say, Smith, and Ganilh, I profess to be acquainted, for I, too, am versed in title-pages; but I did not expect to hear, in this House, a name, with which I am a little further acquainted, treated with so little ceremony; and by whom? I leave Adam Smith to the simplicity, and majesty, and strength of his own native genius, which has canonized his name—a name which will be pronounced with veneration, when not one in this House will be remembered. But one word as to Ricardo, the last mentioned of these writers—a new authority, though the grave has already closed upon him, and set its seal upon his reputation. I shall speak of him in the language of a man of as great a genius as this, or perhaps any, age has ever produced; a man remarkable for the depth of his reflections and the acumen of his penetration. "I had been led," says this man, "to look into loads of books—my understanding had for too many years been intimate with severe thinkers, with logic, and the great masters of knowledge, not to be aware of the utter feebleness of the herd of modern economists. I sometimes read chapters from more recent works, or part of parliamentary debates. I saw that these" [ominous words!] "were generally the very dregs and rinsings of the human intellect." [I am very glad, sir, he did not read our debates. What would he have said of ours?]

phetic anticipation of the advent of some legislator on this science, I said, Thou art the man. Wonder and curiosity had long been dead in me; yet I wondered once more. Had this profound work been really written in England during the 19th century? Could it be that an Englishman, and he not in academic bowers, but oppressed by mercantile and senatorial cares, had accomplished what all the universities and a century of thought had failed to advance by one hair's breadth? All other writers had been crushed and overlaid by the enormous weight of facts and documents: Mr. Ricardo had deduced, "a priori," from the understanding itself, laws which first gave a ray of light into the unwieldy chaos of materials, and had constructed what had been but a collection of tentitive discussions, into a science of regular proportions, now first standing on an eternal basis."

I pronounce no opinion of my own on Ricardo; I recur rather to the opinion of a man inferior, in point of original and native genius, and that highly cultivated, too, to none of the moderns, and few of the ancients. Upon this subject, what shall we say to the following fact? Butler, who is known to gentlemen of the profession of the law, as the annotator, with Hargrave, on Lord Coke, speaking with Fox as to political economy—that most extraordinary man, unrivalled for his powers of debate, excelled by no man that ever lived, or probably ever will live, as a public debater, and of the deepest political erudition, fairly confessed that he had never read Adam Smith. Butler said to Mr. Fox, "that he had never read Adam Smith's work on the Wealth of Nations." "To tell you the truth," replied Mr. Fox, "nor I neither. There is something in all these subjects that passes my comprehension—something so wide that I could never embrace them myself, or find any one who did." And yet we see how we, with our little dividers, undertake to lay off the scale, and with our pack-thread to take the soundings, and speak with a confidence peculiar to quacks (in which the regular-bred professor never indulges) on this abstruse and perplexing subject. Confidence is one thing, knowledge another; of the want of which, overweening confidence is notoriously the indication. What of that? Let Ganilh, Say, Ricardo, Smith, all Greek and Roman fame be against us; we appeal to Dionysius in support of our doctrines; and to him, not on the throne of Syracuse, but at Corinth—not in absolute possession of the most wonderful and enigmatical city, as difficult to comprehend as the abstrusest problem of political economy, which furnished not only the means but the men for supporting the greatest wars—a kingdom within itself, under whose ascendant the genius of Athens, in her most high and palmy state, quailed, and stood rebuked. No; we follow the pedagogue to the schools—dictating in the classic shades of Longwood—("lucus a

We have been told that the economists are right in theory and wrong in practice; which is as much as to say, that two bodies occupy at the same time the same space; for it is equally impracticable to be right in theory and wrong in practice. It is easy to be wrong in practice; but if our practice corresponds with our theory, it is a solecism to say that we can be right in the one and wrong in the other. As for Alexander and Cæsar, I have as little respect for their memory as is consistent with that involuntary homage which all must pay to men of their prowess and abilities; and if Alexander had suffered himself to be led by the nose out of Babylon and banished to Sinope, or if Cæsar had suffered himself to be deprived of his imperial sway, not by the dagger of the assassin, but by his own slavish fears, I should have as little respect for their memory as for that of him whose example has on this occasion been held up to us for admiration. Speaking of that man who has kept me awake night after night, and has been to me an incubus by day, for fear of the vastness of his designs, I cannot conceive of a spectacle so pitiful, so despicable, as that man, under those circumstances; and if the work dictated by him at St. Helena be read with the slightest attention, no forsworn witness at the Old Bailey was ever detected in so many contradictions as he has been guilty of. No, sir, the Jupiter from whose reluctant hand the thunderbolt is wrung, is not the one at whose shrine I worship—not that I think that the true Amphytrion is always him with whom we dine. Napoleon is not the political economist who is to take place of Smith and Ricardo. Will any man make me believe that he understood the theory or the practice of political economy better than these men, or than Charles Fox? Impossible. When I recollect what that man might have done for liberty, and what he did; when I recollect that to him we owe this Holy Alliance—this fearful power of Russia—of Russia, where I should advise persons to go who desire to be instructed in petty treason by the murder of a husband, or in parricide by the murder of a father, but from whom I should never think of taking a lesson in political economy—to whom I say rather, pay your debts, not in depreciated paper; do not commit daily acts of bankruptcy; restore your currency; practise on the principles of liberality and justice, and then I will listen to you. No, sir, Russia may, if she pleases, not only lay heavy duties on imports; she may prohibit them if she pleases; she has nothing to export but what some inland countries have, political power—physical, to be sure, as well as intellectual power—but she does not even dare to attack the Turk: she cannot stir: she is something like some of our interior people of the South, who have plenty of land, plenty of serfs, smoke-houses filled with meat, and very fine horses to ride, but who, when they go abroad, have not one shilling to bless themselves with; and so

rest of the world, so long she may be suffered to remain: but, if she should continue to act hereafter as she has done heretofore, it will be the interest of the civilized world to procure her dismemberment, "per fas aut nefas."

But it is said, a measure of this sort is necessary to create employment for the people. Why, sir, where are the handles of the plough? Are they unfit for young gentlemen to touch? Or will they rather choose to enter your military academies, where the sons of the rich are educated at the expense of the poor, and where so many political janissaries are every year turned out, always ready for war, and to support the powers that be—equal to the strelitzes of Moscow or St. Petersburg. I do not speak now of individuals, of course, but of the tendency of the system—the hounds follow the huntsman because he feeds them, and bears the whip. I speak of the system. I concur most heartily, sir, in the censure which has been passed upon the greediness of office, which stands a stigma on the present generation. Men from whom we might expect, and from whom I did expect, better things, crowd the antechamber of the palace, for every vacant office; nay, even before men are dead, their shoes are wanted for some barefooted office-seeker. How mistaken was the old Roman, the old consul, who, whilst he held the plough by one hand, and death held the other, exclaimed, "Diis immortalibus sero!"

Our fathers, how did they acquire their property? By straightforward industry, rectitude, and frugality. How did they become dispossessed of their property? By indulging in speculative hopes and designs, seeking the shadow whilst they lost the substance; and now, instead of being, as they were, men of respectability, men of substance, men capable and willing to live independently and honestly, and hospitably too—for who so parsimonious as the prodigal who has nothing to give?—what have we become? A nation of sharks, preying on one another through the instrumentality of this paper system, which, if Lycurgus had known of it, he would unquestionably have adopted, in preference to his iron money, if his object had been to make the Spartans the most accomplished knaves as well as to keep them poor.

But we are told this is a curious constitution of ours: it is made for foreigners, and not for ourselves—for the protection of foreign, and not of American industry. Sir, this is a curious constitution of ours, and if I were disposed to deny it, I could not succeed. It is an anomaly in itself. It is that supposed impossibility of all writers, from Aristotle to the present day, an "imperium in imperio." Nothing like it ever did exist, or possibly ever will, under similar circumstances. It is a constitution consisting of confederated bodies, for certain exterior purposes, and also for some interior purposes, but leaving to the state authorities

now propose to exercise; for, if we are now passing a revenue bill—a bill the object of which were to raise revenue—however much I should deny the policy, and however I could demonstrate the futility of the plan, I still should deem it to be a constitutional bill—a bill passed to carry, "bona fide," into effect, a provision of the constitution, but a bill passed with short-sighted views. But this is no such bill. It is a bill, under pretence of regulating commerce, to take money from the pockets of a very large, and, I thank God, contiguous territory, and to put it into other pockets. One word, sir, on that point;—I can assure the gentlemen whose appetites are so keenly whetted for our money—I trust, at least, if this bill passes, there will be a meeting of the members opposed to it, and a general and consentaneous resistance to its operation throughout the whole southern country—and we shall make it by lawful means; "quant à nous," the law will be a dead letter. It shall be to me, at least, as innocuous as the pill of the empiric which I am determined not to swallow. The manufacturer of the east may carry his woollens, or his cottons, or his, coffins, to what market he pleases—I do not buy of him. Self-defence is the first law of nature. You drive us into it. You create heats and animosities among this great family, who ought to live like brothers; and, after you have got this temper of mind roused among the southern people, do you expect to come among us to trade, and expect us to buy your wares? Sir, not only shall we not buy them, but we shall take such measures (I will not enter into the detail of them now) as shall render it impossible for you to sell them. Whatever may be said here of the "misguided counsels" as they have been termed, "of the theorists of Virginia," they have, so far as regards this question, the confidence of united Virginia. We are asked—Does the South lose any thing by this bill—why do you cry out? I put it, sir, to any man from any part of the country, from the Gulf of Mexico, from the Balize, to the eastern shore of Maryland—which, I thank Heaven, is not yet under the government of Baltimore, and will not be, unless certain theories should come into play in that state, which we have lately heard of, and a majority of men, told by the head, should govern—whether the whole country between the points I have named, is not unanimous in opposition to this bill. Would it not be unexampled, that we should thus complain, protest, resist, and that all the while nothing should be the matter? Are our understandings (however low mine may be rated, much sounder than mine are engaged in this resistance), to be rated so low, as that we are to be made to believe that we are children affrighted by a bugbear? We are asked, however, why do you cry out? it is all for your good. Sir, this reminds me of the mistresses of George II., who, when they were insulted

put their heads out of the window, and said to them in their broken English, "Goot people, we be come for your goots;" to which one of the mob rejoined—"Yes, and for our chattels too, I fancy." Just so it is with the oppressive exactions proposed and advocated by the supporters of this bill, on the plea of the good of those who are its victims.

There is not a member in this House, sir, more deeply penetrated than the one who is endeavoring to address you, with the inadequate manner in which he has discharged the task imposed upon him; in this instance, he will say, on his part, most reluctantly. But, as I have been all my life a smatterer in history, I cannot fail to be struck with the fitness of the comparison instituted by a historian of this country with the Roman republic, just as it was in a state of preparation for a master.

"Sed, postquam luxu, atque desidia civitas corrupta est; rursus respublica, magnitudine sua, imperatorum atque magistratuum vitia sustentabat; ac veluti effœta parentum, multis tempestatibus, haud sane quisquam Romæ virtute magnus fuit."

Of this quotation, I will, as they sometimes say in parliament, for the benefit of the country-gentlemen, attempt a translation. "But, after the state had become corrupted by luxury and sloth"—in the Arabian Nights' Entertainments, we are told of one who laid by his sequins in good money, and when he afterwards came to use them, he found them to be bits of paper, not worth more than old continental (or Kentucky) money—"by luxury and sloth, again the republic,"—and here I press the comparison—"by dint of its own magnitude, its own greatness, its own vastness, bore up under the faults, the vices of its generals, magistrates, and that, too, as if effete (past bearing), since for a long while"—I hope the comparison will not hold here—"for a long time scarcely any man had become great at Rome by his merit." So, sir, it is with this republic. It does sustain by its greatness and growing magnitude, the follies and vices of its magistracy. Had this government been stationary like any of the old governments of Europe, of the second class, Prussia for instance, or Holland, by the political evolutions of the last thirty years, I might say the last twelve years, it would have sunk into insignificance and debility; and it is only upon this resourse, the increasing greatness of this republic, that the blunderers who plunge blindfold into schemes like this, can rely for any possibility of salvation from the effects of their own rash, undigested measures. It is true that the race is not to the swift, nor the battle to the strong; and elsewhere than in the republic of Rome, and of other times than the days of Catiline, it may be said, "Haud sane quisque virtute magnus est."

"'Tis not in mortals to command success!—
But do you more, Sempronius!—don't deserve it,
Give gentle way when there's too great a press;
And for your conscience, only learn to nerve it,—
For like a racer, or a boxer, training,
'Twill make, if proved, vast efforts without paining."

I had more to say, Mr. Speaker, could I have said it, on this subject. But I cannot sit down without asking those, who were once my brethren of the church, the elders of the young family of this good old republic of the thirteen States, if they can consent to rivet upon us this system, from which no benefit can possibly result to themselves. I put it to them as descendants of the renowned colony of Virginia: as children sprung from her loins; if for the sake of all the benefits, with which this bill is pretended to be freighted to them, granting such to be the fact for argument's sake, they could consent to do such an act of violence to the unanimous opinion, feelings, prejudices, if you will of the whole Southern States, as to pass it? I go farther. I ask of them what is there in the condition of the nation, at this time, that calls for the immediate adoption of this measure? Are the Gauls at the gates of the Capitol? If they are, the cacklings of the Capitoline geese will hardly save it. What is there to induce us to plunge into the vortex of those evils so severely felt in Europe from this very manufacturing and paper policy? For it is evident that, if we go into this system of policy, we must adopt the European institutions also. We have very good materials to work with; we have only to make our elective king president for life, in the first place, and then to make the succession hereditary in the family of the first that shall happen to have a promising son. For a king we can be at no loss—"ex quovis ligno"—any block will do for him. The Senate may, perhaps, be transmuted into a house of peers, although we should meet with more difficulty than in the other case; Bonaparte himself was not more hardly put to it, to recruit the ranks of his mushroom nobility, than we should be to furnish a house of peers. As for us, we are the faithful commons, ready made to hand; but with all our loyalty, I congratulate the House—I congratulate the nation—that, although this body is daily degraded by the sight of members of Congress manufactured into placemen, we have not yet reached such a point of degradation as to suffer executive minions to be manufactured into members of Congress. We have shut that door; I wish we could shut the other also. I wish we could have a perpetual call of the House in this view, and suffer no one to get out from its closed doors. The time is peculiarly inauspicious for the change in our policy which is proposed by this bill. We are on the eve of an election that promises to be the most distracted that this nation has ever yet undergone. It may turn out to be a Polish election. At such a time, ought any measure to be brought forward which

of this country, and beneficial in proportion to another? Sufficient for the day is the evil thereof. There are firebrands enough in the land, without this apple of discord being cast into this assembly. Suppose this measure is not what it is represented to be; that the fears of the South are altogether illusory and visionary; that it will produce all the good predicted of it—an honorable gentleman from Kentucky said yesterday—and I was sorry to hear it, for I have great respect for that gentleman, and for other gentlemen from that State—that the question was not whether a bare majority should pass the bill, but whether the majority or minority should rule. The gentleman is wrong, and, if he will consider the matter rightly, he will see it. Is there no difference between the patient and the actor? We are passive; we do not call them to act or to suffer, but we call upon them not so to act as that we must necessarily suffer; and I venture to say, that in any government, properly constituted, this very consideration would operate conclusively, that if the burden is to be laid on 102, it ought not to be laid by 105. We are the eel that is being flayed, while the cook-maid pats us on the head, and cries, with the clown in King Lear, "Down, wantons, down." There is but one portion of the country which can profit by this bill, and from that portion of the country comes this bare majority in favor of it. I bless God that Massachusetts and old Virginia are once again rallying under the same banner, against oppressive and unconstitutional taxation; for, if all the blood be drawn from out the body, I care not whether it be by the British parliament or the American Congress; by an emperor or a abroad, or by a president at home.

Under these views, and with feelings of mortification and shame at the very weak opposition I have been able to make to this bill, I entreat gentlemen to consent that it may lie over, at least, until the next session of Congress. We have other business to attend to, and our families and our affairs need our attention at home; and indeed, I, sir, would not give one farthing for any man who prefers being here to being at home; who is a good public man and a bad private one. With these views and feelings, I move you, sir, that the bill be indefinitely postponed.

INCREASE OF THE ARMY.

The following speech, on the second resolution reported by the Committee of Foreign Relations: "That an additional force of ten thousand regular troops ought to be immediately raised to serve for three years; and that a bounty in lands ought to be given to encourage enlistments," * was delivered by Mr. Randolph in the House of Representatives of the United States, on the tenth of December, 1811:—

Mr. Speaker: This is a question, as it has been presented to this House, of peace or war. In that light it has been argued; in no other light can I consider it, after the declarations made by members of the committee of foreign relations. Without intending any disrespect to the chair, I must be permitted to say, that if the decision yesterday was correct, "that it was not in order to advance any arguments against the resolution, drawn from topics before other committees of the House," the whole debate, nay, the report itself, on which we are acting, is disorderly; since the increase of the military force is a subject, at this time, in agitation by a select committee, raised on that branch of the President's message. But it is impossible that the discussion of a question, broad as the wide ocean of our foreign concerns, involving every consideration of interest, of right, of happiness and of safety at home; touching, in every point, all that is dear to freemen, "their lives, their fortunes, and their sacred honor," can be tied down by the narrow rules of technical routine.

The committee of foreign relations have, indeed, decided that the subject of arming the militia, (which has been pressed upon them as indispensable to the public security,) does not come within the scope of their authority. On what ground, I have been and still am unable to see, they have felt themselves authorized to recommend the raising of standing armies, with a view, (as has been declared,) of immediate war—a war not of defence, but of conquest, of aggrandizement, of ambition—a war, foreign to the interests of this country; to the interests of humanity itself.

I know not how gentlemen, calling themselves republicans, can advocate such a war. What was their doctrine in 1798–9, when the command of the army, that highest of all possible trusts in any government, be the form what it may, was reposed in the bosom of the father of his country—the sanctuary of a nation's love—the only hope that never came in vain! When other worthies of the revolution—Hamilton, Pinckney, and the younger Washington, men of tried patriotism, of approved conduct and valor, of untarnished honor, held subordinate command under him. Republicans were then unwilling

* The resolutions were reported on the twenty-ninth of

had given proof that he was above all human temptation. Where now is the revolutionary hero, to whom you are about to confide this sacred trust? To whom will you confide the charge of leading the flower of our youth to the heights of Abraham? Will you find him in the person of an acquitted felon? What! then you were unwilling to vote an army where such men, as have been named, held high command! When Washington himself was at the head, did you show such reluctance, feel such scruples; and are you now nothing loth, fearless of every consequence? Will you say that your provocations were less then than now—when your direct commerce was interdicted, your ambassadors hooted with derision from the French court, tribute demanded, actual war waged upon you?

Those who opposed the army then were indeed denounced as the partisans of France; as the same men, (some of them at least,) are now held up as the advocates of England: those firm and undeviating republicans, who then dared, and now dare, to cling to the ark of the constitution, to defend it even at the expense of their fame, rather than surrender themselves to the wild projects of mad ambition. There is a fatality attending plenitude of power. Soon or late, some mania seizes upon its possessors; they fall from the dizzy height through giddiness. Like a vast estate, heaped up by the labor and industry of one man, which seldom survives the third generation; power, gained by patient assiduity, by a faithful and regular discharge of its attendant duties, soon gets above its own origin. Intoxicated with their own greatness, the federal party fell. Will not the same causes produce the same effects now as then? Sir, you may raise this army, you may build up this vast structure of patronage; but "lay not the flattering unction to your souls," you will never live to enjoy the succession. You sign your political death warrant.

Mr. Randolph here adverted to the provocation to hostilities from shutting up the Mississippi by Spain, in 1803; but more fully to the conduct of the House in 1805–6, under the strongest of all imaginable provocations to war—the actual invasion of our country. He read various passages from the President's public message of Dec. 3d, 1805, in which he detailed the injuries and insults which had been received from Spain. Mr. Randolph then referred to a subsequent message of the President upon the same subject, and read the report of the committee to whom the message was referred, reprehending, in strong terms, the conduct of Spain, and recommending the passage of a bill making provision for raising a sufficient number the United States from Spanish inroad and insult, and to chastise the same." Mr. Randolph then proceeded: *

The peculiar situation of the frontier, at that time insulted, alone induced the committee to recommend the raising of regular troops. It was too remote from the population of the country for the militia to act, in repelling and chastising Spanish incursion. New Orleans and its dependencies were separated by a vast extent of wilderness from the settlements of the old United States; filled with a disloyal and turbulent people, alien to our institutions, language and manners, and disaffected towards our Government. Little reliance could be placed upon them, and it was plain, that if "it was the intention of Spain to advance on our possessions until she be repulsed by an opposing force," that force must be a regular army, unless we were disposed to abandon all the country south of Tennessee; that "the protection of our citizens, and the spirit and the honor of our country required that force should be interposed." Nothing remained but for the legislature to grant the only practicable means, or to shrink from the most sacred of all its duties; to abandon the soil and its inhabitants to the mercy of hostile invaders.

Yet this report, moderate as it was, was deemed of too strong a character by the House. It was rejected, and, at the motion of a gentleman from Massachusetts, (Mr. Bidwell, who has since taken a great fancy also to Canada, and marched off thither, in advance of the committee of foreign relations,) "two millions of dollars were appropriated towards," (not in full of,) "any extraordinary expense which might be incurred in the intercourse between the United States and foreign nations;" in other words, to buy off, at Paris, Spanish aggressions at home.

Was this fact given in evidence of our impartiality towards the belligerents? That to the insults and injuries and actual invasion of one of them, we opposed not bullets, but dollars; that to Spanish invasion we opposed money, whilst for British aggression on the high seas we had arms—offensive war? But Spain was then shielded, as well as instigated, by a greater power. Hence our respect for her. Had we at that time acted as we ought to have done in defence of our rights, of the "natale solum" itself, we should, I feel confident, have avoided that series of insult, disgrace and injury, which has been poured out upon us in long, unbroken succession. We would not then raise a small regular force for a country, where the militia could not act, to defend our own territory; now we are willing to levy a great army, for great it must be to accomplish the proposed object, for a war of conquest and ambition; and this, too, at the very entrance of

the "northern hive," of the strongest part of the Union.

An insinuation has fallen from the gentleman from Tennessee, (Mr. Grundy,) that the late massacre of our brethren on the Wabash was instigated by the British government. Has the President given any such information? Is it so believed by the administration? I have cause to believe the contrary to be the fact; that such is not their opinion. This insinuation is of the grossest kind—a presumption the most rash; the most unjustifiable. Show but good ground for it, I will give up the question at the threshold. I will be ready to march to Canada. It is, indeed, well calculated to excite the feelings of the western people particularly, who are not quite so tenderly attached to our red brethren as some of our modern philosophers; but it is destitute of any foundation, beyond mere surmise and suspicion. What would be thought, if, without any proof whatsoever, a member should rise in his place and tell us, that the massacre in Savannah—a massacre perpetrated by civilized savages with French commissions in their pockets, was excited by the French government? There is an easy and natural solution of the late transaction on the Wabash, in the well-known character of the aboriginal savage of North America, without resorting to any such mere conjectural estimate. I am sorry to say, that, for this signal calamity and disgrace, the House is, in part at least, answerable. Session after session, our table has been piled up with Indian treaties, for which the appropriations have been voted as a matter of course, without examination. Advantage has been taken of the spirit of the Indians, broken by the war which ended in the treaty of Grenville. Under the ascendency then acquired over them, they have been pent up by subsequent treaties, into nooks; straitened in their quarters by a blind cupidity, seeking to extinguish their title to immense wildernesses—for which, (possessing, as we do already, more land than we can sell or use,) we shall not have occasion, for half a century to come. It is our own thirst for territory, our own want of moderation, that has driven these sons of nature to desperation, of which we feel the effects.

Although not personally acquainted with the late Colonel Daveiss, I feel, I am persuaded, as deep and serious regret for his loss as the gentleman from Tennessee himself. I know him only through the representation of a friend of the deceased, (Mr. Rowan,) some time a member of this House: a man, who, for native force of intellect, manliness of character, and high sense of honor, is not inferior to any that have ever sat here. With him I sympathise in the severest calamity that could befall a man of his cast and character. Would to God, they were both now on this floor. From my personal knowledge of the one, I feel confident that I should have his support—and I believe (judging of him from the representation of our common friend) of the other also.

I cannot refrain from smiling at the liberality of the gentleman, in giving Canada to New York, in order to strengthen the northern balance of power; while, at the same time, he forewarns her, that the western scale must preponderate. I can almost fancy that I see the capitol in motion towards the falls of Ohio; after a short sojourn, taking its flight to the Mississippi, and finally alighting on Darien; which, when the gentleman's dreams are realized, will be a most eligible seat of government for the new republic, (or empire,) of the two Americas! But it seems that "in 1808 we talked and acted foolishly," and to give some color of consistency to that folly, we must now commit a greater. Really, I cannot conceive of a weaker reason offered in support of a present measure, than the justification of a former folly. I hope we shall act a wise part; take warning by our follies, since we have become sensible of them, and resolve to talk and act foolishly no more. It is, indeed, high time to give over such preposterous language and proceedings.

This war of conquest, a war for the acquisition of territory and subjects, is to be a new commentary on the doctrine, that republicans are destitute of ambition; that they are addicted to peace, wedded to the happiness and safety of the great body of their people. But it seems, this is to be a holiday campaign: there is to be no expense of blood or treasure, on our part; Canada is to conquer herself; she is to be subdued by the principles of fraternity! The people of that country are first to be seduced from their allegiance, and converted into traitors, as preparatory to making them good citizens! Although I must acknowledge that some of our flaming patriots were thus manufactured, I do not think the process would hold good with a whole community. It is a dangerous experiment. We are to succeed in the French mode, by the system of fraternization—all is French! But how dreadfully it might be retorted on the southern and western slaveholding States. I detest this subornation of treason. No; if we must have them, let them fall by the valor of our arms; by fair legitimate conquest; not become the victims of treacherous seduction.

I am not surprised at the war-spirit which is manifesing itself in gentlemen from the South. In the year 1805–6, in a struggle for the carrying trade of belligerent-colonial produce, this country was most unwisely brought into collision with the great powers of Europe. By a series of most impolitic and ruinous measures, utterly incomprehensible to every rational, sober-minded man, the southern planters, by their own votes, have succeeded in knocking down the price of cotton to seven cents, and of tobacco, (a few choice crops excepted,) to nothing; and in raising the price of blankets, (of which a few would not be amiss in a Canadian campaign,) coarse woollens, and every article of first necessity, three or four hundred per centum.

And now that, by our own acts, we have brought ourselves into this unprecedented condition, we must get out of it in any way, but by an acknowledgment of our own want of wisdom and forecast. But is war the true remedy? Who will profit by it? Speculators; a few lucky merchants who draw prizes in the lottery; commissaries and contractors. Who must suffer by it? The people. It is their blood, their taxes, that must flow to support it.

But gentlemen avowed, that they would not go to war for the carrying trade; that is, for any other but the direct export and import trade; that which carries our native products abroad, and brings back the return cargo; and yet they stickle for our commercial rights, and will go to war for them! I wish to know, in point of principle, what difference gentlemen can point out between the abandonment of this or of that maritime right? Do gentlemen assume the lofty port and tone of chivalrous redressers of maritime wrongs, and declare their readiness to surrender every other maritime right, provided they may remain unmolested in the exercise of the humble privilege of carrying their own produce abroad, and bringing back a return cargo? Do you make this declaration to the enemy at the outset? Do you state the minimum with which you will be contented, and put it in their power to close with your proposals at their option; give her the basis of a treaty ruinous and disgraceful beyond example and expression? And this, too, after having turned up your noses in disdain at the treaties of Mr. Jay and Mr. Monroe! Will you say to England, "end the war when you please, give us the direct trade in our own produce, we are content?" But what will the merchants of Salem, and Boston, and New York, and Philadelphia, and Baltimore, the men of Marblehead and Cape Cod say to this? Will they join in a war, professing to have for its object, what they would consider, (and justly too,) as the sacrifice of their maritime rights, yet affecting to be a war for the protection of commerce?

I am gratified to find gentlemen acknowledging the demoralizing and destructive consequences of the non-importation law; confessing the truth of all that its opponents foretold, when it was enacted. And will you plunge yourselves in war, because you have passed a foolish and ruinous law, and are ashamed to repeal it? "But our good friend, the French emperor, stands in the way of its repeal, and as we cannot go too far in making sacrifices to him, who has given such demonstration of his love for the Americans, we must, in point of fact, become parties to his war. Who can be so cruel as to refuse him that favor?" My imagination shrinks from the miseries of such a connection. I call upon the House to reflect, whether they are not about to abandon all reclamation for the unparalleled outrages, "insults and injuries" of the French government; I ask what reparation or atonement they can expect to obtain in hours of future dalliance, after they shall have made a tender of their person to this great deflowerer of the virginity of republics? We have by our own wise (I will not say wiseacre) measures, so increased the trade and wealth of Montreal and Quebec, that at last we begin to cast a wishful eye at Canada. Having done so much towards its improvement, by the exercise of "our restrictive energies," we begin to think the laborer worthy of his hire, and to put in claim for our portion. Suppose it ours, are we any nearer to our point? As his minister said to the king of Epirus, "may we not as well take our bottle of wine before as after this exploit? Go! march to Canada! leave the broad bosom of the Chesapeake and her hundred tributary rivers; the whole line of sea-coast from Machias to St. Mary's, unprotected! You have taken Quebec —have you conquered England? Will you seek for the deep foundations of her power in the frozen deserts of Labrador?

> "Her march is on the mountain wave,
> Her home is on the deep!"

Will you call upon her to leave your ports and harbors untouched, only just till you can return from Canada, to defend them? The coast is to be left defenceless, whilst men of the interior are revelling in conquest and spoil. But grant for a moment, for mere argument's sake, that in Canada you touched the sinews of her strength, instead of removing a clog upon her resources—an incumbrance, but one, which, from a spirit of honor, she will vigorously defend. In what situation would you then place some of the best men of the nation? As Chatham and Burke, and the whole band of her patriots, prayed for her defeat in 1776, so must some of the truest friends of their country deprecate the success of our arms against the only power that holds in check the arch-enemy of mankind.

The committee have outstripped the executive. In designating the power, against whom this force is to be employed, as has most unadvisedly been done in the preamble or manifesto with which the resolutions are prefaced, they have not consulted the views of the executive, that designation is equivalent to an abandonment of all our claims on the French government. No sooner was the report laid on the table, than the vultures were flocking round their prey—the carcass of a great military establishment. Men of tainted reputation, of broken fortune, (if they ever had any,) and of battered constitutions, "choice spirits tired of the dull pursuits of civil life," were seeking after agencies and commissions, willing to doze in gross stupidity over the public fire; to light the public candle at both ends. Honorable men undoubtedly there are, ready to serve their country; but what man of spirit, or of self-

The gentleman from Tennessee, Mr. Grundy, addressed himself yesterday, exclusively to the "republicans of the House." I know not whether I may consider myself as entitled to any part of the benefit of the honorable gentleman's discourse. It belongs not, however, to that gentleman to decide. If we must have an exposition of the doctrines of republicanism, I shall receive it from the fathers of the church, and not from the junior apprentices of the law. I shall appeal to my worthy friends from Carolina, Messrs. Macon and Stanford, "men with whom I have measured my strength," by whose side I have fought during the reign of terror; for it was indeed an hour of corruption, of oppression, of pollution. It is not at all to my taste—that sort of republicanism which was supported, on this side of the Atlantic, by the father of the sedition law, John Adams, and by Peter Porcupine on the other. Republicanism! of John Adams and William Cobbett! "Par nobile fratrum," now united as in 1798, whom the cruel walls of Newgate alone keep from flying to each other's embrace—but whom, in sentiment, it is impossible to divide. Gallant crusaders in the holy cause of republicanism! Such "republicanism does, indeed, mean any thing or nothing."

Our people will not submit to be taxed for this war of conquest and dominion. The government of the United States was not calculated to wage offensive foreign war; it was instituted for the common defence and general welfare; and whosoever should embark it in a war of offence, would put it to a test which it is by no means calculated to endure. Make it out that Great Britain has instigated the Indians on a late occasion, and I am ready for battle; but not for dominion. I am unwilling, however, under present circumstances, to take Canada, at the risk of the constitution, to embark in a common cause with France, and be dragged at the wheels of the car of some Burr or Bonaparte. For a gentleman from Tennessee, or Genesee, or Lake Champlain, there may be some prospect of advantage. Their hemp would bear a great price by the exclusion of foreign supply. In that, too, the great importers are deeply interested. The upper country on the Hudson and the lakes would be enriched by the supplies for the troops, which they alone could furnish. They would have the exclusive market: to say nothing of the increased preponderance from the acquisition of Canada and that section of the Union which the Southern and Western States have already felt so severely in the apportionment bill.

Mr. Randolph here adverted to the defenceless state of the sea-ports, and particularly of the Chesapeake, and observed, that there was but a single spot on either shore, which could be considered in tolerable security, from the nature of and that spot unhappily governed the whole State of Maryland. His friend, the late Governor of Maryland, Mr. Lloyd, at the very time he was bringing his warlike resolutions before the legislature of the State, was liable on any night to be taken out of his bed and carried off with his family, by the most contemptible picaroon. Such was the situation of many a family in Maryland, and lower Virginia.

Permit me now, sir, to call your attention to the subject of our black population. I will touch this subject as tenderly as possible. It is with reluctance that I touch it at all; but in cases of great emergency, the state physician must not be deterred by a sickly, hysterical humanity, from probing the wound of his patient; he must not be withheld by a fastidious and mistaken delicacy from representing his true situation to his friends, or even to the sick man himself, when the occasion calls for it. What is the situation of the slaveholding States? During the war of the Revolution, so fixed were their habits of subordination, that while the whole country was overrun by the enemy, who invited them to desert, no fear was ever entertained of an insurrection of the slaves. During a war of seven years, with our country in possession of the enemy, no such danger was ever apprehended. But should we, therefore, be unobservant spectators of the progress of society within the last twenty years; of the silent, but powerful change wrought, by time and chance, upon its composition and temper? When the fountains of the great deep of abomination were broken up, even the poor slaves did not escape the general deluge. The French revolution has polluted even them. Nay, there have not been wanting men in this House: witness our legislative Legendre, the butcher who once held a seat here, to preach upon this floor these imprescriptible rights to a crowded audience of blacks in the galleries: teaching them that they are equal to their masters; in other words advising them to cut their throats. Similar doctrines have been disseminated by pedlars from New England and elsewhere, throughout the southern country; and masters have been found so infatuated, as by their lives and conversation, by a general contempt of order, morality, and religion, unthinkingly to cherish these seeds of self-destruction to them and their families. What has been the consequence? Within the last ten years, repeated alarms of insurrection among the slaves: some of them awful indeed. From the spreading of this infernal doctrine, the whole southern country has been thrown into a state of insecurity. Men dead to the operation of moral causes, have taken away from the poor slave his habits of loyalty and obedience to his master, which lightened his servitude by a double operation; beguiling his

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politics, you are called upon to trust to the mere physical strength of the fetter which holds him in bondage. You have deprived him of all moral restraint; you have tempted him to eat of the fruit of the tree of knowledge, just enough to perfect him in wickedness; you have opened his eyes to his nakedness; you have armed his nature against the hand that has fed, that has clothed him, that has cherished him in sickness; that hand, which before he became a pupil of your school, he had been accustomed to press with respectful affection. You have done all this—and then show him the gibbet and the wheel, as incentives to a sullen, repugnant obedience. God forbid, sir, that the Southern States should ever see an enemy on their shores, with these infernal principles of French fraternity in the van. While talking of taking Canada, some of us are shuddering for our own safety at home. I speak from facts, when I say, that the night-bell never tolls for fire in Richmond, that the mother does not hug her infant more closely to her bosom. I have been a witness of some of the alarms in the capital of Virginia.

How have we shown our sympathy with the patriots of Spain, or with the American provinces? By seizing on one of them, her claim to which we had formerly respected, as soon as the parent country was embroiled at home. Is it thus we yield them assistance against the arch-fiend who is grasping at the sceptre of the civilized world? The object of France is as much Spanish-American as old Spain herself. Much as I hate a standing army, I could almost find it in my heart to vote one, could it be sent to the assistance of the Spanish patriots.

Mr. Randolph then proceeded to notice the unjust and illiberal imputation of British attachments, against certain characters in this country, sometimes insinuated in that House, but openly avowed out of it.

Against whom are these charges brought? Against men who, in the war of the revolution, were in the councils of the nation, or fighting the battles of your country. And by whom are they made? By runaways, chiefly from the British dominions, since the breaking out of the French troubles. It is insufferable. It cannot be borne. It must and ought, with severity to be put down in this House; and out of it to meet the lie direct. We have no fellow-feeling for the suffering and oppressed Spaniards! Yet even them we do not reprobate. Strange! that we should have no objection to any other people or government, civilized or savage, in the whole world! The great autocrat of all the Russias, receives the homage of our high consideration. The Dey of Algiers and his divan of pirates, are a very civil, good sort of people, with whom we find no difficulty in maintaining the relations of peace and amity. "Turks, Jews, and Infidels," Melimelli or the Little Turtle: barbarians and savages of every clime and color, are welcome to our arms. With chiefs of banditti, negro, or mulatto, we can treat and can trade. Name, however, but England, and all our antipathies are up in arms against her. Against whom? Against those whose blood runs in our veins: in common with whom we claim Shakspeare, and Newton, and Chatham, for our countrymen: whose form of government is the freest on earth, our own only excepted: from whom every valuable principle of our own institutions has been borrowed—representation, jury trial, voting the supplies, writ of habeas corpus, our whole civil and criminal jurisprudence—against our fellow Protestants, identified in blood, in language, in religion, with ourselves. In what school did the worthies of our land, the Washingtons, Henrys, Hancocks, Franklins, Rutledges of America, learn those principles of civil liberty which were so nobly asserted by their wisdom and valor? American resistance to British usurpation has not been more warmly cherished by these great men and their compatriots; not more by Washington, Hancock, and Henry, than by Chatham and his illustrious associates in the British Parliament. It ought to be remembered, too, that the heart of the English people was with us. It was a selfish and corrupt ministry, and their servile tools, to whom we were not more opposed than they were. I trust that none such may ever exist among us; for tools will never be wanting to subserve the purposes, however ruinous or wicked, of kings and ministers of state.

I acknowledge the influence of a Shakspeare and a Milton upon my imagination, of a Locke upon my understanding, of a Sidney upon my political principles, of a Chatham upon qualities which, would to God, I possessed in common with that illustrious man! of a Tillotson, a Sherlock and a Porteus upon my religion. This is a British influence which I can never shake off. I allow much to the just and honest prejudices growing out of the Revolution. But by whom have they been suppressed, when they ran counter to the interests of my country? By Washington. By whom, would you listen to them, are they most keenly felt? By felons escaped from the jails of Paris, Newgate and Kilmainham, since the breaking out of the French revolution; who, in this abused and insulted country, have set up for political teachers, and whose disciples give no other proof of their progress in republicanism, except a blind devotion to the most ruthless military despotism that the world ever saw. These are the patriots who scruple not to brand with the epithet of tory, the men, (looking towards the seat of Col. Stewart,) by whose blood your liberties have been cemented. These are they, who hold in such keen remembrance the outrages of the British armies, from which many of them are deserters. Ask these self-styled patriots where they were during the American war, (for they are, for the most part, old enough to have borne arms,) and you strike them dumb; their

lips are closed in eternal silence. If it were allowable to entertain partialities, every consideration of blood, language, religion and interest, would incline us towards England: and yet, shall they be alone extended to France and her ruler, whom we are bound to believe a chastening God suffers as the scourge of a guilty world! On all other nations he tramples; he holds them in contempt; England alone he hates; he would, but he cannot despise her; fear cannot despise; and shall we disparage our ancestors? Shall we bastardize ourselves by placing them even below the brigands of St. Domingo? —with whom Mr. Adams negotiated a sort of treaty, for which he ought to have been, and would have been impeached, if the people had not previously passed sentence of disqualification for their service upon him. This antipathy to all that is English, must be French.

But the outrages and injuries of England—bred up in the principles of the revolution, I can never palliate, much less defend them. I well remember flying with my mother and her new-born child from Arnold and Philips—and we were driven by Tarleton and other British Pandours from pillar to post, while her husband was fighting the battles of his country. The impression is indelible on my memory: and yet, (like my worthy old neighbor, who added seven buckshot to every cartridge at the battle of Guilford, and drew a fine sight at his man,) I must be content to be called a tory by a patriot of the last importation. Let us not get rid of one evil, (supposing it possible,) at the expense of a greater: "mutatis mutandis," suppose France in possession of the British naval power —and to her the trident must pass, should England be unable to wield it—what would be your condition? What would be the situation of your seaports, and their seafaring inhabitants? Ask Hamburg, Lubec! Ask Savannah! What! sir, when their privateers are pent up in our harbors by the British bull-dogs, when they receive at our hands every rite of hospitality, from which their enemy is excluded; when they capture in our own waters, interdicted to British armed ships, American vessels; when such is their deportment towards you, under such circumstances; what could you expect if they were the uncontrolled lords of the ocean? Had those privateers at Savannah borne British commissions; or had your shipments of cotton, tobacco, ashes and what not, to London and Liverpool, been confiscated, and the proceeds poured into the English exchequer—my life upon it, you would never have listened to any miserable wire-drawn distinctions between "orders and decrees affecting our neutral rights," and "municipal decrees," confiscating in mass your whole property: you would have had instant war! The whole land would have blazed out in war.

And shall republicans become the instruments of him who has effaced the title of Attila to the "scourge of God!" Yet, even Attila, in the falling fortunes of civilization, had, no doubt, his advocates, his tools, his minions, his parasites in the very countries that he overrun; sons of that soil, whereon his horse had trod; where grass could never after grow. If perfectly fresh, instead of being as I am, my memory clouded, my intellect stupefied, my strength and spirits exhausted, I could not give utterance to that strong detestation which I feel towards (above all other works of the creation) such characters as Gengis, Tamerlane, Kouli-Khan or Bonaparte. My instincts involuntarily revolt at their bare idea. Malefactors of the human race, who have ground down man to a mere machine of their impious and bloody ambition! Yet under all the accumulated wrongs, and insults, and robberies of the last of these chieftains, are we not, in point of fact, about to become a party to his views, a partner in his wars?

But before this miserable force of ten thousand men is raised to take Canada, I beg gentlemen to look at the state of defence at home; to count the cost of the enterprise before it is set on foot, not when it may be too late; when the best blood of the country shall be spilt, and nought but empty coffers left to pay the cost. Are the bounty lands to be given in Canada? It might lessen my repugnance to that part of the system, to granting these lands, not to these miserable wretches who sell themselves to slavery for a few dollars, and a glass of gin, but in fact, to the clerks in our offices, some of whom, with an income of fifteen hundred or two thousand dollars, live at the rate of four or five thousand, and yet grow rich; who, perhaps at this moment, are making out blank assignments for these land rights.

I beseech the House, before they run their heads against this post, Quebec, to count the cost. My word for it, Virginia planters will not be taxed to support such a war—a war which must aggravate their present distresses; in which they have not the remotest interest. Where is the Montgomery, or even the Arnold, or the Burr, who is to march to the Point Levi?

I call upon those professing to be republicans, to make good the promises held out by their republican predecessors, when they came into power; promises which, for years afterwards, they honestly, faithfully fulfilled. We have vaunted of paying off the national debt; of retrenching useless establishments; and yet have now become as infatuated with standing armies, loans, taxes, navies and war, as ever were the Essex Junto. What republicanism is this?

Mr. Randolph apologized for his very desultory manner of speaking. He regretted that his bodily indisposition had obliged him to talk perhaps sometimes wildly; yet he trusted some method would be found in his madness.

AN EXTRACT.*

The talent for government lies in these two things—sagacity to perceive, and decision to act. Genuine statesmen were never made such by mere training; "nascuntur non fiunt:" education will form good business men. The maxim, "nascitur non fit," is as true of statesmen as it is of poets. Let a house be on fire, you will soon see in that confusion who has the talent to command. Let a ship be in danger at sea, and ordinary subordination be destroyed, and you will immediately make the same discovery. The ascendency of mind and of character rises and rises as naturally and as inevitably where there is fair play for it, as material bodies find their level by gravitation. Thus, a great logician, like a certain animal, oscillating between the hay on different sides of him, wants some power from without, before he can decide from which bundle to make trial. Who believes that Washington could write a good book or report as Jefferson, or make an able speech as Hamilton? Who is there that believes that Cromwell would have made as good a judge as Lord Hale? No, sir; these learned and accomplished men find their proper place under those who are fitted to command, and to command them among the rest. Such a man as Washington will say to Jefferson, do you become my Secretary of State; to Hamilton, do you take charge of my purse, or that of the nation, which is the same thing; and to Knox, do you be my master of horse. All history shows this; but great logicians and great scholars are, for that very reason, unfit to be rulers. Would Hannibal have crossed the Alps, when there were no roads—with elephants—in the face of the warlike and hardy mountaineers, and have carried terror to the very gates of Rome, if his youth had been spent in poring over books? Would he have been able to maintain himself on the resources of his own genius for sixteen years in Italy, in spite of faction and treachery in the Senate of Carthage, if he had been deep in conic sections and fluxions, and the differential calculus, to say nothing of botany and mineralogy, and chemistry? "Are you not ashamed," said a philosopher to one who was born to rule; "are you not ashamed to play so well upon the flute?" Sir, it was well put. There is much which becomes a secondary man to know—much that it is necessary for him to know, that a first-rate man ought to be ashamed to know. No head was ever clear and sound that was stuffed with book learning. You might as well attempt to fatten and strengthen a man by stuffing him with every variety and the greatest quantity of food. After all, the chief must draw upon his subalterns, for much that he does not know and cannot perform himself.

* From Mr. Randolph's speech on *Retrenchment*, delivered in the House of Representatives of the United States, on the first day of February, 1828.

WILLIAM B. GILES.

WILLIAM B. GILES was born in Amelia County, Virginia, on the twelfth of August, 1762. Of his early years little is known. He acquired his classical education under the guidance of Samuel Stanhope Smith, LL. D., an eminent divine, and for several years the President of Princeton College, and studied law with the celebrated George Wythe of Williamsburg, in his native State. After practising at Petersburg a few years, and finding the profession unsuited to his inclinations, he abandoned it and entered the arena of politics, in which he soon became distinguished. In August, 1790, he was elected to the House of Representatives of the United States for an unexpired term, and continued in that body by re-election until the second day of October, 1798, when he resigned and returned to Virginia. During the discussion of the bill relating to the establishment of the United States Bank, in December, 1790, Mr. Giles first gave evidence of his extraordinary abilities as a debater. He opposed the measure, as unnecessary and unconstitutional, in an able and eloquent speech. With Madison and Gallatin, and in conformity with the opinions of a majority of his constituents who were of the democratic party, he resisted the passage of the laws necessary for carrying into effect the treaty of 1794, between Great Britain and the United States. His speech on this subject, which is considered as one of his ablest efforts, will be found in the selections in this volume.

A short time subsequent to his retirement from Congress, in 1798, he was chosen to represent his native county in the House of Delegates of Virginia, and continued in that office until 1800, when he was again elected to the lower House of Congress. At this time he had become one of the most conspicuous members of the democratic party, and in all the measures originated during the sessions of 1800, 1801, 1802, he took an active part. In 1803 he declined a re-election to Congress, and was succeeded by Mr. Eppes. The Executive Council of Virginia, delegated him to the Senate of the United States, in August, 1804. Here he remained until after the close of the second war with Great Britain, in the latter portion of that period, the acknowledged leader of his party in the Senate, and throughout the whole of his career repeatedly distinguishing himself in the debates which arose on the important questions that came before that body.

On the twenty-third of November, 1815, he resigned his seat in the Senate, giving his reasons for that step in the following letter to the Governor of Virginia. "A period has at length arrived when our beloved country, after successfully passing through the trials of a just and honorable war, against a powerful nation, is enjoying all the blessings of peace, with the fairest prospects, under the guidance of wise counsels and the divine protection, of their long continuance. This fortunate and happy condition of the country affords me a favorable opportunity of indulging myself in a desire, I have long felt, of retiring altogether to the scenes of domestic life. This consideration however would not, of itself, furnish a sufficient motive to induce me to carry this purpose into effect, during the present senatorial term; but another circumstance has taken place, which I conceive ought to have its influence upon any determination in this respect. In consequence of an absence from home, for a portion of each year, during a period of nearly five-and-twenty years, in which I have been engaged in serving the people in the representative character, my private concerns have become materially deranged; and in my judgment, a

strong obligation is therefore imposed on me, to give my personal attention to their ment. These considerations united, have determined me to withdraw from public service at this time."

Mr. Giles remained in retirement until the year 1826, when he was again brought forth as a candidate by the people of the county of Amelia, and elected to the House of Delegates. In this assembly he delivered a powerful speech in opposition to the Tariff acts, in reply to Mr. Clay's celebrated speech in Congress of the session of 1823–1824. His correspondence with Mr. Clay, together with a report of his speech on this occasion, was published in 1827. A short time after the publication of that work, he was elevated to the gubernatorial chair of his native State, and held that position until a short time before his death, which took place on the fourth of December, 1830.

No extended biography of him has been published. The laborious author of the *Thirty Years View*, in referring to his death, speaks of him as one of the most conspicuous in the early annals of Congress. "He had that kind of talent," he continues, "which is most effective in legislative bodies, and which is so different from set-speaking. He was a debater; and was considered by Mr. Randolph to be in our House of Representatives what Charles Fox was admitted to be in the British House of Commons: the most accomplished debater which his country had ever seen. But their acquired advantages were very different, and their schools of practice very opposite. Mr. Fox perfected himself in the House, speaking on every subject; Mr. Giles, out of the House, by talking to every body. Mr. Fox, a ripe scholar, addicted to literature, and imbued with all the learning of all the classics in all time; Mr. Giles neither read nor studied, but talked incessantly with able men, rather debating with them all the while; and drew from this source of information, and from the ready powers of his mind, the ample means of speaking on every subject with the fulness which the occasion required, the quickness which confounds an adversary, and the effect which a lick in time always produces. He had the kind of talent which was necessary to complete the circle of all sorts of ability which sustained the administration of Mr. Jefferson." He always exhibited a fondness for controversial discussion, and mingled zealously in the conflicts of party; while he won many admirers, he doubtless made some enemies; but in private society, he was kind, affectionate and estimable.

BRITISH TREATY.

Mr. Giles delivered the following speech, on the British Treaty, in the House of Representatives of the United States, on the eighteenth of April, 1796.*

MR. CHAIRMAN: It is much to be regretted that all the information which could throw light upon the subject of discussion, should not be before the committee. A sense of responsibility arising from the peculiarly delicate nature of the question, has induced the House to take every step with more than a common degree of caution. Before we proceeded to deliberate upon the expediency or inexpediency of providing for carrying the treaty into effect, we made a request to the President for the papers which attended the negotiation. This request has been refused; not because the call itself contained any thing unconstitutional; not because the contents of the papers called for are of such a nature as to render the disclosure thereof at this time improper—neither of these causes being intimated in the message—but because, principles were advocated by individual gentlemen in the course of the argument inducing the call, which the President thought not warranted by the constitution. I do not propose to animadvert upon the conduct of the executive, in departing from the resolution itself, and in noticing the arguments of individual members; nor upon any other part of the proceedings of the executive relative to the call of the House and his refusal. I only mean to remark, that being perfectly convinced of the propriety of the call itself, of the utility of the information embraced by it; and not being satisfied, by the arguments of the President, of the propriety of witholding the papers called for, I should myself have been willing to have suspended all

* See introduction to Mr. Gallatin's speech at page —— ante: See also the speeches of Mr. Ames and Mr. Madison, in the first volume of this work.

further proceedings respecting the provision for the treaty, until the papers should be laid before the House. I would have firmly placed myself on that ground; and in that position hazarded my responsibility. The extreme sensibility excited on the public mind by the agitation of the treaty question, I had supposed, would have furnished an irresistible argument in favor of complying with the request of the House; provided no inconvenience would have attended the disclosure; and in my opinion, under all circumstances of the case, the House would have been completely justified in suspending all further proceedings upon the question of providing for the treaty, until they received that information which they deemed necessary to guide their deliberations. But as the House has thought proper to take a different course, and has proceeded to the consideration of the question, with such lights as they possess, I will explain the motives which will probably finally influence my vote.

I shall discuss the subject in two points of view. I will first examine the contents of the treaty itself, and then the probable consequences of refusing, or of giving it efficacy.

In examining the contents of the instrument itself, I propose to go through it, article by article, unless the task prescribed to myself should exceed the bounds usually allowed to members for the delivery of their sentiments. I shall do this because I wish to treat the subject with the utmost candor, and to avoid any possible imputation of intending to exhibit the bad, and avoid the good parts of the treaty, if any such there are. I mean, however, to state merely the purport of many of the articles, without any animadversion, and to dwell only upon such as appear to me to be the most material.

The first object of the negotiation respects the inexecution of the treaty of peace.

The preamble professes to waive the respective complaints and pretensions of the parties, as to the inexecution of the former treaty, and of course establishes a principle, as the basis of the present treaty, that either both parties were equally culpable or equally blameless, in respect to the inexecution of the treaty of peace. I do not mean to remark upon the propriety or impropriety of this admission on the part of the United States. I will observe, however, and I think with great force, that the stipulations in the present treaty do not correspond with the principle professed as its basis.

On the part of Great Britain, two articles have been unexecuted—the restoration of certain property in possession of the British at the close of the war, and the surrender of the Western posts. On the part of the United States, one article is said to remain unfulfilled; it respects the promise, that no legal impediments should be thrown in the way of the recovery of debts due to British subjects.

The claim of compensation for the property carried away in contravention of the treaty of peace, is wholly abandoned, and the value of the surrender of the posts very much lessened, by the annexation of conditions which made no part of the stipulations of surrender in the treaty of peace. The United States are more than bound to fulfil the article heretofore unfulfilled by them; for, instead of continuing the courts open for the recovery of debts in the usual way, as was the promise in the treaty of peace, they are made to assume the payment of all debts interests and damages in cases of insolvencies, and a mode of adjustment is proposed for ascertaining the amount, which furnishes the greatest latitude for frauds against the United States which could be devised. This will appear in the further examination of the subject. Hence it is obvious, that the stipulations of the treaty abandon the very principle of adjustment assumed by a gentleman from Connecticut, Mr. Swift, in replying to a remark to this effect, made by a gentleman from Virginia: he observed, that he believed if an inquiry were to be made into the first breach of the treaty of peace, it would not issue favorably to the United States; and he proceeded to argue upon the presumption, that the first breach was properly imputable to the United States. I think it requires very strong assurances to justify an imputation of this sort against the United States, such as I believe the present occasion does not afford. In the first place, the treaty itself disavows the imputation; all claims and pretensions arising from the first breach are disclaimed; of course it is unnecessary, if not improper, to defend the treaty on a ground disclaimed by itself.

But upon what ground does the gentleman place his admission of the first breach of the treaty of peace upon the United States? The gentleman denies the uniform construction put upon the article for the restoration of certain property which was carried away from the United States at the close of the war, and asserts that the article never was intended to bear that construction. If the gentleman can establish his assertion, and extend it to the other article, unfulfilled by Great Britain, he may probably establish his position.

I will first premise, that if the article does not intend the restoration of property mentioned in it, the insertion of it in the treaty is not only unnecessary, but mischievous: as it will necessarily produce embarrassment to the parties to the instrument.

The British army at the termination of the war, was at New York; the negroes which constitute the species of property in question, were in the Southern States, so that if the article does not include the species of property taken in the course of the war, and in the possession of the British at the close of it, it is worse than nonsense. It never could have been supposed, that upon the first dawn of peace, the British would have left New York and invaded the Southern country, for the purpose of plundering the inhabitants of their negroes. The peace

article itself was a sufficient security against this conduct, and of course no specific provision could have been necessary for that purpose. This is not only the uniform construction of the article by the United States, but, as I always have understood and believed, Great Britain has acquiesced in the construction, until the negotiation of the present treaty. As an evidence of these facts, I will observe, that American commissioners were permitted to make a list of the negroes in the possession of the British at the close of the war, by the British commander; that the list was entered upon the files of Congress; that there are resolutions of Congress claiming compensation for the property carried away in contravention of that article in the treaty of peace, perhaps without even the intimation of a doubt as to the construction: that during the administration of Lord Carmarthen, I have always understood, that the claim of compensation for property carried away, was admitted, whenever British subjects were indemnified for debts due to them from citizens of the United States. But here I have to regret the want of the papers called for by this House, as they contain all the evidence upon which this important fact depends. Hence it appears that Great Britain herself yielded her assent to this construction, and ought not to have been permitted to withdraw it afterwards. These circumstances seem to me to be conclusive, and ingenuity itself would pause for arguments against facts so stubborn and irresistible.

The gentleman from Connecticut has said, that he thinks the present treaty as good an one as the United States had any right to expect. If the United States were as flagitious with respect to the inexecution of the treaty of peace, as the gentleman supposes, and Great Britain as blameless, I would acknowledge that the mode of adjustment has inflicted upon them a just punishment for their criminal conduct. This, however, is but a negative compliment to the treaty, and can be gratifying only to those who concur with the gentleman in the imputation thrown upon the United States. But it can afford no consolation to those who contend that Great Britain has been at least as culpable as the United States, and particularly when they reflect that the present treaty itself professes to disavow the imputation.

But even if the imputation is conceded, it would have been but reasonable to have confined the punishment to the new adjustment of the articles unfulfilled, without extending it to a train of humiliating and imperious commercial concessions, which are altogether unconnected with the subject, and not warranted by necessity.

The first article of the treaty, is declaratory of peace, &c., between the two countries, which is a very desirable thing, provided it can be established upon principles compatible with the national honor and the national interests. The second and third articles contain the stipulations for the surrender of the western posts, and the conditions accompanying the surrender.

The surrender of the western posts would be an extremely desirable object, if conformably with the treaty of peace, it were unattended with any conditions.

I am desirious of giving credit to every part of the instrument which will admit of it, and am not disposed to exaggerate its imperfections. I am willing to admit that the surrender of the posts, even with the conditions annexed, is of some importance; but I will assert, that the surrender loses a great portion of its value to the United States, in consequence of the conditions attached to it. Two objects of primary importance were to be effected by the unqualified surrender of the posts. The one was to obtain the influence over the Indians in their neighborhood, which the British now possess. The other, the participation, at least, in the fur trade carried on with those Indians. The conditions accompanying the surrender, will, in my opinion, very much impede the one, and completely defeat the other object.

The stipulation in the second article, which authorizes British subjects, now living within the precints or jurisdiction of the posts, still to continue to reside there, with the free use of their property, and to elect either to remain British subjects, or become American citizens at pleasure, will, in my opinion, very much impede, if not wholly obstruct, the salutary influence of the United States over the numerous tribes of Indians in that quarter; which is one great object hoped for from the possession of those posts. The effects of this stipulation will appear more obvious, when it is compared with the stipulations in the next article, by which the trade with the Indians is regulated. The second object, to wit, the participation in the fur trade, I believe will be completely defeated by the regulation of that trade in the third article. That article stipulates an equality of duties between American citizens and British subjects, a free communication through that country, upon an equality of portages and ferriages. These conditions, in my opinion, will secure a complete monopoly of the fur trade to Great Britain; because the superiority of the British capital employed in that trade, and the inferiority of duties paid upon goods imported for that trade into Canada, will, in my judgment, wholly exclude American citizens from a participation in that trade through any channel in the United States. The United States have no mode left to counteract this monopoly, but by a system of drawbacks, which appear to me, from the nature of the trade and country, to be almost impracticable; or if not absolutely impracticable, it will compel us to purchase the trade at a price greater than it is worth. It appears to me, that Great Britain foresaw these consequences, and that these articles are as well calculated to produce them, and to obstruct the views of the United States, as sagacity itself could have devised. Hence it appears

to me, that the value of an unqualified surrender of the posts, is very much lessened by the accompanying conditions. The gentleman from Connecticut observed, that the surrender of the posts was absolute, and that no conditions were annexed to it. It is a sufficient answer to say, that his observation is a mere criticism upon terms. If they be not conditions of the surrender, they are accompanying engagements, and are to be executed, with good faith, by the United States.

The fourth and fifth articles relate merely to the ascertainment of the boundary line, and therefore I shall pass over them without comment.

The sixth article is, in my judgment, highly objectionable. This article assumes the payment of all debts, interests, and damages, due from American citizens to British subjects, previous to the Revolution, in all cases where insolvencies have ensued, and where legal impediments to the recovery of the debts have existed. I will remark, that this is an assumption of debt by the public, which they do not owe, and never promised to pay, and that it is bettering the condition of the British creditor under the treaty of peace, without any obligation on the United States to do so. As amongst the fashionable calumnies of the day, this article has been a fertile source of misrepresentation against the State I have the honor to represent, I am anxious to place this subject in its true light; and as I profess to be well acquainted with it, I hope to be indulged with some minutiæ of explanation. This subject presents two aspects to the public; the one, as it respects States, the other, as it respects the individuals of the United States. As to the first, I admit, that if a greater proportion of debts of this description are due from Virginia than from other States, which has not, however, been ascertained, and which, I doubt, in the same proportion as a State, Virginia would receive an advantage over the rest of the States, by a common assumption of the debts; but as it respects the individuals of that State, who are not debtors, they stand precisely upon the same footing with individuals in the other States, because they are, in common with others, to contribute to the payment of debts which they never owed. It is of very little consolation to them, that they live in the neighborhood of those whose debts they are to contribute to pay; for propinquity or distance can make no difference in the state of interest between the individuals who do not owe, but who are to contribute to pay. As a very small proportion of the inhabitants of Virginia come under this description of debtors, the phenomenon of an opposition of that State to this particular article, is thus explained.

It is to be remarked, that this article contains no limits as to the amount of debts assumed by it, nor are there any precise data furnished for calculation. But it has been said, that if the debts be due, they ought to be paid, be the amount what it may. Gentlemen should reflect, that the amount will depend very much upon the mode of adjustment, and that the mode adopted by the treaty, is the most objectionable that can be devised.

The principle established for the adjustment of the debts, instead of preserving the conflicting interests of debtor and creditor will produce a complete union of interests; and of course, will furnish the greatest temptations to frauds against the United States from both debtor and creditor. Hence the amount of debts assumed by the United States, will probably be greatly increased beyond what would be the amount, if the debtor and creditor were left to the ordinary course of judicial proceedings to adjust their own differences under the principle of opposing interests. To entitle the creditor to a claim upon the United States, it is necessary for him first to establish his demand against his debtor, and then to show that his debtor was solvent at the commencement of the late war, has since become insolvent, and that some legal impediment has intervened to prevent the recovery of the debt. Hence it becomes the interest of both debtor and creditor, to establish these facts: because the debtor will be relieved from his debt, by the assumption of the United States, and the claim of the creditor will be transferred from the individual to the United States, which he will in all cases prefer, particularly as the assistance of the debtor will often become necessary to facilitate the establishment of the debt. This is the natural operation of the union of interest, produced by the assumption of the debts by the United States, and there is more danger to be apprehended from it, from the impossibility of checking it by any vigilance on the part of the United States, and from the peculiar circumstances attending these debts.

The greatest proportion of debts remaining unpaid, I believe, stand upon open accounts. In many cases, when the debts were evidenced by specialties, payments have been obtained, either by the usual course of judicial process, or by compromise between the parties. There are two circumstances attending the open accounts, which will give great scope to fraudulent combinations between the debtor and creditor. The one respects the evidence, the other the substantial causes of difference in the accounts of the creditor and debtor. In the reign of George the II., an act was passed for the more easy recovery of debts due to his majesty's subjects, from his majesty's plantations in America. This act authorized the merchant residing in Great Britain to establish his debt against a colonist, by affidavits, taken before the commencement of the suit, and authenticated in the usual mode. This deprived the defendant of all opportunity of cross-examination, so essential to the discovery of truth, and the jury of all knowledge of the character and credibility of the deponent.

In Virginia, the affidavits taken in pursuance

of this act, have been deemed incompetent to the establishment of the debt, because the act itself destroys the very nature and properties of evidence. Hence, in all disputed claims, founded upon this act, judgments have been rendered for the defendants. If this should be deemed a legal impediment to the recovery, this whole description of debts will probably come under the description of debts assumed. The words used in the treaty were calculated, in my opinion, with a view to this construction, and must have been dictated by persons better informed of the nature of this business than I presume the envoy extraordinary of the United States could have been. The words alluded to are the following: "The said commissioners in examining the complaints and applications so preferred to them, are empowered and required, in pursuance of the true intent and meaning of this article, to take into their consideration all claims, whether of principal or interest, or balance of principal and interest, and to determine the same respectively, according to the merits of the several cases, due regard being had to all the circumstances thereof, and as equity and justice shall appear to them to require. And the said commissioners shall have power to examine all such persons, as shall come before them, on oath or affirmation, touching the premises; and also to receive in evidence, according as they may think most consistent with equity and justice, all written depositions, or books, or papers, or copies, or extracts thereof, every such deposition, book, or paper, or copy, or extract, being duly authenticated, either according to the legal forms now respectively existing in the two countries, or in such other manner as the said commissioners shall see cause to require or allow."

The other circumstances arise from the nature of the remittances. These are generally made in tobacco. The sales of this article are intrusted solely to the merchant residing in Great Britain; and the American shipper has no check whatever upon the merchant making the sale. Upon rendering these accounts, the tobacco is often set down at a price very inferior to the average price of that article in Europe, at the time of making the sale. A great number of controversies have taken place upon this ground, which remain unsettled; but if the United States shall assume the debts of the individuals thus circumstanced, they will have no inducement to contest these accounts in a course of judicial proceedings, and the promise of exoneration from the creditor will often induce the debtor to facilitate the establishment of the claims against the United States. I have not overlooked the clause in this article of the treaty, which compels an assignment of the claim from the creditor to the United States; but that will have little or no operation to check the practice invited by this article, because the debtor is presumed to be insolvent before the assignment is to be made, and I believe the United States will be but unsuccessful collectors from insolvent debtors.

From these circumstances, I conclude, that this assumption of debt, without any obligation for so doing, is extremely improper, particularly when it is recollected that this article sweeps away all acts of limitation, and relates to the whole extensive scene of business carried on in the United States, from the extremes of New Hampshire to the extremes of Georgia, for an unlimited time before the Revolution. If I were to make a conjecture as to the amount, it would be a loose one, but if I were to choose between indemnification to the American merchants for recent spoliations committed upon their commerce, or the payment of these debts, I should not hesitate to prefer the first alternative; because, to that there are known limits; to the other there are not, nor any data for calculation under the mode of adjustment prescribed by the treaty. I therefore caution gentlemen against the assumption of this unascertained debt; for I believe it will be attended with a responsibility which they cannot answer to their constituents, nor will the responsibility be alleviated by the recollection of the merits of the individuals for whose benefit it is made. The increase of the debt of the United States by these artificial means, without any obligation to do so, I think highly objectionable.

The seventh article of the treaty promises compensation for the spoliations committed upon American commerce, in the course of the present war. This would be a very desirable object, if it could be obtained; but, when I observe, that before compensation is to be obtained, a process is to be had in the admiralty courts of Great Britain, and that the amount will depend very much upon the temper of those courts, I doubt whether this boasted article will not dwindle down into very little importance. I shall only observe further, that the merchants, for whose benefit this article was more immediately intended, and who have petitioned Congress to make provision for carrying the treaty into effect, seem not to rely implicitly upon the provision upon this subject; because, in every memorial they have held up the expectation of ultimate indemnification from the United States.

The eighth article points out the mode of paying the commissioners, to be appointed under the treaty—to which I have no objection.

The phraseology of the ninth article is somewhat curious, and the object I cannot perfectly understand. It is in the following words:

"It is agreed, that British subjects, who now hold lands in the territories of the United States, and American citizens, who now hold lands in the dominions of his majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein; and may grant, sell, or devise the same to whom they please, in like manner, as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect

the said lands and the legal remedies incident thereto, be regarded as aliens."

If it be the object of this article to vary the existing laws upon the subject of landed estates, it is wholly improper. If not, it is wholly unnecessary. I do not know how far this article may affect the proprietory estates. If it be intended to give any new impulse to those estates, it may be attended with serious effects. Pennsylvania is the only State which has regularly extinguished the proprietory claim. If a latitude of construction should be given to this article, it might materially affect the States of Delaware, North Carolina, and Virginia. I will not pretend to say, that it will bear the interpretation I have hinted at, but, as an individual, I would rather it had been omitted. There is a semblance of reciprocity assumed by this article; but no reciprocity in fact.

The tenth article is of a very extraordinary complexion. It is remarkable, both as to the matter it contains, and the manner in which it is expressed. It is in the following words:

"Neither the debts, due from individuals of the one nation to individuals of the other, nor shares, nor moneys, which they may have in the public funds, or in the public or private banks, shall ever, in any event of war or national differences, be sequestered or confiscated, it being unjust and impolitic, that debts and engagements, contracted and made by individuals having confidence in each other, and in their respective governments, should ever be destroyed or impaired by national authority, on account of national differences and discontents."

This article also assumes the semblance of reciprocity; but no reciprocity in fact.

British subjects have great sums, both in public and private funds, in the United States; American citizens have little or no property in public or private funds in Great Britain. Hence the evident and substantial inequality of this reciprocal stipulation. On the other hand, American citizens have a great share of property on the water, with very little naval protection, and of course subject to the naval superiority of Great Britain.

If, therefore, Great Britain had stipulated, in case of war, that in consideration of a refusal, on the part of the United States, to sequestrate property of British subjects upon land, she would not molest the property of American citizens upon water, there would then have been a substantial, instead of a nominal reciprocity: as the article now stands, there is an important right conceded, and no compensation obtained.

This article, however, has been highly applauded, by a particular description of persons interested in it, in consequence of the affectation of morality professed by it.

It has been said to be dishonest and immoral, to take the property of individuals for the purpose of compensating national wrongs. I can see no difference between the morality of taking the property of individuals upon water, and the property of individuals upon land. The difference of the element can make no difference in the morality of the act. However strongly, therefore, this moral impulse was operating upon the American envoy, whilst engaged in the construction of this article, it had entirely dissipated before he arrived at the twenty-fifth article: for, in that article, the principle of privateering is not only admitted, but its operation facilitated; so that, unless the interest of Great Britain is to be the criterion of the envoy's morality, what he has gained by the morality of the tenth article, must be at least balanced by the immorality of the twenty-fifth. Sequestration is always admitted as part of the law of nations, and hence I presume it is not immoral, under certain circumstances. It appears to be the opinion of some, that where the property of an individual has been sequestered on account of the act of his nation, the individual is to sustain the loss; but this is not the case. The sequestration itself imposes upon the government, to which the individual belongs, an obligation of reimbursement. Hence the sequestration does not ultimately rest upon the individual, but upon the government for whose wrong the property was taken. This is also conformable to the laws of nations. It is the course pursued by Great Britain for all sequestrations made during the American war, and is the course which will be pursued by all nations.

War itself is immoral in most cases; and justifiable, in my opinion, only in the case of self-defence; but, if a stipulation had been inserted in this treaty which prohibited the United States from declaring war, it would have been justly and universally reprobated. The present article prohibits the United States from resorting to the best means, not only of preventing war, but the most efficacious means of supporting it. Hence the surrender of the right is a most impolitic concession, and is infinitely aggravated by its being a voluntary concession; no equivalent being received in return. It is dishonorable to the United States, because it evidences a want of confidence in the discretion of the constituted authorities. The right of sequestration is admitted to be essential to national sovereignty; but lest it should be indiscreetly used by the United States, its guardianship is transferred to Great Britain. I view sequestration as an extraordinary remedy, to be resorted to only on extraordinary occasions. And although I admit that but few cases will justify a resort to it, yet it is one of our best instruments of defence, considering our relationship to Great Britain, and ought not, therefore, to have been surrendered. This restraint is imposed upon the United States for an unlimited time, and is the more objectionable, as it is a species of legislation against the discretion of legislation.

But, whatever may be the difference of opinion as to the matter of this article, the most partial admirer of this treaty must be unwilling to defend the very extraordinary envoy of the

United States for the manner of expression. This measure was proposed in the House of Representatives, as one of the means of self-protection against British depredations. This circumstance was known to the envoy, yet he not only bartered away the measure, but, in doing so, branded the proposition, then depending before the House of Representatives, with the terms "impolitic and unjust." This was an unnecessary imputation, which no minister could have been justifiable in applying to his government. Suppose our envoy had insisted, and the British minister had agreed, that the order of the 6th of November, for taking neutral vessels for adjudication, was piratical, and ought not to be renewed: I will not pretend to say how far the order would justify the epithet; but what would have been the fate of a British minister under such circumstances? Utter disgrace would have been one inevitable consequence; but, an American minister is not only tolerated for a similar conduct, but by some, who even affect to be Americans, applauded. In the present agitation of the public mind, truth seems to be obscured by party irritations, and personal partialities; but I am convinced, that whenever it may be so far collected as to take a calm review of this transaction, there will exist one universal voice of condemnation.

The eleventh article contains a general stipulation for the liberty of navigation and commerce between the two countries.

The twelfth article is the first of the commercial articles. This article is suspended; but the want of a substitute will justify a few remarks. I am not practically acquainted with commercial detail, and of course shall not go much into detail upon the commercial articles; there are, however, some grand principles which apply to commerce, as well as to every other business or science, which will guide me in a few remarks upon this subject. The twelfth article is intended to regulate the trade between the United States and the British West India Islands; so far, therefore, as it permits that trade to be carried on, it is intended as a concession to the United States; the rigid restrictions accompanying the concession, however, render it so paltry, that the Senate rejected the concession, although the envoy had accepted it. But, in what situation has the rejection left the United States? They are now engaged in a commercial treaty with Great Britain, in which they have surrendered almost every commercial advantage they had to bestow, and are still wholly excluded from the West India trade. I have always understood that the West India trade was the great object of commercial negotiation with Great Britain, but now that is formally relinquished. It may be said, that further negotiations upon this subject are promised; but what inducement will Great Britain have to relax her colonial regulations, provided this treaty should be carried into effect? She has already, without this relaxation, placed the commerce between the two countries precisely upon the footing she wished; and the United States have yielded every commercial advantage which might have been exchanged for that relaxation; of course, Great Britain will have no inducement to make, as the United States have nothing to offer for, the relaxation.

The gentleman from Connecticut, Mr. Swift, justified the conduct of Great Britain with respect to the West Indies, upon the ground of her colonial rights. He observed that Great Britain had a right to prevent the trade to the West Indies altogether. This is true, and she has a right to prevent the trade to London, and the United States have a right to interdict her trade to this country. But I would ask, if there be no relaxation of these rights, of what advantage is the treaty? The very object of a commercial treaty is a reciprocal indulgence in the exercise of these rights; and the peculiar dependence of those islands, upon the United States for their very subsistence, would command a participation in that trade, if properly used.

The resort to the United States for supplies to facilitate the present operations in the West Indies, is a striking evidence of the importance of the United States to their existence.

It has been observed, that the Spanish treaty has not opened the Spanish islands to the United States. This is true, and it would have been a desirable thing if it had effected this object. But it should be recollected, that the United States have made no commercial concessions to Spain, and that the treaty does not profess to contain any material commercial regulations.

The thirteenth article contains regulations for the East India trade. This article has been held up as an apology for all the commercial defects of the treaty. I do not pretend to be perfectly acquainted with the nature of this trade; but as far as I understand the explanation of the advantages of this article, I cannot concur in the result. The common remark is, that this article secures to the United States a right which before was a courtesy. This remark possesses some plausibility, but no substance; what is called courtesy, is a trade founded upon the interest of the parties. I believe that a courtesy in trade, the basis of which is the interest of the party granting it, is a better security than forced regulations by treaty, without the basis of interest for their support.

It is admitted, that the trade to the East Indies, before this treaty, was extremely lucrative, and of course cannot be the effect of the treaty. But the restrictive and monopolizing hand of Great Britain is seen to extend itself even to this branch of commerce, in the prohibition of the exportation of East India articles to an European market in American bottoms; which is a restriction that does not now exist, and is another restriction upon the citizens of the United States trading thence, which,

in my opinion, will lessen very much the boasted security of right under this article, whenever the interest of the East India Company will justify the prohibition of that trade. The restrictions alluded to are in the following words: "Neither is this article to be construed to allow the citizens of the said States to settle or reside within the said territories, or to go into the interior parts thereof, without the permission of the British Government established there; and if any transgression should be attempted against the regulations of the British Government in this respect, the observance of the same shall and may be enforced against the citizens of America in the same manner as against British subjects or others transgressing the same rule. And the citizens of the United States, whenever they arrive in any port or harbor in the said territories, or if they should be permitted, in manner aforesaid, to go to any other place therein, shall always be subject to the laws, government and jurisdiction, of whatever nature established, in such harbor, port, or place, according as the same may be. The citizens of the United States may also touch for refreshment at the island of St. Helena, but subject in all respects to such regulations, as the British Government may from time to time establish there."

The fourteenth article relates to the commerce and navigation of the two countries generally, and will be passed over without remark.

The fifteenth article is, in my judgment, highly objectionable.

This article restrains the United States from imposing upon British goods higher duties, &c., than upon those of other foreign nations. It authorizes Great Britain to equalize the existing unequal duties between the American and British bottoms, and restrains the United States from reviving the existing inequality. One objection to this article is, that it abandons, without an equivalent, the advantages resulting from the peculiar nature of the trade carried on between the United States and Great Britain. This trade consists, on the part of the United States, mostly of raw materials, which employ the artisans of Britain, and on the part of Great Britain, of the manufactures of artisans in the most finished state; and in addition, there is always a large specie balance against the United States, and in favor of Great Britain. It is calculated that the United States furnish a market for at least one-third of the whole surplus manufactures of Great Britain, and for this the most suitable returns for the British market are made. The loss of so valuable a market could not be supplied in any part of the world. It would naturally be supposed, that a trade so favorable would be entitled to some indulgence on the part of the nation receiving the favor, and would command some respect to the nation affording it; provided it had energy enough to avail itself of the advantage; but by this article it is abandoned with a nominal, but no real equivalent. This consideration is greatly strengthened by extending it to the peculiar nature of the trade between the United States and the West Indies, which has been already remarked upon.

Upon this ground the discrimination in favor of American over British bottoms, has been built, and the growth of American shipping has very considerably increased, in consequence of this policy. Our experience, therefore, is bartered away without even the probable calculation of a countervailing advantage.

The apology, made for this article, that the United States have granted no right to Britain, which she did not possess before, is entirely delusive. It may be true that no new right of sovereignty is granted to Great Britain; but she is now left at liberty to exercise a right, without hazard, by a restriction imposed upon the United States; and which she had failed to exercise until this restriction was imposed. It is remarkable, from the whole complexion of the treaty, that the advantages, gained by Great Britain, consist in restrictions imposed upon the United States, as if her object was to restrain the United States in the exercise of their rights of sovereignty.

The sixteenth article relates only to the appointment of consuls, and does not require notice.

The seventeenth article is, in my opinion, objectionable in many respects. It yields a formal assent to the seizure and condemnation of an enemy's property on board of American vessels. I expected to have heard this article apologized for and not justified. But I was surprised to hear it asserted, that it was problematical, whether the admission of this principle would be for the advantage or disadvantage of the United States. This is throwing the article into a problem, without attempting to solve it. It is discarding the exercise of the reasoning faculty. From the peculiar situation of the United States in their relations to the rest of the world, the establishment of the principle, that neutral vessels shall give freedom to their cargoes, is to them of primary importance: of course the United States have sedulously exerted themselves, in all their foreign negotiations, to have that principle formally admitted as the law of nations. In every other treaty, entered into by the United States, this principle has been carefully inserted. A formal assent to the contrary doctrine, will probably produce a retrograde effort upon all former exertions, which will require a great length of time to counteract. In the relations between the United States and Great Britain, the principle is peculiarly important. Great Britain possesses the most formidable fleet in existence, and is at least one half her time at war. The United States have an extended commerce without the protection of a fleet, and from her remote situation from Europe, the great scene of war, as well as from the genius of the American people, are not likely to be involved in European contests.

Hence the disadvantage to the United States from this stipulation, will be in proportion to the greater probability of their remaining free from war, than Great Britain, and in proportion to their more defenceless state of commerce. There exists another forcible reason, which ought to have prevented this stipulation—its necessary operation upon the present belligerent powers.

Under this article, French goods, in American bottoms, are made subject to British seizure and condemnation; but British goods, in American bottoms, are free from French seizure and condemnation. This is an evident partiality in favor of Britain against France, which, in my opinion, can hardly be warranted by the species of neutrality, proclaimed by the executive as the existing state of the nation. It is not only a neutrality, but an impartial neutrality. If a deviation from the strict line of impartial neutrality can be in one case justifiable, I think every American feeling will incline to favor the cause of liberty, and not the cause of despotism.

It is no apology for this article, to say that an article upon the opposite principle could not be obtained: then let none be obtained. It is the assent to the principle, which constitutes the disgrace and the injury to the United States. If other terms could not have been procured, French property in American bottoms might have been left to the ordinary operation of the laws of nations, without an explicit and invidious stipulation for its seizure and condemnation.

The eighteenth article defines contraband goods: there is a common, but just objection, made to this article, to wit, that the contraband list is extended, and that several articles are added, which were never before admitted to be contraband. It is to be observed, that all these additional articles are amongst the exports of the United States, whilst most, or perhaps all of them, are amongst the imports of Great Britain. This circumstance proves, that the reciprocity, assumed by this article, is delusive, and that the advantage is wholly in favor of Great Britain. This article contains also some regulations respecting the seizure of provisions in American vessels under certain circumstances, which are extremely equivocal and suspicious. I presume this article furnished the pretext to Great Britain, for issuing the late order for seizing American vessels, bound with provisions to France. I will not pretend to say, that the article justifies a construction which might give rise to the order; but the existence of such an order since the signing of the treaty, is universally admitted: but I will assert, that whether the order is to be considered as the practical construction of this article, or an infraction of it, or an infraction of the neutrality of the United States in any respect, it may be attended with the most serious consequences. If this invasion of neutral rights is to be the first fruits of the treaty, the most alarming results may be expected from its further operation. The executive of the United States has declared, that even the permission of this conduct, by one of the belligerent powers, is a breach of neutrality against the other; and, of course, a just cause of war from the injured nation. This doctrine is so clearly established in a letter from Mr. Jefferson, written by order of the President to Mr. Pinckney, dated 7th September, 1793, that I beg the indulgence of the committee in reading two or three paragraphs from the letter: it is in the following words:

"This act, too, tends directly to draw us from that state of peace in which we are wishing to remain. It is an essential character of neutrality, to furnish no aids, not stipulated by treaty, to one party, which we are not equally ready to furnish to the other. If we permit corn to be sent to Great Britain and her friends, we are equally bound to permit it to France. To restrain it would be a partiality, which might lead to war with France; and, between restraining it ourselves, and permitting her enemies to restrain it unrightfully, there is no difference. She would consider this as a mere pretext, of which she would not be the dupe, and on what honorable ground could we otherwise explain it? Thus we should see ourselves plunged, by this unauthorized act of Great Britain, into a war, with which we meddle not, and which we wish to avoid, if justice to all parties, and from all parties, will enable us to avoid it. In the case where we found ourselves obliged, by treaty, to withhold from the enemies of France the right of arming in our ports, we thought ourselves in justice bound to withhold the same right from France also; and we did it. Were we to withhold from her supplies of provisions, we should, in like manner, be bound to withhold them from her enemies also; and thus shut against ourselves all the ports of Europe, where corn is in demand, or make ourselves parties in the war. This is a dilemma, which Great Britain has no right to force upon us, and for which no pretext can be found in any part of our conduct. She may, indeed, feel the desire of starving an enemy nation; but she can give no right of doing it at our loss, nor of making us the instrument of it."

After this unequivocal declaration, made by the executive of the United States, what plea can be made to the French government, to justify an acquiescence in this conduct of Great Britain? Whether it be the result of the construction of the treaty, or an infraction of it, what apology can this House make for giving efficacy to the treaty before some satisfactory explanation is made upon this subject? Suppose the republic of France were to approach the executive of the United States with this letter in their hand, and say, "Here is your own declaration of your own principles of neutrality! You have unkindly departed from the principles avowed by yourself, in favor of my enemy. You seem to have concurred in a scheme of distressing a whole nation by withholding sup-

plies of provisions, when a better office might have been expected from the United States." Suppose a similar appeal were to be made to this House, whilst deliberating upon the expediency or inexpediency of giving efficacy to the very treaty which is used by Great Britain to sanctify her conduct; what reply could be made in either case? Is any gentleman, who is disposed to carry the treaty into effect, prepared to give a satisfactory answer to so just and so interesting a complaint? According to the very principles avowed by the executive, rather than give no cause of umbrage to Great Britain, we give just cause of war to France. Yet it has been said, that it would be disgraceful to the nation not to give efficacy to an instrument containing this disgraceful concession. It is not sufficient to say, that the republic of France will not avail herself of this breach of neutrality, and enter into hostilities against the United States. It is sufficient to show that the United States, by the execution of this treaty, under this construction, will furnish just cause for such a conduct; and, if this be not the just interpretation of the instrument, no disgrace can be greater than to execute a treaty with a nation at the very moment she is engaged in its infraction.

The nineteenth article contains some regulations respecting privateers, which require no comment.

The twentieth article respects the punishment of pirates, which is not material.

The twenty-first article prohibits American citizens from entering into any foreign service against Great Britain, and defines piracies. There is an existing law in the United States upon this subject, which operates equally towards all the belligerent powers. This act extends no farther than to prohibit American citizens from entering into foreign service within the United States, and applies equally to all foreign powers. But Great Britain, not content with this fair and just regulation, has extended this provision, so far as regards herself, beyond the limits or jurisdiction of the United States, and entirely destroys the impartiality and neutrality of the existing legal provision. What is the operation of this article upon the belligerent powers? It is this. An American citizen entering into the French service against Great Britain, out of the limits or jurisdiction of the United States, is punishable. An American citizen entering into the British service under the same circumstances, is not punishable. Besides, it is a prohibition upon American citizens, which has never been imposed upon the subjects or citizens of any nation, as far as I can recollect. But the practice of entering into foreign service has, at all times, been resorted to as affording the best military education. When it is recollected, that this article is to continue in force for only two years after the termination of the present European war; that there is no probability of the United States being, during that time, engaged in an European war; and that this article is, in no respect, connected with the professed objects of negotiation—has not the stipulation too much the appearance, as well as the effect, of interfering in the present European quarrel, and evincing a partiality for the interests of Great Britain, in violation of our professions of an impartial neutrality? And can this conduct be justified, either from the nature of the cause in which France is engaged, or from the good offices rendered by that great nation to the United States?

The twenty-second article stipulates, that notice shall be given before acts of reprisal, etc., shall be authorized by either of the contracting parties, which is very proper.

The twenty-third article is that, in which I expected to have found some provisions for the protection of American seamen against British impressments: instead of this humane and salutary provision, I found that the officers and crews of those very ships of war, etc., engaged in the unauthorized impressments, are to be hospitably received in the ports of the United States, and a proper respect to be paid to those officers, according to their respective ranks. Strange substitute this for the protection of American seamen! This article is rendered more aggravating by the practice of the British in impressing American seamen since the signing this very treaty. Whilst the table of the House is almost laboring with evidence of this fact—whilst the fact is not denied by any gentleman on this floor—in the very same breath in which a bill has been passed for the protection and relief of this valuable class of citizens, is the House called upon to make provision for effectuating a treaty of amity, etc., with a nation committing these wrongs—with a nation refusing to respect any evidence of protection which can be afforded to this description of citizens by the government of the United States; and an alarm and wonder is excited, because the House, under these circumstances, should deliberate upon making the provision.

The twenty-fourth article prohibits the arming of ships, by other foreign nations, in the ports of the United States, and selling their prizes; and restrains the United States from selling them more provisions than may be necessary to carry them to the next port of the nation to which they belong. Although I can see no propriety in these stipulations, particularly at this time, I will pass them over without remark.

The twenty-fifth article deserves two remarks—the first is, that it accommodates Great Britain in her scheme of privateering against France, and evidences the same temper with several other articles towards the belligerent powers, which has been remarked upon. The other grows out of the general clause of reservation which it contains. The clause I allude to is in the following words:

"Nothing in this treaty contained, shall, however, be construed or operate contrary to former and existing public treaties with other sov-

ereigns or states. But the two parties agree, that while they continue in amity, neither of them will in future make any treaty that shall be inconsistent with this or the preceding article."

From this reservation it is evident, that all the articles, which affect the present belligerent powers, are intended as constructive of the treaty between the United States and France; and the construction is so made, as to operate most injuriously to France, and most advantageously to Great Britain. Indeed, this construction seems to have bound so hard upon the French treaty, in the opinion of both negotiators, that they, probably apprehending that it might, in some respect, be deemed by the United States a positive infraction of that treaty, thought it necessary to insert this sovereign clause. The whole of the stipulations, which affect the present belligerent powers, are the most reprehensible interferences in the European quarrel, for the following reasons: first, they are wholly unnecessary, because they are totally disconnected with the objects of negotiation between the two countries, and with the usual and natural order of commerce; and of course must be deemed voluntary on the part of the United States. Second, the interest of the United States could not have been contemplated, because there is no probability of their being engaged in a naval war in two years after the termination of the present war; at which time these stipulations are to cease; of course the accommodation was intended for the present war, in which the United States are not engaged, and not for a future war, in which they may be engaged. Third, because it is a dishonorable deviation from that impartial neutrality, professed by the United States in favor of a nation the least of all others entitled to the accommodations of the United States, and against a nation the most of all others entitled to them. Fourth, it voluntarily hazards the resentment and hostility of a nation which, if exerted, might produce to the United States the most serious calamities.

The twenty-sixth article provides, that in case of war between the two countries, the merchants and others of each of the two countries, residing in the other, shall have time to remove with their effects, etc., which is in every respect proper.

The twenty-seventh article provides for reciprocally giving up certain fugitives from justice, which is not objectionable.

The twenty-eighth article respects the time of the duration of the treaty.

Having examined the treaty at large, with candor, and with the best judgment I possess, I find in it so much to condemn, and so little to applaud, and some of the objectionable parts are so formidable in themselves, that it is wonderful to me, that the treaty should have found an advocate upon its merits, in the United States. Viewing the subject as I do, and believing it my duty to exercise my discretion upon it, nothing contained in it can justify me in giving my vote for the necessary provisions to give it efficacy.

Mr. Giles, after apologizing for the time he had already consumed, proceeded to consider the probable consequences of refusing, or giving efficacy to the treaty.

Gentlemen in favor of making the provision have suggested two consequences resulting from refusal, of a very serious nature. The one, what is termed by them the hostility of departments of government, which would necessarily eventuate in a total dissolution of the government itself. The other, a war with Great Britain. If either of these consequences would result, I would vote for the necessary provisions, although the vote would be more against my feelings than any vote I ever before gave. Whether either of these consequences will result, cannot be positively ascertained, but by experiment. The subject, however, like all others, is susceptible of a certain degree of reasoning and calculation.

It should be recollected, that the House is now engaged in the exercise of its constitutional rights. It is called upon to make provision for carrying into effect the British treaty. Two things naturally present themselves to its consideration. The one, the expediency of the object of expenditure itself, for which the appropriation is required; the second, the ways and means of raising the money. It has been settled by the House, that both are within the constitutional discretion of the House. The President would deprive the House of the right of judging of the expediency of the expenditure, and limit its discretion to the ways and means of furnishing supplies. This point being previously settled I shall not enlarge upon it. I propose to give the history of the rise and progress of the treaty. I will be correct as to facts, and precise as to dates. Very shortly after Great Britain became a party to the war against France, the President proclaimed the United States to be in a state of impartial neutrality. The proclamation was dated 22d of April, 1793. An attempt had been made, and was at that time continued, to terminate the differences, which subsisted between the United States and Great Britain, growing out of the inexecution of the treaty of peace. This attempt proved unsuccessful. On the 16th of June, 1793, Great Britain issued an order, which affected the rights of neutral vessels. This order, and the acts committed under it, served to increase the causes of dispute between the two countries.

On the meeting of Congress in the succeeding fall, the President communicated to them all the negotiations which had taken place between the two countries, intimated that negotiation did not promise a favorable issue, and that it was left with Congress to say what further was to be done. In this critical situa-

tion of affairs, Congress took the subject into consideration. Great Britain was, at that time at least, considered as the aggressing nation. The first measure of self-protection proposed, was a restriction of the commerce of Great Britain with the United States: this measure was objected to, as being too strong as a commercial measure, and too weak as a political one. As far, however, as a vote was taken upon it, a majority of the House appeared in favor of that proceeding. On the 6th of November, 1793, an additional order was issued, the purport of which was, to take and bring to legal adjudication all neutral vessels bound to French ports. This additional evidence of hostility gave rise to three other measures; the one was an embargo for a limited time, which was effected; the second was the suspension of commercial intercourse between the United States and Great Britain; the third, a sequestration, or rather the arrestation of debts due to British subjects. The proposition for the arrestation of debts, was moved the 27th of March: the proposition for the suspension of intercourse, 7th of April, 1794. On the 4th of April, 1794, the President laid before the House a communication from Mr. Pinckney, minister from the United States to Great Britain, containing a conversation between Mr. Pinckney and Lord Grenville, of a very extraordinary nature, which always appeared to me to be the groundwork of the change, which shortly afterwards took place in the conduct of the executive of the United States towards the House of Representatives.

The part of the communication alluded to, is in the following words.—Extract of a letter from Mr. Pinckney to the Secretary of State, dated 9th of January, 1794.

"Lord Grenville answered, that the only reason for renewing them was, lest the present instruction, being a revocation of that of the 6th of November, might also be deemed to revoke the articles which were connected with it. His lordship then explained the motives which had induced this government to issue the present instruction. The first, he said, was the sincere desire of administration to maintain the best understanding and harmony with the United States. The second was, what he could not mention to me officially, but what he still thought it right I should be apprised of, that no misconception of their motives might be entertained; that he was aware of the delicacy of speaking to a foreign minister concerning the internal state of his country, neither could he expect an answer from me on the subject; but that their second reason was, by this conduct, to take away every pretext, from evil-disposed persons among us, who, according to the intelligence he had received, were endeavoring to irritate our people against Great Britain, as well as to oppose the measures of our own government, and, in short, to reduce us to the present situation of France; a misfortune, which they deprecated, as well for our sakes, as for the common welfare and tranquillity of mankind. He further took occasion to observe, with respect to the conduct of our government, in maintaining our neutrality, that although there were some matters with which this government was not perfectly satisfied, (and to which, for the same reason, they refrained from giving that opposition they thought they would be justified in doing,) yet from the general tenor of the conduct of our government, they were convinced it was their desire to maintain a full neutrality, which was an additional motive for their present conduct."

It is to be remarked, that on the 8th of January the revocation of the hostile order of the 6th of November took place, and on the next day after an apology for the acknowledged indelicacy of interfering in the internal affairs of a foreign government, Lord Grenville modestly undertakes to intermeddle with the affairs of the United States. It has always been matter of surprise to me, that the American minister should have listened to such a communication, and still more surprising, that it should have met with a favorable reception in the United States. But the fact is, that on the 19th of April, 1794, the chief justice was taken from the exercise of his judicial duties, and nominated envoy extraordinary to Great Britain, during the pendency of two of the before-mentioned propositions in the House of Representatives. The House of Representatives proceeded to pass the bill for the suspension of commercial intercourse on the 25th of April, by an uncommonly large majority, and on the 27th of April the bill was negatived by the Senate upon the casting vote of the Vice President. The effect of this vote was a discontinuance of the embargo, and an abandonment of all the other measures proposed for self-protection. In these acts will be seen, the commencement of what gentlemen call the hostility of departments; but what I shall term the due exercise of the checks, provided by the constitution. And if it is to be traced to this source, the House of Representatives will evidently appear not to be the aggressor. The House, viewing their measures defeated by the constitutional check, acquiesced in the decision without a murmur. Now we are told, if the House should exercise its constitutional check, a dissolution of the government would necessarily ensue. This conclusion seems to me without foundation, and ought not to be brought into calculation, in estimating the present question. The treaty itself was concluded on the 28th of October, 1794. It was communicated to this House, the 1st of March, 1796, having on the same day been promulgated by proclamation declaring it to be obligatory.

The treaty originated from an intimation of Lord Grenville, which has always excited my apprehension; it was commenced against the known sense of the House of Representatives, and every step of its progression seems to have been marked with peculiar coercion.

When a British minister undertakes to declare, that the motive for the revocation of a hostile order was, to take away every pretext from evil-disposed persons among us, who, according to the intelligence he had received, were endeavoring to irritate our own people against Great Britain, as well as to oppose the measures of our own government, &c., and to assign the same reason for refraining from giving that opposition to some exceptionable measures of our government, which he otherwise might have done; and when the United States so far listen to this language, as immediately to enter into negotiation upon the subject, my apprehensions of British interference, of British influence, are strongly excited, particularly when the British minister seems to make a common cause between the two governments against what he is pleased to call evil-disposed persons. I will here incidentally remark, that as far as these "evil-disposed persons" have produced the revocation of the hostile order of November, and a relaxation of British hostility in other respects, they are certainly entitled to applause from the United States, whatever epithets may have been bestowed upon them by a British minister.

The contents of the treaty have very much confirmed my original apprehensions. Gentlemen have often said, show us the danger of British interference, of British influence. To my mind, the treaty itself contains the evidence. The treaty itself corresponds with what I consider as the object of the British minister in giving the invitation to it. I find it in the following particular instances.

Before the treaty, the right of laying a special as well as a general embargo existed in the United States: the right of laying a special embargo upon British vessels is surrendered. Before the treaty, the right of sequestration existed, and the exercise of it was proposed. This right, so far as it respects Great Britain, is forever surrendered. Before the treaty, the right of discriminating against British goods, in favor of those of other nations, existed, and the exercise of it was proposed. This right is surrendered. Before the treaty, the right of suspending commercial intercourse with Great Britain existed, and was proposed to be exercised; the exercise of that right is stipulated against for a limited time, &c. All these are restrictions of the exercise of the rights of national sovereignty, and seem to me complete evidence of British interference.

These circumstances furnish two reflections. The one is, that the British cabinet deem the measures proposed, to be more efficacious, than they have generally been represented to be in the United States; and hence, the extreme caution to stipulate against the future exercise of them. The other is, that party sensations must have had great influence upon the extraordinary envoy of the United States, to induce his consent to these great abridgments of the rights of national sovereignty. The treaty not only contains abridgments of the national rights, but changes the municipal regulations of the United States: and how have these things been effected?—By the substitution of a foreign power in the place of the House of Representatives. If the treaty-making power be thus extensive, and if it be so absolutely obligatory, as to deprive the House of Representatives of the right of judging as to the expediency of making the provisions for its complete effectuation, of what use is the House of Representatives as a distinct branch of the government? Will it not be a mere formal, and not an efficient branch of the government? An entire new system of jurisprudence may thus be introduced by treaty, and become obligatory upon the House of Representatives—obligatory upon the nation.

Whenever the question, which necessarily results from the unlimited scope given to the treaty-making power, shall be presented to the people of the United States, to wit:—Shall the House of Representatives become a formal, or remain an efficient, branch of the government; they will pause, before they will decide upon its annihilation. Their love of liberty, their love of their own interests, will check, for a moment, personal affections, or antipathies: party sensations, state jealousies will be disarmed, and the people will be found right in their decision.

Even in the midst of the clamor of war and disunion, which has been momentarily excited for a particular object, the people cannot be led to such fatal extremities, as the doctrine contended for would necessarily produce. Much less will this be the case after they shall have been relieved from these causeless apprehensions.

If, therefore, the House should exercise a constitutional right of judging of the propriety of the object of expenditure, and a refusal should be the result of their judgment, I do not believe that it will produce that fatal hostility of departments which would eventuate in a total dissolution of the government; but will be an exercise of one of the salutary checks, provided in the constitution, which, in my opinion, constitute its merit, and not its reproach.

I shall now proceed to consider, whether a war with Great Britain will be the probable consequence of a refusal to make the necessary provision for carrying the British treaty into effect. To my mind, there does not appear to be the least ground for the clamor, which has been excited from this suggestion. I believe that Great Britain will make war upon the United States whenever she deems it her interest to do so: and that the treaty would impose no restraint upon her, if she thought her interest would justify the conduct. I also believe, that if there should be no treaty with Great Britain, she would not go to war with the United States, unless her interest should dictate the measure. In short, I believe, that Great Britain, like all other nations, will make her interest the criterion of her conduct in every question of peace or war.

If this opinion be well formed, the probability of war may be tested by this question. Is it the interest of Great Britain to make war upon the United States in the relative situation of the two countries? Great Britain is now engaged in a war in which the government hazards every thing. She is at this moment engaged in an important enterprise against the French West Indies. She is under the necessity of resorting to the United States for sundry supplies for facilitating the enterprise. The United States are the best commercial customer she has in the world. Under these circumstances, what would be her inducement for war? What would be her inducements to avoid it? These questions furnish their own answers. The argument of war is an argument of dependence. It is also an argument which will last for ever. If the fear of war is now to influence our conduct against our judgments, will not the same argument apply with double force two years after the expiration of the present war, to induce a continuance of the treaty upon its present injurious conditions?

As the argument of war is the chief instrument by which the treaty is pressed upon the people of the United States, I beg the indulgence of the committee in taking a retrospective view of this subject, and in examining it with some minuteness. Whatever may have been my opinion at the time of receiving the information of the hostile order of the 6th of November; I am now of opinion, that at that time, Great Britain did meditate war against the United States, although I believe there is no danger of it at present.

I believe, too, that the neutrality proclaimed by the United States does not, in the smallest degree, influence the conduct or disposition of Great Britain towards the United States in regard to war or peace, but that the true explanation of her disposition will be found in the course of events in Europe. On the 1st of February, 1793, France declared war against the King of England, and the stadtholder of Holland, and on the 7th of the same month against Spain. France was then at war with the Emperor of Germany, and the King of Prussia, &c. A combination of most of the despots of Europe had previously been formed, (it is generally believed on the 21st July, 1791, at Pilnitz,) for the purpose of crushing the revolutionary spirit which had appeared in France. The accession of Great Britain, Spain, Holland, Portugal and some of the Italian States to the combination already formed, made it the most formidable which has ever appeared in the history of modern times. The most desperate and bloody war of course ensued, and immediately succeeded the declaration of war against Great Britain; a series of successes took place, which threatened the absolute subjugation of France.

On the 1st of March, the French sustained a considerable loss by the surprise of the vanguard of their army, on the river Roer; on the 13th, the rebellion of La Vendee commenced; on the 18th, Dumourier was defeated; on the 20th, he abandoned his army; on the 3d of April, his army retreated into France; on the 4th, Dumourier himself was outlawed; on the 13th, France made a declaration against all interference with foreign governments; on the 22d of April, the President issued the proclamation of neutrality; on the 3d of May, the rebellion of Corsica commenced; 29th, the rebellion of the department of Loire; 30th, the rebellion of the city of Lyons; June 2d, thirty-two deputies of the convention, generally called the Brissotines, were arrested. About the same time, a rebellion commenced in the departments of Bouches du Rhone, Calvados and Eure; June the 8th, the first order by Great Britain for seizure of neutral vessels bound to France, with provisions, was issued. It is here to be remarked, that the impartial state of neutrality proclaimed by the President of the United States, on the 22d of the preceding April, was probably known to the British cabinet; but, whilst flushed with these successes in her crusade against liberty, the neutrality of the United States could not protect them from the invasion of their neutral rights. On the 10th of July, Conde surrendered to the Combined Armies; on the 27th, Mayence, &c.; on the 28th, Valenciennes; at the end of July, the Spaniards were in possession of Bellegrade, Collioure, St. Elme, &c., and of the whole department of the eastern Pyrenees, and part of the lower Pyrenees. The Prussians and Austrians were possessed of the lines of Weisemburg, Fort Vauban, &c., and had blockaded Landau. The Piedmontese and Hanoverians had made successful inroads into other parts of France; the royalists of La Vendee were in possession of four departments.

The royalists of the fourth were in possession of Lyons, Marseilles, Toulon, and the departments of Vaucluse and Rhone. On the 28th of August, all Frenchmen were put in requisition; on the 28th, Toulon surrendered to Lord Hood, by the royalists; on the 9th of September, the Duke of York was defeated; on the 11th, Lyons was subdued; on the 30th of October, the Brissotines were executed. This was nearly the state of the war upon the European continent, at the time of issuing the hostile order of the 6th of November. In this chronological statement of facts, may be found the hostile disposition of Great Britain, widened by that order against the United States. France, convulsed with intestine divisions, which extended to the very heart of the convention, laboring under the most formidable external pressure, was supposed to be an easy prey to this terrible combination of despots: the combination having in view, as I believe, the total destruction of liberty. Great Britain, possessed of the most triumphant and formidable fleet, and guiding almost implicitly the movements of this great combination, already anticipated the destruction of liberty in France, and began to

turn her attention towards the same object in the United States. Hence, the order of the 6th of November; hence, the truce between Portugal and Algiers; hence, the talk between Lord Dorchester and the Indians. These were all acts of hostility, and evidently produced by the state of things before described. But what events followed these acts of hostility?

A complete reverse of fortune immediately succeeded. The Duke of York had been already defeated. On the 17th of December, Toulon was retaken by the French; on the 22d, the Austrian fortified camp near Werth, was attacked and carried; on the 24th and 25th, the army under the command of the Duke of Brunswick was defeated at Kellsburg, and the Austrian army at Geisberg; on the 26th, the lines of Weisemburg were forced, and the Austrian army defeated. On the 8th of January, the hostile order for seizing neutral vessels was revoked, and on the 9th, Lord Grenville informed the American minister that the revocation of the order was to take away all pretext from evil disposed persons amongst us, for indulging their resentment against Great Britain. But, however strongly this motive may have operated on the British cabinet, it certainly was very strongly enforced by the state of things upon the European continent, which was not only changed, but completely reversed between the 6th of November, 1793, and the 8th of January, 1794. It is remarkable, that notwithstanding the several changes in the conduct of Great Britain towards the United States, they have been uniform in their impartial neutrality towards Great Britain; of course, the uniform disposition of the United States towards Great Britain could not have produced the fluctuating disposition of Great Britain towards the United States. Great Britain, in all probability, supposed, that, in the intoxication of the combined powers, from their early successes, her influence might unite them in a war against the United States, and perhaps, in the height of her presumption, she might even have indulged the impious hope of regaining her dominion over them: but this sudden reverse of fortune checked her ambitious enterprise. Probably anticipating a speedy dissolution of the combination, and having abandoned all prospects of engaging them in her iniquitous project, and being unwilling to add a new and formidable enemy to the one she already had encountered, and even fearing the effects of her previous hostilities, a sudden revolution is produced in her conduct towards the United States: it is then she is desirous of taking away all pretext from "evil disposed persons," to indulge their resentment against her: it is then the order of revocation is seen. If, then, Great Britain was unwilling to encounter a new enemy, in her then situation, will any change of circumstances justify, at this time, the supposition of a change of disposition in Great Britain, respecting war with the United States? I believe not. Peace seems to be more important to Great Britain at this moment, than at any time previously, during the whole period of the war. The nation is desirous of peace, and distressed for provisions. The combination which indulged her presumptuous hopes, crumbled into dust.

Prussia is at peace with France, and almost at war with Great Britain. Spain is at peace with France, and hardly at peace with Great Britain. Holland is at peace and in alliance with France, and at war with Great Britain. Austria herself is almost exhausted, and desirous of peace; and the continuation of French exertions and successes has excited the admiration and astonishment of the world. Are these the circumstances which would justify apprehensions of war from Great Britain? And are the United States to tremble at the sound of war from a nation thus circumstanced? I trust not. And for what cause is this war to be produced? Because the House of Representatives may deem it inexpedient to become the instrument of giving efficacy to a bad bargain.

I verily believe, that the alarm of war is not serious. I verily believe it is resorted to as an artificial instrument to effect a favorite object. For my part, I believe the hazard so small, as not to constitute an item in estimating the present question.

I believe that Great Britain considers the United States as a more important commercial connexion, particularly as it respects her views in the West Indies, than some gentlemen seem to admit; and I believe also, that she views the United States more formidable as an enemy. I infer these opinions from the avidity with which this treaty seems to have been received in that country, and particularly from an expression in the speech of the king at the late meeting of parliament. Two reflections were strongly impressed upon my mind from that speech. The one, that the treaty is deemed a very advantageous one to Great Britain, the other, that Great Britain has no appetite for war against the United States, in her present situation.

Hence, I cannot believe that there is the least possible foundation for the suggestion of the fatal hostility of departments of government, or of war with Great Britain, as amongst the consequences resulting from a refusal to make the necessary provisions for giving efficacy to the treaty.

As the present treaty is incomplete, and as further negotiations are stipulated in the treaty itself, and in the event of a decision either way, are expected; I think the most important consequences of the vote will be these. If the House should refuse to make the provisions for carrying the treaty into effect, the new negotiations will commence without the concessions contained in the present treaty. If the provisions are made, the further negotiations will proceed under the weight of the concessions already made, and very little melioration of the present conditions can be expected, as the

United States will have very little left to induce the melioration. And if no final adjustment of differences ensues, the United States will at least continue to posses all the rights attached to national sovereignty.

Much has been said, and much unnecessarily said, about intemperance and heats. I will appeal to the recollection of the committee, whether there ever was a more harmonious session than the present, until this treaty was introduced into the House; and, then, whether its opponents have not discovered at least as much coolness and deliberation as its advocates.

The treaty itself is the torch of discord, which has been unfortunately thrown into the United States, and it is extraordinary to observe, that those who have been most instrumental in introducing it, impute intemperance to others for a firm and decisive opposition to it. It is too much to suppose that the absolute sacrifice of opinion is an obligation due to the embarrassments, into which this treaty has thrown the United States.

Upon the whole, I conscientiously believe the treaty to be a bad one. I believe it contains the completest evidence of British interference in our internal affairs, and has laid the foundation for the further extension of British influence. It has restricted the exercise of some of the important rights of national sovereignty. It has voluntarily hazarded the neutrality of the United States in the present European war, and destroyed all pretensions to its character of impartiality. It has not afforded protection to our neutral rights, which is amongst its great objects; and, in the adjustment of the differences resulting from the inexecution of the treaty of peace, it is unequal and unjust. All these important circumstances considered, and when it is also considered, that the British persevere in impressing our seamen and seizing our vessels in violation of the clearest rights of neutral nations, even since the signing of the treaty, I cannot consent to be the instrument of giving it efficacy. I believe that it is one of those extraordinary cases which justify strong and extraordinary resistance.

SPEECH ON THE JUDICIARY.

The subjoined speech on the Judiciary Bill * was delivered by Mr. Giles, in the House of Representatives of the United States, on the eighteenth of February, 1802:—

Mr. Chairman, I feel some degree of apprehension, that in the course I deem it necessary to take in the discussion of this question, some observations may fall from me which may not be in strict harmony with the feelings of some gentlemen of the committee. I shall regret, however, if a compliance with a sense of duty shall produce this effect. I wish, therefore, to apprise gentlemen, that I intend to direct my observations, as much as possible, to the effects and tendencies of measures; and that when I am constrained to speak of the views of gentlemen, it will be with respect to what I conceive to be their opinions in relation to the general interests, and not to private gratifications. It is natural that men should differ in the choice of means to produce a given end, and more natural that they should differ in the choice of political means than any other; because the subject presents more complicated and variable objects, out of which to make a choice. Accordingly, a great portion of the human mind has been at all times directed towards monarchy, as the best form of government to enforce obedience and ensure the general happiness; whereas, another portion of the human mind has given a preference to the republican form, as best calculated to produce the same end: and there is no reason for applying improper motives to individuals who give a preference to either of the principles, provided in doing so they follow the honest dictates of their own judgments. It must be obvious to the most common observer, that from the commencement of the Government of the United States, and perhaps before it, a difference of opinion existed among the citizens, having more or less reference to these two extreme fundamental points, and that it manifested itself in the modification or administration of the government as soon as it was put in operation. On one side it was contended, that in the organization of the constitution, a due apportionment of authority had not been made among the several departments; that the legislature was too powerful for the executive department; and to create and preserve a proper equipoise, it was necessary to infuse into the executive department, by legislation, all artificial powers compatible with the constitution, upon which the most diffusive construction was given; or, in other words, to place in executive hands all the patronage it was possible to create, for the purpose of protecting the President against the full force of his constitutional responsibility to the people. On the other side, it was contended, that the doctrine of patronage was repugnant to the opinions and feelings of the people; that it was unnecessary, expensive and oppressive, and that the highest energy the government

* See the speech of Mr. Bayard, and note at page 55 ante; see also the speeches of Mr. Tracy and Mr. Morris in the first volume of this work.

could possess, would flow from the confidence of the mass of the people, founded upon their own sense of their common interests. Hence, what is called party in the United States, grew up from a division of opinion respecting these two great characteristic principles—patronage, or the creation of partial interest for the protection and support of government, on the one side; on the other side, to effect the same end, a fair responsibility of all representatives to the people; an adherence to the general interests, and a reliance on the confidence of the people at large, resulting from a sense of their common interests. A variety of circumstances existed in the United States, at the commencement of the government, and a great number of favorable incidents continued afterwards to arise, which gave the patronage system the preponderancy, during the first three presidential terms of election; notwithstanding it was evident, that the system was adopted and pursued in direct hostility to the feelings and opinions of a great portion of the American people. The government was ushered into operation under a vast excitement of federal fervor, flowing from its recent triumph on the question of adopting the constitution. At that time, a considerable debt was afloat in the United States, which had grown out of the revolutionary war. This debt was of two kinds: the debt proper of the United States, or engagements made by the United States, in their federal capacity; the other, the state debts, or engagements entered into by the respective States for the support of the common cause.

The favorers of the patronage system readily availed themselves of these materials for erecting a moneyed interest; gave to it a stability, or qualified perpetuity, and calculated upon its certain support in all their measures of irresponsibility.

This was done not only by funding the debt proper of the United States, but by assuming the payment of the State debts and funding them also; and it is believed extending the assumption beyond the actual engagements of the States. Hence the federal axiom, that the public debt is a public blessing. Shortly after this event an Indian war sprang up, I will not say by what means; in consequence of which an army was added to the list of patronage. The Algerines commenced a predatory war upon the commerce of the United States, and thence a navy formed a new item of patronage. Taxes became necessary to meet the expenses of this system, and an arrangement of internal taxes, an excise, &c., &c., still swelled the list of patronage. But the circumstance which most favored this system was the breaking out of a tremendous and unprecedented war in those countries of Europe with which the United States had the most intimate relations. The feelings and sympathies of the people of the United States were so strongly attracted by the tremendous scenes existing there, that they considered their own internal concerns in a secondary point of view. After a variable conduct had been pursued by the United States in relation to these events, the depredations committed upon commerce, and the excitements produced thereby, enabled the administration to indulge themselves in a more decisive course, and they at once pushed forward the people to the X. Y. Z. of their political alphabet before they had well learned and understood the A. B. C. of the principles of the administration.

Armies and navies were raised, and a variety of other schemes of expense were adopted, which placed the administration in the embarrassing predicament, either to violate their faith with their public creditors, or to resort to new taxes. The latter alternative was preferred, accompanied with other strong coercive measures to enforce obedience. A land tax was laid for two millions of dollars. This measure awakened the people to a sense of their situation, and shook to the foundation all those federal ramparts which had been planned with so much ingenuity, and erected around the executive with so much expense and labor. Another circumstance peculiarly favorable to the advocates of executive patronage, was, that during the two first presidential terms the chief executive magistrate possessed a greater degree of popularity and the confidence of the people than ever was, or perhaps ever will be again attached to the person occupying that dignified station. The general disquietude which manifested itself in consequence of these enterprising measures, in the year 1800, induced the federal party to apprehend that they had pushed their principles too far, and they began to entertain doubts of the result of the presidential election which was approaching. In this state of things it was natural for them to look out for some department of the government in which they could entrench themselves in the event of an unsuccessful issue in the election, and continue to support those favorite principles of irresponsibility which they could never consent to abandon.

The judiciary department of course presented itself as best fitted for their object, not only because it was already filled with men who had manifested the most indecorous zeal in favor of their principles, but because they held their offices by indefinite tenures, were not subject to periodical appointments, and of course were further removed from any responsibility to the people than either of the other departments. Accordingly, on the 11th of March, 1800, a bill for the more convenient organization of the courts of the United States, was presented to the House of Representatives. This bill appears to have had for its objects, first, the gradual demolition of the State courts, by increasing the number, and extending the jurisdiction of the federal courts. Second, to afford additional protection to the principles of the then existing administration by creating a new corps of judges of concurring political opinions. This bill, however, was not passed into a law during

that session of Congress, perhaps from an apprehension that it would tend to increase the disquietudes which other measures had before excited, and therefore operate unfavorably to the approaching presidential election. At the next session, after the result of the late election was ascertained, the bill, after having undergone some considerable alterations, was passed into the law now under discussion. This law it is now said, is inviolable and irrepealable. It is said the independence of the judges will be thereby immolated. Yes, sir, this law is now considered as the sanctuary of the principles of the last administration, and the tenures of the judges as the horns of inviolability within that sanctuary. We are now called upon to rally around the constitution as the ark of our political safety. Gentlemen discarding all generalizing expressions and the spirit of the instrument, tie down all construction to the strict letter of the constitution. It gives me great pleasure to meet gentlemen on this ground; and the more so because I have long been in the habit of hearing very different language from the same gentlemen. I have long been in the habit of hearing the same gentlemen speak of the expressions of "the common defence and general welfare," as the only valuable part of the constitution; that they are sufficient to obliterate all the specifications and the limitations of power. That the constitution is a mere nose of wax, yielding to every impression it receives. That every "opening wedge" which is driven into it is highly beneficial in severing asunder the limitations and restrictions of power. That the republicanism it secures means any thing or nothing. It gives me, therefore, great pleasure at this time to obey the injunctions of gentlemen in rallying around the constitution as the ark of our political safety, and of interpreting it by the plain and obvious meaning and letter of the specified powers. But, as if it is always the unfortunate destiny of these gentlemen to be upon extremes, they have now got round to the opposite extreme point of the political compass, and even beyond it. For they not only tie down all construction to the letter of the instrument, but they tell us that they see, and call upon us also to see written therein in large capital characters, "the indefinite independence of judges;" which, to the extent they carry the meaning of the term, is neither to be found in the letter or spirit of that instrument, or in any other political establishment, I believe under the sun. I rejoice that this subject is now to be discussed, and I think the crisis peculiarly auspicious for the discussion. The European world with which the United States have the most relations is now tranquillized. The tremendous scenes of blood and revolution which have agitated that portion of the globe have at length subsided into profound peace; and have left mankind in silent amazement to retrospect the wonderful events which are passed; and I hope, with calm deliberation, to improve the lessons they have furnished for the benefit of mankind in time to come. The interests and sympathies which the people of the United States felt in these events no longer turn their attention from their own internal concerns; arguments of the highest consideration for the safety of the constitution, and the liberty of the citizens, no longer receive the short reply, French partisans! Jacobins! Disorganizers! And although the gentleman from North Carolina sees, or thinks he sees the destructive spirit mount in the whirlwind and direct the storm, let him be consoled by the information, "that all these our actors are mere spirits and are dissolved into thin air." Yes, sir, these magical delusions are now vanished, and have left the American people and their Congress, in their real persons and original American characters, engaged in the transaction of American concerns.

Upon taking a view of our internal situation, although party rage may not be done away, it may be said, its highest paroxysm is past. And although the gentleman from New York, Mr. Morris, yesterday observed, that the President had commenced a system of persecution, so ignorant am I of the existence of such a system, that I cannot conceive to what the gentleman alluded. It is some time, Mr. Chairman, since a member of this House and sundry printers throughout the United States, were amerced and imprisoned to appease the vengeance of an unconstitutional sedition act, merely for publishing their own sentiments, which happened to be unpalatable to the then existing administration! It is some time, sir, since we have seen judges, who ought to have been independent, converted into political partisans, and like executive missionaries, pronouncing political harangues throughout the United States! It is some time, sir, since we have seen the zealous judge stoop from the bench to look out for more victims for judicial vengeance! It is some time since we have seen the same judicial impetuosity drive from the bar the most respectable counsel, who humanely proposed to interpose between a friendless and unprotected man and the judicial vengeance to which he was doomed! It is some time, sir, since we have seen the same judicial zeal extending the provisions of the sedition act, by discovering that it had jurisdiction of the 'lex non scripta,' or common law! It is some time since we have seen the chief executive magistrate dooming to humiliation, 'in dust and ashes,' a great portion of the American people! Yes, sir, these terrific scenes are past. These noisy declamations, and this judicial zeal, are hushed into silence by the audible pronunciation of the public will. We may even indulge the hope, Mr. Chairman, that our pulpits will not much longer be converted into political forums; and that the meek and humble teachers of the Christian faith, instead of stirring up all the angry and destructive passions of the human mind, will ere long once more condescend to teach those precepts of humility, forbearance and toleration, taught them by their divine

preceptor—those precepts so essential to the discovery of truth, by predisposing the mind to deliberation and reflection.

The present executive, pursuing the general good, and supported by the general confidence, stands not in need of these artificial aids. He invites inquiry. He knows, that the highest encomium which can be bestowed upon his administration, would flow from a correct understanding of his motives and his conduct. Instead of calling in the aid of sedition acts to the defamatory scribblers, who appear to increase in numbers, and in impudence, in proportion to the desperation of their cause, and their security from punishment, he has said, "let them stand undisturbed, as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it." Under these auspicious circumstances, I proceed to the discussion of the important question before us with pleasure, conscious that I am subject to error, and knowing, that if I do err, it is my interest to be corrected; confident also, that there is a mass of intelligence and calm reflection at this time in the people of the United States, competent to detect the error, and apply the corrective. Impressed with these sentiments, I differ widely in opinion with the gentleman from North Carolina, Mr. Henderson, who said, "that if the bill upon your table should pass into a law, he would not heave a sigh or drop a tear upon the instantaneous demolition of the whole constitution; the sooner it was done the better." Sir, this gentleman, and his associates in political opinions, have termed themselves "lovers of order." Is this an evidence of the practice we are to expect from those gentlemen, under their professions, so long and so loudly made to the people of the United States? Cannot that gentleman find some reason to regret that sentiment, in the confidence due to the intelligence and patriotism of a great portion of his fellow-citizens, who differ with him on that piont? Or do the gentleman, and his political associates, claim, with presumptuous vanity, not only the appellation of the exclusive "lovers of order," but also the monopoly of all the intelligence and patriotism of the nation? I have too much respect for gentlemen, to suppose they will place their pretensions on this ground. I beg pardon of the committee for this digression: I have been impelled to it from the course the debate has taken, and particularly from the indecorous attacks made on the President of the United States.

I will now proceed to examine, whether the repeal of the judiciary law of the last session of Congress, would in any respect violate that salutary and practicable independence of the judges, which is secured to them by the constitution. The term, independence of judges, or of the judiciary department, is not to be found in the constitution. It is, therefore, a mere inference from some of the specified powers; and I believe in the meaning of gentlemen, and to the extent they carry it, the term is not to be found either in the spirit, general character, or phraseology of any article or section of the constitution. I mean to give the constitution the most candid interpretation in my power, according to the plain and obvious import of the English language. I shall discard, in my interpretation, the terms "common defence and general welfare," which have been resorted to by some gentlemen. I consider these words as containing no grant of power whatever, but merely the expression of the ends or objects, to be effected by the grants of specified powers. I therefore protest against drawing any aid whatever from them, in my construction of the instrument. I have read through the whole constitution, to enable me to form my opinion upon this question, for fear there might be, in some hidden corner of it, some provision, which might demonstrate the unconstitutionality of the present bill; and if so, although I should lament such a provision, I would instantly give up the bill. But my researches have terminated in a different result. I find from the general character of the constitution, that the general will was its basis, the general good its object, and the fundamental principle for effecting this object is the responsibility of all public agents, either mediately or immediately to the people. The context of the constitution demonstrates the two first points, which I will read.

"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."

Here we find the constitution founded upon the will of the people; and the object declared to be the good of the people. Through the whole body of the constitution may be discerned the responsibility of all public agents, either mediately or immediately, to the people. This responsibility results, first, from the division of authority into different departments; second, from a specification and limitation of the authorities of all and each of the departments; third, from periodical appointments of the public agents. The first clause declares there shall be a Congress, to whom the business of legislation is confided. This Congress is to consist of a House of Representatives to be chosen by the people immediately, and responsible to them at the end of every two years; and a Senate, to be chosen by the legislatures of the different States, who are chosen by the people; one-third of the senators to be chosen every two years, and responsible at the end of every six years. The executive power is vested in a President, who is chosen by electors, who are chosen for the express purpose by the people, and responsible at the end of every four years. The President may be considered as immediately responsible to the people, although chosen

through the medium of electors: because it is found in practice that the electors are constrained to avow the vote they intend to give before they are chosen, and the people have generally made their elections with a view to that object.

Thus, then, are formed two departments, their powers specified and defined, the times for extending their powers fixed, and indeed a complete organization for the execution of their respective powers without the intervention of any law for that purpose. A third department, to wit, the judiciary department, is still wanting. Is that formed by the constitution? How is that to be formed? It is not formed by the constitution. It is only declared, that there shall be such a department; and it is directed to be formed by the other two departments, who owe a responsibility to the people. Here there arises an important difference of opinion between the different sides of this House. It is contended on one side, that the judiciary department is formed by the constitution itself. It is contended on the other side, that the constitution does no more than to declare, that there shall be a judiciary department, and directs, that it shall be formed by the other two departments, under certain modifications. Article third, section first, the constitution has these words: "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as Congress may from time to time ordain and establish." Here then the power to ordain and establish inferior courts is given to Congress in the most unqualified terms, and also to ordain and establish 'one supreme court.' The only limitation upon the power of Congress in this clause, consists in the number of supreme courts to be established; the limitation is to the number of one, although that is an affirmative and not a negative expression. The number of judges, the assignment of duties, the fixing of compensations, the fixing of the times when, and places where, the courts shall exercise their functions, &c. are left to the entire discretion of Congress. The spirit, as well as the words of the constitution, are completely satisfied, provided one supreme court be established. Hence, when all these essential points in the organization and formation of courts is intrusted to the unlimited discretion of Congress, it cannot be said that the courts are formed by the constitution. For further restraints, therefore, upon the discretion of Congress, the remaining part of the same section must be consulted. Here I beg leave to remark, that I have often felt a veneration for the wisdom of the sages who formed this constitution. Considering the difficulties they had to encounter, resulting from the various local prejudices and local interests of the different parts of the United States, and the vast variety of opinions which the subject presented, it is almost wonderful to conceive how they should have hit upon a system so admirably calculated to protect and to promote the general interests, when administered according to its original meaning and intention. I cannot go so far as to say it is perfect. I admit, like other human productions, it is stamped with the common fallibility of man; I wish, however, to see no radical changes in its principles. I wish to hand it down to posterity with those amendments only which experience shall suggest, and which will grow out of the continually varying state of the nation. It is not only remarkable for the wisdom of its arrangements, but the correct and technical mode of expression. The part of the section now to be examined, is an example of the justice of both these remarks. The words are, "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."

The first part of this sentence respects the relationship between the executive and the judiciary departments: it respects judges or officers of the courts, who are appointed by the President. The last part of the sentence respects the relationship between the legislative and judiciary departments; it respects the creation of offices, the fixing of the compensation of the officers or judges, and their continuance in office. These are the peculiar attibutes of the legislative department. Accordingly, the most correct and technical words are used in relation to both these objects. The term, "hold their offices during good behavior," relates merely to the executive department. The term, hold, is the common technical word used to convey the idea of tenure. Tenure requires two parties. The one granting, the other holding or receiving the grant. Let the inquiry be made, of whom do the judges hold? The constitution furnishes the answer—of the President. One of the most obvious rules in the construction of instruments of writing is, that the whole of it must be taken together, and not one particular part by itself. The following words will be found in the second section of the second article of the constitution. "And he (to wit, the President,) 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." In the third section of the same article, are these words: "And shall (to wit, the President,) commission all the officers of the United States." These three sentences contain the relationship between the executive and judiciary departments, so far as respects the objects of the present discussion.

To ascertain the real meaning and import of these sentences, they should be read in connection with each other, excluding therefrom all intermediate words not immediately bearing on the subject. In that case, the constitution would read thus: "He (to wit the President,)

shall nominate and appoint the judges of the Supreme Court, and all other officers of the United States, and shall commission all the officers of the United States. The judges both of the supreme and inferior courts shall hold their offices during good behavior." It may be now asked, if this case of the judges of the supreme and inferior courts be not an obvious exception out of the general presidential discretion of appointing and commissioning all officers of the United States during pleasure? After the government has been in operation above twelve years, and the principle of commissioning all executive officers during pleasure, has been practised upon during the whole of the period by the executive, as well as the legislative department, the propriety of that practice is for the first time now become questionable. It is said that the right to commission during pleasure, is by implication. It is readily admitted, that there are no express words in the constitution to that effect; but the inference, from the words which are there, is almost as strong as the words themselves, if they had been inserted. The President is authorized, without limitation, to "commission all the officers of the United States." The question arises, by what tenure? The reply is, according to his pleasure or discretion. It was not difficult to foresee, that if the President was fully empowered to commission as he pleased, he would please to commission during his pleasure. The legislature has no more control over an officer who holds an executive commission during the pleasure of the President, than over a judicial officer holding his office during good behavior. The remedy given by the constitution being the same in both cases, to wit, impeachment. Nor is there any reason, why the office of the one should be less subject to the discretion of the legislature, than the office of the other; and it seems to be universally agreed, that although the legislature cannot deprive an executive officer of his office in any other way than by impeachment during the continuance of such office, yet the office itself is always subject to be abolished. The same reasoning will hold with equal force respecting a judge and a judicial office. The reason why the executive is proscribed from the removal of a judge, is to secure to the judge the complete independence of the President, who is not responsible for the discharge of judicial duties; but the removal is perfectly correct in the case of an executive officer, because the President is highly responsible for the due discharge of executive duties. The legislature is not responsible for either, and of course stands in the same constitutional relation to both. This appears obvious from furnishing to the legislature the same means of removing both, as will appear by the fourth section of the second article, in the following words: "The President, Vice President, and all civil officers of the United States, shall be removed from office by impeachment for, and conviction of, treason, bribery, or other high crimes or misdemeanors." I now beg leave to call the attention of the committee particularly to the last clause of the sentence, which ascertains the constitutional connection between the legislative and judicial departments, so far as it respects the limitation of the legislative, in the exercise of the power committed to it, for the organization of the judicial department. I shall place particular emphasis on these words of the constitution in the exposition I propose to make. The words are, "and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office." The first part of this section having given to Congress the power of creating courts, ascertaining the number of judges, &c., these last words may be considered as containing explanations and limitations of the general power of Congress, as is the foregoing part of this sentence a limitation of the general executive power. And accordingly, the most correct terms are used for limiting legislative discretion, and explaining its objects; according to the words of this sentence, the judge is to receive a compensation for his services. To whom are these services to be rendered? To the people, for the benefit of the people. Who is the judge of the necessity or utility of these services? The constitution has ordained, that Congress, or in other words, the representatives of the people, shall be the tribunal. Suppose there should be no services required, none for the judge to perform, and that Congress should so think and determine: is the judge entitled to compensation? He is not. The condition of service for the benefit of the people, is the express consideration upon which the compensation accrues. No service is rendered, the competent tribunal says, there is none required, of course, no compensation accrues. The judge is entitled to receive none. On this point, an obvious and most important difference of opinion exists between the two sides of the committee. On one side, it is contended, that the office is the vested property of the judge, conferred on him by his appointment, and that his good behavior is the consideration of his compensation; so long, therefore, as his good behavior exists, so long his office must continue in consequence of his good behavior, and that his compensation is his property in virtue of his office, and therefore cannot be taken away by any authority whatever, although there may be no service for him to perform. On the other side, it is contended, that the good behavior is not the consideration upon which the compensation accrues, but services rendered for the public good; and that if the office is to be considered as a property, it is a property held in trust for the benefit of the people, and must therefore be held subject to that condition, of which Congress is the constitutional judge. Considering the boundary line between these conflicting opinions to be the boundary line between offices held for public utility, and offices held for per-

sonal favor, I cannot bestow too much attention on this part of the discussion; for if the construction, gentlemen contend for, should prevail, in vain have the framers of the constitution, with so much jealous circumspection, erected so many ramparts against the introduction of some of these offices in the Government of the United States. A sinecure office is an office held without the condition of service; often for past services already compensated; often for present favor, without the condition of any service. For the purpose of excluding from the federal government all sinecure offices, the sages, who formed the constitution, have, through every part of it, connected services and compensation, and they ought never to be separated in construction. The sixth section of the first article is in these words: "The Senators and Representatives shall receive a compensation for their services, to be ascertained by law," &c., and so far has this principle of the rendition of service been carried, that the service of the Senate and Representatives is to be rendered every day, and unless they do daily render service, they are not entitled to their day's compensation. In the first section of the second article of the constitution, are these words, "the President shall, at stated times, receive for his services a compensation," &c.; in the first section of the third article, are these words, "and shall (to wit, the judges shall,) at stated times, receive for their services a compensation," &c. In the forty-first section of the act, under which the judges claim their compensation, are these words, "that each of the circuit judges of the United States, to be appointed by virtue of this act, shall be allowed as a compensation for his services," &c. These expressions all demonstrate the importance of coupling the service and compensation of office. But the jealous caution of the framers of the constitution did not stop at choosing the best affirmative expression for excluding this doctrine of sinecure offices; they also applied negative restraints.

In the ninth section of the first article of the constitution, are these words, "No money shall be drawn from the treasury but in consequence of appropriations made by law." In the same section, "No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state." If, then, services rendered for the public benefit, be the essential consideration, upon which the compensation does accrue to the judges; if the Congress be the proper tribunal for pronouncing upon the necessity or utility of such service, and if they decide, that no such service is necessary or useful; the judge sustains no injury in not receiving the compensation; because he does not comply with the condition on his part, nor does he sustain a hardship thereby; because it must be presumed, that he understood the conditions attached to his office, at the time of his acceptance. It has been admitted by all gentlemen, that Congress is the constitutional tribunal for deciding, respecting the services to be performed. They admit that Congress may modify the courts, diminish or add to their duties, alter the terms of their sessions, or make any other arrangements respecting them which do not go to take away or diminish their compensations. It is to be observed, that there is not one of these powers specified in the constitution; they are, therefore, necessary inferences from the paramount power "to ordain and establish," and the power of repeal, or to take away all the services to be performed, is as necessary an inference as either of the others, and has uniformly resulted from every other specified power in the constitution. From this part of the sentence, therefore, it is deducible, that the only restraint upon the general power given to Congress in the first part of the section, to ordain and establish courts, is, that the compensations of the judges shall not be lessened during their continuance in office; not during their good behavior. And in this part of the sentence, the correct phraseology of the constitution is worthy of observation. In speaking of the executive attribute, (to wit, the appointing and commissioning of officers,) the term good behavior is used. In speaking of the legislative attribute, (to wit, the creation of offices and fixing compensations,) the term during their continuance in office is used. The reason for this variation of expression is obvious. It was known, that the office might be discontinued, and the judge continue to behave well; the limitation was therefore applied to the office, and not the good behavior, because, if the office should be discontinued, which is clearly implied in this expression, it was not the intention of the constitution, that the compensation should be received; no service, in that event, being to be rendered. From this interpretation of the constitution, all the departments are preserved in the due exercise of their respective functions for the general good, without any of the mischievous and absurd consequences resulting from the opposite construction. It is admitted, that the first part of this section expressly vests Congress with the general power to ordain and establish courts: and if there had been no other restriction, the consequent power to unordain, or abolish. The restriction relied upon is not a restriction in express words; there are no words in the constitution prohibiting Congress from repealing a law for organizing courts: the restraint contended for, therefore, is by implication, and that implication, to say the least, not expressly connected with any legislative attribute. Is it right, is it a correct interpretation, that when a power is given in express words, for the most important purposes, it should be restrained or prohibited by implication? Can so much inattention and folly be attributed to the framers of the constitution, as would result from the supposition, that, if it was their inten-

tion, that a law growing out of one of the specified powers, in contradistinction to all others, should be irrepealable when once passed, so extraordinary a principle would be left to mere implication? Such a supposition would be the highest injustice to the superior intelligence and patriotism of those gentlemen, manifested in every other part of the instrument. No, sir, they would have made notes of admiration; they would have used every mark, adopted every caution, to have arrested and fixed the attention of the legislature to so extraordinary a principle.

They would have said, Legislators! Be circumspect! Be cautious! Be calm! Be deliberate! Be wise! Be wise not only for the present, but be wise for posterity! You are now about to tread upon holy ground. The law you are now about to pass, is irrepealable! irrevocable! We are so enamored with the salutary and practical independence of the English judiciary system, that in infusing its principle into our constitution, we have stamped it with the proverbial folly of the Medes and Persians! If this principle had been introduced into the constitution in express words, it would have formed an unfortunate contrast to all other parts of the instrument; yet gentlemen make no difficulty in introducing that principle by construction, which would have appeared so stupid and absurd, if written in express words in the body of the instrument. But there is no such language in the constitution. Let us see what is the language of that instrument. "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, ordain and establish." Here, then, instead of cautioning the legislature, that a law for the organization of courts, when passed, can never be repealed, it contains an invitation to a revision, from time to time. It contains an intimation, that the subject is new and difficult, and an injunction to ordain and establish your courts, from time to time, according to the results, which an experience of the system alone could suggest. The gentleman from Pennsylvania, Mr. Hemphill, observed, that the character of irrepealability is not exclusively attached to this law, and attempted to furnish instances of other laws of the same character. He instanced a law for the admission of a new State into the Union.

The gentleman from Kentucky, Mr. Davis, has given a proper reply to that remark; the strongest instance the gentleman gave, was of a law executed. After the new State is admitted into the Union, in virtue of a law for that purpose, the object of the law is answered. The State admitted has no stipulated duties to perform on its part, no services to render; in the case before the committee, the law is in a state of execution, and the judges have services to render on their part, which the competent tribunal may determine to be neither useful nor necessary. A law for the appropriation of instance; the money is applied: its object is answered: the law may be said to be irrepealable, or, in other words, the repeal would produce no effect. That is not the case of the law in question. I have no doubt but that the framers of the constitution had particular reference to the British act of Parliament of William the Third, for the establishment of the independence of the judges in that country, in framing the section for the establishment of the judicial department in the United States; and it is not a little remarkable, that whilst gentlemen, in one breath, speak of the independence of the English judges, as the boast and glory of that nation, in the next breath they tell us, that by the repeal of the present act, the independence of the judges here would be immolated. Let this subject be examined. In the third chapter of the first book of Blackstone's Commentaries, the independence of the English Judiciary is fully explained. I beg leave to read the exposition of that commentator on this subject.

"And, in order to maintain both the dignity and independence of the judges in the superior courts, it is enacted by the statute, 13 W. III. c. 2, that their commissions shall be made, (not, as formerly, 'durante bene placito,' but,) 'quam diu bene se gesserint', and their salaries ascertained and established; but that it may be lawful to remove them on the address of both houses of parliament. And now, by the noble improvements of that law in the statute of Geo. III. c. 23, enacted at the earnest recommendation of the king himself from the throne, the judges are the continued in their offices during their good behavior, notwithstanding any demise of the crown, (which was formerly held immediately to vacate their seats,) and their full salaries are absolutely secured to them during the continuance of their commissions; his majesty having been pleased to declare, that 'he looked upon the independence and uprightness of the judges, as essential to the impartial administration of justice; as one of the best securities of the rights and liberties of his subjects; and as the most conducive to the honor of the crown.'"

Now, sir, under the doctrine contended for by the repeal of this law, let us see whether the judges of the United States are not more independent than the judges of England. In the first place, Congress have the power of originating, abolishing, modifying, &c. the courts here. The parliament in England have the same power there. Congress cannot remove a judicial officer from his office so long as the office itself is deemed useful, except by impeachment, the consent of two thirds of the Senate being necessary to a conviction. In England, judges can be removed from their offices, although the offices may be deemed useful, by an address of a majority of the two houses of parliament. Here then, is one essential advantage in favor of the independence of the judges of the United States. Congress can-

here during their continuance in office. In England, the parliament may diminish the compensation of the judges at their discretion, during their continuance in office. Here, then, is another obvious advantage in favor of the independence of the judges of the United States; whence is it then, that we hear of the independence of the English judiciary, as being the boast and glory of that country, and with justice too, and at the same time hear the cry of the immolation of the independence of the judges of the United States, when, under the interpretation of the constitution by the favorers of the repeal, the judges here are more independent than the English judges? It can have no other object than to excite a popular clamor, which, if excited at all, can have only a momentary effect, and will be dissipated as soon as the subject shall be thoroughly examined and understood. But it appears to me, that if gentlemen really do value the independence of the judges, they have taken an unfortunate ground in the interpretation of the constitution. Under their construction, the judges may be placed not only in a dependent, but a ludicrous point of view. Gentlemen admit that Congress may constitutionally increase or diminish the duties of the judges; give or take away jurisdiction; fix the times of holding courts, &c., saving therefrom the salaries of the judges. Under this admission, Congress may postpone the sessions of the courts for eight or ten years, and establish others, to whom they could transfer all the powers of the existing courts. In this case, the judges would be held up to the people as pensioners receiving their money and rendering no service in return; or Congress might convert them into mere courts of "piepoudre," assigning them the most paltry duties to perform, and keep them continually in session, in inconvenient places; whilst new courts could be erected to perform all the essential business of the nation. This would be taking down the high pretensions, assigned to the judges by the gentleman from North Carolina, Mr. Henderson, of being formed into a permanent corps, for the purpose of protecting the people against their worst enemies, themselves; and degrading them into pitiful courts of "piepoudre," rendering little service and receiving large compensations. And this would be the case, if party purposes were the object, and not the general good. According to his construction, these absurd results could not take place, unless by a virtual breach of the constitution. Because, I contend, that service and compensation are correlative terms; and that there ought always to be a due apportionment of service to compensation. This I consider as the plain and sound interpretation of the constitution, and the moment it is departed from, infinite absurdities ensue. I intended to have taken another view of this subject, as it respects the relative influence of the law of the last session, and the proposed repeal upon this question; but the gentleman from Massachusetts, Mr. Bacon, has put this subject in a so much stronger point of view than I could have done, that I would refer to his remarks thereupon, observing only that I have no doubt but that the law of last session, now proposed to be repealed, is, in every respect, as much opposed to the doctrine of gentlemen, as the contemplated repeal can be. The sections of the law particularly alluded to, are the twenty-fourth, in these words, "and be it further enacted, that the district courts of the United States, in and for the districts of Tennessee and Kentucky, shall be and are hereby abolished," and the twenty-seventh, in these words, "and be it further enacted, that the circuit courts of the United States, heretofore established, shall cease and be abolished."

I will now examine some of the consequences of the doctrine against the repeal, and see if it can be recommended from that consideration. First, as it respects the judicial department. Its first effect is to produce a perpetual increase of judges and salaries, without any practicable mode of reducing them. This is inconsistent both with the general sentiment of the people and the constitution, which requires that no compensation shall be received, without an equivalent service rendered.

The gentleman from Pennsylvania supposes, that there would be as much danger, that a corrupt legislature would give an enormous sum, say two hundred thousand dollars, to one judge, as to appoint too great a number of judges. Yet he says, the legislature is restrained in express words from lessening the salary, and he infers from that circumstance, that it is also restrained from lessening the number of offices. I draw from it a direct contrary inference. If there be neither the power to lessen the sum nor abolish the office, there is no remedy for the evil the gentleman suggests. It is an incurable mischief. There is, therefore, a necessity for a power to abolish the office, as a remedy against the enormous abuse of giving so large a sum without the rendition of equivalent service. And as express words were deemed necessary to limit the discretion of Congress against diminishing the sum, so would there have been greater necessity for express words to limit the discretion of Congress against the abolition of unnecessary offices.

According to a sound rule of interpretation, where a general grant of power is made, and one limitation to the general power is expressed, the expression of that limitation is an exclusion of all intention to make any other limitation whatever by inference or implication. And this rule will apply to all other cases put by gentlemen, where there is an express limitation of legislative authority. But the most important consequence from this doctrine is, that it erects the judges into a body politic and corporate, in perpetual succession, with censorial and controlling powers over the other departments. And for what purpose? The gentleman from North Carolina, Mr. Henderson, has

informed us, "to protect the people against their worst enemies," themselves! This is the real exposition of the object in very few but emphatical words. As the inducement to the adoption of this principle, gentlemen have reminded us of the fate of a foreign country, of the violent passions which agitate popular assemblies, of the age, experience, the unassuming talents and unambitious virtue of judges. The judges were selected from their fellow-citizens, and I presume possess the same human propensities. All men love power, and in general, those love it best who know best how to use it. Let us apply this remark to the judges of the United States.

Very shortly after the establishment of the courts, the judges decided, that they had jurisdiction over the States in their sovereign capacity. Did this, in the judges, seem unambitious? The states thought it did not. It happened, that during the revolutionary war, the State of Massachusetts had issued certain obligatory bills, which were made transferable, and which were outstanding without any provision for their payment; suits were instituted on these bills. The court determined to bring the great State of Massachusetts, and not Virginia, on its knees, not at the feet of justice, but of policy. Upon the representation of Massachusetts an amendment was made to the Constitution of the United States, declaring that the constitution should not be construed to extend to authorizing the courts to arraign and pronounce judgment against states which had not consented to give up their sovereignty. Thus this unambitious project of the judges was prostrated by a constitutional interposition. The amendment is in the following words: "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state." The judges have determined that they are judges in the last resort upon the constitutionality of your laws. I propose not to discuss this question, because I do not think it pertinent to the question before us. I only mention it to show their unlimited claims to power. The judges have determined that their jurisdiction extends to the "lex non scripta," or rather to the "lex non descripta," or common law. Does this, in the judges, seem unambitious? This law pervades the whole municipal regulations of the country. It is unlimited in its object, and indefinite in its character. Legalize this unassuming claim of jurisdiction by the judges, and they have before them every object of legislation. They have sent a mandatory process, or process leading to a "mandamus," into the executive cabinet, to examine its concerns. Does this, in the judges, seem unambitious? Now, sir, examine and combine the extraordinary pretensions to power, legalize them, and you have precisely that body politic and corporate which gentlemen deem so important in the United States, "to protect the people from their worst enemies—themselves!" I should not resort so frequently to this expression, but that I consider it as the candid and correct exposition of the object of gentlemen opposed to the repeal. It is the doctrine of irresponsibility against the doctrine of responsibility. The latter, I have endeavored to show, characterizes the Constitution of the United States. It is the doctrine of despotism, in opposition to the representative system. It is an express avowal, that the people are incompetent to govern themselves. This, I believe to have been the great characteristic difference from the commencement of the administration of the government to the present day. If, indeed, there be a political corps necessary to interpose between the people and themselves, I consider the judiciary corps, supported by the doctrines on this floor, well calculated to effect that object.

I will now examine the consequences of the doctrine against the repeal, as it respects the legislature. It will have a direct tendency to impair the responsibility of the representatives to the people. I cannot illustrate this observation better than by giving the history of the law proposed to be repealed.

The first bill for changing the organization of the courts of the United States was reported to the House of Representatives the 11th of March, 1800; after undergoing some discussion and amendment, it was re-committed and reported again the 31st of March, 1800; on the 14th of April, it was postponed by a majority of two votes. At this time, the presidential election was approaching, and the result uncertain. The bill upon which the law in question was founded, was reported to the House of Representatives the 19th of December, 1800, and passed that House the 20th of January, 1801. It was read in the Senate the 21st of January, 1801, and passed the 7th of February, 1801. At this time, the presidential election, so far as it respected the then existing President, was ascertained.

I propose to be particular in ascertaining the facts respecting the passage of this law and its execution, because gentlemen have complained that rumors have gone into circulation respecting its passage, and the appointments under it, not warranted by the facts; a sense of justice has, therefore, induced me to make the strictest inquiry into the dates and facts, and the result of that inquiry, upon my mind, has been as unfavorable to its advocates, as any impression which had been made by the rumors complained of. At the time of passing the law, no complaints had been presented to Congress against the competency of the former system; not even a memorial from the bar of Philadelphia. I believe the former system to have been amply competent. The business, indeed, had very much declined; in the spring of 1799, the whole number of causes instituted, exclusive of Maryland and Tennessee, amounted to seven

hundred and three, besides seventy-eight criminal prosecutions in Pennsylvania. In the fall of 1800, there were instituted only three hundred and fifty-five; without any information, however, on this point, the law was passed. On the 13th of February, 1801, it was approved by the President. On turning to the journals of that day, it will be found that the House of Representatives was not engaged in the ordinary business of the session. They were engaged in the extraordinary business of electing a President.

In a note made on that day on the journals, will be found a message from the President in these words: "A message was received from the President of the United States by Mr. Shaw, his Secretary, notifying, that the President did this day approve and sign an act which originated in the House of Representatives, entitled, 'An act to provide for the more convenient organization of the courts of the United States.'" Upon examining the journals themselves, I find an entry in these words: "The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid the twenty-ninth ballot: and upon examination thereof, the result was declared to be the same." Need I remind gentlemen, now present, who were agents in the existing scenes, of the extraordinary situation of Congress at that moment, when in the House of Representatives the ordinary business of legislation was suspended, a permanent session decreed; when lodging and subsistence were furnished the members within the walls of the chamber; when even a sick bed was introduced to enable its patient to discharge a sacred duty? Need I awaken the recollection of our fellow citizens, who were looking, with indignant anxiety, on the awful scene, beholding their representatives, urged by the most tempestuous passions, and pushing forward to immolate the constitution of their country? No, sir, the awful scene is freshly remembered! And what was its object? To prevent the fair and known expressions of the public will in the highest function it has to perform. In the choice of the chief executive magistrate of the nation. In this state of things, when all confidence amongst the members of this House was lost, in the highest paroxysm of party rage, was this law ushered into existence. And now its advocates gravely tell us to be calm, to guard against the danger of our passions. They tell us, at the same time, that the law they have passed is sacred! inviolable! irrepealable! Does it merit this extraordinary character from the circumstances which accompanied its passage? It does not.

Let us examine how this law was carried into effect. Members of the legislature, who voted for the passage of the law, were appointed to offices, not indeed created by the law, the constitution having wisely guarded against an effect of that sort, but to judicial offices previously created; by the removal of what was called the promotion of judges from offices they then held, to the offices newly created, and supplying their places by members of the legislature, who voted for the creation of the new offices. In this substitution, however, it appears, that no respect was paid to another provision of the constitution. The sixth section of the first article of the constitution contains these words, "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." If vacancies had existed in the previously existing judicial establishments, the appointments of the members of the legislature might not be considered as a direct breach of this provision in the constitution; but this was not the fact, no vacancies did exist. It was necessary, to make provision for members voting for the law, that vacancies should be made by the removal or promotion of the then existing judges. This was done under this authority in the constitution. Second section, second article, "he, (to wit,) the President of the United States, shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, and other public ministers and consuls, judges of the supreme court, and all other officers of the United States," &c.; again, "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." How did the then President exercise the power in the present case? He did not wait until the vacancies should happen. He attempted to make vacancies, by what he called the promotion of judges, although they held their commissions of him, "during good behavior," and without waiting to know whether the judges would accept the promotion or not, upon which event alone a vacancy could accrue; he proceeded to appoint and actually commission members of the legislature to offices, then actually held by other commissions granted to other persons. What was the effect of this procedure? That two persons held commissions to perform the same duties, although one person only was authorized by law to discharge those duties, whilst the office, where the promotion was refused, remained vacant. This was actually the case, in several of the districts of the United States. This subject will be put into a still stronger point of view, by examining the journals of the Senate, which I am sorry to do for this purpose. When discussing the bill in question in the Senate, I find this entry on their journals, "on motion to strike out the whole of the bill after the words (from and after,) section first, line second, for the purpose of inserting as follows, (to wit,) a substitute for the bill." On the question to agree to this motion,

it passed in the negative—yeas, thirteen—nays, seventeen. I observe among the nays, the names of Mr. Green, of Rhode Island, and Mr. Read, of South Carolina. Both these gentlemen received appointments in virtue of the promotion of judges under this law. If these gentlemen had voted on the opposite side of the question, the law would never have been in existence. I mention this circumstance, not to impugn the motives of any gentleman, but to demonstrate the temptation held out to the members of the legislature, under the doctrine contended for against the repeal of this law. The refusal of the present President to correct what was called a mistake in Mr. Green's appointment, having excited some clamor, it is necessary to put this subject in a correct point of view. It seems, that in filling up Mr. Green's commission, the word "circuit," instead of the word "district," was inserted, it is presumed, by mistake. *If* the commission was intended for the circuit court, it was a breach of the constitution, in its most obvious letter. If it was intended for the district court, it was void "ab initio;" because, at the date of the commission, no vacancy had happened, and the President's right to appoint depended on that precedent condition, and he, therefore, in making the appointment, attempted to exercise a power he did not possess. It must be obvious to every gentleman, that Mr. Green's accepting the commission, under all the incidents attending the case, could furnish but a negative recommendation of Mr. Green, in his application for that or any other appointment. Upon a review of the history of the law in question, according to the doctrine of its advocates, the temptation to the legislature to make permanent, irrevocable provision for themselves, must be obvious to every impartial observer. If, when a judicial establishment be once made, it becomes irrevocable, how easy would it be for a legislature, combined with the executive, to compensate themselves for the loss of the confidence of their constituents, by following the example before us? By erecting a new tier of judges, holding out to them additional emoluments, and by filling up the vacancies, occasioned by their promotion, with the members of the legislature.

This operation would be most likely to take place when the representatives had lost the confidence of their constituents, and of course less likely to be influenced by considerations of public good. Again, sir, the sinecure system thus established, would have the advantage of all other similar systems existing in the world; because, if in other countries the sinecure system has become oppressive to the people, they have the consolation to recollect, that the evil may be lessened by the competent authority; but, according to the doctrine, upon which the system is bottomed in the United States, no remedy can be applied to the mischief, by the union of all the responsible agents of the people. How, sir, would the framers of our constitution lament, after all the care and circumspection they have used to exclude this system entirely from the practical operation of the government, that the constitution itself should be made the instrument of its introduction, and its permanent, irrevocable establishment? And this too at the moment of an expiring administration; when the passions of men just parting from power, were breaking down every impediment which stood in the way of attaining their object! Upon the whole, therefore, it appears, that this doctrine of the irrepealability of laws derives no consideration from the consequences which naturally flow from it.

Having exhausted so great a portion of the time and attention of the committee, in discussing the constitutional question, which has been made the cardinal point in the debate, I propose to confine myself to very few observations upon the expediency of the contemplated repeal. I take it for granted, that the former judicial system was competent to the discharge of all the judicial business in the United States; but if that should be denied, I think it demonstrable from the document before the committee. The gentleman from Delaware, Mr. Bayard, has intimated a doubt whether the President acted correctly, in favoring us with the document. I shall only observe in reply, that the constitution imposes a duty upon the President, from time to time, to give to Congress information of the state of the Union, and recommend to their consideration, such measures as he shall judge necessary and expedient. The number of suits in the courts of the United States must always be very small, from the limited objects of their jurisdiction; this will appear by reading the second section of the third article of the constitution, limiting their jurisdiction. The whole expense of the existing system is one hundred and thirty-seven thousand dollars, of which forty thousand or fifty thousand dollars may be attributable to the new system; the estimates differing between these two sums. Whether the expense be estimated, either according to the service to be rendered, or by comparison with any other system, it appears to me to be enormous. I have examined the document before us, by way of ascertaining the relative view of expense and service, and also the competency of the former system to the discharge of the business. I would not, however, be responsible for precise clerical accuracy, in my addition, which has also been deemed a subject worthy of criticism against the President of the United States. But if it be within twenty-five per centum of being correct, it will demonstrate, first, that the former courts were competent to the business; second, that the number of causes bears no proportion to the expense of the institution.

I will present to the view of the committee, the whole number of causes instituted at the respective sessions of the courts, from the spring of 1796 to the spring of 1801. I have fixed upon the year 1796, because the business began then to increase under the influence of the British treaty.

In all the circuit courts of the United States, except Maryland and Tennessee, the whole number of causes, of every description, instituted in the spring of 1796, was two hundred and ninety-four; fall, one hundred and ninety-two—1797, spring, four hundred and eighty-one; fall, three hundred and ninety-seven—1798, spring, three hundred and twenty-five; fall, three hundred and ninety-seven—1799, spring, seven hundred and three, exclusive of ninety-eight criminal prosecutions in Pennsylvania; fall, four hundred and fifty-five—1800, spring, four hundred and fifty-one, seventy criminal prosecutions in Pennsylvania; fall, three hundred and fifty-five—1801, spring, three hundred and fifty. Making the common calculation of suits settled between the parties without trial, dismissions, abatements, &c., &c., and it will appear, that the whole number of judgments against solvent persons, would hardly compensate the expense of the institution. It also appears, that the number of causes left to be tried, could easily be decided by the six former judges.

Upon looking over the number of suits in the eastern circuit, it appears to me strange, that the members representing that part of the country should insist upon increasing the expense of the system, when the courts have there scarcely any business to attend to; and that gentlemen in the southern States, where the business is greater, should be willing to lessen the expense. I never heard the smallest complaint in the State I represent, respecting the incompetency of the former courts to discharge the business in that State. I believe they have always gone through the docket, whenever they attended, and as far as my own observations go, that is the fact. It appears strange to me, that the new courts and new expenses should be called for in other parts of the United States, when the old courts are competent to the business in that State, where the business has been considerably more than in any other State, although it is now very much declined, and probably will decline still more. In the courts of Maine, West Pennsylvania, West Virginia and West Tennessee, no suit at all had been instituted in June last.

Under the view of the subject thus presented, I consider the late courts as useless and unnecessary, and the expense, therefore, is to me highly objectionable. I do not consider it in the nature of a compensation, for there is no equivalent rendition of service. I cannot help considering it as a tribute for past services—as a tribute for the zeal displayed by these gentlemen in supporting principles which the people have denounced. I think the federal maxim always was "millions for defense, not a cent for tribute." I cannot consent to tax the people even one cent, as a tribute to men who disrespect their principles.

Another objection I have to the new organization of the courts, is, their tendency to produce a gradual demolition of State courts, by mutiplying the number of courts, increasing their jurisdiction, making bonds or obligatory bills assignable, with the privilege of bringing suits in the name of the assignee, &c., &c., or, as gentlemen say, bringing federal justice to every man's door; the State courts will be ousted of their jurisdiction, which I think by no means a desirable event. Under this consideration alone, and under the conviction I feel of the inutility of the courts, I shall vote for the repeal.

Upon the whole view of the subject, feeling the firmest conviction, that there is no constitutional impediment in the way of repealing the act in question, upon the most fair and candid interpretation of the constitution; believing, that principles advanced in opposition, go directly to the destruction of the fundamental principle of the constitution, the responsibility of all public agents to the people; that they go to the establishment of a permanent corporation of individuals invested with ultimate, censorial and controlling power over all the departments of the government, over legislation, execution and decision, and irresponsible to the people; believing that these principles are in direct hostility with the great principle of representative government; believing that the courts, formerly established, were fully competent to the business they had to perform, and that the present courts are useless, unnecessary and expensive; believing, that the Supreme Court has heretofore discharged all the duties assigned to it, in less than one month in the year, and that its duties could be performed in half that time; considering the compensations of the judges to be amongst the highest given to any of the highest officers of the United States, for the services of the whole year; considering the compensations of all the judges greatly exceeding the services assigned to them, as well as considering all the circumstances attending the substitution of the new system for the old one, by increasing the number of judges, and compensations, and lessening their duties by the distribution of the business into a greater number of hands, &c.—whilst acting under these impressions, I shall vote against the motion now made for striking out the first section of the repealing bill.

EDWARD LIVINGSTON.

This distinguished diplomatist and civilian was born at Clermont, Livingston Manor, New York, in the year 1764. He attended school at Albany, and afterward at Esopus, in Ulster county, where he continued until the destruction of that village, by the British, in 1777. From that place he removed to Hurley, a few miles southwest of Kingston, and, after spending two years in diligent study, entered the junior class at Princeton College. On graduating in 1781, he devoted his energies to the profession of the law. In his preparatory studies he became thoroughly versed in the principles of common and civil law, and entering upon practice, he soon rose into fame. From this time until he was elected to the lower House of Congress, in 1794, he was continually and laboriously engaged in the duties of his profession, with the exception of the time he spent in the New York Convention, for the adoption of the Federal Constitution.

In Congress, Mr. Livingston became one of the most celebrated members of the republican, or democratic party. A few days after he had taken his seat, he called the attention of the House to the then existing provisions of the criminal code of the United States, and endeavored, though at that time without effect, to reform their sanguinary character, and adapt them more justly to the nature and quality of offences. He introduced, and finally carried, several laws for the protection and relief of American seamen left by accident or misfortune on foreign shores. He warmly advocated the establishment and gradual increase of the navy, and he supported the existing government, though opposed to its general policy, in every measure which was necessary to sustain the honor, or protect the rights of the country.*

The period at which Mr. Livingston entered Congress was important. The people of the United States had just finished the struggle for Independence, by adopting the Federal Government. "Washington had been selected to administer that government; and around him were gathered the tried spirits who, either in the council or the field, had assisted him in the mighty work of Revolution. The constitution, binding free and sovereign States in an indissoluble league, after long anxiety and deliberation, was about to be tried. Its strength and its weaknesses, its tendencies whether for good or for evil, were soon to develop themselves in practical operation. Parties, taking their principles from the bent of their dispositions toward a stronger government or a stronger people, were already formed." At the head of one stood Thomas Jefferson, and at the head of the other was Alexander Hamilton. Livingston embraced the cause of the former and entered with enthusiasm into the support of his measures. Conceiving the treaty of 1794 to be disadvantageous to the American people, he opposed it. "I took on myself," said he, "for the first time in my whole representative career, to disregard the wish of my constituents. I attacked the treaty, and spared no effort to prevent its adoption. The issue justified the line of conduct I had held. Enlightened by the discussion and by the press, my constituents voted me their thanks for the course I had pursued."†

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* National Portrait Gallery. Article Edward Livingston.

† See Democratic Review, vols. 8 and 9, to which the Editor is indebted for much of the material of this sketch.

Mr. Livingston continued in Congress until the accession of Mr. Jefferson to the presidency. At that time he declined a re-election and determined to devote himself entirely to the practice of his profession. Not long after, however, he was elevated to the office of United States Attorney for New York, and in the year 1803, was chosen mayor of the city. The latter office he held two years, during which time he displayed the greatest industry, and manifested a zealous interest in the welfare of the people. About the time he entered upon the discharge of the duties of the mayoralty, the yellow fever broke out in New York with great violence. The dread of the contagion soon caused to disappear from the city all those whose fortune afforded them the means of flying. The indigent class alone remained exposed to the fury of the epidemic. Livingston devoted himself to the performance of the duties of his station. He visited every day the most destitute of the sick. He conducted the physicians wherever he knew that misfortune claimed the aid which poverty could not command. "I never remember," said he to his friend and biographer, in speaking of this calamity, "to have experienced a greater fulness of health than at this period. There is something healthful to a man in the consciousness of a duty well discharged. Notwithstanding the number of sick whom I saw every day, my recollection of their sufferings, of their distress, of the interest attaching to their families, to their various relations, did not present itself to my mind only in the mass: I knew each one individually. I identified myself with each one of the sick, for I could call each, with the physician, *my patient*. I shared in the regrets of the family of each victim, the joy of the wife, the children, of each convalescent restored to life, to labor, to the tenderness of family affections. After the first fears of contagion were surmounted, I ceased to experience the slightest apprehension of danger. My confidence was not fatalism—(my soul has always regarded with horror that cruel slavery of man to necessity)—but a profound sense of the task of humanity which Providence had assigned me. It was the unfavorable turn of an alternative contract (to speak the language of the law) which I had signed, in accepting the chief magistracy of a great city, then populous and flourishing. This contract must be executed in its letter and in its spirit."

Near the close of the epidemic Mr. Livingston was attacked by it, and reduced to the point of death. On recovering from his illness, he found his private affairs sadly deranged, and being unjustly and suddenly subjected to heavy responsibilities, he resigned his office, and determined to remove to Louisiana. This he did in 1804. He arrived at New Orleans in February of that year; immediately commenced the practice of his profession, and soon amassed a fortune. Associated with others, he accomplished many important reforms in the law of Louisiana, which was, at that time, "a vast miscellany of Spanish customs, French decrees, English precedents, and conflicting legislative enactments." This confusion had been brought about by the various fortunes of Louisiana, under Spanish and French rule. Livingston set about correcting these evils. "Rejecting alike the interminable proceedings of the French, and the absurd fictions of English practice, he formed a short and simple code of procedure, which combined the advantages of the various systems that prevailed, and was at the same time free from their vices." *

On the invasion of New Orleans by the British in 1812, Mr. Livingston was appointed by General Jackson, his aid-de-camp, and remained in his military family until the end of the war. In the battle he was active and intrepid, and at the close of the conflict, was employed in the negotiation for the exchange of prisoners. At the return of peace he renewed the labors of his profession; continued in the execution of his plans of legal reform. In 1820, he was elected by the Legislature of Louisiana, to prepare a system of penal law for that State. The following year he presented a report containing a specimen of his system, which was approved, and he was further empowered to finish it. He entered upon the task with the greatest assiduity, acquiring a knowledge of all points pertaining to the subject, which had originated in his own country and in Europe, corresponding with distinguished and learned lawyers of all nations, comparing the principles of every theory—and, after spending four years in its completion, had the satisfaction to see it approved. The beauty of its arrangement, says Mr. Livingston's biographer, the wisdom of its provisions, the simplicity of its forms, and the clearness of its

* Edward Livingston and his Code. Democratic Review, vol. 9.

language, equal, but do not surpass, the philanthropy, the wise views of human character, the knowledge of social intercourse, and the insight into the sources of happiness and misery, by all of which it is distinguished, far beyond any similar system of criminal law that has emanated from the jurists of any age or country." An elaborate and highly finished account of this important work will be found in the Democratic Review for July, 1841.

In 1823, Mr. Livingston was elected to represent Louisiana, in the Lower House of Congress. He took his seat in December of that year. In 1829, he was chosen by the legislature of his adopted State, to the United States Senate. His course in Congress was distinguished. In the several important measures that originated during his career, he took an active and dignified part. His speech, on Mr. Foot's resolution, is thought by many to be one of the most eloquent and able that were delivered on that occasion. Its extreme length, alone, precludes it from this collection.

Mr. Livingston continued in the Senate until the spring of 1831, when he was appointed by President Jackson, to the honorable position of Secretary of State. On his retirement from this office, in 1833, he was sent as minister to the Court of France. After spending two years abroad, "with honor to himself and his country," he returned to America, and established his residence at Red Hook, on the Hudson River. On the afternoon of Monday, the twenty-fifth of May, 1836, he died, after a very short illness, induced by drinking cold water. His age was seventy-two. "The last time I saw him—which was a few days before his death,"—said one of his friends, "he talked with all the anticipations and apparent health of a youthful sportsman, about a trouting excursion he was contemplating to Long Island. His summons has been short and sudden for a more fearful journey."*

SPEECH ON THE ALIEN BILL.†

Mr. Livingston delivered this speech in the House of Representatives of the United States on the nineteenth of June, 1798.

Mr. Speaker: I esteem it one of the most fortunate occurrences of my life, that, after an inevitable absence from my seat in this House, I have arrived in time to express my dissent to the passage of this bill. It would have been a source of eternal regret, and the keenest remorse, if any private affairs, any domestic concerns, however interesting, had deprived me of the opportunity, I am now about to use, of stating my objections, and recording my vote against an act, which I believe to be in direct violation of the constitution, and marked with every characteristic of the most odious despotism.

On my arrival, I inquired, what subject occupied the attention of the House; and being told it was the alien bill, I directed the printed copy to be brought to me, but to my great surprise, seven or eight copies of different bills on the same subject, were put into my hands; among them it was difficult (so strongly were they marked by the same family features) to discover the individual bill then under discussion. This circumstance gave me a suspicion, that the principles of the measure were erroneous. Truth marches directly to its end, by a single, undeviating path. Error is either undermining in its object, or pursues it through a thousand winding ways; the multiplicity of propositions, therefore, to attain the same general but doubtful end, led me to suspect, that neither the object, nor the means, proposed to attain it, were proper or necessary. These surmises have been confirmed by a more minute examination of the bill. In the construction of statutes, it is a received rule to examine, what was the state of things when they were passed, and what were the evils they were intended to remedy; as these circumstances will be applied in the construction of the law, it may be well to examine them minutely in framing it. The state of things, if we are to judge from the complexion of the bill, must be, that a number of aliens, enjoying the protection of our government, are plotting its de-

* New York American, 1836.

† By the provisions of this bill, the President might order dangerous or suspected aliens, to depart out of the territory of the United States. The penalty, provided for disobedience of the President's order, was imprisonment and a perpetual exclusion from the rights of citizenship. The bill provided, that, if any alien, ordered to depart, should prove to the satisfaction of the President, that no injury to the United States would arise from suffering him to remain, the President might grant him a license to remain for such time as he should deem proper, and at such place as he should designate.

struction; that they are engaged in treasonable machinations against a people, who have given them an asylum and support, and that there exists no provision for their expulsion and punishment. If these things are so, and no remedy exists for the evil, one ought speedily to be provided, but even then it must be a remedy that is consistent with the constitution under which we act; for, by that instrument, all powers, not expressly given to it by the union, are reserved to the States; it follows, that unless an express authority can be found, vesting us with the power, be the evil ever so great, it can only be remedied by the several States, who have never delegated the authority to Congress.

We must legislate upon facts, not on surmises; we must have evidence, not vague suspicions, if we mean to legislate with prudence. What facts have been produced? What evidence has been submitted to the House? I have heard, sir, of none; but if evidence of facts could not be procured, at least it might have been expected, that reasonable cause of suspicion should be shown. Here again, gentlemen are at fault; they cannot even show a suspicion why aliens ought to be suspected. We have, indeed, been told, that the fate of Venice, Switzerland and Batavia, was produced by the interference of foreigners. But the instances are unfortunate; because all those powers have been overcome by foreign force, or divided by domestic faction, not by the influence of aliens who resided among them; and if any instruction is to be gained from the history of those republics, it is, that we ought to banish, not aliens, but all those citizens who do not approve the executive acts. This doctrine, I believe, gentlemen are not ready to avow; but if this measure prevails, I shall not think the other remote. If it has been proved, that these governments were destroyed by the conspiracies of aliens, it yet remains to be shown, that we are in the same situation: or that any such plots have been detected, or are even reasonably suspected here. Nothing of this kind has yet been done. A modern Theseus, indeed, has told us, that he has procured a clue, that will enable him to penetrate the labyrinth and destroy this monster of sedition. Who the fair Ariadne is, who kindly gave him the ball, he has not revealed; nor, though several days have elapsed since he undertook the adventure, has he yet told us where the monster lurks. No evidence then being produced, we have a right to say, that none exists, and yet we are about to sanction a most important act, and on what grounds?—Our individual suspicions, our private fears, our overheated imaginations. Seeing nothing to excite these suspicions, and not feeling those fears, I cannot give my assent to the bill, even if I did not feel a superior obligation to reject it on other grounds.

The first section provides, that it shall be lawful for the President "to order all such aliens, as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the United States, in such time as shall be expressed in such order."

Our government, sir, is founded on the establishment of those principles, which constitute the difference between a free constitution and a despotic power; a distribution of the legislative, executive and judiciary powers into several hands; a distribution strongly marked in the three first and great divisions of the constitution. By the first, all legislative power is given to Congress; the second vests all executive functions in the President, and the third declares, that the judiciary powers shall be exercised by the supreme and inferior courts. Here then is a division of the governmental powers strongly marked, decisively pronounced, and every act of one or all of the branches, that tends to confound these powers, or alter their arrangement, must be destructive of the constitution. Examine then, sir, the bill on your table, and declare, whether the few lines, I have repeated from the first section, do not confound these fundamental powers of government, vest them all, in more unqualified terms, in one hand, and thus subvert the basis on which our liberties rest.

Legislative power prescribes the rule of action; the judiciary applies the general rule to particular cases, and it is the province of the executive to see, that the laws are carried into full effect. In all free governments, these powers are exercised by different men, and their union in the same hand is the peculiar characteristic of despotism. If the same power, that makes the law, can construe it to suit his interest, and apply it to gratify his vengeance; if he can go further, and execute, according to his own passions, the judgment which he himself has pronounced upon his own construction of laws which he alone has made, what other features are wanted to complete the picture of tyranny? Yet all this, and more, is proposed to be done by this act; by it the President alone is empowered to make the law, to fix in his mind, what acts, what words, thoughts or looks, shall constitute the crime contemplated by the bill. He is not only authorized to make this law for his own conduct, but to vary it at pleasure, as every gust of passion, every cloud of suspicion shall agitate or darken his mind. The same power, that formed the law, then applies it to the guilty or innocent victim, whom his own suspicions, or the secret whisper of a spy, have designated as its object. The President then having construed and applied it, the same President is by the bill authorized to execute his sentence, in case of disobedience, by imprisonment during his pleasure. This then comes completely within the definition of despotism; an union of legislative, executive and judicial powers. But this bill, sir, does not

stop here; its provisions are a refinement upon despotism, and present an image of the most fearful tyranny. Even in despotisms, though the monarch legislates, judges and executes, yet he legislates openly; his laws, though oppressive, are known, they precede the offence, and every man, who chooses, may avoid the penalties of disobedience. Yet he judges and executes by proxy, and his private interests or passions do not inflame the mind of his deputy.

But here the law is so closely concealed in the same mind that gave it birth—the crime is "exciting the suspicions of the President"—that no man can tell what conduct will avoid that suspicion: a careless word, perhaps misrepresented or never spoken, may be sufficient evidence, a look may destroy, an idle gesture may ensure punishment; no innocence can protect, no circumspection can avoid the jealousy of suspicion. Surrounded by spies, informers, and all that infamous herd which fatten under laws like this, the unfortunate stranger will never know either of the law of accusation or of the judgment, until the moment it is put in execution: he will detest your tyranny, and fly from a land of delators, inquisitors and spies. This, sir, is a refinement upon the detestable contrivance of the decemvirs. They hung the tables of their laws so high, that few could read them; a tall man, however, might reach—a short one might climb and learn their contents; but here the law is equally inaccessible to high and low, safely concealed in the breast of its author; no industry or caution can penetrate this recess and attain a knowledge of its provisions, nor even if they could, as the rule is not permanent, would it at all avail.

Having shown, that this bill is at war with the fundamental principles of our government, I might stop here in the certain hope of its rejection. But I can do more; unless we are resolved to pervert the meaning of terms, I can show, that the constitution has endeavored to "make its surety doubly sure, and take a bond of fate," by several express prohibitions of measures like the one you now contemplate. One of these is contained in the ninth section of the first article; it is at the head of the articles which restrict the powers of Congress, and declares, "that the emigration or importation of such persons as any of the States shall think proper to admit, shall not be prohibited prior to the year 1808." Now, sir, where is the difference between a power to prevent the arrival of aliens and a power to send them away as soon as they arrive? To me they appear precisely the same. The constitution expressly says, that Congress shall not do this; and yet Congress are about to delegate this prohibited power and say the President may exercise it, as his pleasure may direct.

Judiciary power is taken from courts, and given to the executive; the previous safeguard of a presentment by a grand inquest, is removed: the trial by jury is abolished; the "public trial," required by the constitution, is changed into a secret and worse than inquisitorial tribunal. Instead of giving "information on the nature and cause of the accusation," the criminal, alike ignorant of his offence, and the danger to which he is exposed, never hears of either, until the judgment is passed and the sentence is executed. Instead of being "confronted with his accusers," he is kept alike ignorant of their names and their existence; and the forms of a trial being dispensed with, it would be a mockery, to talk of "process for witness," or the "assistance of counsel for defence." Thus are all the barriers, which the wisdom and humanity of our country has placed between accused innocence and oppressive power, at once forced and broken down. Not a vestige even of their form remains. No indictments, no jury, no trial, no public procedure, no statement of the accusation, no examination of the witnesses in its support, no counsel for defence: all is darkness, silence, mystery and suspicion. But, as if this were not enough, the unfortunate victims of this law are told in the next section, that, if they can convince the President that his suspicions are unfounded, he may, if he pleases, give them a license to stay. But how can they remove his suspicions, when they know not on what act they were founded? How take proof to convince him, when he is not bound to furnish that on which he proceeds? Miserable mockery of justice! Appoint an arbitrary judge, armed with legislative and executive powers added to his own! Let him condemn the unheard, the unaccused object of his suspicions, and then to cover the injustice of the scene, gravely tell him, you ought not to complain, you need only disprove facts you have never heard, remove suspicions that have never been communicated to you; it will be easy to convince your judge, whom you shall not approach, that he is tyrannical and unjust, and when you have done this, we give him the power, he had before, to pardon you if he pleases!

So obviously do the constitutional objections present themselves, that their existence cannot be denied, and two wretched subterfuges are resorted to, to remove them out of sight. In the first place, it is said, the bill does not contemplate the punishment of any crime, and therefore the provisions in the constitution, relative to criminal proceedings and judiciary powers, do not apply. But have the gentlemen, who reason thus, read the bill, or is every thing forgotten, in our zealous hurry to pass it? What are the offences upon which it is to operate? Not only the offence of being "suspected of being dangerous to the peace and safety of the United States," but also that of being "concerned in any treasonable or secret machinations against the government thereof"—and this, we are told, is no crime. A treasonable machination against the government, is not the subject of criminal jurisprudence! Good heaven! to what absurdities does not an

over zealous attachment to particular measures lead us! In order to punish a particular act, we are forced to say, that treason is no crime, and plotting against our government is no offence! And to support this fine hypothesis, we are obliged to plunge deeper into absurdity, and say, that the acts, spoken of in the bill, are no crimes, and therefore the penalty, contained in it, is not a punishment, but merely a prevention; that is to say, we invite strangers to come amongst us; we declare solemnly, that government shall not prevent them; we entice them over by the delusive prospects of advantage; in many parts of the Union we permit them to hold lands, and give them other advantages while they are waiting for the period at which we have promised them a full participation of all our rights. An unfortunate stranger, disgusted with tyranny at home, thinks he shall find freedom here; he accepts our conditions; he puts faith in our promises; he vests his all in our hands; he has dissolved his former connections and made your country his own; but while he is patiently waiting the expiration of the period that is to crown the work, entitle him to all the rights of a citizen—the tale of a domestic spy, or the calumny of a secret enemy, draws on him the suspicions of the President, and unheard, he is ordered to quit the spot he had selected for his retreat, the country which he had chosen for his own, perhaps the family which was his only consolation in life,—he is ordered to retire to a country whose government, irritated by his renunciation of its authority, will receive only to punish him—and all this, we are told, is no punishment!

So manifest do these violations of the constitution appear to me, so futile the arguments in their defence, that they press seriously on my mind and sink it even to despondency. They are so glaring to my understanding, that I have felt it my duty to speak of them in a manner that may perhaps give offence to men whom I esteem, and who seem to think differently on this subject; none, however, I can assure them, is intended. I have seen measures carried in this House, which I thought militated against the spirit of the constitution; but never before have I been witness to so open, so wanton, so undisguised an attack.

I have now done, sir, with the bill, and come to consider the consequences of its operation. One of the most serious has been anticipated, when I described the blow it would give to the constitution of our country. We should cautiously beware of the first act of violation; habituated to overleap its bounds, we become familiarized to the guilt, and disregard the danger of a second offence; until proceeding, from one unauthorized act to another, we at length throw off all restraint which our constitution has imposed; and very soon not even the semblance of its form will remain.

But, if regardless of our duty as citizens, and our solemn obligations as representatives; regardless of the rights of our constituents; regardless of every sanction, human and divine, we are ready to violate the constitution we have sworn to defend—will the people submit to our unauthorized acts—will the States sanction our usurped power? Sir, they ought not to submit—they would deserve the chains which these measures are forging for them, if they did not resist. For let no man vainly imagine that the evil is to stop here; that a few unprotected aliens only are to be affected by this inquisitorial power. The same arguments, which enforce those provisions against aliens, apply with equal strength to enacting them in the case of citizens. The citizen has no other protection for his personal security, that I know, against laws like this, than the humane provisions I have cited from the constitution. But all these apply in common to the citizen and the stranger; all crimes are to be tried by jury; no person shall be held to answer unless on presentment; in all criminal prosecutions, the accused is to have a public trial; the accused is to be informed of the nature of the charge; to be confronted with the witnesses against him; may have process to enforce the appearance of those in his favor, and is to be allowed counsel in his defence. Unless, therefore, we can believe that treasonable machinations, and the other offences described in the bill are not crimes, that an alien is not a person, and that one charged with treasonable practices is not accused—unless we can believe all this in contradiction to our understanding, to received opinions and the uniform practice of our courts, we must allow, that all these provisions extend equally to alien and native, and that the citizen has no other security for his personal safety, than is extended to the stranger, who is within his gates. If, therefore, this security is violated in one instance, what pledge have we that it will not be in the other? The same plea of necessity will justify both. Either the offences, described in the act, are crimes, or they are not. If they are, then all the humane provisions of the constitution forbid this mode of punishing, or preventing them, equally as relates to aliens and citizens. If they are not crimes, the citizen has no more safety by the constitution than the alien; for all these provisions apply only to crimes. So that in either event, the citizen has the same reason to expect a similar law to the one now before you, which will subject his person to the uncontrolled despotism of a single man. You have already been told of plots and conspiracies; and all the frightful images, that are necessary to keep up the present system of terror and alarm, have been presented to you; but who are implicated by these dark hints—these mysterious allusions? They are our own citizens, sir, not aliens. If there is any necessity for the system now proposed, it is more necessary to be enforced against our own citizens than against strangers; and I have no doubt, that either in this or some other shape, this will be attempted. I now ask, sir,

whether the people of America are prepared for this? Whether they are willing to part with all the means which the wisdom of their ancestors discovered, and their own caution so lately adopted, to secure their own persons? Whether they are willing to submit to imprisonment, or exile, whenever suspicion, calumny, or vengeance, shall mark them for ruin? Are they base enough to be prepared for this? No, sir, they will, I repeat it, they will resist this tyrannical system; the people will oppose, the States will not submit to its operations; they ought not to acquiesce, and I pray to God, they never may.

My opinions, sir, on this subject, are explicit, and I wish they may be known: they are, that whenever our laws manifestly infringe the constitution under which they were made, the people ought not to hesitate which they should obey: if we exceed our powers, we become tyrants, and our acts have no effect. Thus, sir, one of the first effects of measures such as this, if they be acquiesced in, will be disaffection among the States, and opposition among the people to your government; tumults, violations, and a recurrence to first revolutionary principles: if they are submitted to, the consequences will be worse. After such manifest violation of the principles of our constitution, the form will not long be sacred; presently every vestige of it will be lost and swallowed up in the gulf of despotism. But should the evil proceed no further than the execution of the present law, what a fearful picture will our country present! The system of espionage thus established, the country will swarm with information spies, delators and all that odious tribe, that breed in the sunshine of despotic power, that suck the blood of the unfortunate, and creep into the bosom of sleeping innocence only to awaken it with a burning wound. The hours of the most unsuspecting confidence; the intimacies of friendship, or the recesses of domestic retirement, afford no security; the companion whom you must trust, the friend in whom you must confide, the domestic who waits in your chamber, are all tempted to betray your imprudence or guardless follies, to misrepresent your words, to convey them, distorted by calumny, to the secret tribunal where jealousy presides, where fear officiates as accuser, where suspicion is the only evidence that is heard.

These, bad as they are, are not the only ill consequences of these measures. Among them we may reckon the loss of wealth, of population and of commerce. Gentlemen who support the bill seemed to be aware of this, when yesterday they introduced a clause to secure the property of those who might be ordered to go off. They should have foreseen the consequences of the steps which they have been taking: it is now too late to discover, that large sums are drawn from the banks, that a great capital is taken from commerce. It is ridiculous to observe the solicitude they show to retain the wealth of these dangerous men, whose persons they are so eager to get rid of. If they wish to retain it, it must be by giving them security to their persons, and assuring them that while they respect the laws, the laws will protect them from arbitrary powers; it must be, in short, by rejecting the bill on your table. I might mention other inferior considerations: but I ought, sir, rather to entreat the pardon of the House for having touched on this. Compared to the breach of our constitution, and the establishment of arbitrary power, every other topic is trifling; arguments of convenience sink into nothing; the preservation of wealth, the increase of commerce, however weighty on other occasions, here lose their importance, when the fundamental principles of freedom are in danger. I am tempted to borrow the impressive language of a foreign speaker, and exclaim—"Perish our commerce, let our constitution live;" perish our riches, let our freedom live. This, sir, would be the sentiment of every American, were the alternative between submission and wealth: but here, sir, it is proposed to destroy our wealth in order to ruin our commerce: not in order to preserve our constitution, but to break it—not to secure our freedom, but to abandon it.

I have now done, sir; but before I sit down, let me entreat gentlemen seriously to reflect, before they pronounce the decisive vote that gives the first open stab to the principles of our government. Our mistaken zeal, like the patriarch of old, has bound one victim; it lies at the foot of the altar; a sacrifice of the first born offspring of freedom is proposed by those who gave it birth. The hand is already raised to strike, and nothing, I fear, but the voice of heaven, can arrest the impious blow.

Let not gentlemen flatter themselves, that the fervor of the moment can make the people insensible to these aggressions. It is an honest, noble warmth, produced by an indignant sense of injury. It will never, I trust, be extinct, while there is a proper cause to excite it. But the people of America, sir, though watchful against foreign aggressions, are not careless of domestic encroachment; they are as jealous, sir, of their liberties at home, as of the power and prosperity of their country abroad; they will awake to a sense of their danger. Do not let us flatter ourselves, then, that these measures will be unobserved or disregarded; do not let us be told, sir, that we excite a fervor against foreign aggressions only to establish tyranny at home; that, like the arch traitor, we cry "Hail Columbia," at the moment we are betraying her to destruction; that we sing out, "happy land," when we are plunging it in ruin and disgrace; and that we are absurd enough to call ourselves "free and enlightened," while we advocate principles that would have disgraced the age of Gothic barbarity, and establish a code, compared to which the ordeal is wise, and the trial by *battel* is merciful and just.

CAPITAL PUNISHMENT.

The following argument against Capital Punishment, was published in the introduction to the "Criminal Code of Louisiana" by Mr. Livingston.

Existence was the first gift of Omnipotence to man,—existence accompanied not only by the instinct to preserve it, and to perpetuate the species, but with a social (not merely a gregarious) disposition, which led so early to the formation of societies, that unless we carry our imagination back to the first created being, it is scarcely possible to imagine, and certainly impossible to trace, any other state than that of the social—it is found wherever men are found, and must have existed as soon as the number of the species were sufficiently multiplied to produce it. Man, then, being created for society, the Creator of man must have intended that it should be preserved; and as he acts by general laws, not by special interference, (except in the cases which religion directs to believe,) all primitive society, as well as the individuals of which it is composed, must have been endowed with certain natural rights and correspondent duties, anterior in time, and paramount in authority, to any that may be formed by mutual consent. The first of these rights, perhaps the only one that will not admit of dispute, is, as well on the part of the individual as of the society, the right to continue the existence given by God to man, and by the nature of man, to the social state in which he was formed to live; and the correspondent mutual duty of the individual and of the society is to defend this right; but when the right is given, the means to enforce it must, in natural as well as positive law, be admitted to be also given. If, then, both individuals and the society have the right to preserve their several existence, and are, moreover, under the reciprocal duty to defend it when attacked, it follows, that if one or the other is threatened with destruction, which cannot be averted but by taking the life of the assailant, the right, nay more, the duty to take it exists: the irresistible impulse of nature indicates the right she has conferred, and her first great law shows that life may be taken in self-defence. It is true the aggressor has the same right to exist; but if this right were sacred while he was attempting to destroy that of another, there would be co-existing two equal and conflicting rights, which is a contradiction in terms. The right, therefore, I speak of, is proved; but both in the individual and in society it is strictly defensive—it can only be exerted during that period when the danger lasts, by which I mean the question is, which of the two shall exist, the aggressor or the party attacked,—whether this be an individual or the society? Before this crisis has arrived, or after it has passed, it is no longer self-defence, and then their right to enjoy existence would be co-existent and equal, but not conflicting, and for one to deprive the other of it would be of course unjust.

Therefore, the positions with which I set out seem to be proved. That the right to inflict death exists, but that it must be in defence, either of individual or social existence;* and that it is limited to the case where no other alternative remains to prevent the threatened destruction.

In order to judge whether there is any necessity for calling this abstract right into action, we must recollect the duty imposed upon society of protecting its members, derived, if we have argued correctly, from the social nature of man, independent of any implied contract. While we can imagine society to be in so rude and imperfect a state as to render the performance of this duty impossible without taking the life of the aggressor, we must concede the right. But is there any such state of society? Certainly none in the civilized world, and our laws are made for civilized man. Imprisonment is an obvious and effectual alternative; therefore, in civilized society, in the usual course of events, we can never suppose it necessary, and of course never lawful; and even among the most savage hordes, where the means of detention might be supposed wanting—banishment, for the most part, would take away the necessity of inflicting death. An active imagination, indeed, might create cases and situations in which the necessity might possibly exist; but if there are any such, and they are sufficiently probable to justify an exception in the law, they should be stated as such, and they would then confirm the rule. But, by a perversity of reasoning in those who advocate this species of punishment, they put the exception in the place of the rule, and, what is worse, an exception of which the possibility is doubtful.

It may be observed, that I have taken the preservation of life as the only case in which even necessity could give the right to take life, and that for the simple reason, that this is the only case in which the two natural rights of equal importance can be balanced; and in which the scale must preponderate in favor of him who defends against him who endeavors to destroy. The only true foundation for the right of inflicting death, is the preservation of existence. This gift of our Creator seems, by the universal desire to preserve it which he has infused into every part of his animal creation, to be intended as the only one which he did not intend to place at our disposal. But, it

* This explains the part of the Report on the Plan of a Penal Code, which relates to the comparison between the evil of the offence and the punishment.

may be said, what becomes of our other rights? Are personal liberty, personal inviolability, and private property to be held at the will of any strong invader? How are these to be defended, if you restrain the right to take life to the single case of defence against an attack upon existence? To this it is answered: Society being a natural state, those who compose it have collectively natural rights. The first is that of preserving its existence; but this can only be done by preserving that of the individuals which compose it. It has, then, duties as well as rights; but these are wisely ordered to be inseparable. Society cannot exert its right of self-preservation without, by the same act, performing its duty in the preservation of its members. Whenever any of those things which are the objects of the association, life, liberty, or property, are assailed, the force of the whole social body must be exerted for its preservation: and this collective force, in the case of an individual attack, must, in ordinary cases, be sufficient to repel it without the sacrifice of life; but in extraordinary cases, when the force of the assailants is so great as to induce them to persevere in a manner that reduces the struggle to one for existence, then the law of self-defence applies.

But there may be a period in which individual rights may be injured before the associated power can interfere. In these cases, as the nature of society does not deprive the individual of his rights, but only comes in to aid their preservation, he may defend his person or property against illegal violence by a force sufficient to repel that with which he is assailed. This results clearly from the right to property, to whatever source we may refer it; and from that of personal inviolability, which is (under certain restrictions imposed by nature itself) indubitably a natural right. As the injury threatened may not admit of compensation, the individual may use force to prevent the aggression; and if that used by the assailant endangers his life,* the question then again becomes one of self-defence, and the same reasoning applies which was used to show the right of taking life in that case. But where the individual attacked can, either by his own physical force, or by the aid of the society to which he belongs, defend himself or his property,—when the attack is not of such a nature as to jeopardize his own existence in the defence of them,—if he take the life of the aggressor, under these circumstances, he takes it without necessity, and consequently without right. This is the extent to which the natural law of self-defence allows an individual to go, in putting another to death. May any association of individuals inflict it for any other cause, and under any other circumstances? Society has the right only to defend that which the individuals who compose it have a right to defend, or to defend itself—that is to say, its own existence, and to destroy any individual, or any other society which shall attempt its destruction. But this, as in the case of individuals, must be only while the attempt is making, and when there is no other means to defeat it. And it is in that sense only that I understand the word so often used, so often abused, so little understood,—*necessity*. It exists between nations during war, or a nation and one of its component parts in a rebellion or insurrection, —between individuals during the moment of an attempt against life, which cannot otherwise be repelled; but between society and individuals, organized as the former now is, with all the means of repression and self-defence at its command, never. I come then to the conclusion, in which I desire most explicitly to be understood, that although the right to punish with death might be abstractedly conceded to exist in certain societies, and under certain circumstances which might make it necessary, yet, composed as society now is, these circumstances cannot reasonably be even supposed to occur; that, therefore, no necessity, and of course no right, to inflict death as a punishment does exist.

There is also great force in the reasonings which have been used to rebut that which founds the right to take life for crimes, on an original contract, made by individuals on the first formation of society: 1. That no such contract is proved, or can be well imagined. 2. That if it were, it would be limited to the case of defence. The parties to such contract could only give to the society those rights which they individually had: their only right over the life of another is to defend their own. They can give that to society, and they can give no more. In this case also, therefore, the right resolves itself into that of doing what is necessary for preservation. The great inquiry then recurs, Is the punishment of death in any civilized society necessary, for the preservation either of the lives of its citizens individually, or of their social collective rights? If it be not necessary, I hope it has been proved not to be just; and if neither just nor necessary, can it be expedient? To be necessary, it must be shown that the lives of the citizens and the existence of society cannot be preserved without it. But can this be maintained in the face of so many proofs? Egypt, for twenty years, during the reign of Sabaco*—Rome, for two hundred and fifty years—Tuscany, for more than twenty-five—Russia,† for twenty-one, during the reign of Elizabeth,—are so many proofs to the contrary. Nay, if those are right who tell you that the penal laws of Spain were abro-

* The existence of danger alone is not a sufficient justification by the English, nor I believe by other laws, for homicide; it must be a danger from which there is no other means of escape.

* Diodorus Siculus.

† As I use no historical fact with a desire that it should go for more than it is worth, it is but proper to say, that I have never relied so much upon the example of Russia as

gated by the transfer, this State (Louisiana) itself gives an unanswerable proof that no such necessity exists; for if those laws were not in force, it is very clear that there were none imposing the penalty of death, from the time of the transfer, in December, 1803, to the 5th of May, 1805, when our first penal law was passed. Yet, during that period, when national prejudices ran high,—when one government had abandoned and the other had not yet established its authority,—there was not, I believe, a single instance of murder, or of any attempt to destroy the order of society; so that one argument or the other must be given up. Either the Spanish laws existed, or we ourselves furnish a proof that a nation may exist, in peace, without the punishment of death. Societies have, then, existed without it. In those societies, therefore, it was not necessary. Is there any thing in the state of ours that makes it so? It has not, as far as I have observed, been even suggested. But, if not absolutely necessary, have its advocates even the poor pretext that it is convenient,—that the crimes for which it is reserved diminish under its operation, in a greater proportion than those which incur a different punishment? The reverse is the melancholy truth. Murder, and those attempts to murder which are capitally punished, have increased in some of the United States, to a degree that not only creates general alarm, but, by the atrocity with which they are perpetrated, fix a stain on the national character, which it will be extremely difficult to efface. I might rely, for this fact, on the general impression which every member of the body I address must have on this subject; but as the result is capable of being demonstrated by figures, I pray their attention to the tables annexed to this report,—in which, although they are far from being as complete as could be wished, they will see an increase of those crimes that demonstrates, if any thing can do it, the inefficiency of the means adopted, and so strangely persisted in, of repressing them. The small number of executions, compared with the well-authenticated instances of the crime, shows that the severity of the punishment increases the chance of acquittal; and the idle curiosity which draws so many thousands to witness the exhibition of human suffering at the executions—the levity with which the spectacle is beheld—demonstrates its demoralizing and heart-hardening effects,—while the crimes committed at the very moment of the example intended to deter from the commission, show how entirely ineffectual it is. One instance of this is so remarkable, that I cannot omit its detail. In the year 1822, a person, named John Lechler, was executed at Lancaster, in Pennsylvania, for an atrocious murder. The execution was, as usual, witnessed by an immense multitude; and of the salutary effect it had on their feelings and morals we may judge from the following extract from a newspaper,* printed in the neighborhood,—the material facts, which are stated in it, having been since confirmed to me, by unquestionable authority:—

"It has long," says the judicious editor, "been a controverted point, whether public executions, by the parade with which they are conducted, do not operate on the vicious part of the community more as incitements to, than examples deterring from, crime. What has taken place in Lancaster would lead one to believe, that the spectacle of a public execution produces less reformation than criminal propensity. While an old offence was atoned for, more than a dozen new ones were committed, and some of a capital grade. Twenty-eight persons were committed to jail, on Friday night, for divers offences at Lancaster, such as murder, larceny, assault and battery, etc.; besides, many gentlemen lost their pocket-books, where the pick-pockets escaped, or the jail would have overflowed.

"In the evening, as one Thomas Burns, who was employed as a weaver in a factory, near Lancaster, was going home, he was met by one Wilson, with whom he had some previous misunderstanding; when Wilson drew a knife and gave him divers stabs, in sundry places, which are considered mortal. Wilson was apprehended and committed to jail, and had the same irons

upon the others to which I refer; because, although I have been able to procure no precise information on the subject, I am yet inclined to believe that the punishment of the *knout* was preserved as an equivalent to that of death, in many cases,—and to death in its most horrid form. It is thus described by Howard: "I saw two criminals, a man and a woman, suffer the punishment of the knout. They were conducted from prison by about fifteen hussars and ten soldiers. When they arrived at the place of punishment, the hussars formed themselves into a ring round the whipping-post. The drum beat a minute or two, and then some prayers were repeated,—the populace taking off their hats. The woman was taken first, and, after being roughly stripped to the waist, her hands and feet were bound with cords to the post; a man standing before the post to keep the cords tight. A servant attended the executioners, and both were stout men. The servant first marked his ground, and struck the woman five times on the back. Every stroke seemed to penetrate deep into the flesh. But his master, thinking him too gentle, pushed him aside, took his place, and gave all the remaining strokes himself, which were evidently more severe. The woman received twenty-five, and the man sixty. I pressed through the hussars, and counted the number as they were chalked on a board. Both seemed but *just alive*, especially the man, who had, however, strength enough to receive a small donation, with some signs of gratitude. They were conducted back to prison in a little wagon. I saw the woman in a weak condition, some days after, *but could not find the man any more.*" The enlightened successor of Alexander is pursuing, with energy a ı zeal, a reform in the laws of the empire, which his great predecessor begun. It will, without any doubt, put an end to such scenes as Howard has described; and this code, if completed according to the humane and liberal views of the emperor, will be a monument more glorious than any that was ever erected to a conquering monarch.

* Yorktown Gazette.

put on him which had scarcely been laid off long enough, by Lechler, to get cold."

A letter, in answer to some inquiries I made on the subject, adds to this information, that Wilson was one of the crowd who left his residence expressly to witness the execution, and, to take away all doubt that the "Gazette" account was not exaggerated, that he has since been convicted of the murder.

I pray the advocates for this punishment to reflect on this example,—to recollect that detailed in my former report, of the sale of forged notes in the chamber where lay the corpse* of him who was that day executed for a similar offence. I ask them seriously to ponder on them,—on the numerous other instances of a like nature, that must occur to them,—and then to say whether they can believe the punishment of death an efficient one for murder. The most serious and intense reflection has brought my mind to the conclusion, not only that it fails in any repressive effect, but that it promotes the crime. The cause it is not very easy to discover, and still more difficult to explain; but I argue from effects; and when I see them general in their occurrence, after the same event, I must believe that event to be the efficient cause which produces them, although I may not be able to trace exactly their connection. This difficulty is particularly felt in deducing moral effects from physical causes, or arguing from the operation of moral causes on human actions. The reciprocal operations of the mind and body must always be a mystery to us, although we are daily witnesses of their effects. In nothing is this more apparent, or the cause more deeply hidden, than in that propensity which is produced on the mind to imitate that which has been strongly impressed on the senses, and that frequently in cases where the first impression must be that of painful apprehension. It is one of the earliest developments of the understanding in childhood. Aided by other impulses, it conquers the sense of pain, and the natural dread of death. The tortures inflicted on themselves by the fakirs of India, the privations and strict penance of some monastic orders of Christians, and the self-immolation of the Hindoo widows, may be attributed, in part, to religion,—in part to the love of distinction and fear of shame; but no one, nor all of these united, except in the rare cases of a hero or a saint, could produce such extraordinary effects, without that spirit of imitation to which I have alluded. The lawgiver, therefore, should mark this, as well as every other propensity of human nature; and beware how he repeats, in his punishments, the very acts he wishes to repress, and makes them examples to follow rather than to avoid.

Another reason, perhaps not sufficiently enlarged upon in the former report, to show that it cannot be efficient, is drawn from the uncertainty of its infliction,—an uncertainty which reduces the chance of the risk to less than that which is, in many instances, voluntarily incurred in many pursuits of life. Soldiers march gayly to battle, with the certainty that many of them must fall: those who commit a crime, punishable with death, always proceed with the hope that they will avoid detection. You find men to affront death in all the shapes it can assume;* to pursue the most dangerous trades; to undertake the most desperate enterprises, for the most trifling considerations. While there is a chance of escape, the happy disposition of our nature makes us always believe it will be favorable to us. We seize the certain enjoyment that is offered by glory, by profit, or even by convenience, and we trust that we shall escape the uncertain danger. If this is acknowledged in the common pursuits of life, why should it be denied in the rarer instance of crime? The great error of our laws is, an obstinate refusal to consider an offender against them as moved by the same impulses, guided by the same motives, with the rest of the community; refusing, in short, to consider him as a man. They suppose him a demon, or an idiot; and their provisions are, accordingly, for the most part, calculated for a being actuated by perversity too incorrigible to be amended, or by folly incapable of pursuing his own happiness when the path is pointed out. If we, on the contrary, were to frame our laws for man as he is, should we consider that the threat of death would be an efficient restraint to him who, before he commits the crime, takes every measure that prudence can dictate to avoid

* The following circumstance, which I find stated by a gentleman at a public meeting in Southampton, in England, as having been detailed by Mr. Buxton, is a stronger case: "An Irishman, found guilty of issuing forged bank notes, was executed, and his body delivered to his family. While his widow was lamenting over the corpse, a young man came to her to purchase some forged notes. As soon as she knew his business, forgetting at once both her grief and the cause of it, she raised up the dead body of her husband, and pulled from under it a parcel of the very paper for the circulation of which he had forfeited his life. At that moment, an alarm was given of the approach of the police, and not knowing where else to conceal the notes she thrust them into the mouth of the corpse; and there the officers found them."

* In one of those imaginary characters, drawn by the great modern painter of human passions and pursuits, after his most felicitous manner, we have this reckless contempt of danger admirably personified in the ferocious buccanier:

"Inured to danger's direst form,
Tornade and earthquake, flood and storm;
Death hath he seen by sudden blow,
By wasting plague, by torture slow,
By mine, or breach, by steel or ball,
Knew all his shapes, and scorned them all."

Bertram is the *beau ideal* of a pirate; but the same contempt of death is found, in a less degree, perhaps, to animate other freebooters. Witness the cool reply of one of them to a fellow-sufferer on the wheel: "Why do you make all this noise? (said he,) did you not know that in our profession we were subject to one malady more than the rest of the world?"

discovery, and who, after that, calculates on the proverbial uncertainty of the law,—while many of us are not deterred by a risk which we cannot flatter ourselves to avoid, for a trifling gain, or a momentary gratification? Yet, it may be said, the good citizen incurs the risk of death, but not of death in such a form; he would not, for the gratification or reward you speak of, incur the slightest risk of infamy, although the greatest that can be presented of honorable death does not affright him. This is most true, and this is most conclusive in the argument. It is not death, then, that is feared; it is death with ignominy. But if it be that which makes death dreadful, will it not make life intolerable? If the suffering of shame cannot be endured during the short interval between conviction and execution, how can it be borne spread over a whole life?

But the murderer has no shame!—Then, according to your argument, he has nothing to make him fear death more, in his criminal pursuits, than you do in your honest occupation of inhaling pestilence in an infected hospital, or poison in the manufacture of mercury, or when you are heroically facing it on the ocean or in the field. Why, then, should the lesser risk, against which he thinks he has guarded, deter him, when the greater, which you know you must face, has no effect upon you? Let no man, whose duty it is to determine on this important measure, evade this question. If he decide it as I think reason and the slightest knowledge of human nature must direct, the denunciation of death must be acknowledged to be no efficient bar to the commission of the only crime in which you think proper to employ it.

There is no point in the argument, on which stronger reasoning and more persuasive authority could be produced, than on this, which has more than once been necessarily introduced; for it connects itself with every other. From the operation of the earliest written laws, of which history gives us any account, down to the present day, it has been invariably observed, by all who would take the trouble to think, that the inexecution of penal laws was in exact proportion to their severity. Those of Draco have become proverbial for this last quality; and their cruelty has been generally supposed a sufficient reason for their abolition by Solon. But the fact is, that they were abolished, not so much by Solon, as by the impossibility of carrying them into execution. When the stealing an apple incurred the punishment of death, what citizen would accuse—what witness would testify—what assembly of the people would convict,—nay, what executioner would be found to present the poisoned cup? We are accordingly told expressly, that these laws were abolished, not by a formal decree, but by the tacit and unrecorded consent of the Athenians.*

I make no quotations from modern writers on penal law to this point, for there is not one who has not given his testimony in favor of the position I have taken; and yet, by a most singular incongruity, each of them has a favorite crime to which he thinks it applicable.

This is not an essay to prove the inutility, the danger, and if these are admitted, the *crime* of employing the punishment of death. Such a work would require a methodical arrangement, and a research into the first principles of penal law, which cannot be expected from a mere explanatory report, in which heads of argument are suggested without much order, and with little development; leaving to the enlightened minds, to which they are addressed, the task of pursuing, to all their consequences, the topics which are raised for consideration. With this understanding, I shall add a few more reflections on this subject, so interesting to our best feelings.

All nations, even those the best organized, are subject to political disorders, during which the violent passions that are excited avail themselves of every pretext for their indulgence; and parties, animated with the rage of civil discord, mutually charge each other with the worst intentions, and blackest crimes; but even in the hottest warfare of party rage, the destruction of a rival faction or a dangerous leader, is seldom attempted but by the imputation of some crime: new laws are not made on such occasions, but the existing laws are perverted and misapplied; new punishments are not invented, but those already known are rigorously enforced against the innocent. This is the usual state of things in all intestine commotions, and even after they have assumed the shape of civil war, accompanied by all its horrors, those who do not fall in the field are subjected to something like a trial before their lives are sacrificed. Murder, on those occasions, arrays itself in the spotless ermine of justice, covers itself with her robes, mounts her sacred seat, borrows her holy language, adopts her forms, calls its iniquitous sentence the judgment of the law; and even when it stretches forth its bloody hand for execution, it wields her own weapon, and inflicts on the innocent victim no other punishment than that which previous laws had provided for guilt.

This is necessary, is inevitable, in cases of civil discord. Whatever may be the projects of unprincipled leaders, the people, who compose their party and their strength, must be made to believe that those to whom they adhere are the friends and supporters of the laws, and therefore no violent, open disregard of established forms would be tolerated, even where the essentials of justice are violated; forms speak to the senses; the substance of justice to the understanding only. This last may be perverted by the passions, or imposed on by false-

* "Draconis leges, quoniam videbantur impendio acerbiores, non decreto jussuque, sed tacito illite rateque Atheniensium consensu, obliteratæ sunt."—*Aulus Gellius*, lib. iii. c. 18.

hood in fact, or sophistry in argument; but the eyes and ears only are necessary to observe a violation of form. In the times I have supposed—and they may afflict our country as they have all others—it is of importance to sanction no penalty that may be used to the destruction of your best citizens: they are the most obnoxious to all parties. Not partaking the violence of either, they are suspected by both, and become the first victims; and never has any revolutionary or factious storm desolated any land, without the loss of men lamented even by their mad executioners, after the calm of peace had restored them to their senses. Beware, then, how you sharpen the axe, and prepare the other instruments of death, for the hand of party violence. Beware how you so accustom the people to their use, that whenever their judgment may be led astray so as to think the innocent guilty, they may feel no shock in witnessing the last agonies of a man whom they may afterwards deplore as a national loss, and whose death they may feel as a national disgrace. I dwell upon this, because I deeply feel its force.

History presents to us the magic glass on which, by looking at past, we may discern future events. It is folly not to read; it is perversity not to follow its lessons. If the hemlock had not been brewed for felons in Athens, would the fatal cup have been drained by Socrates? If the people had not been familiarized to scenes of judicial homicide, would France or England have been disgraced by the useless murder of Louis or of Charles? If the punishment of death had not been sanctioned by the ordinary laws of those kingdoms, would the one have been deluged with the blood of innocence, of worth, of patriotism, and of science, in her revolution? Would the best and noblest lives of the other have been lost on the scaffold, in her civil broils? Would her lovely and calumniated queen, the virtuous Malesherbes, the learned Condorcet—would religion, personified in the pious ministers of the altar, courage and honor, in the host of high-minded nobles, and science, in its worthy representative, Lavoisier—would the daily hecatomb of loyalty and worth,—would all have been immolated by the stroke of the guillotine; or Russell and Sidney, and the long succession of victims of party and tyranny, by the axe? The fires of Smithfield would not have blazed, nor, after the lapse of ages, should we yet shudder at the name of St. Bartholomew, if the ordinary ecclesiastical law had not usurped the attributes of divine vengeance, and by the sacrilegious and absurd doctrine, that offences against the Deity were to be punished with death, given a pretext to these atrocities. Nor, in the awful and mysterious scene on Mount Calvary, would that agony have been inflicted, if by the daily sight of the cross, as an instrument of justice, the Jews had not been prepared to make it one of their sacrilegious rage. But there is no end of the examples which crowd upon the memory, to show the length to which the exercise of this power, by the law, has carried the dreadful abuse of it, under the semblance of justice. Every nation has wept over the graves of patriots, heroes, and martyrs, sacrified by its own fury. Every age has had its annals of blood.

But not to resort to the danger of the examples in times of trouble and dissension, advert once more to that which was formerly urged, and to which I must again hereafter return—that which attends its regular practice in peace—the irremediable nature of this punishment, when error, popular prejudice, or false or mistaken testimony, has caused its infliction to be ordered upon the innocent,—a case by no means of so rare occurrence as may be imagined. It is not intended to enter into a detail of those which I have myself collected; they are not few, although they must necessarily bear a small proportion to those which were not within my reach. The author of a book* of high authority, on evidence, has brought together several cases which are well authenticated. In France, in the short space of one year, I have gathered from the public papers that seven cases occurred, in which persons condemned to death by the primary courts and assizes, have been acquitted by the sentence of a superior tribunal, on a reversal of the sentence.† In other States of our Union, these cases are not uncommon. With us the organizations of our courts prevent the correction of any error, either in law, or in fact, by a superior tribunal. But every where it is matter of surprise that any cases should be discovered of these fatal mistakes. The unfortunate subjects of them are, for the most part, friendless: generally their lives must have been vicious, or suspicion would not have fastened on them; and men of good character sometimes think it disreputable to show an interest for such men, or to examine critically into the circumstances of their case. They are deserted by their connections, if they have any,—friends they have none. They are condemned—executed—forgotten; and in a few days it would seem that the same earth which covered their bodies has buried all remembrance of them, and all doubts of their innocence or guilt. It is, then, not unreasonable to suppose, that many more such cases have existed than those that have fortuitously been brought to light.‡

* Phillips on Evidence, (Appendix.)

† Is not this a striking lesson to teach us the necessity of providing the means of correcting error in criminal as well as in civil cases—of protecting life and liberty as well as property? The importance of the subject may, perhaps, excuse my referring once more to the bill formerly offered to the general assembly by the reporter.

‡ Let me give the substance of this objection to capital punishment in the words of a man to whom the science of legislation owes the great attention that is now paid to its true principles, and to whom statues would be raised if the benefactors of mankind were as much honored as the oppressors of nations: "The same objection," he says, "lies against all afflictive penalties, that they cannot be remedied,

Would you retain a punishment that, in the common course of events, must be irremediably inflicted, at times, on the innocent, even if it secured the punishment of the guilty? But that is far from being the effect. While you cannot, in particular cases, avoid its falling upon innocence, that very cause, from the imperfection of all testimony, will make it more favorable to the escape of the guilty; and the maxim,† so often quoted on this occasion, will no longer be perverted in order to effect a compromise between the conscience of the juror and the severity of the law, when your punishments are such only as admit of remission when they have been found to be unjustly imposed.

Other arguments, not less forcible,—other authorities, equally respectable,—might be adduced to show the ill effects of this species of punishment; but the many topics that are still before me, in this report, oblige me to pursue this one no farther than to inquire, what good can be expected, or what present advantage is derived, from retaining this punishment? Our legislation surrendered it without a struggle, in all cases, at first, but murder, attempt to murder, rape, and servile insurrection; and afterwards extended it to a species of aggravated burglary.* Now, as these cases are those only in which it has been deemed expedient to retain this punishment,—as it has been abandoned in all others,—the serious inquiry presents itself, why it was retained in these, or why abandoned in the others? Its inefficiency, or some of the other objections to it, must have been apparent in all the other numerous offences in which it has been dispensed with, or it would certainly have been retained, or restored. Taking this acknowledged inefficiency, in the numerous cases, for the basis of the argument, let us inquire whether there is any thing which makes it peculiarly adapted to the enumerated crimes, which it is unjust or inexpedient to apply to any of the others? We have three modes of discovering the truth on this subject: by reasoning from the general effects of particular motives on human actions; by analogy, or judging from the effects in one case to the probable effects in another; or by experience of the effect on the particular case. The general reasoning upon the justice and efficacy of the punishment will not be repeated here, but it is referred to as being conclusive as to all offences, and admitting of no exceptions that would apply to murder, or either of the three other cases in which our laws inflict it. If we reason from analogy, we should say the only argument ever used in favor of death as a punishment is, that the awful example it presents will deter from the commission of the offence; but by your abandonment of it in all cases but these, you acknowledge it has no efficacy there. Analogy, therefore, would lead us to the conclusion, that if it was useless in the many cases, it would be so in the few. But it is acknowledged that no analogy, or any other mode of reasoning,—no theory, however plausible,—ought to influence,

but they may be compensated. For death alone there is no resource. There is no man, ever so little versed in criminal procedure, who does not feel a kind of terror, when he thinks on how slight a circumstance the life of a man under accusation for a capital crime depends, and who does not recollect instances in which individuals have owed their lives to some extraordinary circumstance, accidentally brought to light at the critical moment of danger. The chances of danger are, without doubt, very different, according to the different systems of procedure; but are there any judiciary forms, which can guard, in perfect security, against the snares of falsehood and the illusions of error? No! absolute security is a point of perfection which may be approached much nearer than has yet been done without reaching it; for witnesses may deceive, or be deceived; the number of those who testify to the same fact is not an infallible safeguard; and as to proofs which are drawn from circumstantial facts—circumstances the most conclusive, in appearance—those which it would seem impossible to explain, but on the supposition of guilt—even these may be the effect of chance, or of preconcerted circumstances, arranged by interested persons. The only proof which would appear to bring complete conviction, the free confession of the accused, besides its being very rare, does not always give absolute certainty; since men have been found, as in the case of witchcraft, to confess themselves guilty of a crime that it was impossible to commit. Those are not imaginary alarms, drawn from simple possibilities; there are no criminal records that do not present examples of those fatal mistakes, and those which, by a concurrence of singular events, have become known, give us reason to suspect many innocent victims unknown. It may even be observed, that the cases in which the word evidence is most frequently used, are those in which the testimony is most doubtful. When the alleged crime is one of those which excites the most antipathy, or heightens the spirit of party, the witnesses unconsciously become accusers; they are no more than the echoes of public clamor; the fermentation increases by its own action, and it is no longer permitted to doubt. It was a frenzy of this kind which first seized the people, and was afterwards communicated to the judges, in the unfortunate affair of Calas."—*Bentham's Theory of Rewards and Punishments.*

† That it is better ten guilty should escape than one innocent suffer, is invariably given to the jury as a maxim in all capital cases, depending on circumstantial evidence; and where there are no irritating causes, it invariably succeeds.

* Act of 20th March, 1818, (section 8;)—breaking into a dwelling house in the night time, with intent to steal, etc. So far this crime was already punishable, under the act of 1805. The severe punishment of death is added, if any person was lawfully within the house, and if the offender was armed with a dangerous weapon; or if not so armed, if he armed himself in the house, or made an assault on the person then being in the house lawfully. If the occupier of the house was not there lawfully, the offender escapes death! What a circumstance on which to hang the life of a man! If the tenant has a good lease, the robber is hanged; if he is an intruder, he escapes death. Again, if the robber meets nobody in the house, and steals ten thousand dollars, he only suffers imprisonment; but if he sees a servant, and shakes his fist at him, he is hanged, although he should steal nothing. If he breaks in without weapons, and rifles the house of all its contents, he is imprisoned only; if he finds a fowling-piece, and carries it off in his hand, he is hanged;—another specimen of the laws which nothing but presumption could attempt to amend.

when contradicted by experience. You have tried this remedy, and found it ineffectual! The crimes to which you have applied it are decreasing, in number and atrocity, under its influence! If so, it would be imprudent to make any change, even under the most favorable prospects that the new system would be equally efficient. Let us try it by this test. For the first three years after the transfer of the province, there was not a single execution or conviction for either of these crimes. In the course, however, of the first six years, four Indians, residing within the limits of the State, made an attack on some of the settlers, and were either given up by the tribe, or arrested and condemned; and two were executed as for murder, and one negro was condemned and executed for insurrection. In the next six years there were ten convictions; in the succeeding four, to the month of January, 1822, fourteen;—so that we find the number of convictions for the enumerated crimes have nearly doubled in every period of six years, in the face of this efficient penalty. But the population of the State doubles only once in twenty years; therefore the increase of this crime progresses in a ratio of three to one to that of the population; and we should not forget, in making this calculation, the important and alarming fact, that numerous instances of homicide, and attempts to kill, occur, which are rarely followed by prosecution, and more rarely still by conviction. I mean, all that class that have their origin in a mistaken sense of honor, including not only the lives sacrificed to the tyranny of public opinion in duels, but those less excusable and increasing cases of wounds and death, inflicted in atonement for some injury offered to personal dignity. Under the statute against stabbing, I find but three convictions up to the year 1822; one instance of rape, to the same period; and what is somewhat singular, not a single instance of burglary from 1805 until 1820, in which year, and the succeeding one, there were two cases, just two years after it was made a capital crime. What are we to conclude from this statement? First, I think, that, of burglary, one of the crimes to which capital punishment is annexed, fifteen years' experience, (during which time there was not a single conviction, and, as far as is known, not a single indictment, under the law which denounced imprisonment as the penalty,) ought to have convinced us, that the severer punishment was not necessary; while the two convictions which so soon succeeded the promulgation of that law, are strong testimony that the punishment of death is not an effectual remedy for the evil. As to rape, that its rare occurrence is much more properly to be attributed to the manners of the age than to any fear of the punishment annexed; for if that were the efficient cause, we should certainly find it at least as powerful in the case of murder—a crime to which the offender is not stimulated, as in the former case, by the strongest sensual appetite.

Besides, this is not the stronghold of those who argue in favor of capital punishment. Driven from every other ground, they defend it as peculiarly applicable to the case of murder. The slow abandonment of it for other offences is a proof of the gradual advance of true principles, and the pertinacity with which it is adhered to in this, shows the force of early impressions and inveterate prejudice, even in the most enlightened minds; yet that prejudice must in time yield to the evidence which the practical results which have attended this infliction,—results which show, almost to demonstration, that the public exhibition of homicide, directed by the sacred voice of the law, so far from repressing, does but encourage it, in private quarrels. It is commonly advocated on the principle of vindictive justice,* and can be, with a due regard to facts, on no other. The murderer deserves death! He that sheds man's blood, by man shall his blood be shed! Blood for blood! These are the exclamations that are used instead of argument. Such sentiments, combined with the spectacle of legal revenge which they dictate, can produce but one effect. Half the odium and horror of taking human life is lost, by the example of seeing it made a public duty, while the motives are sanctified, which are but too apt to justify it in the mind of an irritated individual, who magnifies the injury he has received, overlooks the provocation he gave, and thinks himself excusable in doing, to satisfy his passions, that which public justice does from the same motive,—revenge. The sensation of horror, with which we see a human being suffering a violent death, would certainly be increased, if the hand of justice was never employed in the unholy work; and private vengeance would be checked by the laws, when they no longer encouraged it by their example.

But however this vindictive feeling may betray itself in the warmth of conversation, it is not brought forward in any serious argument: there it is too universally exploded. What then is said? That it is a punishment proportioned to the crime; that, as murder is the highest of all offences, death, the greatest of all punishments, ought to be applied to it. But why ought it to be so applied? To apportion the punishment to the offence, does not mean to make the culprit suffer the same quantity of evil which he inflicted by his crime: that would

* I had once a conversation with an exalted magistrate, a man of high attainments and great liberality on the abolition of this punishment. He acceded to the propriety of the measure, in all cases but murder; because of the difficulty of keeping the offender, and the severity of solitary confinement, which was proposed to be substituted. But when these two objections were, as I thought, satisfactorily answered, he replied by one of the exclamations used in the text, and added, very frankly—"I must confess that there is some little feeling of *revenge* at the bottom of my opinion on this subject." If all other reasoners were equally candid, there would be less difficulty in establishing true doctrines.

be both impossible and unjust. It means, that the punishment should be such as to deter from the commission of crime, but no greater. If, then, death has not this effect, why ought it to be applied? But that it has not this effect is shown by reasoning and by fact. Why, then, will you continue to apply it? Pressed by this inquiry, we have the same eternal answer,—murder deserves death.* Out of this circle no reasoning can drive them. Sometimes, indeed, we are asked, Are you sure, that, if we give up this punishment, your substitute will prove effectual? If you mean so effectual as to eradicate the crime, I answer, no! But I am as sure as experience, and analogy, and reason united, can make me, that it will be more effectual. What is it we fear? Why do we hesitate? You *know*, you cannot deny, that the fear of the gallows does not restrain from murder. We have seen a deliberate murder committed in the very crowd assembled to enjoy the spectacle of a murderer's death; and do we still talk of its force as an example? In defiance of your menaced punishment, homicide stalks abroad and raises its bloody hand, at noon-day, in your crowded streets; and, when arrested in its career, takes shelter under the example of your laws, and is protected, by their very severity, from punishment. Try the efficacy of milder punishments; they have succeeded. Your own statutes,—all those of every State in the Union,—prove that they have succeeded, in other offences; try the great experiment on this also. Be consistent: restore capital punishment in other crimes, or abolish it in this. Do not fear that the murderers from all quarters of the earth, seduced by the mildness of your penal code, will choose this as the theatre of their exploits. On this point we have a most persuasive example. In Tuscany, as we have seen, neither murder nor any other crime was punished with death, for more than twenty years, during which time we have not only the official declaration of the sovereign, that "all crimes had diminished, and those of an atrocious nature had become extremely rare," but the authority of the venerable Franklin for these conclusive facts; that in Tuscany, where murder was not punished with death, only five had been committed in twenty years,—while in Rome, where that punishment is inflicted with great pomp and parade, sixty murders were committed in the short space of three months, in the city and its vicinity.* "It is remarkable," he adds to this account, "that the manners, principles, and religion of the inhabitants of Tuscany and of Rome are exactly the same. The abolition of death alone, as a punishment for murder, produced this difference in the moral character of the two nations." From this it would appear, rather that the murderers of Tuscany were invited, by the severe punishments in the neighboring territories of Rome, than that

* If ever any philosophy deserved the epithets of useful and practical, it was that of Doctor Franklin. His opinions must have weight, not only from his character, but from the simple, intelligible reasoning by which they are supported. What says this venerable and irreproachable witness in the cause of humanity, which we are now pleading? "I suspect the attachment to death, as a punishment for murder, in minds otherwise enlightened upon the subject of capital punishment, arises from a false interpretation of a passage in the Old Testament, and that is, 'He that sheds the blood of man, by man shall his blood be shed.' This has been supposed to imply, that blood could only be expiated by blood. But I am disposed to believe, with a late commentator on this text* of Scripture, that it is rather a prediction than a law. The language of it is, simply, that such is the folly and depravity of man that murder, in every age, shall beget murder. Laws, therefore, which inflict death for murder, are, in my opinion, as unchristian as those which justify or tolerate revenge; for the obligations of Christianity upon individuals, to promote repentance, to forgive injuries, and to discharge the duties of universal benevolence, are equally binding upon states.

"The power over human life is the sole prerogative of Him who gave it. Human laws, therefore, are in rebellion against this prerogative, when they transfer it to human hands.

"If society can be secured from violence by confining the murderer, so as to prevent a repetition of his crime, the end of extirpation will be answered. In confinement, he may be reformed; and, if this should prove impracticable, he may be restrained for a term of years that will probably be coeval with his life.

"There was a time when the punishment of captives with death or servitude, and the indiscriminate destruction of peaceable husbandmen, women, and children, were thought to be essential to the success of war, and the safety of states. But experience has taught us that this is not the case; and, in proportion as humanity has triumphed over these maxims of false policy, wars have been less frequent and terrible, and nations have enjoyed longer intervals of internal tranquillity. The virtues are all parts of a circle. Whatever is humane, is wise; whatever is wise, is just; and whatever is wise, just, and humane, will be found to be the true interest of states, whether criminal or foreign enemies are the subject of their legislation.

"For the honor of humanity, it can be said that, in every age and country, there have been found persons in whom uncorrupted nature has triumphed over custom and law. Else, why do we hear of houses being abandoned near to places of public execution? Why do we see doors and windows shut the days and hours of criminal executions? Why do we hear of aid being secretly afforded to criminals to mitigate or elude the severity of their punishments? Why is the public executioner of the law a subject of such general detestation? These things are latent struggles of reason, or rather the secret voice of God himself, speaking in the

* "I hope I shall not offend any one by taking the liberty to put my own construction on this celebrated passage, and to inquire, why it should be deemed a precept at all? To me, I must confess, it appears to contain nothing more than a declaration of what will generally happen; and in this view to stand exactly upon the same ground with such passages as the following: 'He that leadeth into captivity, shall go into captivity;' 'He that taketh up the sword, shall fall by the sword.' The form of expression is precisely the same in both texts. Why, then, may they not all be interpreted in the same manner, and considered, not as commands, but as denunciations? and, if so, the magistrate will no more be bound, by the text in Genesis, to punish murder with death, than he will, by the text in the Revelation, to sell every Guinea captain to our West India planters."—*Rev. W. Turner.*

those of Rome were attracted into Tuscany by their abolition. We have nothing to apprehend, then, from this measure; and if any ill effects should follow the experiment, it is but too easy to return to the system of extermination.

One argument,—the ferocious character impressed on the people by this punishment, which was insisted on in the first report,—has been so strongly illustrated by a subsequent event in Pennsylvania, that I cannot omit stating it. After the execution of Lechler had gratified the people about York and Lancaster with the spectacle of his death, and had produced its proper complement of homicide and other crimes, a poor wretch was condemned to suffer the same fate, for a similar offence, in another part of the State, where the people had not yet been indulged with such a spectacle. They, also, collected by thousands and tens of thousands. The victim was brought out. All the eyes, in the living mass that surrounded the gibbet, were fixed on his countenance; and they waited, with strong desire, the expected signal for launching him into eternity.

There was a delay. They grew impatient. It was prolonged, and they were outrageous: cries like those which precede the tardy rising of the curtain, in a theatre, were heard. Impatient for the delight they expected in seeing a fellow-creature die, they raised a ferocious cry. But when it was at last announced that a reprieve had left them no hope of witnessing his agonies, their fury knew no bounds; and the poor maniac, for it was discovered that he was insane, was with difficulty snatched, by the officers of justice, from the fate which the most violent among them seemed determined to inflict.* This is not an overcharged picture: the same savage feeling has been more than once exhibited, in different parts of the Union, and will always be produced by public executions, unless it is replaced by the equally dangerous feeling of admiration and interest for the sufferer.* Which of the two is to prevail, depends on circumstances totally out of the power of the lawgiver or the judge to foresee, or control; but, by the indulgence of either feeling, every good end of punishment is totally defeated.

I cannot, I ought not to dismiss this subject, without once more pressing on the most serious consideration of the Legislature, an argument which every new view of it convinces me is important, and, if we listen to the voice of conscience, conclusive,—the irremediable nature of this punishment. Until men acquire new faculties, and are enabled to decide upon innocence or guilt without the aid of fallible and corruptible human evidence, so long will the risk be incurred of condemning the innocent. Were the consequence felt as deeply as it ought to be, would there be an advocate for that punishment which, applied in such case, has all the consequences of the most atrocious murder to the innocent sufferers,—worse than the worst murderer! He stabs, or strikes, or poisons, and the victim dies,—he dies unconscious of the blow, without being made a spectacle to satisfy ferocious curiosity, and without the torture of leaving his dearest friends doubtful of his innocence, or seeing them abandon him under he conviction of his guilt. He dies, and his death is like one of those inevitable chances to which all mortals are subject. His family are distressed, but not dishonored; his death is lamented by his friends, and, if his life deserved it, honored by his country. But the death inflicted by the laws,—the murder of the innocent under its holy forms,—has no such mitigating circumstances. Slow in its approach, uncertain in its stroke, its victim feels not only the sickness of the heart that arises from the alternation of hope and fear, until his doom is pronounced; but when that becomes inevitable,—alone, the tenant of a dungeon during every moment that the lenity of the law prolongs his life,—he is made to feel all those anticipations, worse than a thousand deaths. The consciousness of innocence, that which is our support under other miseries, is here converted into a source of bitter anguish, when it is found to be no protection from infamy and death; and when the ties which connected him to his country, his friends, his family, are torn asunder, no

human heart, against the folly and cruelty of public punishments.

"I shall conclude this inquiry by observing, that the same false religion and philosophy which once kindled the fire on the altar of persecution, now dooms the criminal to public ignominy and death. In proportion as the principles of philosophy and Christianity are understood, they will agree in extinguishing the one and destroying the other. If these principles continue to extend their influence upon government, as they have done for some time past, I cannot help entertaining a hope, that the time is not very distant, when the gallows, the pillory, the stocks, the whipping-post, and the wheel-barrow, (the usual engines of public punishment,) will be connected with the history of the rack and the stake, as marks of the barbarity of ages and countries, and as melancholy proofs of the feeble operation of reason and religion on the human mind."—*Inquiry upon Public Punishments.*

* This disgraceful scene took place at Orwigsburgh. The wretched madman, who was so near suffering, was named Zimmerman. I have the details from a gentleman of the first respectability in Pennsylvania. My informant adds to his account of this transaction—"Executions in this State are scenes of riot, and every species of wickedness; twenty, thirty, and forty thousand persons have been in attendance, on such occasions. In country parts, two and even three days are employed in the merry-making, much after the manner of fairs in former times."

* The tendency of public executions, at times, to elevate the sufferer to the honors of saintship, and lose the detestation due to his crime in admiration for the piety of the new convert, is not confined to the United States. The scene described in the first report, of the execution of the mail-robbers at Baltimore, has been represented in other countries. A note to that part of the report, in a German translation, says—"One would think that the author was an eye-witness to the execution of the murderer Jonas, in this place,—so exactly is the scene described."

consoling reflection mitigates the misery of that moment. He leaves unmerited infamy to his children; a name stamped with dishonor to their surviving parent, and bows down the gray heads of his own with sorrow to the grave. As he walks from his dungeon, he sees the thousands who have come to gaze on his last agony: he mounts the fatal tree, and a life of innocence is closed by a death of dishonor. This is no picture of the imagination. Would to God it were! Would to God that, if death must be inflicted, some sure means might be discovered of making it fall upon the guilty. These things have happened. These legal murders have been committed! and who were the primary causes of the crime? Who authorized a punishment which, once inflicted, could never be remitted to the innocent? Who tied the cord, or let fall the axe upon the guiltless head? Not the executioner, the vile instrument who is hired to do the work of death,—not the jury who convict, or the judge who condemns,—not *the law* which sanctions these errors; but the *legislators* who made the law,—those who, having the power, did not repeal it. These are the persons responsible to their country, their consciences, and their God. These horrors not only have happened, but they must be repeated: the same causes will produce the same effects. The innocent have suffered the death of the guilty: the innocent will suffer. We know it. The horrible truth stares us in the face. We dare not deny, and cannot evade it. A word, while it saves the innocent, will secure the punishment of the guilty; and shall we hesitate to pronounce it? Shall we content ourselves with our own imagined exemption from this fate, and shut our ears to the cries of justice and humanity? Shall "sensibility (as has been finely observed) sleep in the lap of luxury,"* and not awake at the voice of wretchedness? I urge this point with more earnestness, because I have witnessed more than one condemnation under false instructions of law, or perjured, or mistaken testimony:—sentences that would now have been reversed, if the unfortunate sufferers were within the reach of mercy. I have seen, in the gloom and silence of the dungeon, the deep concentrated expression of indignation which contended with grief; have heard the earnest asseverations of innocence, made in tones which no art could imitate; and listened with awe to the dreadful adjuration, poured forth by one of these victims, with an energy and solemnity that seemed superhuman, summoning his false accuser and his mistaken judge to meet him before the throne of God. Such an appeal to the high tribunal which never errs, and before which he who made it was in a few hours to appear, was calculated to create a belief of his innocence: that belief was changed into certainty. The perjury of the witness was discovered, and he fled from the infamy that awaited him; but it was too late for any other effect, than to add one more example to the many that preceded it of the danger, and I may add impiety, of using this attribute of the divine power, without the infallibility that can alone properly direct it. And this objection alone, did none of the other cogent reasons against capital punument exist,—this alone would make me hail the decree for its abolition as an event, so honorable to my country, and so consoling to humanity, as to be cheaply purchased by the labor of a life.

I cannot quit this part of the subject without submitting to the general assembly the opinion of one whose authority would justify an experiment even more hazardous than this, but whose arguments are as convincing as his name is respectable. They are not the opinions of one whom the cant, which is used to cover the ignorance of the day, would call a theorist, but of a man whose whole life was spent in the useful and honorable functions of the highest magistracy, whose name is always mentioned with reverence, and whose doctrines are quoted as authority, wherever the true principles of legal knowledge are regarded. Hear the venerable D'Agnesseau:—

"Who would believe that a first impression may sometimes decide the question of life and death? A fatal mass of circumstances, which seem as if fate had collected them together, for the ruin of an unfortunate wretch,—a crowd of mute witnesses, (and from that character more dangerous,)—depose against innocence: they prejudice the judge; his indignation is roused; his zeal contributes to seduce him. Losing the character of the judge in that of the accuser, he looks only to that which is evidence of guilt, and he sacrifices to his own reasonings the man whom he would have saved had he listened only to the proofs of the law. An unforeseen event sometimes shows that innocence has sunk under the weight of conjectures, and falsifies the conclusions which circumstances had induced the magistrate to draw. Truth lifts up the veil with which probability had enveloped her; but she appears too late! The blood of the innocent cries aloud for vengeance against the prejudice of his judge; and the magistrate passes the rest of his life deploring a misfortune which his REPENTANCE CANNOT REPAIR."*

The earnestness for this reform is sometimes reproached to its advocates as proceeding from a childish fear, that magnifies the apprehension of that which we know is appointed to us all. Not so. The value of life is not overrated in the argument. There are occasions in which the risk of its loss must be incurred; in which the certainty of death must be encountered with firmness and composure. These occasions are presented by patriotism, in defence of our country and our country's rights,—by benevolence, in the rescue of another from danger,—by religion, whenever persecution offers the

* Eden. Principles of Penal Law.

* D'Agnesseau, 16 Mercuriale.

martyr's crown to the faithful; and it is not known, or believed, that those who propose to abolish death as a punishment either fear it as a natural event, or shun its encounter when required by duty, more than those who think it ought to be retained. He who preserved the life of a Roman citizen was entitled to a more honorable recompense than the daring soldier who ventured his own, by first mounting the breach. The civic was preferred to the mural crown. The Romans, during the best period of their history, reduced this abolition to practice. "Far," said their great orator, endeavoring, in a corrupted age, to restore the ancient feeling on the subject,—"far from us be the punishment of death—its ministers—its instruments. Remove them, not only from their actual operation on our bodies, but banish them from our eyes, our ears, our thoughts; for, not only the executions, but the apprehension, the existence, the very mention of these things, is disgraceful to a freeman and a Roman citizen."* Yet the Romans were not very remarkable for a pusillanimous fear of death. In the age of which I speak, they did not want the excitement of capital punishment to induce them to die for their country. On the contrary, it might, perhaps, be plausibly argued, that the servile disposition, which disgraced the latter ages of the republic, was in some measure caused by the change, which made the sacrifice of life the expiation for crime, instead of the consummation and proof of patriotic devotion.

Conscious of having been guilty of much repetition, and certain that I have weakened, by my version of them, arguments much better used by others, I am yet fearful of having omitted many things that might have an effect in convincing any one of those to whom this report is addressed. The firm religious belief I have of the truth of the doctrine I advance, contrasted with the sense of my incapacity to enforce it upon others, must have produced obscurity where the interests of humanity require there should be light, and confusion where the performance of my great duty demands order. But the truth will appear in spite of these obstacles. From the midst of the cloud, with which human imperfections has surrounded her, her voice, like that of the Almighty from the Mount, will be heard reiterating to nations, as well as to individuals, the great command, "THOU SHALT NOT KILL."

* Carnifex et abductio capitis, et nomen ipsum crucis absit, non modo a corpore civium Romanorum sed etiam a cogitatione, oculis, auribus—harum etiam omnium rerum non solum eventus atque perpessio, sed etiam conditio, expectatio, mentio ipsa denique, indigna cive Romano, atque homine libero est.—*Cicero pro Rabirio.*

SAMUEL DEXTER.

Samuel Dexter was a native of Boston, Massachusetts, where he was born in the year 1761. His father, Samuel senior, a descendant of Richard Dexter, who emigrated from England to America, a short time after the landing at Plymouth, was an active supporter of the patriotic cause, prior to the Revolution, and for his eminent services was several times elected by the colonial House of Representatives to the Council; and for the same reasons as often rejected by the royal governor. Finally, however, he was permitted to take his seat; but, in 1774 was again negatived, in company with Bowdoin and others, by the "express commands of his Majesty." It is recorded that he took part in the preparation of the celebrated answers to the Governor's speeches, and the various state papers of that period; which have so long been the theme of admiration for their eloquence and their firm and bold tone of remonstrance against the oppressive measures of the British ministry.* "Soon after the commencement of the revolutionary war," says Doctor Holmes, "he removed, with his family, to Woodstock, Connecticut. He had a large library, which attracted much attention, at the time of its removal, and he was greatly devoted to the use of it, in his retirement, to the close of his life. He was a gentleman of a highly respectable character, possessed a handsome estate, and enjoyed far beyond most literary men, in our country, *otium cum dignitate*.† The latter part of his life was spent in the investigation of the doctrines of theology; which resulted in the establishment, by his will, of a professorship of Sacred Literature in Harvard University. He died, at Mendon, in Massachusetts, on the 10th of June, 1810. Hannah, the wife of this excellent man, and the mother of the subject of this sketch, was the daughter Andrew and Mary Sigourney, and a descendant of André Sigourney, one of those Huguenots who fled from France to America qn the revocation of the edict of Nantes. She is described as "a respectable lady, of dark complexion, with characteristic French features and pronunciation;" peculiarities which her distinguished son inherited.‡ Of her, as well as of his honored father, that son always spoke with reverence and affection.

At the age of sixteen years Samuel Dexter, the junior, entered Harvard University, and in 1781, graduated with the highest honors of his class. During his junior year he delivered a poem on the *Progress of Science*, "which was at that time," says Judge Story, "received with great applause, and is still (1816) considered as highly creditable to his taste and judgment."§ After leaving college he studied law in the office of the Honorable Levi Lincoln, an eminent counsellor of that period, and subsequently Lieutenant Governor of Massachusetts. In due time

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* Wheaton's Life of William Pinkney, page 141.

† Appendix to Doctor Holmes's Memoir of the French Protestants who settled at Oxford, Massachusetts, A. D. 1686, &c., in the Massachusetts Historical Collections. Third series, vol. 2, page 79.

‡ Mr. Dexter was, at one time, engaged in the defence of some foreign sailors, who were on trial in Rhode Island, for piracy. During the trial he had occasion to confer with them repeatedly; and a Quaker, to whom he was personally unknown, observed to a friend, when Mr. Dexter commenced his argument—"*How well he speaketh our language!*" mistaking him for one of the foreigners, arguing in behalf of himself and his associates.—*Sketches of Samuel Dexter by Mr. Sargent.*

§ Sketch of the Life and Character of Samuel Dexter, by Judge Story. Miscellaneous Writings, page 782.

he commenced practice, his reputation increased, and "he soon found himself surrounded with clients." He now became a member of the legislature of his native State; soon after was elected to the lower House of the Congress of the United States, and from thence was elevated to a seat in the Senate. In both branches of Congress his course was honorable and distinguished. "His clear and forcible argumentation, his earnest and affecting admonitions, and his intrepid and original development of principles and measures, gave him a weight of authority, which it was difficult to resist. Perhaps no man was ever heard by his political opponents with more profound and unaffected respect."

In the spring of 1800, he was appointed by President Adams, Secretary of War, and in the following winter, on the resignation of Oliver Wolcott, was transferred to the Treasury Department. He discharged the duties of these offices with his characteristic energy and ability. Before the close of Mr. Adams' administration he was offered a foreign mission. This honor he declined.

Mr. Dexter continued at the head of the Treasury department during a greater part of the first year of Mr. Jefferson's presidency. Mr. Gallatin succeeded him on the twenty-sixth of January, 1802. Soon after retiring he resumed the duties of his profession, and was immediately engaged in causes brought before the highest courts of his native State and of the country. It was in this position that his splendid powers were fully developed. "In no situation," said Judge Story, "have the admirable talents of Mr. Dexter appeared with more unclouded lustre, than in his attendance on the Supreme Court, at Washington. For several years, he passed the winters there, under engagements in many of the most important causes. Rarely did he speak without attracting an audience composed of the taste, the beauty, the wit and the learning, that adorned the city; and never was he heard without instruction and delight. On some occasions, involuntary tears from the whole audience have testified the touching power of his eloquence and pathos. On others, a profound and breathless silence expressed, more forcibly than any human language, the riveted attention of an hundred minds:—I well remember," continues the same able authority, "with what appropriate felicity he undertook, in one cause, to analyze the sources of patriotism. * * * No one who heard him describe the influence of local scenery upon the human heart, but felt his soul dissolve within him. I can recall but imperfectly a single passage; and, stript of its natural connection, it affords but a glimmering of its original brightness. 'We love not our country,' said the orator, 'from a blind and unmeaning attachment, simply because it is the place of our birth. It is the scene of our earliest joys and sorrows. Every spot has become consecrated by some youthful sport, some tender friendship, some endearing affection, some reverential feeling. It is associated with all our moral habits, our principles, and our virtues. The very sod seems almost a part of ourselves, for there are entombed the bones of our ancestors. Even the dark valley of the shadow of death is not without its consolations, for we pass it in company with our friends.'"

It is much to be regretted that the forensic efforts of Mr. Dexter have not been preserved. But one of his arguments is extant, and that is spoken of by his most recent and most competent biographer,* as "an abridgment," and cannot, probably, however able, be classed in the very foremost rank of his efforts. His argument on the unconstitutionality of the embargo laws, is considered to be one of his greatest successes. To the profound legal knowledge, the able statesmanship, and the tremendous eloquence he displayed on this occasion, Mr. Webster, in the memorable debate on Foot's resolution, gives unqualified and honorable praise.

Mr. Dexter's style of speaking was slow and deliberate. Generally, he stood still and erect, using no gestures except, occasionally, in the extension of his right arm towards the bar, with his hand firmly clenched. "When growing earnest, he often inclined his body slightly forward, and closing the palms of his hands, moved them up and down repeatedly, as though he were about to dive into the jury box; and, at such times, a dignified motion of the head gave emphasis to the argument. When deeply engaged in any important cause, a slight tremulation of the fingers

* Honorable Lucius Manlius Sargent, of Massachusetts, whose sketches of Mr. Dexter, over the signature of "Sigma," appeared in the Boston Transcript in 1856–1857. These valuable papers have since been issued in a volume.

was frequently perceptible:—He was in the practice of walking much in his office, with his hands behind his back, and in perfect silence. He had a very common habit of sitting for an hour or more with his eyes closed, his chair canted backward, his feet resting against the wall, or the mantel, and while in this position, gently stroking his nose with his thumb and finger. On such occasions, no one disturbed him, without good and sufficient reasons." Another of his peculiarities is noted by Mr. Sullivan, in his interesting *Letters on Public Characters*. "His precious moments were of the early morning, when in bed. He awoke oftentimes before dawn, and would remain in bed, producing a gentle motion of the body by shaking his foot, while his mind was occupied in severe contemplation." His manhood may be considered to have been one long process of meditation, reluctantly interrupted by business and sleep.

Mr. Dexter was a strenuous advocate of temperance, and was one of the originators of the first society formed for the promotion of that object, and, on its organization, its first president. This was the Massachusetts State Temperance Society, established about 1813. His was the remark: "Give me the money paid for the support of drunken paupers in the United States, and I will pay the expenses of the Federal and of every State government in the Union, and in a few years become as rich, with the surplus, as the Nabob of Arcot." He had consented to deliver the opening address of the Massachusetts Society, but was prevented from carrying out his intentions in consequence of being detained at Washington.*

In 1815, President Madison tendered him the mission to Spain, but, from an unwillingness to leave his native country, he declined the proffered honor. During the winter of this and the following year, he was, as usual, engaged in the laborious duties of his profession at Washington. He was once compelled to relinquish his labors for a time on account of illness; but before he returned to the North in the spring of 1816, he had regained his accustomed health and vigor. On the last day of April of this year, he arrived at Athens, New York, whither he had gone with his family, to attend the wedding of his oldest son. At the time of his arrival he was somewhat indisposed, and continued to fail until his death, which occurred on the morning of the fourth of May following.

The best memorials of this remarkable man, are to be found in the recent sketches by Mr. Sargent, to whom the historical and literary students of America are deeply indebted for the many and valuable facts he has garnered and preserved in the several occasional products of his pen. In the various discourses delivered by eminent jurists of the United States, among whom are Justices Story and Thacher, and Mr. Bliss and Mr. Livingston, will also be found earnest tributes to the eloquence and ability of Mr. Dexter.

ARGUMENT IN SELFRIDGE'S TRIAL.

The following argument was delivered by Mr. Dexter, in the Supreme Court of Massachusetts, at the trial of Thomas O. Selfridge, attorney-at-law, for killing Charles Austin, on the public Exchange, in Boston, on the fourth of August, 1806.†

MAY IT PLEASE YOUR HONOR, AND YOU, GENTLEMEN OF THE JURY: It is my duty to submit to your consideration some observations in the close of the defence of this important and interesting cause. In doing it, though I feel perfectly satisfied that you are men of pure minds, yet I reflect with anxiety, that no exertion or zeal on the part of the defendant's counsel can possibly insure justice, unless you likewise perform your duty. Do not suppose that I mean to suggest the least suspicion with respect to your principles or motives. I know you to have been selected in a manner most likely to obtain impartial justice; and doubtless you have

* Familiar Letters on Public Characters by William Sullivan, page 408.

† This argument was first printed in the report of this trial, in 1807, with the following note. "The Argument of Mr. Dexter is published from a report of the same as furnished by himself. Mr. D. preferred this mode of giving a condensed statement of his defence, to the detailed draft, as prepared by one of the stenographers. It is much compressed in size from the original argument, but although a compendium, will be found to contain all the prominent and essential points, maintained by him in this important trial."

honestly resolved, and endeavored to lay aside all opinions which you may have entertained previous to this trial. But the difficulty of doing this, is perhaps not fully estimated; a man deceives himself oftener than he misleads others; and he does injustice from his errors, when his principles are all on the side of rectitude. To exhort him to overcome his prejudices, is like telling a blind man to see. He may be disposed to overcome them, and yet be unable because they are unknown to himself. When prejudice is once known, it is no longer prejudice, it becomes corruption; but so long as it is not known, the possessor cherishes it without guilt: he feels indignation for vice, and pays homage to virtue; and yet does injustice. It is the apprehension that you may thus mistake, that you may call your prejudices principles, and believe them such, and that their effects may appear to you the fruits of virtue, which leads us so anxiously to repeat the request, that you would examine your hearts, and ascertain that you do not come here with partial minds. In ordinary cases, there is no reason for this precaution. Jurors are so appointed, by the institutions of our country, as to place them out of the reach of improper influence, on common occasions; at least as much so as frail humanity will permit.

But when a cause has been a long time the subject of party discussion; when every man among us belongs to one party or the other, or at least is so considered; when the democratic presses, throughout the country, have teemed with publications, fraught with appeals to the passions, and bitter invective against the defendant; when, on one side, every thing has been done, that party rage could do, to prejudice this cause; and, on the other, little has been said in vindication of the supposed offender, though, on one occasion, I admit that too much has been said; when silence has been opposed to clamor, and patient waiting for a trial to systematic labor to prevent justice; when the friends of the accused, restrained by respect for the laws, have kept silence, because it was the exclusive right of a court of justice to speak; when no voice has been heard from the walls of the defendant's prison, but a request that he may not be condemned without a trial; the necessary consequence must be, that opinion will progress one way; that the stream of incessant exertion will wear a channel in the public mind; and the current may be strong enough to carry away those who may be jurors, though they know not how, or when, they received the impulse that hurries them forward.

I am fortunate enough not to know, with respect to most of you, to what political party you belong. Are you republican federalists? I ask you to forget it: leave all your political opinions behind you; for it would be more mischievous, that you should acquit the defendant from the influence of these, than that an innocent man, by mistake, should be convicted. In the latter case, his would be the misfortune, and to him would it be confined; but in the other, you violate a principle, and the consequence may be ruin. Consider what would be the effect of an impression on the public mind, that in consequence of party opinion and feelings, the defendant was acquitted. Would there still be recourse to the laws, and to the justice of the country? Would the passions of the citizen, in a moment of frenzy, be calmed by looking forward to the decision of courts of law for justice? Rather every individual would become the avenger of imaginary transgression. Violence would be repaid with violence; havoc would produce havoc; and instead of a peaceable recurrence to the tribunals of justice, the spectre of civil discord would be seen stalking through our streets, scattering desolation, misery and crimes.

Such may be the consequences of indulging political prejudice on this day; and if so, you are amenable to your country and your God. This I say to you who are federalists; and have I not as much right to speak thus to those who are democratic republicans? That liberty, which you cherish with so much ardor, depends on your preserving yourselves impartial in a court of justice. It is proved by the history of man, at least of civil society, that the moment the judicial power becomes corrupt, liberty expires. What is liberty, but the enjoyment of your rights, free from outrage or danger? And what security have you for these, but an impartial administration of justice? Life, liberty, reputation, property, and domestic happiness, are all under its peculiar protection. It is the judicial power, uncorrupted, that brings to the dwelling of every citizen, all the blessings of civil society, and makes it dear to man. Little has the private citizen to do with the other branches of government. What, to him, are the great and splendid events that aggrandize a few eminent men and make a figure in history? His domestic happiness is not less real, because it will not be recorded for posterity; but this happiness is his no longer than courts of justice protect it. It is true, injuries cannot always be prevented; but while the fountains of justice are pure, the sufferer is sure of a recompense.

Contemplate the intermediate horrors and final despotism, that must result from mutual deeds of vengeance, when there is no longer an impartial judiciary, to which contending parties may appeal, with full confidence that principles will be respected. Fearful must be the interval of anarchy; fierce the alternate pangs of rage and terror, till one party shall destroy the other, and a gloomy despotism terminate the struggles of conflicting factions. Again, I beseech you to abjure your prejudices. In the language once addresssed from Heaven to the Hebrew prophet, "Put off your shoes, for the ground on which you stand is holy." You are the professed friends, the devoted worshippers of civil liberty; will you violate her sanctuary? Will you pro-

fane her temple of justice? Will you commit sacrilege while you kneel at her altar?

I will now proceed to state the nature of the charge on which you are to decide, and of the defence which we oppose to it; then examine the evidence, to ascertain the facts, and then inquire what is the law applicable to those facts.

The charge is for manslaughter; but it has been stated in the opening, that it may be necessary to know something of each species of homicide, in order to obtain a correct idea of that which you are now to consider.

Homicide, as a general term, includes, in law, every mode of killing a human being. The highest and most atrocious is murder; the discriminating feature of which is previous malice. With that the defendant is not charged; the grand jury did not think that by the evidence submitted to them, they were authorized to accuse him of that enormous crime. They have, therefore, charged him with manslaughter only.

The very definition of this crime, excludes previous malice; therefore it is settled, that there cannot, with respect to this offence, be an accessory before the fact; because the intention of committing it is first conceived at the moment of the offence, and executed in the heat of a sudden passion, or it happens without any such intent, in doing some unlawful act. It will not be contended that the defendant is guilty of either of these descriptions of manslaughter. Neither party suggests that the defendant was under any peculiar impulse of passion at the moment; and had not time to reflect; on the contrary, he is said to have been too cool and deliberate. The case in which it is important to inquire, whether the act was done in the heat of blood, is where the indictment is for murder, and the intent of the defence is to reduce the crime from murder to manslaughter; but Selfridge is not charged with murder. There is nothing in the evidence that has the least tendency to prove an accidental killing, while doing some unlawful act. It is difficult to say, from this view of manslaughter, when compared with the evidence, on what legal ground the defendant can be convicted; unless it be, that he is to be considered as proved guilty of a crime which might have been charged as murder, and by law, if he now stood before you under an indictment for murder, you might find him guilty of manslaughter, and therefore you may now convict him.

This does not appear to be true; for the evidence would not apply to reduce the offence from murder to manslaughter, on either of the aforementioned grounds. Perhaps it may be said, that every greater includes the less, and therefore, manslaughter is included in murder; and that it is on this principle that a conviction for manslaughter may take place on an indictment for murder. I will not detain you to examine this, for it is not doing justice to the defendant to admit, for a moment, even for the sake of argument, that the evidence proves murder. Our time will be more usefully employed in considering the principles of the defence. Let it be admitted, then, as stated by the counsel for government, that the killing being proved, it is incumbent on the defendant to discharge himself from guilt. Our defence is simply this, that the killing was necessary in self-defence; or, in other words, that the defendant was in such imminent danger of being killed, or suffering other enormous bodily harm, that he had no reasonable prospect of escaping, but by killing the assailant.

This is the principle of the defence stripped of all technical language. It is not important to state the difference between justifiable and excusable homicide, or to show to which the evidence will apply; because, by our law, either being proved, the defendant is entitled to a general acquittal.

Let us now recur to the evidence and see whether this defence be not clearly established.

Mr. DEXTER here went into a minute examination of the whole evidence. In the course of it he labored to prove, that Mr. Selfridge went on the Exchange about his lawful business, and without any design of engaging in an affray; that he was in the practice of carrying pistols, and that it was uncertain whether he took the weapon in his pocket in consequence of expecting an attack; that if he did, he had a right so to do, provided he made no unlawful use of it; that the attack was so violent and with so dangerous a weapon, that he was in imminent danger; that it was so sudden, and himself so feeble, that retreat would have been attended with extreme hazard; that the pistol was not discharged until it was certain that none would interfere for his relief, and that blows, which perhaps might kill him, and probably would fracture his skull, were inevitable in any other way, and that the previous quarrel with the father of the deceased, if it could be considered as affecting the cause, arose from the misbehavior of old Mr. Austin, and that the defendant had been greatly injured in that affair:—Mr. DEXTER then proceeded:

It cannot be necessary, gentlemen, for the defendant to satisfy you beyond doubt, that he received a blow before the discharge of the pistol. There is positive evidence from one witness, that the fact was so, and other witnesses say much that renders it probable. But if the defendant waited until the cane was descending, or even uplifted within reach of him, reason and common sense say, it is the same thing; no man is bound to wait until he is killed, and being knocked down would disable him for de-

fence. The killing can be justified only on the ground that it was necessary to prevent an injury that was feared; not that it was to punish for one that was past. This would be revenge, and not self-defence.

The same law authorities which tell you, that a man must retreat as far as he can, say also, that, if the assault be so violent that he cannot retreat without imminent danger, he is excused from so doing. If this means any thing, it is applicable to our case: for perhaps you can hardly imagine a more violent or more sudden assault. When to this is added the muscular debility of the defendant, it certainly forms a very strong case. He could neither fight nor fly. Had he attempted the latter, he must have been overtaken by his more athletic and active antagonist, and either knocked down, or maimed, or murdered, as the passions of that antagonist might dictate.

But it is said, and some passages from law books are read to prove it, that the necessity which excuses killing a man, must not be produced by the party killing: and that he must be without fault. You are then told that the defendant sought the affray, and armed himself for it; and that he had been faulty in calling Mr. Austin, the father, opprobrious names in the newspaper.

As to the affray being sought by the defendant, there is no evidence to support such an assertion, but what arises from his conversations with Mr. Richardson and Mr. Whitman, or from the fact of his having a pistol in his pocket. These only prove, that he was prepared to defend himself, if attacked: and if he did defend himself lawfully, this is the best evidence to show what was his intention. It cannot be presumed that he took the pistol with an unlawful intent, when he never expressed such intent, and when his subsequent conduct was lawful. He had been informed that he should be attacked by a bully: in such case what was his duty? Was he bound to shut himself up in his own house? Was he bound to hire a guard? If he had done so, this would have been urged as the strongest evidence of his intention to commit an affray. Could he obtain surety of the peace from a future assailant, whose name was unknown to him? Or was he bound to go about his business, constitutionally feeble and unarmed, at the peril of his life? There would be more color for this suggestion if the defendant had gone on the Exchange, and then insulted either old Mr. Austin or his son, or voluntarily engaged in an altercation with either of them. But he went peaceably about his ordinary business, and made use of his weapon only when an unavoidable necessity happened.

A man when about to travel a road infested with robbers, lawfully arms himself with pistols; if he should be attacked by a robber, and from necessity kill him, is he to be charged with having sought this necessity, because he voluntarily undertook the journey, knowing the danger that attended it, and took weapons to defend himself against it? As little is the defendant to be censured for going about his ordinary business, when he knew it would be attended with danger, and arming himself for defence, in case such an emergency should happen, as that the laws could not afford him protection. I have here supposed that the pistol was taken for the purpose for which it was used; this, however, is far from being certain from the evidence, as it is in proof, that the defendant had daily occasion for pistols in passing between Boston and Medford, a road that has been thought attended with some danger of robbery; and that he sometimes carried pistols in his pocket. There is not the least pretence for saying that he expected an affray with young Mr. Austin. He could not presume that his father would employ him; and it is not probable that he knew him in the confusion that the sudden attack must have produced. As to the publication in the newspaper against old Mr. Austin; though this might be in some sense a fault, yet it is far from being within the principle established by the books. When it is said the party must be without fault, it is evident that nothing more is meant, than that he must be without fault in that particular transaction. If we are to leave this and look back, where are we to stop? Are we to go through the life of the party to examine his conduct? If the defendant had libelled Mr. Austin; that was a previous and distinct offence, for which he was, and yet is, liable to an action or an indictment; and unless it be presumed without evidence and against all probability that it was intended to produce this affray, it can have no connection with the principle stated. There is another obvious motive for it, and there is nothing in the evidence tending to convince you that it was intended to provoke an attack. The defendant had been defamed; retaliation was the natural punishment; and there is no reason to presume that any thing more was intended, unless it was to blunt the shafts of calumny from Mr. Austin, by destroying his credit and standing in society. It is true, that it is said by several respectable compilers of law, that the party killing must be without fault; but they all refer to one adjudged case, which is found stated in 1. H. P. C. page 440.

By recurring to the statement of this case it appears that the persons who killed, and would have excused it on the ground of necessary self-defence, had forcibly entered and disseized the rightful owner of a house, and continued forcibly to detain it against him; in an attempt by the owner forcibly to recover possession, those who held wrongfully were reduced to the necessity of killing; and it was holden, that as they were then engaged in an unlawful act, namely, forcibly detaining the house against him who had a right to enter, they had produced his necessity by their own wrongful conduct; and therefore it should not excuse them.

So that this principle seems to be related to another, and in reality to be involved in it. I

mean the well known principle that he who kills another by accident, while performing an unlawful act, is guilty of manslaughter. It would be absurd that a man who kills by accident, while performing an unlawful act, should be guilty of manslaughter; and yet that he who kills, from design, while performing an unlawful act, however necessary it may have become, should be guiltless.

It is settled that if, on a sudden affray, A make an assault on B, and afterwards the assaulter be driven to the wall, so that he can retreat no farther, and then kill B necessarily in his own defence, that it is excusable homicide in A; and yet here A was in fault in this very affray, by making the first assault; but having afterwards retreated as far as he could, the law extends to him the right of self-defence. This shows that unless at the moment of killing, the party be doing wrong, the principle contended for on the other side does not apply. In proof of this I will also read to you an authority from 1st Hale's P. C., 479. "There is *malice* between A and B, they meet casually, A assaults B and drives him to the wall, B in his own defence kills A. This is *se defendendo*, and shall not be heightened by the *former malice* into murder or homicide at large; for it was not a killing on the former malice, but upon a necessity imposed upon him by the assault of A.

"A assaults B, and B presently thereupon strikes A without flight, whereof A dies; this is manslaughter in B and not *se defendendo*. But if B. strikes A again, but not mortally, and blows pass between them, and at length B retires to the wall, and being pressed upon by A, gives him a mortal wound, whereof A dies; this is only homicide, *se defendendo*, although that B. had given divers other strokes that were not mortal before he retired to the wall or as far as he could. But now, suppose that A by malice makes a sudden assault upon B, who strikes again, and pursuing hard upon A, A retreats to the wall, and, in saving his own life kills B. Some have held this to be murder, and not *se defendendo*, because A gave the first assault, *Cromp. fol.* 22 *b*, grounding upon the book of 3 Edw., 3 Itin., North. Coron, 287; but Mr. Dalton, *ubi supra*, thinketh it to be *se defendendo*, though A made the first assault *either with or without malice*, and then retreated."

I am bound in candor to add, that the law as above laid down, on the authority of Dalton, has since been doubted as to that part of it which supposes previous malice. This passage has been reviewed by Hawkins and East in their several treatises, on Crown law, and I have chosen to read it from this very circumstance, because it appears that it has been well considered; and when subsequent and eminent writers on full examination reject a part, and admit the residue to be law, it is strong confirmation of that residue. It is that alone on which I rely, and it is amply sufficient to prove, what I have before stated; that if A first assault B on a sudden affray without malice, A may still excuse killing B from a subsequent necessity in his own defence; and yet none will deny that first assaulting B, though without malice, was a fault.

On this point, I submit to your consideration one further remark. The publication in the newspaper is nothing more than provoking language; now if the defendant had, immediately before the affray, made use of the same language to old Mr. Austin, no lawyer will pretend that this would have been such a fault as would have precluded the defendant from excusing himself for the subsequent necessary killing on the principle of self-defence. If it were so we should find it so stated in books of authority that treat on this subject; for the case must often have happened, as provoking language generally precedes blows. On the contrary, we find it settled, that even making the first assault does not deprive the party of this defence. It would be absurd then to say, that rude and offensive language, which cannot even justify an assault, should produce this effect. It can hardly be necessary to add, that, if these words, spoken at the moment, would not have deprived the defendant of this defence, having published them before in a newspaper, cannot produce this consequence.

I have hitherto admitted that the publication in the newspaper was a fault in the defendant; nor am I disposed entirely to justify it; yet circumstances existed which went far to extenuate it. He had been defamed on a subject, the delicacy of which, perhaps, will not be understood by you, as you are not lawyers, without some explanation. Exciting persons to bring suits is an infamous offence, for which a lawyer is liable to indictment, and to be turned away from the bar. It is so fatal to the reputation of a lawyer, that it is wounding him in the nicest point, to charge him with it. It is the point of honor; and charging him with barratry, or stirring up suits, is like calling a soldier a coward. Mr. Austin, the father, had accused the defendant publicly of this offence, respecting a transaction in which his conduct had been punctiliously correct. The defendant first applied to him in person, and with good temper, to retract the charge; afterwards in conversations with Mr. Welsh, Mr. Austin acknowledged the accusation to be false, and promised to contradict it as publicly as he had made it. Yet he neglected to do it; again he said he had done it; but the fact appeared to be otherwise. This induced the defendant to demand a denial of it in writing. Though Mr. Austin privately acknowledged he had injured Mr. Selfridge, yet he refused to make him an adequate recompense, when he neglected to make the denial as public as the charge. This was a state of war between them upon this subject, in which the more the defendant annoyed his enemy, the less power he had to hurt him. It was therefore a species of self-defence; and Mr.

tion, perhaps had little cause to complain. To try the correctness of this, we will imagine an extreme case.

Suppose a man should have established his reputation as a common slanderer and calumniator, by libelling the most virtuous and eminent characters of his country, from Washington and Adams, down through the whole list of American patriots; suppose such an one to have stood for twenty years in the kennel, and thrown mud at every well-dressed passenger; suppose him to have published libels, 'til his style of defamation has become as notorious as his face, would not every one say, that such conduct was some excuse for bespattering him in turn?

I do not apply this to any individual; but it is a strong case to try a principle; and if such conduct would amount almost to a justification of him who should retaliate, will not the slander of Mr. Austin against Mr. Selfridge furnish some excuse for him?

It has also been stated to you, gentlemen, and some books have been read to prove it, that a man cannot be justified or excused in killing another in his own defence, unless a felony were attempted or intended. Some confusion seems to have been produced by this, which I will attempt to dissipate. It has been settled that if a felony be attempted, the party injured may kill the offender, without retreating as far as he safely can; but, that if the offence intended be not a felony, he cannot excuse the killing in his own defence, unless he so retreat, provided circumstances will permit. On this principle, all the books that have been read on this point, may easily be reconciled. But the position contended for by the opposing counsel, is in direct contradiction to one authority which they themselves have read. In the fourth volume of Blackstone's Commentaries, page 185, the law is laid down as follows: "The party assaulted must therefore flee as far as he conveniently can, either by reason of some wall, ditch, or other impediment, or as far as the fierceness of the assault will permit him: for it may be so fierce as not to allow him to yield a step, without manifest danger of his life, or enormous bodily harm; and then, in his defence, he may kill his assailant instantly. And this is the doctrine of universal justice, as well as of the municipal law."

Also in I Hawkin's Pleas of the Crown, chap. 29, sect. 13, the law on this point is stated thus: "And now I am to consider homicide *se defendendo*, which seems to be, where one, who has no other possible means of preserving his life from one who combats with him on a sudden quarrel, or of defending his person from one who attempts to beat him, (especially if such attempt be made upon him in his own house) kills the person by whom he is reduced to such an inevitable necessity."

From these two highly respectable authorities, it appears, that, though nothing more be attempted than to beat a man, and there be no possibility of avoiding it but by killing the assailant, it is excusable so to do.

When the weight and strength of the cane, or rather cudgel, which the deceased selected is considered, and the violence with which it was used, can it be doubted that great bodily harm would have been the consequence, if Selfridge had not defended himself? The difference between this weapon and the pistol made use of by the defendant, perhaps, is greatly exaggerated by the imagination. The danger from the former might be nearly as great as from the latter. When a pistol is discharged at a man, in a moment of confusion and agitation, it is very uncertain whether it will take effect at all; and if it should, the chances are, perhaps, four to one, that the wound will not be mortal. Still further, when the pistol is once discharged, it is of little or no use; but with a cane, a man, within reach of his object, can hardly miss it; and if the first blow should prove ineffectual, he can repeat his strokes until he has destroyed his enemy.

If it were intended to excite contempt for the laws of the country, a more effectual method could hardly be taken than to tell a man, who has a soul within him, that one attempts to rob him of a ten-dollar bill, this is a felony, and therefore esteemed by the law an injury of so aggravated a nature, that he may lawfully kill the aggressor; but that if the same man should whip and kick him on the public Exchange, this is only a trespass, to which he is bound to submit rather than put in jeopardy the life of the assailant; and the laws will recompense him in damages.

Imagine that you read in a Washington newspaper, that on a certain day, immediately on the rising of Congress, Mr. A., of Virginia, called Mr. B., of Massachusetts, a scoundrel for voting against his resolution, and proceeded deliberately to cut off his ears. Mr. B. was armed with a good sword-cane, but observed that his duty as a citizen forbade him to endanger the life of Mr. A., for, that cutting off a man's ear was by law no felony; and he had read in law books that courts of justice were the only proper "vindices injuriarum," and that he doubted not, that by means of a lawsuit, he should obtain a reasonable compensation for his ears. What are the emotions excited in your breasts, at this supposed indignity and exemplary patience of the representative of your country? Would you bow to him with profound respect on his return? or rather would not his dignity and usefulness, by universal consent, be lost for ever?

We have now taken a view of the facts, and the positive rules of law, that apply to them; and it is submitted to you with great confidence, that the defendant has brought himself within the strictest rules, and completely substantiated his defence, by showing that he was under a terrible necessity of doing the act; and that by

you, however, in the course of this investigation, that our law has not been abundant in its provisions for protecting a man from gross insult and disgrace. Indeed it was hardly to be expected, that the sturdy hunters, who laid the foundations of the common law, would be very refined in their notions. There is in truth much intrinsic difficulty in legislating on this subject. Laws must be made to operate equally on all members of the community; and such is the difference in the situations and feelings of men, that no general rule, on this subject, can properly apply to all. That, which is an irreparable injury to one man, and which he would feel himself bound to repel even by the instantaneous death of the aggressor, or by his own, would be a very trivial misfortune to another. There are men, in every civilized community, whose happiness and usefulness would be for ever destroyed by a beating, which another member of the same community would voluntarily receive for a five-dollar bill. Were the laws to authorize a man of elevated mind, and refined feelings of honor, to defend himself from indignity by the death of the aggressor, they must at the same time furnish an excuse to the meanest chimney-sweeper in the country for punishing his sooty companion, who should fillip him on the cheek, by instantly thrusting his scraper into his belly. But it is too much to conclude, from this difficulty in stating exceptions to the general rule, that extreme cases do not furnish them. It is vain, and worse than vain, to prescribe laws to a community, which will require a dereliction of all dignity of character, and subject the most elevated to outrages from the most vile. If such laws did exist, the best that could be hoped, would be, that they would be broken. Extreme cases are in their nature exceptions to all rules; and when a good citizen says, that, the law not having specified them, he must have a right to use his own best discretion on the subject; he only treats the law of his country in the same manner in which every Christian necessarily treats the precepts of his religion. The law of his Master is, "resist not evil;" "if a man smite thee on one cheek, turn to him the other also." No exceptions to these rules are stated; yet does not every rational Christian necessarily make them? I have been led to make these observations, not because I think them necessary in the defence of Mr. Selfridge; but because I will have no voluntary agency in degrading the spirit of my country. The greatest of all public calamities would be a pusillanimous spirit, that would tamely surrender personal dignity to every invader. The opposing counsel have read to you, from books of acknowledged authority, that the right of self-defence was not given by the law of civil society, and that that law cannot take it away. It is founded then on the law of nature, which is of higher authority than any human institution. This law enjoins us to be useful, in proportion to our capacities; to protect the powers of being useful, by all means that nature has given us, and to secure our own happiness, as well as that of others. These sacred precepts cannot be obeyed without securing to ourselves the respect of others. Surely, I need not say to you, that the man, who is daily beaten on the public Exchange, cannot retain his standing in society, by recurring to the laws. Recovering daily damages will rather aggravate the contempt that the community will heap upon him; nor need I say, that when a man has patiently suffered one beating, he has almost insured a repetition of the insult.

It is a most serious calamity, for a man of high qualifications for usefulness, and delicate sense of honor, to be driven to such a crisis, yet should it become inevitable, he is bound to meet it like a man, to summon all the energies of the soul, rise above ordinary maxims, poise himself on his own magnanimity, and hold himself responsible only to his God. Whatever may be the consequences he is bound to bear them; to stand like mount Atlas,

> "When storms and tempests thunder on its brow,
> And oceans break their billows at his feet."

Do not believe that I am inculcating opinions, tending to disturb the peace of society. On the contrary, they are the only principles that can preserve it. It is more dangerous for the laws to give security to a man, disposed to commit outrages on the persons of his fellow-citizens, than to authorize those, who must otherwise meet irreparable injury, to defend themselves at every hazard. Men of eminent talents and virtues, on whose exertions, in perilous times, the honor and happiness of their country must depend, will always be liable to be degraded by every daring miscreant, if they cannot defend themselves from personal insult and outrage. Men of this description must always feel, that to submit to degradation and dishonor, is impossible. Nor is this feeling confined to men of that eminent grade. We have thousands in our country who possess this spirit; and without them we should soon deservedly cease to exist as an independent nation. I respect the laws of my country, and revere the precepts of our holy religion; I should shudder at shedding human blood; I would practise moderation and forbearance, to avoid so terrible a calamity; yét should I ever be driven to that impassable point, where degradation and disgrace begin, may this arm shrink palsied from its socket, if I fail to defend my own honor.

It has been intimated, that the principles of Christianity condemn the defendant. If he is to be tried by this law, he certainly has a right to avail himself of one of its fundamental principles. I call on you then to do to him, as in similar circumstances, you would expect others to do to you; change situations for a moment, and ask yourselves, what you would have done, if attacked as he was. And instead of being necessitated to act at the moment, and without reflection, take time to deliberate. Permit me to state, for you, your train of thought. You

would say—this man, who attacks me, appears young, athletic, active and violent. I am feeble and incapable of resisting him; he has a heavy cane, which is undoubtedly a strong one, as he had leisure to select it for the purpose; he may intend to kill me; he may, from the violence of his passion, destroy me without intending it; he may maim or greatly injure me; by beating me he must disgrace me. This alone destroys all my prospects, all my happiness, and all my usefulness. Where shall I fly, when thus rendered contemptible? Shall I go abroad? Every one will point at me the finger of scorn. Shall I go home? My children—I have taught them to shrink from dishonor; will they call me father? What is life to me, after suffering this outrage? Why should I endure this accumulated wretchedness, which is worse than death, rather than put in hazard the life of my enemy?

Ask yourselves whether you would not make use of any weapon that might be within your power to repel the injury; and if it should happen to be a pistol, might you not, with sincere feeling of piety, call on the Father of Mercies to direct the stroke?

While we reverence the precepts of Christianity, let us not make them void by impracticable construction. They cannot be set in opposition to the law of our nature; they are a second edition of that law; they both proceed from the same Author.

Gentlemen, all that is dear to the defendant, in his future life, is by the law of his country placed in your power. He cheerfully leaves it there. Hitherto he has suffered all that his duty as a good citizen required, with fortitude and patience; and if more be yet in store for him, he will exhibit to his accusers an example of patient submission to the laws. Yet permit me to say, in concluding his defence, that he feels full confidence that your verdict will terminate his sufferings.*

* The Jury returned a verdict of *Not Guilty*.

JOHN QUINCY ADAMS.

JOHN QUINCY, the son of John and Abigail Adams, was born in Braintree, Massachusetts, on the eleventh of July, 1767.* The years of his boyhood were spent at home, under the immediate supervision of his excellent mother, who taught him to read, and directed his thoughts to subjects of piety, patriotism and morality—characteristics for which he was eminently distinguished throughout his long and eventful life. On the appointment of his father, in 1777, as one of the commissioners to the court of Versailles, he accompanied him to Paris, where he arrived in April of the following year. Soon after reaching Paris he was placed at school, where he devoted himself with uncommon industry to the acquisition of the native language, at the same time perfecting himself in the usual classical branches. After an absence of eighteen months he returned to America, but to remain for a short time only.

In November, 1779, his father was appointed by Congress a minister plenipotentiary for negotiating a treaty of peace and a treaty of commerce with Great Britain, and on the thirteenth of that month he embarked for France, taking with him his two eldest sons, John Quincy and Charles. After a protracted and tempestuous voyage, the frigate in which they were passengers was obliged to put into the port of Ferrol, in Spain, from whence they travelled over land to Paris. Here young John Quincy again commenced his studies, which he continued until his removal to Amsterdam. At the latter place he attended school for a few months, and finally entered the University of Leyden, "to learn Latin and Greek under the distinguished teachers there, and to attend the lectures of the celebrated professors in the University." The reasons of this last transfer are evident in the following remarks of John Adams: "I should not wish to have children educated in the common schools of this country, where a littleness of soul is notorious. The masters are mean-spirited wretches; punishing, kicking and boxing the children upon every turn. There is a general littleness arising from the contemplation of stivers and doits. Frugality and industry are virtues every where, but avarice and stinginess are not frugality."

In 1781, at the age of fourteen, John Quincy Adams accompanied Mr. Francis Dana, on his mission to Russia, and subsequently became his private secretary. At St. Petersburg he remained until October, 1782, when he again joined his father in Holland. From this place he journeyed to Paris, was present at the signing of the treaty of peace between Great Britain and the United States; and afterwards visited England, Holland and France, whither his father was called during his diplomatic career. At London he enjoyed the society of the most eminent of the British statesmen, was introduced to the floor of the House of Parliament, and attended the debates, in which Burke, Sheridan, Fox and others took part. With every one he was a favorite, and his uncommon precocity attracted the attention of the eminent men, who, at that

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* He was named *John Quincy*, from the following circumstances: His mother was the daughter of the Rev. William Smith, pastor of the Congregational Church, in the town of Weymouth. The wife of Mr. Smith, the maternal grandmother of John Quincy Adams, was Elizabeth, a daughter of John Quincy, who is mentioned by Hutchinson as the owner of Mount Wollaston, had shared largely in the civil and military distinctions of his time and country, and in honor of him the present town of Quincy received its name. Mr. Quincy died a few hours after the birth of Mr. Adams, and at the special request of the grandmother, the name of her father, then lying dead, was given to the infant, who was baptized the next day, in the Congregational Church of the parish of Braintree.—*Upham.*

time, adorned the councils of both nations. Jefferson, then minister at Paris, wrote to Eldridge Gerry—"I congratulate your country on their prospect in this young man:" while others gave evidence of the respect they held for his talents and attainments.

He returned to Boston in 1785, bearing with him the subjoined letter, from his father to Benjamin Waterhouse, from which a just estimate of his acquirements can be formed:

Auteuil, 24 April, 1785.

This letter will be delivered you by your old acquaintance John Quincy Adams, whom I beg leave to recommend to your attention and favor. He is anxious to study some time at your University before he begins the study of the law, which appears at present to be the profession of his choice. He must undergo an examination, in which I suspect he will not appear exactly what he is. In truth, there are few who take their degrees at college, who have so much knowledge. But his studies having been pursued by himself, on his travels, without any steady tutor, he will be found awkward in speaking Latin, in prosody, in parsing, and even, perhaps, in that accuracy of pronunciation in reading orations or poems in that language, which is often chiefly attended to in such examinations. It seems to be necessary, therefore, that I make this apology for him to you, and request you to communicate it in confidence to the gentlemen who are to examine him, and such others as you think prudent. If you were to examine him in English and French poetry, I know not where you would find anybody his superior; in Roman and English history, few persons of his age. It is rare to find a youth possessed of so much knowledge. He has translated Virgil's Æneid, Suetonius, the whole of Sallust, and Tacitus's Agricola, his Germany, and several books of his Annals, a great part of Horace, some of Ovid, and some of Cæsar's Commentaries, in writing, besides a number of Tully's orations. These he may show you; and although you will find the translations in many places inaccurate in point of style, as must be expected at his age, you will see abundant proof that it is impossible to make those translations without understanding his authors and their language very well.

In Greek his progress has not been equal; yet he has studied morsels in Aristotle's Poetics, in Plutarch's Lives, and Lucian's Dialogues, the choice of Hercules, in Xenophon, and lately he has gone through several books in Homer's Iliad.

In mathematics I hope he will pass muster. In the course of the last year, instead of playing cards like the fashionable world, I have spent my evenings with him. We went with some accuracy through the geometry in the Preceptor, the eight books of Simpson's Euclid in Latin, and compared it, problem by problem, and theorem by theorem, with le père de Chales in French; we went through plane trigonometry and plane-sailing, Fenning's Algebra, and the decimal fractions, arithmetical and geometrical proportions, and the conic sections, in Ward's Mathematics. I then attempted a sublime flight, and endeavored to give him some idea of the differential method of calculation of the Marquis de L'Hôpital, and the method of fluxions and infinite series of Sir Isaac Newton; but alas! it is thirty years since I thought of mathematics, and I found I had lost the little I once knew, especially of these higher branches of geometry, so that he is as yet but a smatterer, like his father. However, he has a foundation laid, which will enable him with a year's attendance on the mathematical professor, to make the necessary proficiency for a degree. He is studious enough, and emulous enough, and when he comes to mix with his new friends and young companions, he will make his way well enough. I hope he *will be* upon his guard against those airs of superiority among the scholars, which his larger acquaintance with the world, and his manifest superiority in the knowledge of some things, may but too naturally inspire into a young mind, and I beg of you, Sir, to be his friendly monitor in this respect and in all others.

In March, 1786, he entered the junior class of Harvard College, and the following year took his first degree. He now removed to Newburyport, and commenced the study of law in the office of the celebrated Theophilus Parsons,* afterwards chief justice of Massachusetts, and on

* Theophilus Parsons, the son of a clergyman, was a native of Byfield, Massachusetts, where he was born in the month of February, 1750. He was educated at Harvard College, kept school at Portland, and was admitted to the

finishing his course, established himself at Boston. Here, besides attending to the duties of his profession, he devoted himself to the discussion of the great political questions of the day. In 1791, his essays, over the signature of *Publicola*, appeared in the Boston Centinel. In these papers he reviewed some portions of Paine's *Rights of Man*, and questioned the ultimate success of the French Revolution. His essays signed *Marcellus*, in which he advocated the policy of neutrality subsequently adopted by President Washington, were pubished in April, 1793. In the following winter he published another series of papers, sustaining the course of President Washington in reference to the French Minister, Genet. These productions attracted the favorable attention of the President, and, in 1796, Mr. Adams was sent on a mission to the Netherlands. During the next seven years he was in Europe, occupied in the several diplomatic missions to Holland, England, and Prussia. President Washington, a short time prior to his retirement, appointed him Minister to Portugal; but before he arrived at his post his destination was changed to Berlin. He continued there from the autumn of 1797, until April, 1801, during which period he concluded an important commercial treaty with that government. In September, 1801, he returned to America, soon after was elected to the Senate of his native State, and in March, 1804, took his seat in the United States Senate, having been elected to that honorable station by the legislature of Massachusetts. While a senator in Congress, he was appointed Professor of Oratory and Rhetoric in Harvard College. In 1808, he resigned his seat in the Senate, and was shortly after sent by President Madison as Minister Plenipotentiary to Russia. His services at the Russian court were of the highest importance. "By his instrumentality," says his biographer, "the Emperor of Russia was induced to mediate for peace between Great Britain and the United States." President Madison named him at the head of the commissioners sent to negotiate the treaty which terminated the war of 1812. On the conclusion of that treaty, Mr. Adams proceeded to London, where, with Henry Clay and Albert Gallatin, he negotiated a convention of commerce between the United States and Great Britain. He was subsequently appointed Minister Plenipotentiary to the Court of St. James. In 1817, he returned to the United States, and assumed the chair of Secretary of State, under the administration of President Monroe. Here he continued eight years, discharging the duties of his office with the highest ability and success, and greatly increasing his reputation as a statesman and patriot.

In 1825, he was elected President of the United States. How well he discharged the duties of this position is familiar to all. On retiring, at the end of his presidential term, he remained out of public life until 1831, when he was elected to the lower House of Congress, where he remained, constantly and assiduously devoted to the interests of his country and his fellow-men, until his death. His services, while in Congress, are too numerous and too intimately connected with the history of his country, to require but a passing notice in the present sketch.

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at that place. When Portland was burnt, he returned to his father's at Byfield. The learned Judge Trowbridge, who lived in Cambridge, retired to the same town during the war, and carried with him his law library. Mr. Parsons availed himself of the Judge's books and conversation; and studied so intently as to impair his health, and to make the continuance of his life exceedingly precarious for many years. He became an invalid, very thin in person, and an afflicted hypochondriac. After the war he opened an office in Newburyport, and soon rose to eminence. He afterwards removed to Boston. In 1806, on the resignation of Chief Justice Dana, he was appointed to the vacated station, and held it to the close of his life, October 30th, 1813.

"He was the most learned lawyer of his time, and was called the giant of the law. He comprised in his professional attainments, among other things, a full and accurate knowledge of the common law, civil, maritime, and ecclesiastical law, the law merchant, the statute and common law of his own country, and the law of nations. He retained all the learning which he thought it necessary to acquire, and from the methodical order of his mind, all he knew was ever familiarly at his command. His speeches to juries and judges were neither eloquent nor elegant, in any thing but pertinency and argument. They were never long, and he was among the few who could discern when they have said enough for their purpose. His eloquence was earnestness, his manner easy, familiar, persuasive, and never vehement. His memory was his brief, and the best one that a lawyer can use. His career on the bench was an era in judicial ability, and in despatch of business. It would be assuming too much to pronounce on the character of his judgments. Very few of them have not been approved by the able minds which have since been employed on the same subjects. Some of them have been especially respected for their explanatory and illustrative notice of what may be distinguished as the common law of the State." He was a finished Greek scholar and mathematician, and delighted in the current literature of the day. During his whole life he was an habitual student. It was his habit to sit and study from twelve to fifteen hours a day; and this without exercise or relaxation. In private life he was social, fond of good stories, and told them well, full of anecdote, and quick at repartee. — *Sullivan's Familiar Letters.*

Mr. Adams was not merely a statesman. His literary productions are numerous, and evince the vigor of his mind, thoroughly conversant with the subject it investigates, and his singularly retentive and capacious memory. While in Russia, he contributed a series of letters to the Port Folio, a periodical published in Philadelphia, entitled *Journal of a Tour through Silesia.* These were afterwards collected and republished in a volume, and met with a very flattering reception from the public. At a later period, they were translated into French and German. In 1810, he published his *Lectures on Rhetoric and Oratory, delivered to the classes of senior and junior Sophisters in Harvard University*, and in 1832, offered to the literary public a long poetical composition, entitled "*Dermot Mac Morrogh; or, the Conquest of Ireland,*" which was intended as a "moral tale, teaching the citizens of the United States, of both sexes, the virtues of conjugal fidelity, of genuine piety, and of devotion to their country, by pointing the finger of scorn at the example, six hundred years since exhibited, of a country sold to a foreign invader by the joint agency of violated marriage vows, unprincipled ambition, and religious imposture."

In 1839, Mr. Adams delivered an address before the New York Historical Society, on the occasion of the semi-centennial anniversary of the ratification of the Federal Constitution. This production was published, soon after its delivery, under the title of *The Jubilee of the Constitution.* He also delivered numerous other discourses, among which, those on Madison, Lafayette and Monroe, were published, with a sketch of the author by the Rev. Charles W. Upham, in 1846. His *Poems of Religion and Society* appeared in 1848, and in 1850, a small volume of letters, written to his son, *On the Bible and its Teachings.* In addition to these literary labors, he published, in 1831–33, a series of papers, condemning the principles of Free-Masonry; translated *Wieland's Oberon* in verse, and, it is said, left at his death a complete paraphrase of the sacred psalms.

On Monday, the twenty-first of February, 1848, in the midst of his duties at his seat in the House of Representatives he was struck by the hand of death. When the House had been in session about an hour, the yeas and nays being ordered on a question, he responded in a voice unsually clear, and with more than ordinary emphasis. The painful scene that followed is thus described in the National Intelligencer of the following morning: "Just after the yeas and nays were taken on a question, and the speaker had just risen to put another question to the House, a sudden cry was heard on the left of the chair, 'Mr. Adams is dying!' Turning our eyes to the spot, we beheld the venerable man in the act of falling over the left arm of his chair, while his right arm was extended, grasping his desk for support. He would have dropped upon the floor had he not been caught in the arms of the member sitting next to him. A great sensation was created in the House; members from all quarters rushing from their seats and gathering round the fallen statesman, who was immediately lifted into the area in front of the clerk's table. The speaker instantly suggested that some gentleman move an adjournment, which being promptly done, the House adjourned. A sofa was brought, and Mr. Adams, in a state of perfect helplessness, though not of entire insensibility, was gently laid upon it. The sofa was then taken up and borne out of the Hall into the Rotunda, where it was set down, and the members of both Houses and strangers, who were fast crowding around, were with some difficulty repressed, and an open space cleared in its immediate vicinity. It was now advised that he be removed to the door of the Rotunda opening on the east portico, where a fresh wind was blowing. This was done; but the air being chilly and loaded with vapor, the sofa was once more taken up and removed to the Speaker's apartment, the doors of which were forthwith closed to all but professional gentlemen and particular friends. While lying in this apartment, Mr. Adams partially recovered the use of his speech, and observed, in faltering accents, 'This is the end of earth;' but quickly added, 'I am composed.'" Soon after he sank into a state of apparent insensibility, and failing gradually, until the evening of February the twenty-third, at a quarter past seven o'clock he expired.

ORATION AT PLYMOUTH.

This oration was delivered at Plymouth on the twenty-second of December, 1802, in commemoration of the landing of the Pilgrims.

Among the sentiments of most powerful operation upon the human heart, and most highly honorable to the human character, are those of veneration for our forefathers, and of love for our posterity. They form the connecting links between the selfish and the social passions. By the fundamental principle of Christianity, the happiness of the individual is interwoven, by innumerable and imperceptible ties, with that of his contemporaries: by the power of filial reverence and parental affection, individual existence is extended beyond the limits of individual life, and the happiness of every age is chained in mutual dependence upon that of every other. Respect for his ancestors excites, in the breast of man, interest in their history, attachment to their characters, concern for their errors, involuntary pride in their virtues. Love for his posterity spurs him to exertion for their support, stimulates him to virtue for their example, and fills him with the tenderest solicitude for their welfare. Man, therefore, was not made for himself alone. No; he was made for his country, by the obligations of the social compact: he was made for his species, by the christian duties of universal charity: he was made for all ages past, by the sentiment of reverence for his forefathers; and he was made for all future times, by the impulse of affection for his progeny. Under the influence of these principles, "Existence sees him spurn her bounded reign." They redeem his nature from the subjection of time and space: he is no longer a "puny insect shivering at a breeze;" he is the glory of creation, formed to occupy all time and all extent: bounded, during his residence upon earth, only by the boundaries of the world, and destined to life and immortality in brighter regions, when the fabric of nature itself shall dissolve and perish.

The voice of history has not, in all its compass, a note but answers in unison with these sentiments. The barbarian chieftain, who defended his country against the Roman invasion, driven to the remotest extremity of Britain, and stimulating his followers to battle, by all that has power of persuasion upon the human heart, concludes his exhortation by an appeal to these irresistible feelings*—"Think of your forefathers and of your posterity." The Romans themselves, at the pinnacle of civilization, were actuated by the same impressions, and celebrated, in anniversary festivals, every great event which had signalized the annals of their forefathers. To multiply instances, where it were impossible to adduce an exception, would be to waste your time and abuse your patience: but in the sacred volume, which contains the substance of our firmest faith and of our most precious hopes, these passions not only maintain their highest efficacy, but are sanctioned by the express injunctions of the Divine Legislator to his chosen people.

The revolutions of time furnish no previous example of a nation shooting up to maturity and expanding into greatness, with the rapidity which has characterized the growth of the American people. In the luxuriance of youth, and in the vigor of manhood, it is pleasing and instructive to look backwards upon the helpless days of infancy; but in the continual and essential changes of a growing subject, the transactions of that early period would be soon obliterated from the memory, but for some periodical call of attention to aid the silent records of the historian. Such celebrations arouse and gratify the kindliest emotions of the bosom. They are faithful pledges of the respect we bear to the memory of our ancestors, and of the tenderness with which we cherish the rising generation. They introduce the sages and heroes of ages past to the notice and emulation of succeeding times: they are at once testimonials of our gratitude, and schools of virtue to our children.

These sentiments are wise; they are honorable; they are virtuous; their cultivation is not merely innocent pleasure, it is incumbent duty. Obedient to their dictates, you, my fellow-citizens, have instituted and paid frequent observance to this annual solemnity. And what event of weightier intrinsic importance, or of more extensive consequences, was ever selected for this honorary distinction?

In reverting to the period of their origin, other nations have generally been compelled to plunge into the chaos of impenetrable antiquity, or to trace a lawless ancestry into the caverns of ravishers and robbers. It is your peculiar privilege to commemorate, in this birthday of your nation, an event ascertained in its minutest details: an event of which the principal actors are known to you familiarly, as if belonging to your own age: an event of a magnitude before which imagination shrinks at the imperfection of her powers. It is your further happiness to behold, in those eminent characters who were most conspicuous in accomplishing the settlement of your country, men upon whose virtues you can dwell with honest exultation. The founders of your race are not handed down to you, like the father of the Roman people, as the sucklings of a wolf. You are not descended from a nauseous compound of fanaticism and sensuality, whose only argument was the sword, and whose only paradise was a brothel. No

* Proinde ituri in aciem, et majores vestros et posteros cogitate.—*Galgacus in Vita Agricolæ.*

Gothic scourge of God; no Vandal pest of nations; no fabled fugitive from the flames of Troy; no bastard Norman tyrant appears among the list of worthies, who first landed on the rock, which your veneration has preserved, as a lasting monument of their achievement. The great actors of the day we now solemnize, were illustrious by their intrepid valor, no less than by their christian graces; but the clarion of conquest has not blazoned forth their names to all the winds of heaven. Their glory has not been wafted over oceans of blood to the remotest regions of the earth. They have not erected to themselves colossal statues upon pedestals of human bones, to provoke and insult the tardy hand of heavenly retribution. But theirs was "the better fortitude of patience and heroic martyrdom." Theirs was the gentle temper of christian kindness; the rigorous observance of reciprocal justice; the unconquerable soul of conscious integrity. Worldly fame has been parsimonious of her favor to the memory of those generous champions. Their numbers were small; their stations in life obscure; the object of their enterprise unostentatious; the theatre of their exploits remote: how could they possibly be favorites of worldly fame?—That common crier, whose existence is only known by the assemblage of multitudes: that pander of wealth and greatness, so eager to haunt the palaces of fortune, and so fastidious to the houseless dignity of virtue: that parasite of pride, ever scornful to meekness, and ever obsequious to insolent power: that heedless trumpeter, whose ears are deaf to modest merit, and whose eyes are blind to bloodless, distant excellence.

When the persecuted companions of Robinson, exiles from their native land, anxiously sued for the privilege of removing a thousand leagues more distant to an untried soil, a rigorous climate and a savage wilderness, for the sake of reconciling their sense of religious duty with their affections for their country, few, perhaps none of them, formed a conception of what would be, within two centuries, the result of their undertaking. When the jealous and niggardly policy of their British sovereign, denied them even that humblest of requests, and instead of liberty, would barely consent to promise connivance, neither he nor they might be aware that they were laying the foundations of a power, and that he was sowing the seeds of a spirit, which, in less than two hundred years, would stagger the throne of his descendants, and shake his united kingdoms to the centre. So far is it from the ordinary habits of mankind, to calculate the importance of events in their elementary principles, that had the first colonists of our country ever intimated as a part of their designs, the project of founding a great and mighty nation, the finger of scorn would have pointed them to the cells of bedlam, as an abode more suitable for hatching vain empires than the solitude of a transatlantic desert.

These consequences, then so little foreseen, have unfolded themselves in all their grandeur, to the eyes of the present age. It is a common amusement of speculative minds, to contrast the magnitude of the most important events with the minuteness of their primeval causes, and the records of mankind are full of examples for such contemplations. It is, however, a more profitable employment to trace the constituent principles of future greatness in their kernel; to detect in the acorn at our feet the germ of that majestic oak, whose roots shoot down to the centre, and whose branches aspire to the skies. Let it be then our present occupation to inquire and endeavor to ascertain the causes first put in operation at the period of our commemoration, and already productive of such magnificent effects; to examine, with reiterated care and minute attention, the characters of those men who gave the first impulse to a new series of events in the history of the world; to applaud and emulate those qualities of their minds which we shall find deserving of our admiration; to recognize, with candor, those features which forbid approbation or even require censure, and finally, to lay alike their frailties and their perfections to our own hearts, either as warning or as example.

Of the various European settlements upon this continent, which have finally merged in one independent nation, the first establishments were made at various times, by several nations, and under the influence of different motives. In many instances, the conviction of religious obligation formed one and a powerful inducement of the adventurers; but in none, excepting the settlement at Plymouth, did they constitute the sole and exclusive actuating cause. Worldly interest and commercial speculation entered largely into the views of other settlers: but the commands of conscience were the only stimulus to the emigrants from Leyden. Previous to their expedition hither, they had endured a long banishment from their native country. Under every species of discouragement, they undertook the voyage; they performed it in spite of numerous and almost insuperable obstacles; they arrived upon a wilderness bound with frost and hoary with snow, without the boundaries of their charter; outcasts from all human society; and coasted five weeks together, in the dead of winter, on this tempestuous shore, exposed at once to the fury of the elements, to the arrows of the native savage, and to the impending horrors of famine.

Courage and perseverance have a magical talisman, before which difficulties disappear, and obstacles vanish into air. These qualities have ever been displayed in their mightiest perfection, as attendants in the retinue of strong passions. From the first discovery of the western hemisphere by Columbus, until the settlement of Virginia, which immediately preceded that of Plymouth, the various adventurers from the ancient world had exhibited, upon innumerable occasions, that ardor of enterprise and that stubbornness of pursuit, which set all danger at

defiance, and chain the violence of nature at their feet. But they were all instigated by personal interests. Avarice and ambition had tuned their souls to that pitch of exaltation. Selfish passions were the parents of their heroism. It was reserved for the first settlers of New England to perform achievements equally arduous, to trample down obstructions equally formidable, to dispel dangers equally terrific, under the single inspiration of conscience. To them, even liberty herself was but a subordinate and secondary consideration. They claimed exemption from the mandates of human authority, as militating with their subjection to a superior power. Before the voice of heaven they silenced even the calls of their country.

Yet, while so deeply impressed with the sense of religious obligation, they felt, in all its energy, the force of that tender tie which binds the heart of every virtuous man to his native land. It was to renew that connection with their country which had been severed by their compulsory expatriation, that they resolved to face all the hazards of a perilous navigation, and all the labors of a toilsome distant settlement. Under the mild protection of the Batavian government, they enjoyed already that freedom of religious worship, for which they had resigned so many comforts and enjoyments at home: but their hearts panted for a restoration to the bosom of their country. Invited and urged by the open-hearted and truly benevolent people, who had given them an asylum from the persecution of their own kindred, to form their settlement within the territories then under their jurisdiction; the love of their country predominated over every influence save that of conscience alone, and they preferred the precarious chance of relaxation from the bigoted rigor of the English government to the certain liberality and alluring offers of the Hollanders. Observe, my countrymen, the generous patriotism, the cordial union of soul, the conscious, yet unaffected vigor, which beam in their application to the British monarch. "They were well weaned from the delicate milk of their mother country, and inured to the difficulties of a strange land. They were knit together in a strict and sacred bond, to take care of the good of each other and of the whole. It was not with them as with other men, whom small things could discourage, or small discontents cause to wish themselves again at home." Children of these exalted Pilgrims! Is there one among you, who can hear the simple and pathetic energy of these expressions without tenderness and admiration? Venerated shades of our forefathers! No! ye were, indeed, not ordinary men! That country which had ejected you so cruelly from her bosom, you still delighted to contemplate in the character of an affectionate and beloved mother. The sacred bond which knit you together was indissoluble while you lived; and oh! may it be to your descendants the example and the pledge of harmony to the latest period of time! The difficulties and dangers, which so often had defeated attempts of similar establishments, were unable to subdue souls tempered like yours. You heard the rigid interdictions; you saw the menacing forms of toil and danger, forbidding your access to this land of promise: but you heard without dismay; you saw and disdained retreat. Firm and undaunted in the confidence of that sacred bond; conscious of the purity, and convinced of the importance of your motives, you put your trust in the protecting shield of Providence, and smiled defiance at the combining terrors of human malice and of elemental strife. These, in the accomplishment of your undertaking, your were summoned to encounter in their most hideous forms; these you met with that fortitude, and combated with that perseverance which you had promised in their anticipation: these you completely vanquished in establishing the foundations of New England, and the day which we now commemorate is the perpetual memorial of your triumph.

It were an occupation, peculiarly pleasing, to cull from our early historians, and exhibit before you every detail of this transaction. To carry you in imagination on board their bark at the first moment of her arrival in the bay; to accompany Carver, Winslow, Bradford and Standish, in all their excursions upon the desolate coast; to follow them into every rivulet and creek where they endeavored to find a firm footing, and to fix, with a pause of delight and exultation, the instant when the first of these heroic adventurers alighted on the spot where you, their descendants, now enjoy the glorious and happy reward of their labors. But in this grateful task, your former orators, on this anniversary, have anticipated all that the most ardent industry could collect, and gratified all that the most inquisitive curiosity could desire. To you, my friends, every occurrence of that momentous period is already familiar. A transient allusion to a few characteristic incidents, which mark the peculiar history of the Plymouth settlers, may properly supply the place of a narrative, which, to this auditory, must be superfluous.

One of these remarkable incidents is the execution of that instrument of government by which they formed themselves into a body-politic, the day after their arrival upon the coast, and previous to their first landing. This is, perhaps, the only instance, in human history, of that positive, original social compact, which speculative philosophers have imagined as the only legitimate source of government. Here was a unanimous and personal assent; by all the individuals of the community, to the association by which they became a nation. It was the result of circumstances and discussions, which had occurred during their passage from Europe, and is a full demonstration that the nature of civil government, abstracted from the political institutions of their native country, had been an object of their serious meditation.

The settlers of all the former European colonies had contented themselves with the powers conferred upon them by their respective charters, without looking beyond the seal of the royal parchment for the measure of their rights, and the rule of their duties. The founders of Plymouth had been impelled by the peculiarities of their situation to examine the subject with deeper and more comprehensive research. After twelve years of banishment from the land of their first allegiance, during which they had been under an adoptive and temporary subjection to another sovereign, they must naturally have been led to reflect upon the relative rights and duties of allegiance and subjection. They had resided in a city, the seat of a university, where the polemical and political controversies of the time were pursued with uncommon fervor. In this period they had witnessed the deadly struggle between the two parties, into which the people of the United Provinces, after their separation from the crown of Spain, had divided themselves. The contest embraced within its compass not only theological doctrines, but political principles, and Maurice and Barnevelt were the temporal leaders of the same rival factions, of which Episcopius and Polyander were the ecclesiastical champions. That the investigation of the fundamental principles of government was deeply implicated in these dissensions is evident from the immortal work of Grotius, upon the rights of war and peace, which undoubtedly originated from them. Grotius himself had been a most distinguished actor and sufferer in those important scenes of internal convulsion, and his work was first published* very shortly after the departure of our forefathers from Leyden. It is well known that, in the course of the contest, Mr. Robinson more than once appeared, with credit to himself, as a public disputant against Episcopius; and from the manner in which the fact is related by Governor Bradford, it is apparent that the whole English church at Leyden took a zealous interest in the religious part of the controversy. As strangers in the land, it is presumable that they wisely and honorably avoided entangling themselves in the political contentions involved with it. Yet the theoretic principles, as they were drawn into discussion, could not fail to arrest their attention, and must have assisted them to form accurate ideas concerning the origin and extent of authority among men, independent of positive institutions. The importance of these circumstances will not be duly weighed without taking into consideration the state of opinions then prevalent in England. The general principles of government were there little understood and less examined. The whole substance of human authority was centred in the simple doctrine of royal prerogative, the origin of which was always traced in theory to divine institution. Twenty years later, the subject was more industriously sifted, and for half a century became one of the principal topics of controversy between the ablest and most enlightened men in the nation. The instrument of voluntary association, executed on board the Mayflower, testifies that the parties to it had anticipated the improvement of their nation.

Another incident, from which we may derive occasion for important reflections, was the attempt of these original settlers to establish among them that community of goods and of labor, which fanciful politicians, from the days of Plato to those of Rousseau, have recommended as the fundamental law of a perfect republic This theory results, it must be acknowledged, from principles of reasoning most flattering to the human character. If industry, frugality, and disinterested integrity were alike the virtues of all, there would, apparently, be more of the social spirit, in making all property a common stock, and giving to each individual a proportional title to the wealth of the whole. Such is the basis upon which Plato forbids, in his republic, the division of property. Such is the system upon which Rousseau pronounces the first man who enclosed a field with a fence, and said, this is mine, a traitor to the human species. A wiser and more useful philosophy, however, directs us to consider man according to the nature in which he was formed; subject to infirmities, which no wisdom can remedy; to weaknesses, which no institution can strengthen; to vices, which no legislation can correct. Hence it becomes obvious, that separate property is the natural and indisputable right of separate exertion; that community of goods without community of toil is oppressive and unjust; that it counteracts the laws of nature, which prescribe, that he only who sows the seed shall reap the harvest; that it discourages all energy, by destroying its rewards; and makes the most virtuous and active members of society, the slaves and drudges of the worst. Such was the issue of this experiment among our forefathers, and the same event demonstrated the error of the system in the elder settlement of Virginia. Let us cherish that spirit of harmony, which prompted our forefathers to make the attempt, under circumstances more favorable to its success, than, perhaps, ever occurred upon earth. Let us no less admire the candor with which they relinquished it, upon discovering its irremediable inefficacy. To found principles of government upon too advantageous an estimate of the human character, is an error of inexperience, the source of which is so amiable, that it is impossible to censure it with severity. We have seen the same mistake, committed in our own age, and upon a larger theatre. Happily for our ancestors, their situation allowed them to repair it, before its effects had proved destructive. They had no pride of vain philosophy to support, no perfidious rage of faction to glut, by persevering

* In 1625.

in their mistakes, until they should be extinguished in torrents of blood.

As the attempt to establish among themselves the community of goods was a seal of that sacred bond which knit them so closely together, so the conduct they observed towards the natives of the country displays their steadfast adherence to the rules of justice, and their faithful attachment to those of benevolence and charity.

No European settlement, ever formed upon this continent, has been more distinguished for undeviating kindness and equity towards the savages. There are, indeed, moralists who have questioned the right of the Europeans to intrude upon the possessions of the aboriginals in any case, and under any limitations whatsoever. But have they maturely considered the whole subject? The Indian right of possession itself stands, with regard to the greatest part of the country, upon a questionable foundation. Their cultivated fields; their constructed habitations; a space of ample sufficiency for their subsistence, and whatever they had annexed to themselves by personal labor, was undoubtedly, by the laws of nature, theirs. But what is the right of a huntsman to the forest of a thousand miles over which he has accidentally ranged in quest of prey? Shall the liberal bounties of Providence to the race of man be monopolized by one of ten thousand for whom they were created? Shall the exuberant bosom of the common mother, amply adequate to the nourishment of millions, be claimed exclusively by a few hundreds of her offspring? Shall the lordly savage not only disdain the virtues and enjoyments of civilization himself, but shall he control the civilization of a world? Shall he forbid the wilderness to blossom like the rose? Shall he forbid the oaks of the forest to fall before the axe of industry, and rise again, transformed into the habitations of ease and elegance? Shall he doom an immense region of the globe to perpetual desolation, and to hear the howlings of the tiger and the wolf silence for ever the voice of human gladness? Shall the fields and the valleys, which a beneficent God has formed to teem with the life of innumerable multitudes, be condemned to everlasting barrenness? Shall the mighty rivers, poured out by the hand of nature, as channels of communication between numerous nations, roll their waters in sullen silence and eternal solitude to the deep? Have hundreds of commodious harbors, a thousand leagues of coast, and a boundless ocean, been spread in the front of this land, and shall every purpose of utility, to which they could apply, be prohibited by the tenant of the woods? No, generous philanthropists! Heaven has not been thus inconsistent in the works of its hands! Heaven has not thus placed at irreconcilable strife, its moral laws with its physical creation! The Pilgrims of Plymouth obtained their right of possession to the territory, on which they settled, by titles as fair and unequivocal as any human property can be held. By their voluntary association they recognized their allegiance to the Government of Britain, and in process of time, received whatever powers and authorities could be conferred upon them by a charter from their sovereign. The spot on which they fixed, had belonged to an Indian tribe, totally extirpated by that devouring pestilence which had swept the country, shortly before their arrival. The territory, thus free from all exclusive possession, they might have taken by the natural right of occupancy. Desirous, however, of giving ample satisfaction to every pretence of prior right, by formal and solemn conventions with the chiefs of the neighboring tribes, they acquired the further security of a purchase. At their hands the children of the desert had no cause of complaint. On the great day of retribution, what thousands, what millions of the American race will appear at the bar of judgment to arraign their European, invading conquerors! Let us humbly hope, that the fathers of the Plymouth Colony will then appear in the whiteness of innocence. Let us indulge the belief, that they will not only be free from all accusation of injustice to these unfortunate sons of nature, but that the testimonials of their acts of kindness and benevolence towards them, will plead the cause of their virtues, as they are now authenticated by the records of history upon earth.

Religious discord has lost her sting; the cumbrous weapons of theological warfare are antiquated: the field of politics supplies the alchymists of our times with materials of more fatal explosion, and the butchers of mankind no longer travel to another world for instruments of cruelty and destruction. Our age is too enlightened to contend upon topics, which concern only the interests of eternity; and men who hold in proper contempt all controversies about trifles, except such as inflame their own passions, have made it a common-place censure against your ancestors, that their zeal was enkindled by subjects of trivial importance; and that however aggrieved by the intolerance of others, they were alike intolerant themselves. Against these objections, your candid judgment will not require an unqualified justification; but your respect and gratitude for the founders of the State may boldly claim an ample apology. The original grounds of their separation from the church of England, were not objects of a magnitude to dissolve the bonds of communion; much less those of charity, between Christian brethren of the same essential principles. Some of them, however, were not inconsiderable, and numerous inducements concurred to give them an extraordinary interest in their eyes. When that portentous system of abuses, the Papal dominion, was overturned, a great variety of religious sects arose in its stead, in the several countries, which for many centuries before had been screwed beneath its subjection. The fabric of the reformation, first undertaken in England

sanguinary tyrant, had been successively overthrown and restored, renewed and altered according to the varying humors and principles of four successive monarchs. To ascertain the precise point of division between the genuine institutions of Christianity, and the corruptions accumulated upon them in the progress of fifteen centuries, was found a task of extreme difficulty throughout the Christian world. Men of the profoundest learning, of the sublimest genius, and of the purest integrity, after devoting their lives to the research, finally differed in their ideas upon many great points, both of doctrine and discipline. The main question, it was admitted on all hands, most intimately concerned the highest interests of man, both temporal and eternal. Can we wonder, that men who felt their happiness here and their hopes of hereafter, their worldly welfare and the kingdom of heaven at stake, should sometimes attach an importance beyond their intrinsic weight to collateral points of controversy, connected with the all-involving object of the Reformation? The changes in the forms and principles of religious worship, were introduced and regulated in England by the hand of public authority. But that hand had not been uniform or steady in its operations. During the persecutions inflicted in the interval of Popish restoration under the reign of Mary, upon all who favored the reformation, many of the most zealous reformers had been compelled to fly their country. While residing on the continent of Europe, they had adopted the principles of the most complete and rigorous reformation, as taught and established by Calvin. On returning afterwards to their native country, they were dissatisfied with the partial reformation, at which, as they conceived, the English establishment had rested, and claiming the privileges of private conscience, upon which alone any departure from the church of Rome could be justified, they insisted upon the right of adhering to the system of their own preference, and of course, upon that of non-conformity to the establishment prescribed by the royal authority. The only means used to convince them of error, and reclaim them from dissent, was force, and force served but to confirm the opposition it was meant to suppress. By driving the founders of the Plymouth Colony into exile, it constrained them to absolute separation from the church of England, and by the refusal afterwards to allow them a positive toleration, even in this American wilderness, the council of James the First rendered that separation irreconcilable. Viewing their religious liberties here, as held only upon sufferance, yet bound to them by all the ties of conviction, and by all their sufferings for them, could they forbear to look upon every dissenter among themselves with a jealous eye? Within two years after their landing, they beheld a rival settlement* attempted in their immediate neighborhood; and not long after, the laws of self-preservation compelled them to break up a nest of revellers,* who boasted of protection from the mother country, and who had recurred to the easy, but pernicious resource of feeding their wanton idleness, by furnishing the savages with the means, the skill, and the instruments of European destruction. Toleration, in that instance, would have been self-murder, and many other examples might be alleged, in which their necessary measures of self-defence have been exaggerated into cruelty, and their most indispensable precautions distorted into persecution. Yet shall we not pretend that they were exempt from the common laws of mortality, or entirely free from all the errors of their age. Their zeal might sometimes be too ardent, but it was always sincere. At this day, religious indulgence is one of our clearest duties, because it is one of our undisputed rights. While we rejoice that the principles of genuine Christianity have so far triumphed over the prejudices of a former generation, let us fervently hope for the day when it will prove equally victorious over the malignant passions of our own.

In thus calling your attention to some of the peculiar features in the principles, the character, and the history of your forefathers, it is as wide from my design, as I know it would be from your approbation, to adorn their memory with a chaplet plucked from the domain of others. The occasion and the day are more peculiarly devoted to them, but let it never be dishonored with a contracted and exclusive spirit. Our affections as citizens embrace the whole extent of the Union, and the names of Raleigh, Smith, Winthrop, Calvert, Penn and Oglethorpe, excite in our minds recollections equally pleasing, and gratitude equally fervent with those of Carver and Bradford. Two centuries have not yet elapsed since the first European foot touched the soil which now constitutes the American Union. Two centuries more and our number must exceed those of Europe herself. The destinies of this empire, as they appear in prospect before us, disdain the powers of human calculation. Yet, as the original founder of the Roman State is said once to have lifted upon his shoulders the fame and fortunes of all his posterity, so let us never forget that the glory and greatness of all our descendants is in our hands. Preserve, in all their purity, refine, if possible, from all their alloy, those virtues which we this day commemorate as the ornament of our forefathers. Adhere to them with inflexible resolution, as to the horns of the altar; instil them with unwearied perseverance into the minds of your children; bind your souls and theirs to the national Union as the chords of life are centred in the heart, and you shall soar with rapid and steady wing to the summit of human glory. Nearly a century ago, one of those rare minds† to whom it is given to discern future greatness in its seminal principles, upon contemplating

* Weston's plantation at Wessagussett.

* Morton and his party at Mount Wollaston.

† Bishop Berkeley.

the situation of this continent, pronounced in a vein of poetic inspiration,

"Westward the Star of empire takes its way."

Let us unite in ardent supplications to the Founder of nations, and the Builder of worlds, that what then was prophecy, may continue unfolding into history—that the dearest hopes of the human race may not be extinguished in disappointment, and that the last may prove the noblest empire of time.

CHARACTER OF LAFAYETTE.*

Pronounce him one of the first men of his age, and you have yet not done him justice. Try him by that test to which he sought in vain to stimulate the vulgar and selfish spirit of Napoleon; class him among the men who, to compare and seat themselves, must take in the compass of all ages; turn back your eyes upon the records of time; summon from the creation of the world to this day the mighty dead of every age and every clime—and where, among the race of merely mortal men, shall one be found, who, as the benefactor of his kind, shall claim to take precedence of Lafayette?

There have doubtless been, in all ages, men, whose discoveries or inventions, in the world of matter or of mind, have opened new avenues to the dominion of man over the material creation; have increased his means or his faculties of enjoyment; have raised him in nearer approximation to that higher and happier condition, the object of his hopes and aspirations in his present state of existence.

Lafayette discovered no new principle of politics or of morals. He invented nothing in science. He disclosed no new phenomenon in the laws of nature. Born and educated in the highest order of feudal Nobility, under the most absolute Monarchy of Europe, in possession of an affluent fortune, and master of himself and of all his capabilities at the moment of attaining manhood, the principle of republican justice and of social equality took possession of his heart and mind, as if by inspiration from above. He devoted himself, his life, his fortune, his hereditary honors, his towering ambition, his splendid hopes, all to the cause of liberty. He came to another hemisphere to defend her. He became one of the most effective champions of our Independence; but, that once achieved, he returned to his own country, and thenceforward took no part in the controversies which have divided us. In the events of our Revolution, and in the forms of policy which we have adopted for the establishment and perpetuation of our freedom, Lafayette found the most perfect form of government. He wished to add nothing to it. He would gladly have abstracted nothing from it. Instead of the imaginary Republic of Plato, or the Utopia of Sir Thomas More, he took a practical existing model, in actual operation here, and never attempted or wished more than to apply it faithfully to his own country.

It was not given to Moses to enter the promised land; but he saw it from the summit of Pisgah. It was not given to Lafayette to witness the consummation of his wishes in the establishment of a Republic, and the extinction of all hereditary rule in France. His principles were in advance of the age and hemisphere in which he lived. A Bourbon still reigns on the throne of France, and it is not for us to scrutinize the title by which he reigns. The principles of elective and hereditary power, blended in reluctant union in his person, like the red and white roses of York and Lancaster, may postpone to aftertime the last conflict to which they must ultimately come. The life of the Patriarch was not long enough for the development of his whole political system. Its final accomplishment is in the womb of time.

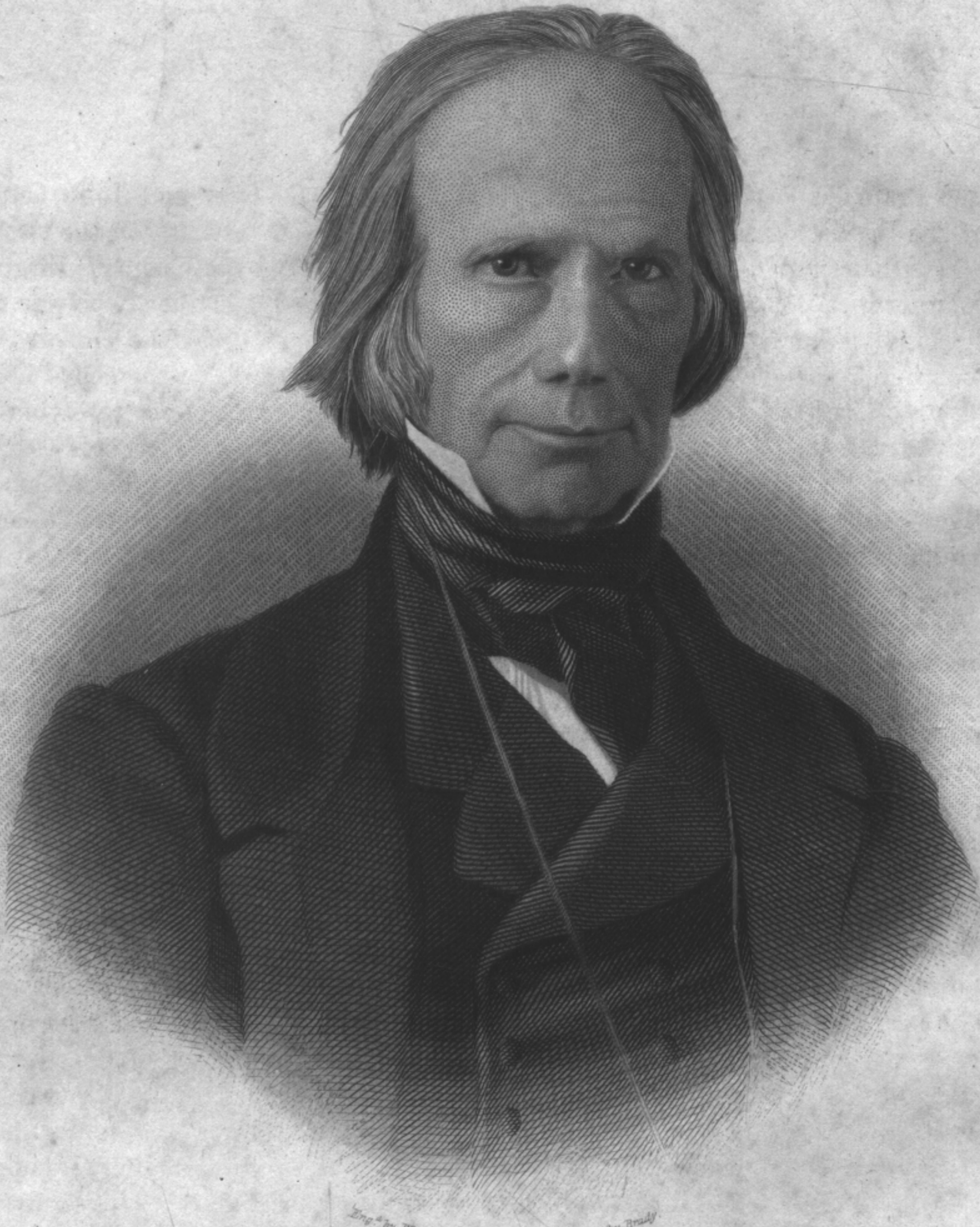
The anticipation of this event is the more certain, from the consideration that all the principles for which Lafayette contended were practical. He never indulged himself in wild and fanciful speculations. The principle of hereditary power was, in his opinion, the bane of all republican liberty in Europe. Unable to extinguish it in the revolution of 1830, so far as concerned the chief magistracy of the nation, Lafayette had the satisfaction of seeing it abolished with reference to the peerage. An hereditary Crown, stript of the support which it may derive from an hereditary peerage, however compatible with Asiatic despotism, is an anomaly in the history of the Christian world, and in the theory of free government. There is no argument producible against the existence of an hereditary peerage, but applies with aggravated weight against the transmission, from sire to son, of an hereditary Crown. The prejudices and passions of the people of France rejected the principle of inherited power, in every station of public trust, excepting the first and highest of them all; but there they clung to it, as did the Israelites of old to the savory deities of Egypt.

This is not the time or the place for a disquisition upon the comparative merits, as a system of government, of a republic, and a monarchy surrounded by republican institutions. Upon this subject there is among us no diversity of opinion; and if it should take the people of France another half century of internal and

* From Mr. Adams's oration on the life and character of Lafayette, delivered before the Congress of the United States, December 31st, 1834.

external war, of dazzling and delusive glories; of unparalleled triumphs, humiliating reverses, and bitter disappointments, to settle it to their satisfaction, the ultimate result can only bring them to the point where we have stood from the day of the Declaration of Independence—to the point where Lafayette would have brought them, and to which he looked as a consummation devoutly to be wished.

Then, too, and then only, will be the time when the character of Lafayette will be appreciated at its true value throughout the civilized world. When the principle of hereditary dominion shall be extinguished in all the institutions of France; when government shall no longer be considered as property transmissible from sire to son, but as a trust committed for a limited time, and then to return to the people whence it came; as a burdensome duty to be discharged, and not as a reward to be abused; when a claim, any claim, to political power by inheritance shall, in the estimation of the whole French people, be held as it now is by the whole people of the North American Union—then will be the time for contemplating the character of Lafayette, not merely in the events of his life, but in the full development of his intellectual conceptions, of his fervent aspirations, of the labors and perils and sacrifices of his long and eventful career upon earth; and thenceforward, till the hour when the trump of the Archangel shall sound to announce that Time shall be no more, the name of Lafayette shall stand enrolled upon the annals of our race, high on the list of the pure and disinterested benefactors of mankind.



Engd by W. C. Jackman, from a Daguerreotype by Brady.

H. Clay

HENRY CLAY.

This celebrated orator and statesman was the seventh child of the Reverend John Clay, a worthy divine of the Baptist persuasion, and Elizabeth, his wife. He was born on the twelfth of April, 1777, in a district commonly called the "Slashes," in Hanover County, Virginia. The death of his father in 1781, consigned him entirely to the care of his mother, who was rendered incapable of giving her children more than a common education, by the embarrassed condition in which her husband's estate was left. This circumstance, which compelled her to rely on her children to assist in the support of the family, did not prevent their receiving the benefits of the parish school. Young Henry was placed under the tuition of one Peter Deacon, with whom he acquired the rudiments of the English branches, and progressed in his arithmetic "as far as Practice"—to use his own words. He remained at home until he reached his fourteenth year, devoting himself, with his brothers, principally to the labors of the farm. It was during this period of his life that he won the title of *The Mill boy of the Slashes.**

In 1791, he entered as a clerk in the drug store of Mr. Richard Denny, at Richmond, in his native State, but remained there only a short time. During the next year his mother was married to Mr. Henry Watkins, and removed to Woodford County, Kentucky, taking with her all her children except Henry and his eldest brother. Previous to this change of residence, Henry, through the instrumentality of his step-father, was placed in the office of Mr. Peter Tinsley, the clerk of the high court of chancery in Virginia, which position he found more congenial to his tastes and inclinations. Here he became acquainted with the celebrated Chancellor Wythe; by his steady and industrious habits soon attracted his attention, and finally became his amanuensis. In the employment now given him, of recording the decisions of the chancellor, and performing the various duties of a private secretary, he obtained much legal and general information, and acquired those habits of regularity and methodical application, which were of so much value to him in his subsequent career. After spending five years in the double service of clerk to Mr. Tinsley and amanuensis to the venerable Chancellor Wythe, he entered as a student at law, in the office of Robert Brooke, at that time attorney-general. The advantages of perfecting himself in the profession he had chosen, now became much better than he had heretofore enjoyed, and the assiduity with which he embraced them, showed how highly he appreciated their benefits. In 1797, after one year of study, he was licensed to practise, by the judges of the Virginia Court of Appeals. During the fall of the same year he removed to Lexington, Kentucky, and there established himself; "without patrons," said he, in reviewing this portion of his life, "without the favor or countenance of the great or opulent, without the means of paying my weekly board, and in the midst of a bar uncommonly distinguished by eminent members. I remember how comfortable I thought I should be," he continued, "if I

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* This *sobriquet* had its origin in the filial and fraternal duty of Mr. Clay, who, after he was large enough, was seen whenever the meal-barrel was low, going to and fro on the road between his mother's house and Mrs. Darricott's mill on the Pamunkey river, mounted on a bag that was thrown across a pony that was guided by a rope bridle; and thus he became familiarly known, by the people living on the line of his travel, as *The millboy of the slashes.—Colton's Life and Times of Clay*, vol. 1, page 19.

could make one hundred pounds, Virginia money, per year, and with what delight I received the first fifteen shilling fee. My hopes were more than realized. I immediately rushed into a successful and lucrative practice." * An incident of this period of his life, which is considered as the occasion of the earliest development of his powers of eloquence and reasoning has been recorded by his numerous biographers; and deserves notice here. At Lexington he had been a member of a debating society some time, but refrained from taking an active part in its exercises, from a modesty inherent in his disposition. At one of the meetings of the society, a question had been discussed at considerable length, and apparently with much ability, on which the customary vote was about to be taken, when he observed in an under tone to a person seated by him, "the subject does not seem to be exhausted." The individual exclaimed, "do not put the question yet, Mr. Clay will speak." The chairman, by a smile and a nod of the head, signified his willingness to allow the discussion to be continued by him, who thereupon arose under every appearance of trepidation and embarrassment. The first words that fell from his lips were "Gentlemen of the jury." His embarrassment was now extreme; blushing, hesitating, and stammering, he repeated the words, "Gentlemen of the Jury." The audience evinced genuine politeness and good breeding, by seeming not to notice his unpleasant and trying position. Suddenly regaining his self-possession, he made a speech of such force and eloquence, as to carry conviction and astonishment at once to the hearts of his hearers. Subsequently he took a prominent part in the debates of the society, and became one of its most efficient members.

Mr. Clay continued the practice of law with increasing reputation. His success, especially in criminal causes, was almost unparalleled. In 1803 he was chosen a member of the Kentucky Legislature, in which body he served until his election to the Senate of the United States in 1806. Here he remained one year, at the expiration of which he returned to Kentucky and was immediately re-elected to the Legislature of that State. His career in that assembly is well described by one who was intimately acquainted with him. "He appears to have been the pervading spirit of the whole body. He never came to the debates without the knowledge necessary to the perfect elucidation of his subject, and he always had the power of making his knowledge so practical, and lighting it up so brightly with the fire of eloquence, and the living soul of intellect, that without resorting to the arts of insidiousness, he could generally control the movements of the Legislature at will. His was not an undue influence; it was the simple ascendency of mind over mind. The measures which originated with him, instead of being characterized by the eccentricities and ambitious innovations which are too visible in the course of young men of genius suddenly elevated to power and influence, were remarkable only for their plain common sense, and their tendency to advance the substantial interests of the State. Though he carried his plans into effect by the aid of the magical incantations of the orator, he always conceived them with the coolness and discretion of a philosopher. No subject was so great as to baffle his powers, none so minute as to elude them. He could handle the telescope and the microscope with equal skill. In him the haughty demagogues of the Legislature found an antagonist who never failed to foil them in their bold projects, and the intriguers of lower degree were baffled with equal certainty whenever they attempted to get any petty measure through the House for their own personal gratification or that of their friends. The people, therefore, justly regarded him as emphatically their own.†

In December, 1809, having been elected by the legislature, Mr. Clay again took his seat in the Senate. On the sixth of the following April, he avowed himself in favor of the policy of encouragement to domestic manufactures, in a powerful speech. Thus early did he become identified with those measures which were afterwards known as the *American System.* This seems to be the only speech he made during that session. His speeches on *the Line of the Perdido*, and the *Augmentation of Military Force*, which are regarded as among his most finished specimens of argumentative eloquence and logical reasoning, were delivered during the session of 1810–1811.

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* See Mr. Clay's Speech at Lexington, June 6, 1842.

† The Life and Speeches of Henry Clay, compiled and edited by Daniel Mallory, vol. 1, page 83.

The most celebrated of his efforts of that session, however, was the speech on the *Bank Charter*. He opposed the measure as unconstitutional; maintaining that no specific provision could be found in the Constitution of the United States, authorizing or permitting the charter of a bank, nor could it be so construed as to imply the power to that effect. Although opposed by many of the ablest men of both parties, his powerful reasoning was sustained and the charter was lost. In all the important subjects which came before the Senate, Mr. Clay evinced his usual zeal and activity. His eloquent powers and brilliant talents were now acknowledged, and his reputation as a debater firmly established throughout the country.

At the close of his second senatorial term he was elected to the lower House of Congress, and on the meeting of that body in November, 1811, he was, on the first ballot, elected to the honorable position of Speaker. His eminent services here are too well known to require particular notice in this sketch. He was a firm supporter of Mr. Madison, and his war measures of 1812, and during the continuance of the hostilities with Great Britain, he displayed the most intense interest for the welfare and honor of the country. It is a remarkable fact, that while the speakership is regarded as a bar to the privilege of participation in the debates of the House, Mr. Clay was accustomed to mingle in its deliberations, while in Committee of the Whole, and to perform the double duty of speaker and member. On the twentieth of January, 1812, he delivered a speech in favor of an increase of the Navy, and succeeded in procuring an appropriation for that object. During the session of 1812–1813, he was the leader of the administration party in the House of Representatives. "Here" says his biographer, "amidst all discouragements, he moved in majesty, for he moved in strength. No difficulties could weary or withstand his energies. Like the Carthaginian chief in the passage of the Alps, he kept his place in front of his comrades, putting aside, with a giant effort, every obstacle that opposed his progress, applauding the foremost of his followers, and rousing those who lingered, by words of encouragement or reproach, till he succeeded in placing them upon a moral eminence, from which they could look down upon the region where their prowess was to meet with its long-expected reward."

In 1814 Mr. Clay was appointed with Mr. Bayard, Mr. Gallatin, and others, to negotiate a treaty of peace with Great Britain. On the termination of that mission, he visited Paris, where he met with a distinguished reception, and by the frankness, grace and ease of his deportment, won the esteem of all who came in contact with him. An anecdote of this visit, illustrative of Mr. Clay's power at repartee and charm of conversation has been preserved. Shortly after his arrival he attended a ball, given by Mr. Hottinguer, the American banker, in honor of the conclusion of the treaty. He was there introduced to the famous Madame de Stael, who cordially addressed him with—"Ah, Mr. Clay! I have been in England, and have been battling your cause for you there." "I know it, madame; we heard of your powerful interposition, and are grateful and thankful for it." "They were much enraged against you," said she; "so much so, that they at one time thought seriously of sending the Duke of Wellington to command their armies against you!" "I am very sorry, madame," replied Mr. Clay, "that they did not send his Grace." "Why?" asked she, surprised. "Because, madame, if he had beaten us, we should have been in the condition of Europe, without disgrace. But, if we had been so fortunate as to defeat him, we should have greatly added to the renown of our arms."

He afterwards met her at her own residence, where he was introduced to the Duke of Wellington, and other celebrities. She related the foregoing conversation to the Duke, who promptly and gracefully responded, that had he been so fortunate in the execution of such a commission as to triumph over a foe evincing so much bravery as the Americans had, he should regard it as a greater honor than the most brilliant victory he had ever achieved.*

Mr. Clay remained at Paris until after the ratification of the treaty, when he went to England. The like civilities and attention with which he had been honored while in the French capital, were extended to him here. While he was in London, the news of the battle of Waterloo arrived, and he was a witness of the joy and exultation with which the British people received it. A few days after, he was dining in company with many of the nobility, at the house of Lord

Castlereagh, when the conversation turned on the recent victory and the flight of Napoleon. Some one suggested that he had gone to America. "If he reaches your shores, Mr. Clay," inquired Lord Liverpool, one of the ministers, "will he not give you much trouble?" "None whatever," responded Mr. Clay; "we shall be glad to receive such a distinguished, though unfortunate exile, and we shall soon make a good democrat of him."

On his return to America in the fall of 1815, Mr. Clay was re-elected to the House of Representatives, and at the commencement of the session was again called to the Speaker's chair. This position he retained until his appointment as Secretary of State, in 1825, with the exception of a short temporary retirement, rendered necessary by heavy pecuniary losses. To enumerate his long and able services in this important station, would be to write a history of the government during ten years of its existence; and the details of his public life are so permanent in the minds of every one, that such a course would be a work of supererogation.

On the inauguration of President Jackson in 1829, Mr. Clay retired to his home in Kentucky. During the winter of that year and the year following, he visited the Southern States, besides passing through the various parts of his own State. The reception he met at the different stages of his route was most cordial and flattering. Men of all parties, distinguished for their abilities and position, went out to welcome him. "The dark elements of faction sank down into quietude" wherever he went, and a "hundred hands were extended to clasp his own."

About this time he delivered an address before the Colonization Society of Kentucky, at Frankfort, in which he supported, with his characteristic eloquence and power, the objects and principles of that institution. During his remarks he alluded to the subject of slavery, and expressed a great desire to co-operate in any work which should have for its end the mitigation of that evil. He dwelt with peculiar pleasure upon the success of the Colonizing efforts throughout the Union, and declared his convictions that it gave the most abundant encouragement for perseverance and renewed exertions in the cause. "We may boldly challenge the annals of human nature," he said, "for the record of any human plan for the melioration of the condition or the advancement of our race, which promises more unmixed good in comprehensive benevolence, than that of the Colonization Society, if carried into full operation. Its benevolent purposes are not confined to the limits of one continent—not to the prosperity of a solitary race. They embrace the largest two portions of the earth, with the peace and happiness of both descriptions of their present inhabitants, and the countless millions of their posterity. The colonists, reared in the bosom of this republic, with a knowledge of the blessings which liberty imparts, although now unable to share them, will carry a recollection of them to benighted Africa, and light up in time her immense territory. And may we not indulge the hope, that in a period of time not surpassing in duration that of our own colonial and national existence, we shall behold a confederation of republican States on the western shores of Africa, with their congress and their annual legislatures, thundering forth in behalf of the rights of man, and causing tyrants to tremble on their thrones." Another portion of this address evinces how deeply he deplored the existence of slavery. "If I could be instrumental," said he, "in eradicating this deepest stain upon the character of our country, and removing all cause of reproach on account of it by foreign nations; if I could only be instrumental in ridding of this foul blot that revered State that gave me birth, or that not less beloved State which has kindly adopted me as her son, I would not exchange the proud satisfaction which I should enjoy, for the honor of all the triumphs ever decreed to the most successful conqueror."

In the fall of 1831, Mr. Clay was again elected to the United States Senate, and about the same time nominated for the presidency, in opposition to General Jackson. He remained in the Senate until 1842, when he made his farewell speech, which is considered one of his finest oratorical efforts, and retired, as he supposed, for ever, from that body. His services during this term of office are familiar to all. In 1844 he was again nominated for the presidency, but was defeated by the election of James K. Polk. In 1849, he was again returned to the Senate, by an unanimous vote of the legislature of his adopted State, and continued a senator until the time of his death. The limits of this sketch will not allow a particular recital of the many and important measures which he originated or perfected in this last term of his senatorial career. It is

sufficient to say that in all his actions he manifested the deepest solicitude and anxiety for the welfare and happiness of his country and his fellow-men.

He died on the twenty-ninth of June, 1852. Tributes of respect from all distinctions of men were offered to his memory, and the nation mourned their irreparable loss. The following remarks, which will close this general sketch, were delivered by his colleague, Mr. Underwood, in the Senate of the United States:—"The character of Henry Clay was formed and developed by the influence of our free institutions. His physical and mental organization eminently qualified him to become a great and impressive orator. His person was tall, slender, and commanding. His temperament ardent, fearless, and full of hope. His countenance clear, expressive, and variable—indicating the emotion which predominated at the moment with exact similitude. His voice, cultivated and modulated in harmony with the sentiment he desired to express, fell upon the ear like the melody of enrapturing music. His eye beaming with intelligence, and flashing with coruscations of genius. His gestures and attitudes graceful and natural. These personal advantages won the prepossessions of an audience, even before his intellectual powers began to move his hearers; and when his strong common sense, his profound reasoning, his clear conceptions of his subject in all its bearings, and his striking and beautiful illustrations, united with such personal qualities, were brought to the discussion of any question, his audience was enraptured, convinced, and led by the orator as if enchanted by the lyre of Orpheus.

"No man was ever blessed by his Creator with faculties of a higher order of excellence than those given to Mr. Clay. In the quickness of his perceptions, and the rapidity with which his conclusions were formed, he had few equals, and no superior. He was eminently endowed with a nice discriminating taste for order, symmetry, and beauty. He detected in a moment every thing out of place or deficient in his room, upon his farm, in his own or the dress of others. He was a skilful judge of the form and qualities of his domestic animals, which he delighted to raise on his farm. I could give you instances of the quickness and minuteness of his keen faculty of observation, which never overlooked any thing. A want of neatness and order was offensive to him. He was particular and neat in his handwriting, and his apparel. A slovenly blot, or negligence of any sort, met his condemnation; while he was so organized that he attended to, and arranged little things to please and gratify his natural love for neatness, order, and beauty, his great intellectual faculties grasped all the subjects of jurisprudence and politics with a facility amounting almost to intuition. As a lawyer, he stood at the head of his profession. As a statesman, his stand at the head of the Republican Whig party for nearly half a century, establishes his title to pre-eminence among his illustrious associates.

"Mr. Clay, throughout his public career, was influenced by the loftiest patriotism. Confident in the truth of his convictions, and the purity of his purposes, he was ardent, sometimes impetuous in the pursuit of objects which he believed essential to the general welfare. * * * His sympathies embraced all. The African slave, the Creole of Spanish America, the children of renovated classic Greece—all families of men, without respect to color or clime, found in his expanded bosom and comprehensive intellect, a friend of their elevation and amelioration.

"Bold and determined as Mr. Clay was in all his actions, he was, nevertheless, conciliating. He did not obstinately adhere to things impracticable. If he could not accomplish the best, he contented himself with the nighest approach to it. He has been the great compromiser of those political agitations and opposing opinions which have, in the belief of thousands, at different times, endangered the perpetuity of our Federal Government and Union. He was no less remarkable for his admirable social qualities than for his intellectual abilities. As a companion, he was the delight of his friends, and no man ever had better or truer. They have loved him from the beginning, and loved him to the last. His hospitable mansion at Ashland was always open to their reception. No guest ever thence departed without feeling happier for his visit."

SPEECH ON THE NEW ARMY BILL.

Mr. Clay delivered this speech in the House of Representatives of the United States, on the eighth of January, 1813, on a bill, proposing that twenty thousand men should be added to the existing military establishment.

Mr. Chairman: I was gratified yesterday by the recommitment of this bill to a committee of the whole House, from two considerations; one, since it afforded me a slight relaxation from a most fatiguing situation;* and the other, because it furnished me with an opportunity of presenting to the committee my sentiments upon the important topics which have been mingled in the debate. I regret, however, that the necessity under which the chairman has been placed of putting the question,† precludes the opportunity, I had wished to enjoy, of rendering more acceptable to the committee any thing I might have to offer on the interesting points, on which it is my duty to touch. Unprepared, however, as I am to speak on this day, of which I am the more sensible from the ill state of my health, I will solicit the attention of the committee for a few moments.

I was a little astonished, I confess, when I found this bill permitted to pass silently through the committee of the whole, and not selected, until the moment when the question was about to be put for its third reading, as the subject on which gentlemen in the opposition chose to lay before the House their views of the interesting attitude in which the nation stands. It did appear to me, that the loan bill, which will soon come before us, would have afforded a much more proper occasion, it being more essential, as providing the ways and means for the prosecution of the war. But the gentlemen had the right of selection, and having exercised it, no matter how improperly, I am gratified, whatever I may think of the character of some part of the debate, at the latitude in which, for once, they have been indulged. I claim only, in return, of gentlemen on the other side of the House, and of the committee, a like indulgence in expressing my sentiments with the same unrestrained freedom. Perhaps, in the course of the remarks which I may feel myself called upon to make, gentlemen may apprehend that they assume too harsh an aspect: but I have only now to say, that I shall speak of parties, measures and things, as they strike my moral sense, protesting against the imputation of any intention, on my part, to wound the feelings of any gentlemen.

Considering the situation in which this country is now placed,—a state of actual war with one of the most powerful nations on the earth,—it may not be useless to take a view of the past, and of the various parties which have at different times appeared in this country, and to attend to the manner, by which we have been driven from a peaceful posture to our present warlike attitude. Such an inquiry may assist in guiding us to that result, an honorable peace, which must be the sincere desire of every friend to America. The course of that opposition, by which the administration of the government has been unremittingly impeded for the last twelve years, is singular, and, I believe, unexampled in the history of any country. It has been alike the duty and the interest of the administration to preserve peace. It was their duty, because it is necessary to the growth of an infant people, to their genius and to their habits. It was their interest, because a change of the condition of the nation, brings along with it a danger of the loss of the affections of the people. The administration has not been forgetful of these solemn obligations. No art has been left unessayed; no experiment, promising a favorable result, left untried, to maintain the peaceful relations of the country. When, some six or seven years ago, the affairs of the nation assumed a threatening aspect, a partial non-importation was adopted. As they grew more alarming, an embargo was imposed. It would have accomplished its purpose, but it was sacrificed upon the altar of conciliation. Vain and fruitless attempt to propitiate! Then came a law of non-intercourse; and a general non-importation followed in the train. In the mean time, any indications of a return to the public law and the path of justice, on the part of either belligerent, are seized upon with avidity by the administration. The arrangement with Mr. Erskine is concluded. It is first applauded, and then censured by the opposition. No matter with what unfeigned sincerity, with what real effort administration cultivates peace, the opposition insist that it alone is culpable for every breach that is made between the two countries. Because the President thought proper, in accepting the proffered reparation for the attack on a national vessel, to intimate that it would have better comported with the justice of the king, (and who does not think so?) to punish the offending officer, the opposition, entering into the royal feelings, sees in that imaginary insult, abundant cause for rejecting Mr. Erskine's arrangement. On another occasion, you cannot have forgotten the hypercritical ingenuity which they displayed, to divest Mr. Jackson's correspondence of a premeditated insult to this country. If gentlemen would only reserve for their own government half the sensibility, which is indulged for that of Great Britain, they would find much less

* Mr. Clay was, at this time, Speaker of the House of Representatives.

† The Chairman had risen to put the question, which would have cut Mr. Clay off from the opportunity of speaking, by carrying the bill to the House.

to condemn. Restriction after restriction has been tried; negotiation has been resorted to, until further negotiation would have been disgraceful. Whilst these peaceful experiments are undergoing a trial, what is the conduct of the opposition? They are the champions of war; the proud, the spirited, the sole repository of the nation's honor; the men of exclusive vigor and energy. The administration, on the contrary, is weak, feeble and pusillanimous,—"incapable of being kicked into a war." The maxim, "not a cent for tribute, millions for defence," is loudly proclaimed. Is the administration for negotiation? The opposition is tired, sick, disgusted with negotiation. They want to draw the sword and avenge the nation's wrongs. When, however, foreign nations, perhaps emboldened by the very opposition here made, refuse to listen to the amicable appeals, which have been repeated and reiterated by the administration, to their justice and to their interests; when, in fact, war with one of them has become identified with our independence and our sovereignty, and to abstain from it was no longer possible, behold the opposition veering round and becoming the friends of peace and commerce. They tell you of the calamities of war, its tragical events, the squandering away of your resources, the waste of the public treasure, and the spilling of innocent blood. "Gorgons, hydras and chimeras dire." They tell you that honor is an illusion! Now we see them exhibiting the terrific forms of the roaring king of the forest: now the meekness and humility of the lamb! They are for war and no restrictions, when the administration is for peace. They are for peace and restrictions, when the administration is for war. You find them, sir, tacking with every gale, displaying the colors of every party and of all nations, steady only in one unalterable purpose, to steer, if possible, into the haven of power.

During all this time, the parasites of opposition do not fail, by cunning sarcasm or sly innuendo, to throw out the idea of French influence, which is known to be false, which ought to be met in one manner only, and that is by the lie direct. The administration of this country devoted to foreign influence! The administration of this country subservient to France! Great God! what a charge! how is it so influenced? By what ligament, on what basis, on what possible foundation does it rest? Is it similarity of language? No! we speak different tongues, we speak the English language. On the resemblance of our laws? No! the sources of our jurisprudence spring from another and a different country. On commercial intercourse? No! we have comparatively none with France. Is it from the correspondence in the genius of the two governments? No! here alone is the liberty of man secure from the inexorable despotism, which every where else tramples it under foot. Where then is the ground of such an influence? But, sir, I am insulting you by arguing on such a subject. Yet, preposterous and ridiculous as the insinuation is, it is propagated with so much industry, that there are persons found foolish and credulous enough to believe it. You will, no doubt, think it incredible, (but I have nevertheless been told it as a fact,) that an honorable member of this House, now in my eye, recently lost his election by the circulation of a silly story in his district, that he was the first cousin of the Emperor Napoleon. The proof of the charge rested on a statement of facts, which was undoubtedly true. The gentleman in question, it was alleged, had married a connexion of the lady of the President of the United States, who, was the intimate friend of Thomas Jefferson, late President of the United States, who some years ago, was in the habit of wearing red French breeches. Now, taking these premises as established, you, Mr. Chairman, are too good a logician not to see that the conclusion necessarily follows!

Throughout the period I have been speaking of, the opposition has been distinguished, amidst all its veerings and changes, by another inflexible feature, the application to Bonaparte of every vile and opprobrious epithet, our language, copious as it is in terms of vituperation, affords. He has been compared to every hideous monster and beast, from that mentioned in the Revelations, down to the most insignificant quadruped. He has been called the scourge of mankind, the destroyer of Europe, and the great robber, the infidel, the modern Attila, and heaven knows by what other names. Really, gentlemen remind me of an obscure lady, in a city not very far off, who also took it into her head, in conversation with an accomplished French gentleman, to talk of the affairs of Europe. She too spoke of the destruction of the balance of power, stormed and raged about the insatiable ambition of the emperor; called him the curse of mankind, the destroyer of Europe. The Frenchman listened to her with perfect patience, and when she had ceased, said to her, with ineffable politeness; "Madam, it would give my master, the emperor, infinite pain, if he knew how hardly you thought of him." Sir, gentlemen appear to me to forget that they stand on American soil; that they are not in the British House of Commons, but in the chamber of the House of Representatives of the United States; that we have nothing to do with the affairs of Europe, the partition of territory and sovereignty there, except so far as these things affect the interests of our own country. Gentlemen transform themselves into the Burkes, Chathams and Pitts of another country, and forgetting from honest zeal the interests of America, engage with European sensibility in the discussion of European interests. If gentlemen ask me, whether I do not view with regret and horror the concentration of such vast power in the hands of Bonaparte—I reply that I do. I regret to see the emperor of China holding such immense sway over the fortunes of millions of our species. I regret to see Great Britain possessing

so uncontrolled a command over all the waters of our globe. If I had the ability to distribute among the nations of Europe their several portions of power and of sovereignty, I would say that Holland should be resuscitated, and given the weight she enjoyed in the days of her De Witts. I would confine France within her natural boundaries, the Alps, Pyrenees and the Rhine, and make her a secondary naval power only. I would abridge the British maritime power, raise Prussia and Austria to their original condition, and preserve the integrity of the Empire of Russia. But these are speculations. I look at the political transactions of Europe, with the single exception of their possible bearing upon us, as I do at the history of other countries, or other times. I do not survey them with half the interest that I do the movements in South America. Our political relation with them is much less important than it is supposed to be. I have no fears of French or English subjugation. If we are united, we are too powerful for the mightiest nation in Europe, or all Europe combined. If we are separated and torn asunder, we shall become an easy prey to the weakest of them. In the latter dreadful contingency, our country will not be worth preserving.

Next to the notice which the opposition has found itself called upon to bestow upon the French Emperor, a distinguished citizen of Virginia, formerly President of the United States, has never for a moment failed to receive their kindest and most respectful attention. An honorable gentleman from Massachusetts, Mr. Quincy, of whom I am sorry to say, it becomes necessary for me, in the course of my remarks, to take some notice, has alluded to him in a remarkable manner. Neither his retirement from public office, his eminent services, nor his advanced age, can exempt this patriot from the coarse assaults of party malevolence. No, sir, in 1801, he snatched from the rude hand of usurpation the violated constitution of his country, and that is his crime. He preserved that instrument in form, and substance, and spirit, a precious inheritance for generations to come, and for this he can never be forgiven. How vain and impotent is party rage directed against such a man! He is not more elevated by his lofty residence upon the summit of his own favorite mountain, than he is lifted by the serenity of his mind and the consciousness of a well spent life, above the malignant passions and bitter feelings of the day. No! his own beloved Monticello is not more moved by the storms that beat against its sides, than is this illustrious man, by the howlings of the whole British pack set loose from the Essex kennel! When the gentleman to whom I have been compelled to allude, shall have mingled his dust with that of his abused ancestors; when he shall have been consigned to oblivion, or if he lives at all, shall live only in the treasonable annals of a certain junto; the name of Jefferson will and cherished as the second founder of the liberties of the people, and the period of his administration will be looked back to, as one of the happiest and brightest epochs of American history—an oasis in the midst of a sandy desert. But I beg the gentleman's pardon; he has indeed secured to himself a more imperishable fame than I had supposed: I think it was about four years ago that he submitted to the House of Representatives, an initiative proposition for an impeachment of Mr. Jefferson. The House condescended to consider it. The gentleman debated it with his usual temper, moderation and urbanity. The House decided upon it in the most solemn manner, and, although the gentleman had somehow obtained a second, the final vote stood, one for, and one hundred and seventeen against the proposition! The same historic page that transmitted to posterity the virtue and the glory of Henry the Great of France, for their admiration and example, has preserved the infamous name of the fanatic assassin of that excellent monarch. The same sacred pen that portrayed the sufferings and crucifixion of the Saviour of mankind, has recorded, for universal execration, the name of him who was guilty, not of betraying his country, (but a kindred crime,) of betraying his God.

In one respect there is a remarkable difference between the administration and the opposition; it is in a sacred regard for personal liberty. When out of power my political friends condemned the surrender of Jonathan Robbins; they opposed the violation of the freedom of the press in the sedition law; they opposed the more insidious attack upon the freedom of the person under the imposing garb of an alien law. The party now in opposition, then in power, advocated the sacrifice of the unhappy Robbins, and passed those two laws.* True to our principles, we are now struggling for the liberty of our seamen against foreign oppression. True to theirs, they oppose a war undertaken for this object. They have, indeed, lately affected a tender solicitude for the liberties of the people, and talk of the danger of standing armies, and the burden of taxes. But it must be evident to you, Mr. Chairman, that they speak in a foreign idiom. Their brogue evinces that it is not their vernacular tongue. What! the opposition, who, in 1798 and 1799, could raise a useless army to fight an enemy three thousand miles distant from us, alarmed at the existence of one raised for a known and specified object—the attack of the adjoining provinces of the enemy! What! the gentleman from Massachusetts, who assisted by his vote to raise the army of twenty-five thousand, alarmed at the danger of our liberties from this very army!

But, sir, I must speak of another subject, which I never think of but with feelings of the

* See Marshall's Speech in the Robbins case, at page 20

deepest awe. The gentleman from Massachusetts, in imitation of some of his predecessors of 1799, has entertained us with a picture of cabinet plots, presidential plots, and all sorts of plots which have been engendered by the diseased state of the gentleman's imagination. I wish, sir, that another plot of a much more serious and alarming character—a plot that aims at the dismemberment of our Union, had only the same imaginary existence. But no man who has paid any attention to the tone of certain prints, and to transactions in a particular quarter of the Union, for several years past, can doubt the existence of such a plot. It is far, very far from my intention to charge the opposition with such a design. No, I believe them generally incapable of it. But I cannot say as much for some, who have been unworthily associated with them in the quarter of the Union to which I have referred. The gentleman cannot have forgotten his own sentiment, uttered even on the floor of this House, "peaceably if we can, forcibly if we must," nearly at the very time Henry's mission to Boston was undertaken. The flagitiousness of that embassy has been attempted to be concealed, by directing the public attention to the price which, the gentleman says, was given for the disclosure. As if any price could change the atrociousness of the attempt on the part of Great Britain, or could extenuate, in the slightest degree, the offence of those citizens, who entertained and deliberated upon a proposition so infamous and unnatural! There is a most remarkable coincidence between some of the things which that man states, and certain events in the quarter alluded to. In the contingency of war with Great Britain, it will be recollected, that the neutrality and eventual separation of that section of the Union was to be brought about. How, sir, has it happened, since the declaration of war, that British officers in Canada have asserted to American officers, that this very neutrality would take place? That they have so asserted can be established beyond controversy. The project is not brought forward openly, with a direct avowal of the intention. No, the stock of good sense and patriotism in that portion of the country is too great to be undisguisedly encountered. It is assailed from the masked batteries of friendship, of peace and commerce on the one side, and by the groundless imputation of opposite propensities on the other. The affections of the people there are gradually to be undermined. The project is suggested or withdrawn; the diabolical "dramatis personæ," in this criminal tragedy, make their appearance or exit, as the audience to whom they address themselves applaud or condemn. I was astonished, sir, in reading lately a letter, or pretended letter, published in a prominent print in that quarter, and written, not in the fervor of party zeal, but coolly and dispassionately, to find that the writer affected to reason about a separation, and attempted to demonstrate its advantages to the different portions of the Union—deploring the existence now of what he terms prejudices against it, but hoping for the arrival of the period when they shall be eradicated. But, sir, I will quit this unpleasant subject; I will turn from one, whom no sense of decency or propriety could restrain from soiling the carpet on which he treads, to gentlemen who have not forgotten what is due to themselves, to the place in which we are assembled, or to those by whom they are opposed. The gentlemen from North Carolina, Mr. Pearson, from Connecticut, Mr. Pitkin, and from New York, Mr. Bleecker, have, with their usual decorum, contended, that the war would not have been declared, had it not been for the duplicity of France, in withholding an authentic instrument, repealing the decrees of Berlin and Milan; that upon the exhibition of such an instrument the revocation of the orders in council took place; that this main cause of the war, but for which it would not have been declared, being removed, the administration ought to seek for the restoration of peace; and that upon its sincerely doing so, terms compatible with the honor and interest of this country might be obtained. It is my purpose to examine, first, into the circumstances under which the war was declared; secondly, into the causes of continuing it; and lastly, into the means which have been taken, or ought to be taken, to procure peace; but, sir, I am really so exhausted, that, little as I am in the habit of asking of the House an indulgence of this kind, I feel I must trespass on their goodness.

Here Mr. Clay sat down. Mr. Newton moved that the committee rise, report progress, and ask leave to sit again, which was done. On the next day Mr. Clay proceeded:

I am sensible, Mr. Chairman, that some part of the debate, to which this bill has given rise, has been attended by circumstances much to be regretted, not usual in this House, and of which it is to be hoped, there will be no repetition. The gentleman from Boston, had so absolved himself from every rule of decorum and propriety, had so outraged all decency, that I have found it impossible to suppress the feelings excited on the occasion. His colleague, whom I have the honor to follow, Mr. Wheaton, whatever else he might not have proved, in his very learned, ingenious, and original exposition of the powers of this government,—an exposition in which he has sought, where nobody before him has, and nobody after him will look, for a grant of our powers, I mean the preamble to the constitution,—has clearly shown, to the satisfaction of all who heard him, that the power of defensive war is conferred. I claim the benefit of a similar principle, in behalf of my political friends, against the gentleman from Boston. I demand only the exercise of the right of repulsion. No one is more anxious than I am to preserve the dignity and the freedom of de-

bate,—no member is more responsible for its abuse; and if, on this occasion, its just limits have been violated, let him, who has been the unprovoked aggressor, appropriate to himself, exclusively the consequences.

I omitted, yesterday, sir, when speaking of a delicate and painful subject, to notice a powerful engine which the conspirators against the integrity of the Union employ to effect their nefarious purposes—I mean Southern influence. The true friend to his country, knowing that our constitution was the work of compromise, in which interests, apparently conflicting, were attempted to be reconciled, aims to extinguish or allay prejudices. But this patriotic exertion does not suit the views of those who are urged on by diabolical ambition. They find it convenient to imagine the existence of certain improper influences, and to propagate, with their utmost industry, a belief of them. Hence the idea of Southern preponderance; Virginia influence; the yoking of the respectable yeomanry of the North, with negro slaves, to the car of Southern nabobs. If Virginia really cherishes a reprehensible ambition, an aim to monopolize the chief magistracy of the country, how is such a purpose to be accomplished? Virginia, alone, cannot elect a President, whose elevation depends upon a plurality of electoral votes, and a consequent concurrence of many States. Would Vermont, disinterested Pennsylvania, the Carolinas, independent Georgia, Kentucky, Tennessee, Ohio, Louisiana, all consent to become the tools of inordinate ambition? But the present incumbent was designated to the office before his predecessor had retired. How? By public sentiment,—public sentiment which grew out of his known virtues, his illustrious services, and his distinguished abilities. Would the gentleman crush this public sentiment,—is he prepared to admit, that he would arrest the progress of opinion?

The war was declared because Great Britain arrogated to herself the pretension of regulating our foreign trade, under the delusive name of retaliatory orders in council,—a pretension by which she undertook to proclaim to American enterprise,—"Thus far shalt thou go, and no farther,"—orders which she refused to revoke after the alleged cause of their enactment had ceased; because she persisted in the practice of impressing American seamen; because she had instigated the Indians to commit hostilities against us; and because she refused indemnity for her past injuries upon our commerce. I throw out of the question other wrongs. The war in fact was announced, on our part, to meet the war which she was waging on her part. So undeniable were the causes of the war, so powerfully did they address themselves to the feelings of the whole American people, that when the bill was pending before this House, gentlemen in the opposition, although provoked to debate, would not, or could not, utter one syllable against it. It is true, they wrapped did not choose to debate such a question in secret session. Whilst speaking of the proceedings on that occasion, I beg to be permitted to advert to another fact which transpired,—an important fact, material for the nation to know, and which I have often regretted had not been spread upon our journals.

My honorable colleague, Mr. M'Kee, moved, in committee of the whole, to comprehend France in the war; and when the question was taken upon the proposition, there appeared but ten votes in support of it, of whom, seven belonged to this side of the House, and three only to the other! It is said that we were inveigled into the war by the perfidy of France; and that had she furnished the document in time, which was first published in England, in May last, it would have been prevented. I will concede to gentlemen every thing they ask about the injustice of France towards this country. I wish to God that our ability was equal to our disposition to make her feel the sense that we entertain of that injustice. The manner of the publication of the paper in question, was undoubtedly extremely exceptionable. But I maintain, that, had it made its appearance earlier, it would not have had the effect supposed; and the proof lies in the unequivocal declarations of the British government. I will trouble you, sir, with going no further back than to the letters of the British minister, addressed to the Secretary of State just before the expiration of his diplomatic functions. It will be recollected by the committee, that he exhibited to this government a despatch from lord Castlereagh, in which the principle was distinctly avowed, that, to produce the effect of a repeal of the orders in council, the French decrees must be absolutely and entirely revoked as to all the world, and not as to America alone. A copy of that despatch was demanded of him, and he very awkwardly evaded it. But on the tenth of June, after the bill declaring war had actually passed this House, and was pending before the senate, (and which, I have no doubt, was known to him,) in a letter to Mr. Monroe, he says: "I have no hesitation, sir, in saying, that Great Britain, as the case has hitherto stood, never did, nor ever could engage, without the greatest injustice to herself and her allies, as well as to other neutral nations, to repeal her orders as affecting America alone, leaving them in force against other states, upon condition that France would except, singly and specially, America from the operation of her decrees." On the fourteenth of the same month, the bill still pending before the Senate, he repeats: "I will now say, that I feel entirely authorized to assure you, that if you can at any time produce a full and unconditional repeal of the French decrees, as you have a right to demand it in your character of a neutral nation, and that it be disengaged from any question concerning our maritime rights, we shall be ready to meet you with a

to your producing such an instrument, which I am sorry to see you regard as unnecessary, you cannot expect of us to give up our orders in council." Thus, sir, you see that the British government would not be content with a repeal of the French decrees as to us only. But the French paper in question was such a repeal. It could not, therefore, satisfy the British government. It could not, therefore, have induced that government, had it been earlier promulgated, to repeal the orders in council. It could not, therefore, have averted the war. The withholding of it did not occasion the war, and the promulgation of it would not have prevented the war. But gentlemen have contended, that, in point of fact, it did produce a repeal of the orders in council. This I deny. After it made its appearance in England, it was declared, by one of the British ministry in Parliament, not to be satisfactory. And all the world knows, that the repeal of the orders in council resulted from the inquiry, reluctantly acceded to by the ministry, into the effect upon their manufacturing establishments, of our non-importation law, or to the warlike attitude assumed by this government, or to both. But it is said, that the orders in council are withdrawn, no matter from what cause; and that having been the sole motive for declaring the war, the relations of peace ought to be restored. This brings me to the examination of the grounds for continuing the present hostilities between this country and Great Britain.

I am far from acknowledging, that, had the orders in council been repealed, as they have been, before the war was declared, the declaration of hostilities would of course have been prevented. In a body so numerous as this is, from which the declaration emanated, it is impossible to say, with any degree of certainty, what would have been the effect of such a repeal. Each member must answer for himself. As to myself, I have no hesitation in saying, that I have always considered the impressment of American seamen, as much the most serious aggression. But, sir, how have those orders at last been repealed? Great Britain, it is true, has intimated a willingness to suspend their practical operation, but she still arrogates to herself the right to revive them upon certain contingencies, of which she constitutes herself the sole judge. She waves the temporary use of the rod, but she suspends it "in terrorem" over our heads. Supposing it to be conceded to gentlemen that such a repeal of the orders in council, as took place on the twenty-third of June last, exceptionable as it is, being known before the war was proclaimed, would have prevented it: does it follow, that it ought to induce us to lay down our arms, without the redress of any other injury of which we complain?

Does it follow, in all cases, that that, which would in the first instance have prevented, would also terminate the war? By no means. It requires a strong and powerful effort in a nation, prone to peace as this is, to burst through its habits and encounter the difficulties and privations of war. Such a nation ought but seldom to embark in a belligerent contest; but when it does, it should be for obvious and essential rights alone, and should firmly resolve to extort, at all hazards, their recognition. The war of the Revolution is an example of a war begun for one object and prosecuted for another. It was waged, in its commencement, against the right asserted by the parent country to tax the colonies. Then no one thought of absolute independence. The idea of independence was repelled. But the British government would have relinquished the principle of taxation. The founders of our liberties saw, however, that there was no security short of independence, and they achieved that independence. When nations are engaged in war, those rights in controversy, which are not acknowledged by the treaty of peace, are abandoned. And who is prepared to say, that American seamen shall be surrendered, as victims to the British principle of impressment? And, sir, what is this principle? She contends, that she has a right to the services of her own subjects; and that, in the exercise of this right, she may lawfully impress them, even although she finds them in American vessels, upon the high seas without her jurisdiction. Now I deny that she has any right, beyond her jurisdiction, to come on board our vessels, upon the high seas, for any other purpose than in the pursuit of enemies, or their goods, or goods contraband of war.

But she further contends, that her subjects cannot renounce their allegiance to her, and contract a new obligation to other sovereigns. I do not mean to go into the general question of the right of expatriation. If, as is contended, all nations deny it, all nations, at the same time, admit and practise the right of naturalization. Great Britain herself does this. Great Britain, in the very case of foreign seamen, imposes, perhaps, fewer restraints upon naturalization than any other nation. Then, if subjects cannot break their original allegiance, they may, according to universal usage, contract a new allegiance. What is the effect of this double obligation? Undoubtedly, that the sovereign having the possession of the subject, would have the right to the services of the subject. If he return within the jurisdiction of his primitive sovereign, he may resume his right to his services, of which the subject, by his own act, could not divest himself. But his primitive sovereign can have no right to go in quest of him, out of his own jurisdiction, into the jurisdiction of another sovereign, or upon the high seas; where there exists either no jurisdiction, or it is possessed by the nation owning the ship navigating them. But, sir, this discussion is altogether useless. It is not to the British principle, objectionable as it is, that we are alone to look; it is to her practice, no matter what guise she puts on. It is in vain to assert

the inviolability of the obligation of allegiance. It is in vain to set up the plea of necessity, and to allege that she cannot exist without the impressment of her seamen. The naked truth is, she comes, by her press gangs, on board of our vessels, seizes our native as well as naturalized seamen, and drags them into her service. It is the case, then, of the assertion of an erroneous principle, and of a practice not conformable to the asserted principle—a principle which, if it were theoretically right, must be for ever practically wrong—a practice which can obtain countenance from no principle whatever, and to submit to which, on our part, would betray the most abject degradation.

We are told, by gentlemen in the opposition, that government has not done all that was incumbent on it to do, to avoid just cause of complaint on the part of Great Britain; that in particular, the certificates of protection, authorized by the act of 1796, are fraudulently used. Sir, government has done too much in granting those paper protections. I can never think of them without being shocked. They resemble the passes which the master grants to his negro slave—"let the bearer, Mungo, pass and repass without molestation." What do they imply? That Great Britain has a right to seize all who are not provided with them. From their very nature they must be liable to abuse on both sides. If Great Britain desires a mark, by which she can know her own subjects, let her give them an ear-mark. The colors that float from the mast head should be the credentials of our seamen. There is no safety to us, and the gentlemen have shown it, but in the rule that all who sail under the flag, (not being enemies,) are protected by the flag. It is impossible that this country should ever abandon the gallant tars, who have won for us such splendid trophies. Let me suppose that the genius of Columbia should visit one of them in his oppressor's prison, and attempt to reconcile him to his forlorn and wretched condition. She would say to him, in the language of gentlemen on the other side: "Great Britain intends you no harm; she did not mean to impress you, but one of her own subjects; having taken you by mistake, I will remonstrate, and try to prevail upon her, by peaceable means, to release you, but I cannot, my son, fight for you." If he did not consider this mere mockery, the poor tar would address her judgment and say, "you owe me, my country, protection; I owe you, in return, obedience. I am no British subject, I am a native of old Massachusetts, where live my aged father, my wife, my children. I have faithfully discharged my duty. Will you refuse to do yours?" Appealing to her passions, he would continue: "I lost this eye in fighting under Truxton, with the Insurgente; I got this scar before Tripoli; I broke this leg on board the Constitution, when the Guerriere struck." If she remained still unmoved, he would break out, in the accents of

Hard, hard is my fate! once I freedom enjoyed,
Was as happy as happy could be!
Oh! how hard is my fate, how galling these chains!

I will not imagine the dreadful catastrophe to which he would be driven by an abandonment of him to his oppressor. It will not be, it cannot be, that his country will refuse him protection.

It is said, that Great Britain has been always willing to make a satisfactory arrangement of the subject of impressment; and that Mr. King had nearly concluded one, prior to his departure from that country. Let us hear what that minister says, upon his return to America. In his letter, dated at New York, in July, 1803, after giving an account of his attempt to form an arrangement for the protection of our seamen, and his interviews to this end with Lords Hawkesbury and St. Vincent, and stating, that, when he had supposed the terms of a convention were agreed upon, a new pretension was set up, (the "mare clausum,") he concludes: "I regret not to have been able to put this business on a satisfactory footing, knowing as I do its very great importance to both parties; but I flatter myself, that I have not misjudged the interests of our own country, in refusing to sanction a principle, that might be productive of more extensive evils than those it was our aim to prevent." The sequel of his negotiation, on this affair, is more fully given in the recent conversation between Mr. Russell and Lord Castlereagh, communicated to Congress during its present session. Lord Castlereagh says to Mr. Russell:

"Indeed, there has evidently been much misapprehension on this subject, an erroneous belief entertained, that an arrangement, in regard to it, has been nearer an accomplishment than the facts will warrant. Even our friends in Congress, I mean those who are opposed to going to war with us, have been so confident in this mistake, that they have ascribed the failure of such an arrangement, solely to the misconduct of the American government. This error probably originated with Mr. King; for, being much esteemed here, and always well received by the persons in power, he seems to have misconstrued their readiness to listen to his representations, and their warm professions of a disposition to remove the complaints of America, in relation to impressment, into a supposed conviction on their part, of the propriety of adopting the plan which he had proposed. But Lord St. Vincent, whom he might have thought he had brought over to his opinions, appears never for a moment to have ceased to regard all arrangement on this subject, to be attended with formidable, if not insurmountable obstacles. This is obvious from a letter which his lordship addressed to Sir William Scott at the time." Here Lord Castlereagh read a letter, contained in the records before him, in which Lord St. Vincent states to Sir William Scott the zeal with which Mr. King had assailed him on the subject

and total incompetency to discover any practical project for the safe discontinuance of that practice, and asks for counsel and advice. 'Thus you see,' proceeded Lord Castlereagh, 'that the confidence of Mr. King on this subject was entirely unfounded.'

Thus it is apparent, that at no time has the enemy been willing to place this subject on a satisfactory footing. I will speak hereafter of the overtures made by administration since the war.

The honorable gentleman from New York, Mr. Bleecker, in the very sensible speech with which he favored the committee, made one observation which did not comport with his usual liberal and enlarged views. It was, that those who are most interested against the practice of impressment, did not desire a continuance of the war on account of it, whilst those, (the southern and western members,) who had no interest in it, were the zealous advocates of American seamen. It was a provincial sentiment unworthy of that gentleman. It was one which, in a change of condition, he would not express, because I know he could not feel it. Does not that gentleman feel for the unhappy victims of the tomahawk in the western wilds, although his quarter of the Union may be exempted from similar barbarities? I am sure he does. If there be a description of rights, which, more than any other, should unite all parties in all quarters of the Union, it is unquestionably the rights of the person. No matter what his vocation; whether he seeks subsistence amidst the dangers of the deep, or draws them from the bowels of the earth, or from the humblest occupations of mechanic life: whenever the sacred rights of an American freeman are assailed, all hearts ought to unite, and every arm should be braced to vindicate his cause.

The gentleman from Delaware sees in Canada no object worthy of conquest. According to him, it is a cold, sterile and inhospitable region. And yet, such are the allurements which it offers, that the same gentleman apprehends that, if it be annexed to the United States, already too much weakened by an extension of territory, the people of New England will rush over the line and depopulate that section of the Union! That gentleman considers it honest to hold Canada as a kind of hostage; to regard it as a sort of bond for the good behavior of the enemy. But he will not enforce the bond. The actual conquest of that country would, according to him, make no impression upon the enemy, and yet the very apprehension only of such a conquest, would at all times have a powerful operation upon him! Other gentlemen consider the invasion of that country as wicked and unjustifiable. Its inhabitants are represented as harmless and unoffending, as connected with those of the bordering States by a thousand tender ties, interchanging acts of kindness, and all the offices of good neighborhood. Is not the tomahawk of the savage has been moulded into its deathlike form? Has it not been from Canadian magazines, Malden and others, that those supplies have been issued which nourish and continue the Indian hostilities? Supplies which have enabled the savage hordes to butcher the garrison of Chicago, and to commit other horrible excesses and murders! Was it not by the joint co-operation of Canadians and Indians, that a remote American fort, Michilimackinac, was assailed and reduced, while in ignorance of a state of war? But, sir, how soon have the opposition changed their tone. When administration was striving, by the operation of peaceful measures, to bring Great Britain back to a sense of justice, they were for old-fashioned war. And now they have got old-fashioned war, their sensibilities are cruelly shocked, and all their sympathies lavished upon the harmless inhabitants of the adjoining provinces. What does a state of war present? The united energies of one people arrayed against the combined energies of another—a conflict in which each party aims to inflict all the injury it can, by sea and land, upon the territories, property and citizens of the other; subject only to the rules of mitigated war practised by civilized nations. The gentleman would not touch the continental provinces of the enemy, nor, I presume, for the same reason, her possessions in the West Indies. The same humane spirit would spare the seamen and soldiers of the enemy. The sacred person of his majesty must not be attacked, for the learned gentlemen, on the other side, are quite familiar with the maxim, that the king can do no wrong. Indeed, sir, I know of no person on whom we may make war upon the principles of the honorable gentleman, but Mr. Stephen, the celebrated author of the orders in council, or the board of admiralty, who authorize and regulate the practice of impressment!

The disasters of the war admonish us, we are told, of the necessity of terminating the contest. If our achievements by land have been less splendid than those of our intrepid seamen by water, it is not because the American soldier is less brave. On the one element, organization, discipline, and a thorough knowledge of their duties exist, on the part of the officers and their men. On the other, almost every thing is yet to be acquired. We have, however, the consolation, that our country abounds with the richest materials, and that in no instance, when engaged in action, have our arms been tarnished. At Brownstown and at Queenstown the valor of veterans was displayed, and acts of the noblest heroism were performed. It is true that the disgrace of Detroit remains to be wiped off. That is a subject on which I cannot trust my feelings; it is not fitting I should speak. But this much I will say, it was an event which no human foresight could have anticipated, and for which the administration

of all the misfortunes we have experienced on land. But for it, the Indian war would have been in a great measure prevented or terminated: the ascendency on Lake Erie acquired, and the war pushed on perhaps to Montreal. With the exception of that event, the war, even upon the land, has been attended by a series of the most brilliant exploits, which, whatever interests they may inspire on this side of the mountains, have given the greatest pleasure on the other. The expedition under the command of Gov. Edwards and Colonel Russell, to lake Pioria, on the Illinois, was completely successful. So was that of Captain Craig, who, it is said, ascended that river still higher. General Hopkins destroyed the prophet's town. We have just received intelligence of the gallant enterprise of Colonel Campbell. In short, sir, the Indian towns have been swept from the mouth to the source of the Wabash, and a hostile country has been penetrated far beyond the most daring incursions of any campaign during the former Indian war. Never was more cool, deliberate bravery displayed, than that by Newman's party from Georgia; and the capture of the Detroit, and the destruction of the Caledonia, (whether placed to a maritime or land account,) for judgment, skill and courage on the part of Lieutenant Elliot, have never been surpassed.

It is alleged, that the elections in England are in favor of the ministry, and that those in this country are against the war. If, in such a cause, (saying nothing of the impurity of their elections,) the people of that country have rallied round their government, it affords a salutary lesson to the people here, who, at all hazards, ought to support theirs, struggling as it is to maintain our just rights. But the people here have not been false to themselves; a great majority approve the war, as is evinced by the recent re-election of the chief magistrate. Suppose it were even true, that an entire section of the Union were opposed to the war, that section being a minority, is the will of the majority to be relinquished? In that section the real strength of the opposition has been greatly exaggerated. Vermont has, by two successive expressions of her opinion, approved the declaration of war. In New Hampshire, parties are so nearly equipoised, that out of thirty or thirty-five thousand votes, those who approved and are for supporting it, lost the election by only one thousand or one thousand five hundred. In Massachusetts alone have they obtained any considerable accession. If we come to New York, we shall find, that other and local causes have influenced her elections.

What cause, Mr. Chairman, which existed for declaring the war has been removed? We sought indemnity for the past and security for the future. The orders in council are suspended, not revoked; no compensation for spoliations. Indian hostilities, which were before secretly instigated, are now openly encouraged; persevered in and insisted upon. Yet administration has given the strongest demonstrations of its love of peace. On the twenty-ninth of June, less than ten days after the declaration of war, the Secretary of State writes to Mr. Russell, authorizing him to agree to an armistice, upon two conditions only, and what are they? That the orders in council should be repealed, and the practice of impressing American seamen cease, those already impressed being released. The proposition was for nothing more than a real truce; that the war should in fact cease on both sides. Again, on the 27th of July, one month later, anticipating a possible objection to these terms, reasonable as they are, Mr. Monroe empowers Mr. Russell to stipulate in general terms for an armistice, having only an informal understanding on these points. In return, the enemy is offered a prohibition of the employment of his seamen in our service, thus removing entirely all pretext for the practice of impressment. The very proposition which the gentleman from Connecticut, Mr. Pitkin, contends ought to be made, has been made. How are these pacific advances met by the other party? Rejected as absolutely inadmissible; cavils are indulged about the inadequacy of Mr. Russell's powers, and the want of an act of Congress is intimated. And yet the constant usage of nations I believe is, where the legislation of one party is necessary to carry into effect a given stipulation, to leave it to the contracting party to provide the requisite laws. If he fail to do so, it is a breach of good faith, and becomes the subject of subsequent remonstrance by the injured party. When Mr. Russell renews the overture, in what was intended as a more agreeable form to the British government, Lord Castlereagh is not content with a simple rejection, but clothes it in the language of insult. Afterwards, in conversation with Mr. Russell, the moderation of our government is misinterpreted and made the occasion of a sneer, that we are tired of the war. The proposition of Admiral Warren is submitted in a spirit not more pacific. He is instructed, he tells us, to propose that the government of the United States shall instantly recall their letters of marque and reprisal against British ships, together with all orders and instructions for any acts of hostility whatever against the territories of his majesty or the persons or property of his subjects. That small affair being settled, he is further authorized to arrange as to the revocation of the laws which interdict the commerce and ships of war of his majesty from the harbors and waters of the United States. This messenger of peace comes with one qualified concession in his pocket, not made to the justice of our demands, and is fully empowered to receive our homage, a contrite retraction of all our measures adopted against his master! And in default, he does not fail to assure us, the orders in council are to be forthwith revived. Administration, still anxious to terminate the

proposal ought to have created, and in its answer concludes by informing Admiral Warren, "that if there be no objection to an accommodation of the difference relating to impressment, in the mode proposed, other than the suspension of the British claim to impressment during the armistice, there can be none to proceeding, without the armistice, to an immediate discussion and arrangement of an article on that subject." Thus it has left the door of negotiation unclosed, and it remains to be seen if the enemy will accept the invitation tendered to him. The honorable gentleman from North Carolina, Mr. Pearson, supposes, that if Congress would pass a law, prohibiting the employment of British seamen in our service, upon condition of a like prohibition on their part, and repeal the act of non-importation, peace would immediately follow. Sir, I have no doubt, if such a law were to pass, with all the requisite solemnities, and the repeal to take place, Lord Castlereagh would laugh at our simplicity. No, sir, administration has erred in the steps which it has taken to restore peace, but its error has been, not in doing too little, but in betraying too great a solicitude for that event. An honorable peace is attainable only by an efficient war. My plan would be to call out the ample resources of the country, give them a judicious direction, prosecute the war with the utmost vigor, strike wherever we can reach the enemy, at sea or on land, and negotiate the terms of a peace at Quebec or at Halifax.

We are told that England is a proud and lofty nation, which, disdaining to wait for danger, meets it half way. Haughty as she is, we once triumphed over her, and, if we do not listen to the counsels of timidity and despair, we shall again prevail. In such a cause, with the aid of Providence, we must come out crowned with success; but if we fail, let us fail like men, lash ourselves to our gallant tars, and expire together in one common struggle, fighting for FREE TRADE AND SEAMAN'S RIGHTS.

SPEECH ON THE SEMINOLE WAR.

The following speech on the report of the committee on military affairs, respecting the Seminole War, was delivered in the House of Representatives of the United States, on the 18th of January, 1819.*

MR. CHAIRMAN: In rising to address you, sir, on the very interesting subject which now engages the attention of Congress, I must be allowed to say, that all inferences drawn from the course which it will be my painful duty to take in this discussion, of unfriendliness either to the chief magistrate of the country, or to the illustrious military chieftain whose operations are under investigation, will be wholly unfounded. Toward that distinguished captain, who shed so much glory on our country, whose renown constitutes so great a portion of its moral property, I never had, I never can have, any other feelings than those of the most profound respect, and of the utmost kindness. With him my acquaintance is very limited, but, so far as it has extended, it has been of the most amicable kind. I know the motives which have been, and which will again be attributed to me, in regard to the other exalted personage alluded to. They have been and will be unfounded. I have no interest, other than that of seeing the concerns of my country well and happily administered. It is infinitely more gratifying to behold the prosperity of my country advancing by the wisdom of the measures adopted to promote it, than it would be to expose the errors which may be committed, if there be any, in the conduct of its affairs. Little as has been my experience in public life, it has been sufficient to teach me that the most humble station is surrounded by difficulties and embarrassments. Rather than throw obstructions in the way of the President, I would precede him, and pick out those, if I could, which might jostle him in his progress; I would sympathize with him in his embarrassments, and commiserate with him in his misfortunes. It is true that it has been my mortification to differ from that gentleman

* The Report of the Committee on Military Affairs, respecting the Seminole War, concluded with the following resolution:

Resolved, That the House of Representatives of the United States, disapproves the proceedings in the trial and execution of Alexander Arbuthnot and Robert C. Ambrister.

Mr. Cobb, of Georgia, moved the following resolutions as an amendment to the report of the military committee:

Resolved, That the Committee on Military Affairs be instructed to prepare and report a bill to this House, prohibiting, in time of peace, or in time of war with any Indian tribe or tribes only, the execution of any captive, taken by the army of the United States, without the approbation of such execution by the President.

Resolved, That this House disapproves of the seizure of the posts of St. Marks and Pensacola, and the fortress of Barrancas, contrary to orders, and in violation of the constitution.

Resolved, That the same Committee be also instructed to prepare and report a bill prohibiting the march of the army of the United States, or any corps thereof, into any foreign territory without the previous authorization of Congress, except it be in the case of fresh pursuit of a defeated enemy of the United States, taking refuge within such foreign territory.

on several occasions. I may again be reluctantly compelled to differ from him; but I will with the utmost sincerity assure the committee that I have formed no resolution, come under no engagements, and that I never will form any resolution or contract any engagements, for systematic opposition to his administration, or to that of any other chief magistrate.

I beg leave further to premise, that the subject under consideration presents two distinct aspects, susceptible, in my judgment, of the most clear and precise discrimination. The one I will call its foreign, the other its domestic aspect. In regard to the first, I will say, that I approve entirely of the conduct of our government, and that Spain has no cause of complaint. Having violated an important stipulation of the treaty of 1795, that power has justly subjected herself to all the consequences which ensued upon the entry into her dominions, and it belongs not to her to complain of those measures which resulted from her breach of contract; still less has she a right to examine into the considerations connected with the domestic aspect of the subject.

What are the propositions before the committee? The first in order is that reported by the military committee, which asserts the disapprobation of this House, of the proceedings in the trial and execution of Arbuthnot and Ambrister. The second, being the first contained in the proposed amendment, is the consequence of that disapprobation, and contemplates the passage of a law to prohibit the execution hereafter of any captive taken by the army, without the approbation of the President. The third proposition is, that this House disapproves of the forcible seizure of the Spanish posts, as contrary to orders, and in violation of the constitution. The fourth proposition, as the result of the last, is, that a law shall pass to prohibit the march of the army of the United States, or any corps of it, into any foreign territory, without the previous authorization of Congress, except it be in fresh pursuit of a defeated enemy. The first and third are general propositions, declaring the sense of the House in regard to the evils pointed out; and the second and fourth propose the legislative remedies against the recurrence of those evils.

It will be at once perceived by this simple statement of the propositions, that no other censure is proposed against General Jackson himself, than what is merely consequential. His name even does not appear in any of the resolutions. The legislature of the country in reviewing the state of the Union, and considering the events which have transpired since its last meeting, finds that particular occurrences of the greatest moment, in many respects, have taken place near our southern border. I will add, that the House has not sought by any officious interference with the doings of the executive, to gain jurisdiction over this matter. The President in proposed to act. I would ask for what purpose? That we should fold our arms and yield a tacit acquiescence, even if we supposed that information disclosed alarming events, not merely as it regards the peace of the country, but in respect to its constitution and character? Impossible. In communicating these papers, and voluntarily calling the attention of Congress to the subject, the President must himself have intended that we should apply any remedy that we might be able to devise. Having the subject thus regularly and fairly before us, and proposing merely to collect the sense of the House upon certain important transactions which it discloses, with the view to the passage of such laws as may be demanded by the public interest, I repeat that there is no censure anywhere, except such as is strictly consequential upon our legislative action. The supposition of every new law, having for its object to prevent the recurrence of evil, is, that something has happened which ought not to have taken place, and no other than this indirect sort of censure will flow from the resolutions before the committee.

Having thus given my view of the nature and character of the propositions under consideration, I am far from intimating that it is not my purpose to go into a full, a free, and a thorough investigation of the facts, and of the principles of law, public, municipal, and constitutional involved in them. And, while I trust I shall speak with the decorum due to the distinguished officers of the government whose proceedings are to be examined, I shall exercise the independence which belongs to me as a representative of the people, in freely and fully submitting my sentiments.

In noticing the painful incidents of this war, it is impossible not to inquire into its origin. I fear that it will be found to be the famous treaty of Fort Jackson, concluded in August, 1814; and I must ask the indulgence of the chairman while I read certain parts of that treaty.

"Whereas, an unprovoked, inhuman, sanguinary war, waged by the hostile Creeks against the United States, hath been repelled, prosecuted and determined, successfully on the part of the said States, in conformity with principles of national justice and honorable warfare: and, whereas, consideration is due to the rectitude of proceedings dictated by instructions relating to the re-establishing of peace: Be it remembered that, prior to the conquest of that part of the Creek nation hostile to the United States, numberless aggressions had been committed against the peace, the property, and the lives of citizens of the United States, and those of the Creek nation in amity with her, at the mouth of Duck River, Fort Mimms, and elsewhere, contrary to national faith and the regard due to an article of the treaty concluded at New York, in the year 1790, between the two nations; that the

and concord between the Creek nation and the said States, in conformity with the stipulations of former treaties, fulfil, with punctuality and good faith, her engagements to the said nation; that more than two-thirds of the whole number of chiefs and warriors of the Creek nation, disregarding the genuine spirit of existing treaties, suffered themselves to be instigated to violations of their national honor and the respect due to a part of their own nation faithful to the United States and the principles of humanity, by impostors, denominating themselves prophets, and by the duplicity and misrepresentations of foreign emissaries, whose governments are at war, open or understood, with the United States.

"Article 2. The United States will guaranty to the Creek nation the integrity of all their territory eastwardly and northwardly of the said line (described in the first article), to be run and described as mentioned in the first article.

"Article 3. The United States demand that the Creek nation abandon all communication, and cease to hold intercourse with any British post, garrison, or town; and that they shall not admit among them any agent or trader who shall not derive authority to hold commercial or other intercourse with them, by license of the President or other authorized agent of the United States.

"Article 4. The United States demand an acknowledgment of the right to establish military posts and trading houses, and to open roads within the territory guarantied to the Creek nation by the second article, and a right to the free navigation of all its waters.

"Article 5. The United States demand that a surrender be immediately made of all the persons and property taken from the citizens of the United States, the friendly part of the Creek nation, the Cherokee, Chickasaw, and Choctaw nations, to the respective owners; and the United States will cause to be immediately restored to the formerly hostile Creeks all the property taken from them since their submission, either by the United States, or by any Indian nations in amity with the United States, together with all the prisoners taken from them during the war.

"Article 6. The United States demand the caption and surrender of all the prophets and instigators of the war, whether foreigners or natives, who have not submitted to the arms of the United States, and become parties to these articles of capitulation, if ever they shall be found within the territory guarantied to the Creek nation by the second article.

"Article 7. The Creek nation being reduced to extreme want, and not at present having the means of subsistence, the United States, from motives of humanity, will continue to furnish gratuitously the necessaries of life, until the crops of corn can be considered competent to yield the nation a supply, and will establish trading-houses in the nation, at the discretion of the President of the United States, and at such places as he shall direct, to enable the nation, by industry and economy, to procure clothing."

I have never perused this instrument until within a few days past, and I have read it with the deepest mortification and regret. A more dictatorial spirit I have never seen displayed in any instrument. I would challenge an examination of all the records of diplomacy, not excepting even those in the most haughty period of imperial Rome, when she was carrying her arms into the barbarian nations that surrounded her, and I do not believe a solitary instance can be found of such an inexorable spirit of domination pervading a compact purporting to be a treaty of peace. It consists of the most severe and humiliating demands—of the surrender of a large territory; of the privilege of making roads through the remnant which was retained; of the right of establishing trading-houses; of the obligation of delivering into our hands their prophets. And all this of a wretched people reduced to the last extremity of distress, whose miserable existence we have to preserve by a voluntary stipulation to furnish them with bread! When did the all-conquering and desolating Rome ever fail to respect the altars and the gods of those whom she subjugated? Let me not be told that these prophets were impostors who deceived the Indians. They were their prophets; the Indians believed and venerated them, and it is not for us to dictate a religious belief to them. It does not belong to the holy character of the religion which we profess, to carry its precepts by the force of the bayonet, into the bosoms of other people. Mild and gentle persuasion was the great instrument employed by the meek founder of our religion. We leave to the humane and benevolent efforts of the reverend professors of Christianity to convert from barbarism those unhappy nations yet immersed in its gloom. But, sir, spare them their prophets! spare their delusions! spare their prejudices and superstitions! spare them even their religion, such as it is, from open and cruel violence. When, sir, was that treaty concluded? On the very day after the protocol was signed, of the first conference between the American and British commissioners, treating of peace, at Ghent. In the course of that negotiation, pretensions so enormous were set up by the other party that, when they were promulgated in this country, there was one general burst of indignation throughout the continent. Faction itself was silenced, and the firm and unanimous determination of all parties was, to fight until the last man fell in the ditch rather than submit to such ignominious terms.

What a contrast is exhibited between the cotemporaneous scenes of Ghent and of Fort Jackson! what a powerful voucher would the British commissioners have been furnished with, if they could have got hold of that treaty! The United States demand, the United States demand, is repeated five or six times. And

what did the preamble itself disclose? That two-thirds of the Creek nation had been hostile, and one-third only friendly to us. Now I have heard (I cannot vouch for the truth of the statement), that not one hostile chief signed the treaty. I have also heard that perhaps one or two of them did. If the treaty were really made by a minority of the nation, it was not obligatory upon the whole nation. It was void, considered in the light of a national compact. And, if void, the Indians were entitled to the benefit of the provision of the ninth article of the treaty of Ghent, by which we bound ourselves to make peace with any tribes with whom we might be at war on the ratification of the treaty, and to restore to them their lands, as they held them in 1811. I do not know how the honorable Senate, that body for which I hold so high a respect, could have given their sanction to the treaty of Fort Jackson, so utterly irreconcilable as it is with those noble principles of generosity and magnanimity which I hope to see my country always exhibit, and particularly toward the miserable remnant of the aborigines. It would have comported better with those principles to have imitated the benevolent policy of the founder of Pennsylvania, and to have given to the Creeks, conquered as they were, even if they had made an unjust war upon us, the trifling consideration, to them an adequate compensation, which he paid for their lands. That treaty, I fear, has been the main cause of the recent war. And, if it has been, it only adds another melancholy proof to those with which history already abounds, that hard and unconscionable terms, extorted by the power of the sword and the right of conquest, serve but to whet and stimulate revenge, and to give old hostilities, smothered, not extinguished, by the pretended peace, greater exasperation and more ferocity. A truce, thus patched up with an unfortunate people, without the means of existence, without bread, is no real peace. The instant there is the slightest prospect of relief from such harsh and severe conditions, the conquered party will fly to arms, and spend the last drop of blood rather than live in such degraded bondage. Even if you again reduce him to submission, the expenses incurred by this second war, to say nothing of the human lives that are sacrificed, will be greater than what it would have cost you to grant him liberal conditions in the first instance. This treaty, I repeat, was, I apprehend, the cause of the war. It led to the excesses on our southern borders which began it.

Who first commenced them, it is, perhaps, difficult to ascertain. There was, however, a paper on this subject, communicated at the last session by the President, that told, in language pathetic and feeling, an artless tale; a paper that carried such internal evidence at least of the belief of the authors of it that

"*To the Commanding Officer at Fort Hawkins:*

"DEAR SIR;

"Since the last war, after you sent word that we must quit the war, we, the red people, have come over on this side. The white people have carried all the red people's cattle off. After the war, I sent to all my people to let the white people alone, and stay on this side of the river; and they did so; but the white people still continue to carry off their cattle. Bernard's son was here, and I inquired of him what was to be done; and he said we must go to the head man of the white people and complain. I did so, and there was no head white man, and there was no law in this case. The whites first began, and there is nothing said about that; but great complaint about what the Indians do. This is now three years since the white people killed three Indians; since that time they have killed three other Indians, and taken their horses, and what they had; and this summer they killed three more; and very likely they killed one more. We sent word to the white people that these murders were done, and the answer was, that they were people who were outlaws, and we ought to go and kill them. The white people killed our people first; the Indians then took satisfaction. There are yet three men that the red people have never taken satisfaction for. You have wrote that there were houses burned; but we know of no such thing being done; the truth, in such cases, ought to be told, but this appears otherwise. On that side of the river, the white people have killed five Indians, but there is nothing said about that; and all that the Indians have done is brought up. All the mischief the white people have done, ought to be told to their head man. When there is any thing done, you write to us; but never write to your head man what the white people do. When the red people send talks or write, they always send the truth. You have sent to us for your horses, and we sent all that we could find; but there was some dead. It appears that all the mischief is laid on this town; but all the mischief that has been done by this town, is two horses; one of them is dead, and the other was sent back. The cattle that we are accused of taking, were cattle that the white people took from us. Our young men went and brought them back, with the same marks and brands. There were some of our young men out hunting, and they were killed; others went to take satisfaction, and the kettle of one of the men that was killed was found in the house where the women and two children were killed; and they supposed it had been her husband who had killed the Indians, and took their satisfaction there. We are accused of killing the Americans, and so on; but since the word was sent to us that peace was made, we stay steady at home, and meddle with no person. You have sent to us respecting the

by the English, and to them you ought to apply for any thing about them. We do not wish our country desolated by an army passing through it, for the concern of other people. The Indians have slaves there also; a great many of them. When we have an opportunity, we shall apply to the English for them; but we cannot get them now.

"This is what we have to say at present.

"Sir, I conclude by subscribing myself,

"Your humble servant, etc.

"September, the 11th day, 1817.

"N. B. There are ten towns have read this letter, and this is the answer.

"WM. BELL, Aid-de-camp.

"*A true copy of the original.*"

I should be very unwilling to assert, in regard to this war, that the fault was on our side; I fear it was. I have heard that a very respectable gentleman, now no more, who once filled the executive chair of Georgia, and who, having been agent of Indian affairs in that quarter, had the best opportunity of judging of the origin of this war, deliberately pronounced it as his opinion, that the Indians were not in fault. I am far from attributing to General Jackson any other than the very slight degree of blame that attaches to him as the negotiator of the treaty of Fort Jackson, and will be shared by those who subsequently ratified and sanctioned that treaty. But if there be even a doubt as to the origin of the war, whether we were censurable or the Indians, that doubt will serve to increase our regret at any distressing incidents which may have occurred, and to mitigate, in some degree, the crimes which we impute to the other side. I know that when General Jackson was summoned to the field, it was too late to hesitate; the fatal blow had been struck, in the destruction of Fowl-town and the dreadful massacre of Lieutenant Scott and his detachment; and the only duty which remained to him, was to terminate this unhappy contest.

The first circumstance which, in the course of his performing that duty, fixed our attention, has filled me with regret. It was the execution of the Indian chiefs. How, I ask, did they come into our possession? Was it in the course of fair, and open, and honorable war? No; but by means of deception—by hoisting foreign colors on the staff from which the stars and stripes should alone have floated. Thus ensnared, the Indians were taken on shore; and without ceremony, and without delay, were hung. Hang an Indian! We, sir, who are civilized, and can comprehend and feel the effect of moral causes and considerations, attach ignominy to that mode of death. And the gallant, and refined, and high-minded man, seeks by all possible means to avoid it. But what cares an Indian whether you hang or shoot him? The moment he is captured, he is considered by his tribe as disgraced, if not lost. They, too, are indifferent about the manner in which he is despatched. But I regard the occurrence with grief, for other and higher considerations. It was the first instance that I know of, in the annals of our country, in which retaliation, by executing Indian captives, has ever been deliberately practised. There may have been exceptions, but if there were, they met with cotemporaneous condemnation, and have been reprehended by the just pen of impartial history. The gentleman from Massachusetts may tell me, if he chooses, what he pleases about the tomahawk and scalping knife; about Indian enormities and foreign miscreants and incendiaries. I, too, hate them; from my very soul I abominate them. But I love my country, and its constitution; I love liberty and safety, and fear military despotism more, even, than I hate the monsters. The gentleman, in the course of his remarks, alluded to the State from which I have the honor to come. Little, sir, does he know of the high and magnanimous sentiments of the people of that State, if he supposes they will approve of the transaction to which he referred. Brave and generous, humanity and clemency toward a fallen foe constitute one of their noblest characteristics. Amid all the struggles for that fair land, between the natives and the present inhabitants, I defy the gentleman to point out one instance, in which a Kentuckian had stained his hand by—nothing but my high sense of the distinguished services and exalted merits of General Jackson, prevents my using a different term—the execution of an unarmed and prostrate captive. Yes, there is one solitary exception, in which a man, enraged at beholding an Indian prisoner who had been celebrated for his enormities, and who had destroyed some of his kindred, plunged his sword into his bosom. The wicked deed was considered as an abominable outrage when it occurred, and the name of the man has been handed down to the execration of posterity. I deny your right thus to retaliate on the aboriginal proprietors of the country; and unless I am utterly deceived, it may be shown that it does not exist. But before I attempt this, allow me to make the gentleman from Massachusetts a little better acquainted with those people, to whose feelings and sympathies he has appealed through their representative. During the late war with Great Britain, Colonel Campbell, under the command of my honorable friend from Ohio (General Harrison), was placed at the head of a detachment, consisting chiefly, I believe, of Kentucky volunteers, in order to destroy the Mississinaway towns. They proceeded and performed the duty, and took some prisoners. And here is the evidence of the manner in which they treated them.

"But the character of this gallant detachment, exhibiting, as it did, perseverance, fortitude, and bravery, would, however, be incomplete, if in the midst of victory, they had forgotten the feelings of humanity. It is with the sincerest pleasure that the general has heard,

that the most punctual obedience was paid to his orders, in not only saving all the women and children, but in sparing all the warriors who ceased to resist; and that even when vigorously attacked by the enemy, the claims of mercy prevailed over every sense of their own danger, and this heroic band respected the lives of their prisoners. Let an account of murdered innocence be opened in the records of heaven, against our enemies alone. The American soldier will follow the example of his government, and the sword of the one will not be against the fallen and the helpless, nor the gold of the other be paid for scalps of a massacred enemy."

I hope, sir, the honorable gentleman will now be able better to appreciate the character and conduct of my gallant countrymen, than he appears hitherto to have done.

But, sir, I have said that you have no right to practise, under color of retaliation, enormities on the Indians. I will advance in support of this position, as applicable to the origin of all law, the principle, that whatever has been the custom, from the commencement of a subject, whatever has been the uniform usage, coeval and coexistent with the subject to which it relates, becomes its fixed law. Such is the foundation of all common law; and such, I believe, is the principal foundation of all public or international law. If, then, it can be shown that from the first settlement of the colonies, on this part of the American continent, to the present time, we have constantly abstained from retaliating upon the Indians the excesses practised by them toward us, we are morally bound by this invariable usage, and cannot lawfully change it without the most cogent reasons. So far as my knowledge extends, from the first settlement at Plymouth or at Jamestown, it has not been our practice to destroy Indian captives, combatants or non-combatants. I know of but one deviation from the code which regulates the warfare between civilized communities, and that was the destruction of Indian towns, which was supposed to be authorized upon the ground that we could not bring the war to a termination but by destroying the means which nourished it. With this single exception, the other principles of the laws of civilized nations are extended to them, and are thus made law in regard to them.

When did this humane custom, by which, in consideration of their ignorance, and our enlightened condition, the rigors of war were mitigated, begin? At a time when we were weak, and they comparatively strong; when they were the lords of the soil, and we were seeking, from the vices, from the corruptions, from the religious intolerance, and from the oppressions of Europe, to gain an asylum among them. And when is it proposed to change this custom, to substitute for it the bloody maxims of barbarous ages, and to interpolate the Indian public law with revolting cruelties? At a time when the situation of the two parties is totally changed—when we are powerful and they are weak—at a time when, to use a figure drawn from their own sublime eloquence, the poor children of the forest have been driven by the great wave which has flowed in from the Atlantic Ocean almost to the base of the Rocky Mountains, and, overwhelming them in its terrible progress, has left no other remains of hundreds of tribes, now extinct, than those which indicate the remote existence of their former companion, the mammoth of the new world! Yes, sir, it is at this auspicious period of our country, when we hold a proud and lofty station among the first nations of the world, that we are called upon to sanction a departure from the established laws and usages which have regulated our Indian hostilities. And does the honorable gentleman from Massachusetts expect, in this august body, this enlighted assembly of Christians and Americans, by glowing appeals to our passions, to make us forget our principles, our religion, our clemency, and our humanity? Why is it that we have not practised toward the Indian tribes the right of retaliation, now for the first time asserted in regard to them? It is because it is a principle proclaimed by reason, and enforced by every respectable writer on the law of nations, that retaliation is only justifiable as calculated to produce effect in the war. Vengeance is a new motive for resorting to it. If retaliation will produce no effect on the enemy, we are bound to abstain from it by every consideration of humanity and of justice. Will it, then, produce effect on the Indian tribes? No; they care not about the execution of those of their warriors who are taken captive. They are considered as disgraced by the very circumstance of their captivity, and it is often mercy to the unhappy captive to deprive him of his existence. The poet evinced a profound knowledge of the Indian character, when he put into the mouth of a son of a distinguished chief, about to be led to the stake and tortured by his victorious enemy, the words:

> "Begin, ye tormentors! your threats are in vain:
> The son of Alknomook will never complain."

Retaliation of Indian excesses, not producing then any effect in preventing their repetition, is condemned by both reason and the principles upon which alone, in any case, it can be justified. On this branch of the subject much more might be said, but as I shall possibly again allude to it, I will pass from it for the present, to another topic.

It is not necessary, for the purpose of my argument in regard to the trial and execution of Arbuthnot and Ambrister, to insist on the innocency of either of them. I will yield for the sake of that argument, without inquiry, that both of them were guilty; that both had instigated the war; and that one of them had led the enemy to battle. It is possible, indeed, that a critical examination of the evidence would show, particularly in the case of Arbuthnot, that the whole amount of his crime consisted in his trading, without the limits of the United States, with the Seminole Indians, in the accus-

tomed commodities which form the subject of Indian trade, and that he sought to ingratiate himself with his customers by espousing their interests, in regard to the provision of the treaty of Ghent, which he may have honestly believed entitled them to the restoration of their lands. And if, indeed, the treaty of Fort Jackson, for the reasons already assigned, were not binding upon the Creeks, there would be but too much cause to lament his unhappy if not unjust fate. The first impression made on the examination of the proceedings in the trial and execution of those two men is, that on the part of Ambrister there was the most guilt, but, at the same time, the most irregularity. Conceding the point of guilt of both, with the qualification which I have stated, I will proceed to inquire, first, if their execution can be justified upon the principles assumed by General Jackson himself. If they do not afford a justification, I will next inquire, if there be any other principles authorizing their execution; and I will in the third place make some other observations upon the mode of proceeding.

The principles assumed by General Jackson, which may be found in his general orders commanding the execution of these men, is, "that it is an established principle of the law of nations, that any individual of a nation making war against the citizens of any other nation, they being at peace, forfeits his allegiance, and becomes an outlaw and a pirate." Whatever may be the character of individuals waging private war, the principle assumed is totally erroneous when applied to such individuals associated with a power, whether Indian or civilized, capable of maintaining the relations of peace and war. Suppose, however, the principle were true, as asserted, what disposition should he have made of these men? What jurisdiction, and how acquired, has the military over pirates, robbers, and outlaws? If they were in the character imputed, they were alone amenable, and should have been turned over to the civil authority. But the principle, I repeat, is totally incorrect, when applied to men in their situation. A foreigner connecting himself with a belligerent, becomes an enemy of the party to whom that belligerent is opposed, subject to whatever he may be subject, entitled to whatever he is entitled. Arbuthnot and Ambrister, by associating themselves, became identified with the Indians; they became our enemies, and we had a right to treat them as we could lawfully treat the Indians. These positions are so obviously correct, that I shall consider it an abuse of the patience of the committee to consume time in their proof. They are supported by the practice of all nations, and of our own. Every page of history, in all times, and the recollection of every member, furnish evidence of their truth. Let us look for a moment into some of the consequences of this principle, if it were to go to Europe, sanctioned by the approbation, express or implied, of this House. We have now in our armies probably the subjects of almost every European power. Some of the nations of Europe maintain the doctrine of perpetual allegiance. Suppose Britain and America in peace, and America and France at war. The former subjects of England, naturalized and unnaturalized, are captured by the navy or army of France. What is their condition? According to the principle of General Jackson, they would be outlaws and pirates, and liable to immediate execution. Are gentlemen prepared to return to their respective districts with this doctrine in their mouths, and to say to their Irish, English, Scotch, and other foreign constituents, that they are liable, on the contingency supposed, to be treated as outlaws and pirates?

Is there any other principle which justifies the proceedings? On this subject, if I admire the wonderful ingenuity with which gentlemen seek a colorable pretext for those executions, I am at the same time shocked at some of the principles advanced. What said the honorable gentleman from Massachusetts (Mr. Holmes), in a cold address to the committee? Why, that these executions were only the wrong mode of doing a right thing. A wrong mode of doing the right thing! In what code of public law; in what system of ethics; nay, in what respectable novel; where, if the gentleman were to take the range of the whole literature of the world, will he find any sanction for a principle so monstrous? I will illustrate its enormity by a single case. Suppose a man, being guilty of robbery, is tried, condemned, and executed, for murder, upon an indictment for that robbery merely. The judge is arraigned for having executed, contrary to law, a human being, innocent at heart of the crime for which he was sentenced. The judge has nothing to do to insure his own acquittal, but to urge the gentleman's plea, that he had done a right thing in a wrong way!

The principles which attached to the cases of Arbuthnot and Ambrister, constituting them merely "participes" in the war, supposing them to have been combatants, which the former was not, he having been taken in a Spanish fortress, without arms in his hands, all that we could possibly have a right to do, was to apply to them the rules which we had a right to enforce against the Indians. Their English character was only merged in their Indian character. Now, if the law regulating Indian hostilities be established by long and immemorial usage, that we have no moral right to retaliate upon them, we consequently had no right to retaliate upon Arbuthnot and Ambrister. Even if it were admitted that, in regard to future wars, and to other foreigners, their execution may have a good effect, it would not thence follow that you had a right to execute them. It is not always just to do what may be advantageous. And retaliation, during a war, must have relation to the events of that war, and must, to be just, have an operation on that war.

and upon the individuals only who compose the belligerent party. It becomes gentlemen, then, on the other side, to show, by some known, certain, and recognised rule of public or municipal law, that the execution of these men was justified. Where is it? I should be glad to see it. We are told in a paper emanating from the Department of State, recently laid before this House, distinguished for the fervor of its eloquence, and of which the honorable gentleman from Massachusetts has supplied us in part with a second edition, in one respect agreeing with the prototype—that they both ought to be inscribed to the American public—we are justly told in that paper, that this is the "first" instance of the execution of persons for the crime of instigating Indians to war. Sir, there are two topics which, in Europe, are constantly employed by the friends and minions of legitimacy against our country. The one is an inordinate spirit of aggrandizement—of coveting other people's good; the other is the treatment which we extend to the Indians. Against both these charges, the public servants who conducted at Ghent the negotiations with the British commissioners, endeavored to vindicate our country, and I hope with some degree of success. What will be the condition of future American negotiators when pressed upon this head, I know not, after the unhappy executions on our southern border. The gentleman from Massachusetts seemed yesterday to read, with a sort of triumph, the names of the commissioners employed in the negotiation at Ghent. Will he excuse me for saying, that I thought he pronounced, even with more complacency and with a more gracious smile, the first name in the commission, than he emphasized that of the humble individual who addresses you?

[Mr. Holmes desired to explain.]

There is no occasion for explanation; I am perfectly satisfied.

[Mr. Holmes, however, proceeded to say that his intention was, in pronouncing the gentleman's name, to add to the respect due to the negotiator, that which was due to the Speaker of this House.]

To return to the case of Arbuthnot and Ambrister. Will the principle of these men having been the instigators of the war, justify their execution? It is a new one; there are no landmarks to guide us in its adoption, or to prescribe limits in its application. If William Pitt had been taken by the French army, during the late European war, could France have justifiably executed him on the ground of his having notoriously instigated the continental powers to war against France? Would France, if she had stained her character by executing him, have obtained the sanction of the world to the act, by appeals to the passions and prejudices, by pointing to the cities sacked, the countries laid waste, the human lives sacrificed in the wars which he had kindled, and by exclaiming to the unfortunate captive, You, miscreant, monster, have occasioned all these scenes of devastation and blood! What has been the conduct even of England toward the greatest instigator of all the wars of the present age? The condemnation of that illustrious man to the rock of St. Helena, is a great blot on the English name. And I repeat what I have before said, that if Chatham, or Fox, or even William Pitt himself, had been prime minister in England, Bonaparte had never been so condemned. On that transaction history will one day pass its severe but just censure. Yes, although Napoleon had desolated half Europe; although there was scarcely a power, however humble, that escaped the mighty grasp of his ambition; although in the course of his splendid career, he is charged with having committed the greatest atrocities, disgraceful to himself and to human nature, yet even his life has been spared. The allies would not, England would not, execute him upon the ground of his being an instigator of wars.

The mode of the trial and sentencing of these men was equally objectionable with the principles on which it has been attempted to prove a forfeiture of their lives. I know the laudable spirit which prompted the ingenuity displayed in finding out a justification for these proceedings. I wish most sincerely that I could reconcile them to my conscience. It has been attempted to vindicate the general upon grounds which I am persuaded he would himself disown. It has been asserted that he was guilty of a mistake in calling upon the court to try them, and that he might at once have ordered their execution, without that formality. I deny that there was any such absolute right in the commander of any portion of our army. The right of retaliation is an attribute of sovereignty. It is comprehended in the war-making power that Congress possesses. It belongs to this body not only to declare war, but to raise armies, and to make rules and regulations for their government. It is in vain for gentlemen to look to the law of nations for instances in which retaliation is lawful. The laws of nations merely lay down the principle or rule; it belongs to the government to constitute the tribunal for applying that principle or rule. There is, for example, no instance in which the death of a captive is more certainly declared by the law of nations to be justifiable, than in the case of spies. Congress has accordingly provided in the rules and articles of war, a tribunal for the trial of spies, and consequently for the application of the principle of the national law. The Legislature has not left the power over spies undefined, to the mere discretion of the commander-in-chief, or of any subaltern officer in the army. For, if the doctrines now contended for were true, they would apply to the commander of any corps, however small, acting as

a detachment. Suppose Congress had not legislated in the case of spies, what would have been their condition? It would have been a "casus omissus;" and although the public law pronounced their doom, it could not be executed, because Congress had assigned no tribunal for enforcing that public law. No man can be executed in this free country without two things being shown—first, that the law condemns him to death; and, secondly, that his death is pronounced by that tribunal which is authorized by the law to try him. These principles will reach every man's case, native or foreign, citizen or alien. The instant quarters are granted to a prisoner, the majesty of the law surrounds and sustains him, and he cannot be lawfully punished with death without the concurrence of the two circumstances just insisted upon. I deny that any commander-in-chief, in this country, has this absolute power of life and death, at his sole discretion. It is contrary to the genius of all our laws and institutions. To concentrate in the person of one individual the powers to make the rule, to judge and to execute the rule, or to judge and execute the rule only, is utterly irreconcilable with every principle of free government, and is the very definition of tyranny itself; and I trust that this House will never give even a tacit assent to such a principle. Suppose the commander had made even reprisals on property, would that property have belonged to the nation, or could he have disposed of it as he pleased? Had he more power, will gentlemen tell me, over the lives of human beings than over property? The assertion of such a power to the commander-in-chief is contrary to the practice of the government.

By an act of Congress which passed in 1799, vesting the power of retaliation in certain cases in the President of the United States—an act which passed during the quasi war with France—the President is authorized to retaliate upon any of the citizens of the French republic, the enormities which may be practised, in certain cases, upon our citizens. Under what administration was this act passed? It was under that which has been justly charged with stretching the constitution to enlarge the executive powers. Even during the mad career of Mr. Adams, when every means was resorted to for the purpose of infusing vigor into the executive arm, no one thought of claiming for him the inherent right of retaliation. I will not trouble the House with reading another law, which passed thirteen or fourteen years after, during the late war with Great Britain, under the administration of that great constitutional president, the father of the instrument itself, by which Mr. Madison was empowered to retaliate on the British in certain instances. It is not only contrary to the genius of our institutions, and to the uniform practice of the government, but it is contrary to the obvious principles on which the general himself proceeded; for, in forming the court, he evidently intended to proceed under the rules and articles of war. The extreme number which they provide for is thirteen, precisely that which is detailed in the present instance. The court proceeded not by a bare plurality, but by a majority of two-thirds. In the general orders issued from the adjutant-general's office, at head-quarters, it is described as a court-martial. The prisoners are said, in those orders, to have been tried "on the following charges and specifications." The court understood itself to be acting as a court-martial. It was so organized, it so proceeded, having a judge advocate, hearing witnesses, and the written defence of the miserable trembling prisoners, who seemed to have a presentiment of their doom. And the court was finally dissolved. The whole proceeding manifestly shows, that all parties considered it as a court-martial, convened and acting under the rules and articles of war. In his letter to the Secretary of War, noticing the transaction, the general says, "these individuals were tried under my orders, legally convicted as exciters of this savage and negro war, legally condemned, and most justly punished for their iniquities." The Lord deliver us from such legal conviction and such legal condemnation! The general himself considered the laws of his country to have justified his proceedings. It is in vain then to talk of a power in him beyond the law, and above the law, when he himself does not assert it. Let it be conceded that he was clothed with absolute authority over the lives of those individuals, and that, upon his own fiat, without trial, without defence, he might have commanded their execution. Now, if an absolute sovereign, in any particular respect, promulgates a rule, which he pledges himself to observe, if he subsequently deviates from that rule, he subjects himself to the imputation of odious tyranny. If General Jackson had the power, without a court, to condemn these men, he had also the power to appoint a tribunal. He did appoint a tribunal, and became, therefore, morally bound to observe and execute the sentence of that tribunal. In regard to Ambrister, it is with grief and pain I am compelled to say, that he was executed in defiance of all law; in defiance of the law to which General Jackson had voluntarily, if you please, submitted himself and given, by his appeal to the court, his implied pledge to observe. I know but little of military law, and what has happened has certainly not created in me a taste for acquiring a knowledge of more; but I believe there is no example on record, where the sentence of the court has been erased, and a sentence not pronounced by it carried into execution. It has been suggested that the court had pronounced two sentences, and the general had a right to select either. Two sentences! Two verdicts! It was not so. The first being revoked, was as though it never had been pronounced. And there remained only one sentence, which was put aside upon the sole authority of the commander, and the execution of the prisoner or-

dered. He either had or had not a right to decide upon the fate of that man, with the intervention of a court. If he had the right he waived it, and having violated the sentence of the court, there was brought upon the judicial administration of the army a reproach, which must occasion the most lasting regret.

However guilty these men were, they should not have been condemned or executed without the authority of the law. I will not dwell, at this time, on the effect of these precedents in foreign countries; but I shall not pass unnoticed their dangerous influence in our own country. Bad examples are generally set in the cases of bad men, and often remote from the central government. It was in the provinces that were laid the abuses and the seeds of the ambitious projects which overturned the liberties of Rome. I beseech the committee not to be so captivated with the charms of eloquence, and the appeals made to our passions and our sympathies, as to forget the fundamental principles of our government. The influence of bad example will often be felt, when its authors and all the circumstances connected with it are no longer remembered. I know of but one analogous instance of the execution of a prisoner, and that has brought more odium than almost any other incident on the unhappy Emperor of France. I allude to the instance of the execution of the unfortunate member of the Bourbon house. He sought an asylum in the territories of Baden. Bonaparte dispatched a corps of gen-d'armes to the place of his retreat, seized him, and brought him to the dungeons of Vincennes. He was there tried by a court-martial, condemned and shot. There, as here, was a violation of neutral territory; there, the neutral ground was not stained with the blood of him whom it should have protected. And there is another most unfortunate difference for the American people. The Duke d'Enghein was executed according to his sentence. It is said by the defenders of Napoleon, that the duke had been machinating not merely to overturn the French government, but against the life of its chief. If that were true, he might, if taken in France, have been legally executed. Such was the odium brought upon the instruments of this transaction, that those persons who have been even suspected of participation in it, have sought to vindicate themselves from what they appeared to have considered as an aspersion, before foreign courts. In conclusion of this part of my subject, I most cheerfully and entirely acquit General Jackson of any intention to violate the laws of the country, or the obligations of humanity. I am persuaded, from all that I have heard, that he considered himself as equally respecting and observing both. With respect to the purity of his intentions, therefore, I am disposed to allow it in the most extensive degree. Of his acts, it is my duty to speak, with the freedom which belongs to my station. And I shall now pronounce them dangerous precedents of a most momentous character, as it regards the distribution of the powers of government.

Of all the powers conferred by the Constitution of the United States, not one is more expressly and exclusively granted, than that which gives to Congress the power to declare war. The immortal convention who formed that instrument, had abundant reason, drawn from every page of history, for confiding this tremendous power to the deliberate judgment of the representatives of the people. It was there seen, that nations are often precipitated into ruinous war, from folly, from pride, from ambition, and from the desire of military fame. It was believed, no doubt, in committing this great subject to the legislature of the Union, we should be safe from the mad wars that have afflicted, and desolated, and ruined other countries. It was supposed, that before any war was declared, the nature of the injury complained of, would be carefully examined, and the power and resources of the enemy estimated, and the power and resources of our own country, as well as the probable issue and consequences of the war. It was to guard our country against precisely that species of rashness which has been manifested in Florida, that the constitution was so framed. If, then, this power, thus cautiously and clearly bestowed upon Congress, has been assumed and exercised by any other functionary of the government, it is cause of serious alarm, and it becomes this body to vindicate and maintain its authority by all the means in its power; and yet there are some gentlemen, who would have us not merely to yield a tame and silent acquiescence in the encroachment, but even to pass a vote of thanks to the author.

On the 25th of March, 1818, the President of the United States communicated a message to Congress in relation to the Seminole war, in which he declared, that although, in the prosecution of it, orders had been given to pass into the Spanish territory, they were so guarded as that the local authorities of Spain should be respected. How respected? The President, by the documents accompanying the message, the orders themselves which issued from the Department of War to the commanding general, had assured the legislature that, even if the enemy should take shelter under a Spanish fortress, the fortress was not to be attacked, but the fact to be reported to that department for further orders. Congress saw, therefore, that there was no danger of violating the existing peace. And yet on the same 25th day of March (a most singular concurrence of dates), when the representatives of the people received this solemn message, announced in the presence of the nation and in the face of the world, and in the midst of a friendly negotiation with Spain, does General Jackson write from his headquarters, that he shall take St. Marks as a necessary depot for his military operations! The general states, in his letter, what he had heard

negroes, to occupy the fort, and declares his purpose to possess himself of it, in either of the two contingencies, of its being in their hands, or in the hands of the Spaniards. He assumed a right to judge what Spain was bound to do by her treaty, and judged very correctly; but then he also assumed the power, belonging to Congress alone, of determining what should be the effect and consequence of her breach of engagement. General Jackson generally performs what he intimates his intention to do. Accordingly, finding St. Marks yet in the hands of the Spaniards, he seized and occupied it Was ever, I ask, the just confidence of the legislative body, in the assurances of the chief magistrate, more abused? The Spanish commander intimated his willingness that the American army should take post near him, until he could have instructions from his superior officer, and promised to maintain, in the mean time, the most friendly relations. No! St. Marks was a convenient post for the American army, and delay was inadmissible. I have always understood that the Indians but rarely take or defend fortresses, because they are unskilled in the modes of attack and defence. The threat, therefore, on their part, to seize on St. Marks, must have been empty, and would probably have been impossible. At all events, when General Jackson arrived there, no danger any longer threaten d the Spaniards, from the miserable fugitive Indians, who fled on all sides upon his approach. And, sir, upon what plea is this violation of orders, and this act of war upon a foreign power, attempted to be justified? Upon the grounds of the conveniency of the depot and the Indian threat. The first I will not seriously examine and expose. If the Spanish character of the fort had been totally merged in the Indian character, it might have been justifiable to seize it. But that was not the fact; and the bare possibility of its being forcibly taken by the Indians could not justify our anticipating their blow. Of all the odious transactions which occurred during the late war between France and England, none was more condemned in Europe and in this country, than her seizure of the fleet of Denmark, at Copenhagen. And I lament to be obliged to notice the analogy which exists in the defences made of the two cases.

If my recollection does not deceive me, Bonaparte had passed the Rhine and the Alps, had conquered Italy, the Netherlands, Holland, Hanover, Lubec, and Hamburg, and extended his empire as far as Altona, on the side of Denmark. A few days' march would have carried him through Holstein, over the two Belts, through Funen, and into the island of Zealand. What then was the conduct of England? It was my lot to fall into conversation with an intelligent Englishman on this subject. "We knew (said he) that we were fighting for our existence. It was absolutely necessary that we should preserve the command of the seas. If the fleet of Denmark fell into the enemy's hands, combined with his other fleets, that command might be rendered doubtful. Denmark had only a nominal independence. She was, in truth, subject to his sway. We said to her, Give us your fleet; it will otherwise be taken possession of by your secret and our open enemy. We will preserve it, and restore it to you whenever the danger shall be over. Denmark refused. Copenhagen was bombarded, gallantly defended, but the fleet was seized." Everywhere the conduct of England was censured; and the name even of the negotiator who was employed by her, who was subsequently the minister near this government, was scarcely ever pronounced here without coupling with it an epithet indicating his participation in the disgraceful transaction. And yet we are going to sanction acts of violence, committed by ourselves, which but too much resemble it! What an important difference, too, between the relative condition of England and of this country! She, perhaps, was struggling for her existence. She was combating, single-handed, the most enormous military power that the world has ever known. With whom were we contending? With a few half-starved, half-clothed, wretched Indians, and fugitive slaves. And while carrying on this inglorious war, inglorious as it regards the laurels or renown won in it, we violate neutral rights, which the government had solemnly pledged itself to respect, upon the principle of convenience, or upon the light presumption that, by possibility, a post might be taken by this miserable combination of Indians and slaves.

On the 8th of April the general writes from St. Marks that he shall march for the Suwaney river; the destroying of the establishments on which will, in his opinion, bring the war to a close. Accordingly, having effected that object, he writes, on the 20th of April, that he believes he may say that the war is at an end for the present. He repeats the same opinion in his letter to the Secretary of War, written six days after. The war being thus ended, it might have been hoped that no further hostilities would be committed. But on the 23d of May, on his way home, he receives a letter from the commandant of Pensacola, intimating his surprise at the invasion of the Spanish territory, and the acts of hostility performed by the American army, and his determination, if persisted in, to employ force to repel them. Let us pause and examine the proceeding of the governor, so very hostile and affrontive in the view of General Jackson. Recollect that he was governor of Florida; that he had received no orders from his superiors to allow a passage to the American army; that he had heard of the reduction of St. Marks; and that General Jackson, at the head of his army, was approaching in the direction of Pensacola. He had seen the president's message of the 25th of March, and reminded General Jackson of it, to satisfy him that the American government could not have authorized all those measures. I cannot read the allusion made by the governor to that message without feeling that the charge of insincerity

which it implied had, at least, but too much the appearance of truth in it. Could the governor have done less than write some such letter? We have only to reverse situations, and suppose him to have been an American governor. General Jackson says that when he received that letter he no longer hesitated. No, sir, he did no longer hesitate. He received it on the 23d, he was in Pensacola on the 24th, and immediately after set himself before the fortress of San Carlos de Barancas, which he shortly reduced. "Veni, vidi, vici." Wonderful energy! Admirable promptitude! Alas! that it had not been an energy and a promptitude within the pale of the constitution, and according to the orders of the chief magistrate. It is impossible to give any definition of war that would not comprehend these acts. It was open, undisguised, and unauthorized hostility.

The honorable gentleman from Massachusetts has endeavored to derive some authority to General Jackson from the message of the president, and the letter of the Secretary of War to Governor Bibb. The message declares that the Spanish authorities are to be respected wherever maintained. What the president means by their being maintained is explained in the orders themselves, by the extreme case being put of the enemy seeking shelter under a Spanish fort. If even in that case he was not to attack, certainly he was not to attack in any case of less strength. The letter to Governor Bibb admits of a similar explanation. When the secretary says, in that letter, that General Jackson is fully empowered to bring the Seminole war to a conclusion, he means that he is so empowered by his orders, which, being now before us, must speak for themselves. It does not appear that General Jackson ever saw that letter, which was dated at this place after the capture of St Marks. I will take a momentary glance at the orders.

On the 2d of December, 1817, General Gaines was forbidden to cross the Florida line. Seven days after, the Secretary of War having arrived here, and infused a little more energy into our councils, he was authorized to use a sound discretion in crossing or not. On the 16th, he he was instructed again to consider himself at liberty to cross the line, and pursue the enemy; but, if he took refuge under a Spanish fortress, the fact was to be reported to the Department of War. These orders were transmitted to General Jackson, and constituted, or ought to have constituted, his guide. There was then no justification for the occupation of Pensacola, and the attack on the Barancas, in the message of the President, the letter to Governor Bibb, or in the orders themselves. The gentleman from Massachusetts will pardon me for saying, that he has undertaken what even his talents are not competent to—the maintenance of directly contradictory propositions, that it was right in General Jackson to take Pensacola, and wrong in the President to keep it. The gentleman has made a greater mistake than he supposes General Jackson to have done in attacking Pensacola for an Indian town, by attempting the defence both of the President and General Jackson. If it were right in him to seize the place, it is impossible that it should have been right in the President immediately to surrender it. We, sir, are the supporters of the President. We regret that we cannot support General Jackson also. The gentleman's liberality is more comprehensive than ours. I approve with all my heart of the restoration of Pensacola. I think St. Marks ought, perhaps, to have been also restored; but I say this with doubt and diffidence. That the President thought the seizure of the Spanish posts was an act of war, is manifest from his opening message, in which he says that, to have retained them, would have changed our relations with Spain, to do which the power of the executive was incompetent, Congress alone possessing it. The President has, in this instance, deserved well of his country. He has taken the only course which he could have pursued, consistent with the constitution of the land. And I defy the gentleman to make good both his positions, that the general was right in taking, and the President right in giving up, the posts.

Mr. Holmes explained.

The gentleman from Massachusetts is truly unfortunate; fact or principle is always against him. The Spanish posts were not in the possession of the enemy. One old Indian only was found in the Barancas, none in Pensacola, none in St. Marks. There was not even the color of a threat of Indian occupation as it regards Pensacola and the Barancas. Pensacola was to be restored unconditionally, and might, therefore, immediately have come into the possession of the Indians, if they had the power and the will to take it. The gentleman is in a dilemma from which there is no escape. He gave up General Jackson when he supported the President, and gave up the President when he supported General Jackson. I rejoice to have seen the President manifesting, by the restoration of Pensacola, his devotedness to the constitution. When the whole country was ringing with plaudits for its capture, I said, and I said alone, in the limited circle in which I moved, that the President must surrender it; that he could not hold it. It is not my intention to inquire, whether the army was or was not constitutionally marched into Florida. It is not a clear question, and I am inclined to think that the express authority of Congress ought to have been asked. The gentleman from Massachusetts will allow me to refer to a part of the correspondence at Ghent different from that which he has quoted. He will find the condition of the Indians there accurately defined. And it is widely variant from the gentleman's ideas on this subject. The Indians, inhabiting the United States, according to the statement of the American commissioners at Ghent, have a qualified

sovereignty only, the supreme sovereignty residing in the Government of the United States. They live under their own laws and customs, may inhabit and hunt their lands; but acknowledge the protection of the United States, and have no right to sell their lands but to the Government of the United States. Foreign powers or foreign subjects have no right to maintain any intercourse with them, without our permission. They are not, therefore, independent nations, as the gentleman supposes. Maintaining the relation described with them, we must allow a similar relation to exist between Spain and the Indians residing within her dominions. She must be, therefore, regarded as the sovereign of Florida, and we are, accordingly, treating with her for the purchase of it. In strictness, then, we ought first to have demanded of her to restrain the Indians, and, that failing, we should have demanded a right of passage for our army. But, if the President had the power to march an army into Florida, without consulting Spain, and without the authority of Congress, he had no power to authorize any act of hostility against her. If the gentleman had even succeeded in showing that an authority was conveyed by the executive to General Jackson to take the Spanish posts, he would only have established that unconstitutional orders had been given, and thereby transferred the disapprobation from the military officer to the executive. But no such orders were, in truth, given. The President acted in conformity to the constitution, when he forbade the attack of a Spanish fort, and when, in the same spirit, he surrendered the posts themselves.

I will not trespass much longer upon the time of the committee; but I trust I shall be indulged with some few reflections upon the danger of permitting the conduct on which it has been my painful duty to animadvert, to pass without the solemn expression of the disapprobation of this House. Recall to your recollection the free nations which have gone before us. Where are they now?

"Gone glimmering through the dream of things that were,
A school-boy's tale, the wonder of an hour."

And how have they lost their liberties? If we could transport ourselves back to the ages when Greece and Rome flourished in their greatest prosperity, and mingling in the throng, should ask a Grecian if he did not fear that some daring military chieftain, covered with glory, some Philip or Alexander, would one day overthrow the liberties of his country, the confident and indignant Grecian would exclaim, No! no! we have nothing to fear from our heroes; our liberties will be eternal. If a Roman citizen had been asked, if he did not fear that the conqueror of Gaul might establish a throne upon the ruins of public liberty, he would have instantly repelled the unjust insinuation. Yet Greece fell; Cæsar passed the Rubicon, and the patriotic arm even of Brutus could not preserve the liberties of his devoted country! The celebrated Madame de Staël, in her last and perhaps her best work, has said, that in the very year, almost the very month, when the president of the directory declared that monarchy would never more show its frightful head in France, Bonaparte, with his grenadiers, entered the palace of St. Cloud, and dispersing, with the bayonet, the deputies of the people, deliberating on the affairs of the State, laid the foundation of that vast fabric of despotism which overshadowed all Europe. I hope not to be misunderstood; I am far from intimating that General Jackson cherishes any designs inimical to the liberties of the country. I believe his intentions to be pure and patriotic. I thank God that he would not, but I thank him still more that he could not if he would, overturn the liberties of the Republic. But precedents, if bad, are fraught with the most dangerous consequences. Man has been described, by some of those who have treated of his nature, as a bundle of habits. The definition is much truer when applied to governments. Precedents are their habits. There is one important difference between the formation of habits by an individual and by governments. He contracts only after frequent repetition. A single instance fixes the habit and determines the direction of governments. Against the alarming doctrine of unlimited discretion in our military commanders when applied even to prisoners of war, I must enter my protest. It begins upon them; it will end on us. I hope our happy form of government is to be perpetual. But, if it is to be preserved, it must be by the practice of virtue, by justice, by moderation, by magnanimity, by greatness of soul, by keeping a watchful and steady eye on the executive; and, above all, by holding to a strict accountability the military branch of the public force.

We are fighting a great moral battle, for the benefit not only of our country, but of all mankind. The eyes of the whole world are in fixed attention upon us. One, and the largest portion of it, is gazing with contempt, with jealousy, and with envy; the other portion, with hope, with confidence, and with affection. Everywhere the black cloud of legitimacy is suspended over the world, save only one bright spot, which breaks out from the political hemisphere of the west, to enlighten, and animate, and gladden the human heart. Obscure that by the downfall of liberty here, and all mankind are enshrouded in a pall of universal darkness. To you, Mr. Chairman, belongs the high privilege of transmitting, unimpaired, to posterity, the fair character and liberty of our country. Do you expect to execute this high trust, by trampling or suffering to be trampled down, law, justice, the constitution, and the rights of the people? by exhibiting examples of inhumanity, and cruelty, and ambition? When the minions of despotism heard, in Europe, of the seizure of Pensacola, how did they chuckle, and chide the admirers of our institutions, tauntingly

pointing to the demonstration of a spirit of injustice and aggrandizement made by our country, in the midst of an amicable negotiation! Behold, said they, the conduct of those who are constantly reproaching kings! You saw how those admirers were astounded and hung their heads. You saw, too, when that illustrious man, who presides over us, adopted his pacific, moderate, and just course, how they once more lifted up their heads with exultation and delight beaming in their countenances. And you saw how those minions themselves were finally compelled to unite in the general praises bestowed upon our government. Beware how you forfeit this exalted character. Beware how you give a fatal sanction, in this infant period of our republic, scarcely yet two-score years old, to military insubordination. Remember that Greece had her Alexander, Rome her Cæsar, England her Cromwell, France her Bonaparte, and that if we would escape the rock on which they split, we must avoid their errors.

How different has been the treatment of General Jackson and that modest, but heroic young man, a native of one of the smallest States in the Union, who achieved for his country, on Lake Erie, one of the most glorious victories of the late war. In a moment of passion, he forgot himself, and offered an act of violence which was repented of as soon as perpetrated. He was tried, and suffered the judgment to be pronounced by his peers. Public justice was thought not even then to be satisfied. The press and Congress took up the subject. My honorable friend from Virginia, Mr. Johnson, the faithful and consistent sentinel of the law and of the constitution, disapproved in that instance, as he does in this, and moved an inquiry. The public mind remained agitated and unappeased, until the recent atonement so honorably made by the gallant commodore. And is there to be a distinction between the officers of the two branches of the public service? Are former services, however eminent, to preclude even inquiry into recent misconduct? Is there to be no limit, no prudential bounds to the national gratitude? I am not disposed to censure the President for not ordering a court of inquiry, or a general court-martial. Perhaps, impelled by a sense of gratitude, he determined, by anticipation, to extend to the general that pardon which he had the undoubted right to grant after sentence. Let us not shrink from our duty. Let us assert our constitutional powers, and vindicate the instrument from military violation.

I hope gentleman will deliberately survey the awful isthmus on which we stand. They may bear down all opposition; they may even vote the general the public thanks; they may carry him triumphantly through this House. But, if they do, in my humble judgment, it will be a triumph of the principle of insubordination, a triumph of the military over the civil authority, a triumph over the powers of this House, a triumph over the constitution of the land. And I pray most devoutly to Heaven, that it may not prove, in its ultimate effects and consequences, a triumph over the liberties of the people.

SPEECH ON INTERNAL IMPROVEMENT.

Mr. Clay delivered this speech, in the House of Representatives of the United States, on the sixteenth of January, 1824; on "a bill authorizing the President of the United States to cause certain surveys and estimates to be made on the subject of roads and canals:"—

Mr. Chairman: I cannot enter on the discussion of the subject before us, without first asking leave to express my thanks for the kindness of the committee, in so far accommodating me as to agree, unanimously, to adjourn its sitting to the present time, in order to afford me the opportunity of exhibiting my views; which, however, I fear I shall do very unacceptably. As a requital for this kindness, I will endeavor, as far as is practicable, to abbreviate what I have to present to your consideration. Yet, on a question of this extent and moment, there are so many topics which demand a deliberate examination, that, from the nature of the case, it will be impossible, I am afraid, to reduce the argument to any thing that the committee will consider a reasonable compass.

It is known to all who hear me, that there has now existed for several years a difference of opinion between the executive and legislative branches of this government, as to the nature and extent of certain powers conferred upon it by the constitution. Two successive Presidents have returned to Congress bills which had previously passed both Houses of that body, with a communication of the opinion, that Congress, under the constitution, possessed no power to enact such laws. High respect, personal and official, must be felt by all, as it is due, to those distinguished officers, and to their opinions, thus solemnly announced; and the most profound consideration belongs to our present chief magistrate, who has favored this House with a written argument, of great length and labor, consisting of not less than sixty or seventy pages, in support of his exposition of the constitution. From the magnitude of the interests involved in the question, all will readily concur

that, if the power is granted, and does really exist, it ought to be vindicated, upheld and maintained, that the country may derive the great benefits which may flow from its prudent exercise. If it has not been communicated to Congress, then all claim to it should be, at once, surrendered. It is a circumstance of peculiar regret to me, that one more competent than myself had not risen to support the course which the legislative department has heretofore felt itself bound to pursue on this great question. Of all the trusts which are created by human agency, that is the highest, most solemn, and most responsible, which involves the exercise of political power. Exerted when it has not been intrusted, the public functionary is guilty of usurpation. And his infidelity to the public good is not, perhaps, less culpable, when he neglects or refuses to exercise a power which has been fairly conveyed, to promote the public prosperity. If the power, which he thus forbears to exercise, can only be exerted by him—if no other public functionary can employ it, and the public good requires its exercise, his treachery is greatly aggravated. It is only in those cases where the object of the investment of power is the personal ease or aggrandizement of the public agent, that his forbearance to use it is praiseworthy, gracious, or magnanimous.

I was extremely happy to find, that, on many of the points of the argument of the honorable gentleman from Virginia, Mr. Barbour, there is entire concurrence between us, widely as we differ in our ultimate conclusions. On this occasion (as on all others on which that gentleman obliges the House with an expression of his opinions), he displayed great ability and ingenuity; and, as well from the matter as from the respectful manner of his argument, it is deserving of the most thorough consideration. I am compelled to differ from that gentleman at the very threshold. He commenced by laying down as a general principle, that, in the distribution of powers among our federal and State governments, those which are of a municipal character are to be considered as appertaining to the State governments, and those which relate to external affairs, to the general government. If I may be allowed to throw the argument of the gentleman into the form of a syllogism (a shape which I presume would be quite agreeable to him), it amounts to this: municipal powers belong exclusively to the State governments; but the power to make internal improvements is municipal; therefore it belongs to the State governments alone. I deny both the premises and the conclusion. If the gentleman had affirmed that certain municipal powers, and the great mass of them, belong to the State governments, his proposition would have been incontrovertible. But if he had so qualified it, it would not have assisted the gentleman at all in his conclusion. But surely the power of taxation, the power to regulate the value of coin, the power to establish a uniform standard of weights and measures, to establish post offices and post roads, to regulate commerce among the several States, that in relation to the judiciary, besides many other powers indisputably belonging to the federal government, are strictly municipal. If, as I understood the gentleman in the course of the subsequent part of his argument to admit, some municipal powers belong to the one system, and some to the other, we shall derive very little aid from the gentleman's principle, in making the discrimination between the two. The question must ever remain open—whether any given power, and, of course, that in question, is or is not delegated to this government, or retained by the States?

The conclusion of the gentleman is, that all internal improvements belong to the State governments: that they are of a limited and local character, and are not comprehended within the scope of the federal powers, which relate to external or general objects. That many, perhaps most internal improvements, partake of the character described by the gentleman, I shall not deny. But it is no less true that there are others, emphatically national, which neither the policy, nor the power, nor the interests, of any State will induce it to accomplish, and which can only be effected by the application of the resources of the nation. The improvement of the navigation of the Mississippi furnishes a striking example. This is undeniably a great and important object. The report of a highly scientific and intelligent officer of the engineer corps (which I hope will be soon taken up and acted upon) has shown that the cost of any practicable improvement in the navigation of that river, in the present state of the inhabitants of its banks, is a mere trifle in comparison to the great benefits which would accrue from it. I believe that about double the amount of the loss of a single steamboat and cargo (the Tennessee) would effect the whole improvement in the navigation of that river, which ought to be at this time attempted. In this great object twelve States and two territories are, in different degrees, interested. The power to effect the improvement of that river is surely not municipal, in the sense in which the gentleman used the term. If it were, to which of the twelve States and two territories concerned does it belong? It is a great object, which can only be effected by a confederacy. And here is existing that confederacy, and no other can lawfully exist: for the constitution prohibits the States, immediately interested, from entering into any treaty or compact with each other. Other examples might be given to show, that, if even the power existed, the inclination to exert it would not be felt, to effectuate certain improvements eminently calculated to promote the prosperity of the union. Neither of the three States, nor all of them united, through which the Cumberland road passes, would ever have erected that road. Two of them would have thrown in every impediment to its completion in their power. Federative in its char-

acter, it could only have been executed so far by the application of federative means. Again, the contemplated canal through New Jersey; that to connect the waters of the Chesapeake and Delaware; that to unite the Ohio and the Potomac, are all objects of a general and federative nature, in which the States, through which they might severally pass, could not be expected to feel any such special interest as would lead to their execution. Tending, as undoubtedly they would do, to promote the good of the whole, the power and the treasure of the whole must be applied to their execution, if they are ever consummated.

I do not think, then, that we shall be at all assisted in expounding the Constitution of the United States, by the principle which the gentleman from Virginia has suggested in respect to municipal powers. The powers of both governments are undoubtedly municipal, often operating upon the same subject. I think a better rule than that which the gentleman furnished for interpreting the constitution, might be deduced from an attentive consideration of the peculiar character of the articles of confederation, as contrasted with that of the present constitution. By those articles, the powers of the thirteen United States were exerted collaterally. They operated through an intermediary. They were addressed to the several States, and their execution depended upon the pleasure and the co-operation of the States individually. The States seldom fulfilled the expectations of the general government in regard to its requisitions, and often wholly disappointed them. Languor and debility, in the movement of the old confederation, were the inevitable consequence of that arrangement of power. By the existing constitution, the powers of the general government act directly on the persons and things within its scope, without the intervention or impediments incident to any intermediary. In executing the great trust which the Constitution of the United States creates, we must, therefore, reject that interpretation of its provisions which would make the general government dependent upon those of the States for the execution of any of its powers, and may safely conclude that the only genuine construction would be that which should enable this government to execute the great purposes of its institution, without the co-operation, and, if indispensably necessary, even against the will, of any particular State. This is the characteristic difference between the two systems of government, of which we should never lose sight. Interpreted in the one way, we shall relapse into the feebleness and debility of the old confederacy. In the other, we shall escape from its evils, and fulfil the great purposes which the enlightened framers of the existing constitution intended to effectuate. The importance of this essential difference in the two forms of government, will be shown in the future progress of the argument.

parts of the constitution which appear to me to convey the power in question, I hope I shall be allowed to disclaim, for my part, several sources whence others have deduced the authority. The gentleman from Virginia seemed to think it remarkable that the friends of the power should disagree so much among themselves; and to draw a conclusion against its existence from the fact of this discrepancy. But I can see nothing extraordinary in this diversity of views. What is more common than for different men to contemplate the same subject under various aspects? Such is the nature of the human mind, that enlightened men, perfectly upright in their intentions, differ in their opinions on almost every topic that could be mentioned. It is rather a presumption in favor of the cause which I am humbly maintaining, that the same result should be attained by so many various modes of reasoning. But, if contrariety of views may be pleaded with any effect against the advocates of the disputed power, it equally avails against their opponents. There is, for example, not a very exact coincidence in opinion between the President of the United States and the gentleman from Virginia. The President says, (page 25 of his book,) "the use of the existing road, by the stage, mail carrier, or post boy, in passing over it, as others do, is all that would be thought of; the jurisdiction and soil remaining to the State, with a right in the State, or those authorized by its legislature, to change the road at pleasure." Again, page 27, the President asks, "if the United States possessed the power, contended for under this grant, might they not, in adopting the roads of the individual States, for the carriage of the mail, as has been done, assume jurisdiction over them, and preclude a right to interfere with or alter them?" They both agree that the general government does not possess the power. The gentleman from Virginia admits, if I understood him correctly, that the designation of a State road as a post road, so far withdraws it from the jurisdiction of the State, that it cannot be afterwards put down or closed by the State, and in this he claims for the general government more power than the President concedes to it. The President, on the contrary, pronounces that "the absurdity of such a pretension," (that is, preventing, by the designation of a post road, the power of the State from altering or changing it,) "must be apparent to all who examine it!" The gentleman thinks that the designation of a post road withdraws it entirely, so far as it is used for that purpose, from the power of the whole State; whilst the President thinks it absurd to assert that a mere county court may not defeat the execution of a law of the United States! The President thinks that, under the power of appropriating the money of the United States, Congress may apply it to any object of internal improvement, provided it does not assume any territorial jurisdiction; and, in this respect, he claims for

gentleman from Virginia assigns to it. And I must own, that I so far coincide with the gentleman from Virginia. If the power can be traced to no more legitimate source than to that of appropriating the public treasure, I yield the question.

The truth is, that there is no specific grant, in the constitution, of the power of appropriation; nor was any such requisite. It is a resulting power. The constitution vests in Congress the power of taxation, with but few limitations, to raise a public revenue. It then enumerates the powers of Congress. And it follows, of necessity, that Congress has the right to apply the money, so raised, to the execution of the powers so granted. The clause, which concludes the enumeration of the granted powers, by authorizing the passage of all laws, "necessary and proper" to effectuate them, comprehends the power of appropriation. And the framers of the constitution recognize it by the restriction, that no money shall be drawn from the treasury but in virtue of a previous appropriation by law. It is to me wonderful how the President should have brought his mind to the conclusion, that, under the power of appropriation, thus incidentally existing, a right could be set up, in its nature almost without limitation, to employ the public money. He combats with great success and much ability, any deduction of power from the clause relating to the general welfare. He shows that the effect of it would be to overturn, or render useless and nugatory, the careful enumeration of our powers; and that it would convert a cautiously limited government into one without limitation. The same process of reasoning by which his mind was brought to this just conclusion, one would have thought, should have warned him against his claiming, under the power of appropriation, such a vast latitude of authority. He reasons strongly against the power, as claimed by us, harmless and beneficent and limited, as it must be admitted to be, and yet he sets up a power boundless in its extent, unrestrained to the object of internal improvements, and comprehending the whole scope of human affairs! For, if the power exists, as he asserts it, what human restraint is there upon it? He does, indeed, say, that it cannot be exerted so as to interfere with the territorial jurisdiction of the States. But this is a restriction altogether gratuitous, flowing from the bounty of the President, and not found in the prescriptions of the constitution. If we have a right, indefinitely, to apply the money of the government to internal improvements, or to any other object, what is to prevent the application of it to the purchase of the sovereignty itself, of a State, if a State were mean enough to sell its sovereignty—to the purchase of kingdoms, empires, the globe itself? With an almost unlimited power of taxation; and, after the revenue is raised, with a right to apply it under no other limitations than those

cannot see what other human power is needed. It has been said, by Cæsar or Bonaparte, no doubt thought by both, that, with soldiers enough, they could get money enough; and, with money enough, they could command soldiers enough. According to the President's interpretation of the constitution, one of these great levers of public force and power is possessed by this government. The President seems to contemplate, as fraught with much danger, the power, humbly as it is claimed, to effect the internal improvement of the country. And, in his attempt to overthrow it, sets up one of infinitely greater magnitude. The quantum of power which we claim over the subject of internal improvement, is, it is true, of greater amount and force than that which results from the President's view of the constitution; but then it is limited to the object of internal improvements; whilst the power set up by the President has no such limitation; and, in effect, as I conceive, has no limitation whatever, but that of the ability of the people to bear taxation.

With the most profound respect for the President, and after the most deliberate consideration of his argument, I cannot agree with him. I cannot think that any political power accrues to this government, from the mere authority which it possesses to appropriate the public revenue. The power to make internal improvements draws after it most certainly the right to appropriate money to consummate the object. But I cannot conceive that this right of appropriation draws after it the power of internal improvements. The appropriation of money is consequence, not cause. It follows, it does not precede. According to the order of nature, we first determine upon the object to be accomplished, and then appropriate the money necessary to its consummation. According to the order of the constitution, the power is defined, and the application, that is, the appropriation of the money requisite to its effectuation, follows as a necessary and proper means. The practice of congressional legislation is conformable to both. We first inquire what we may do, and provide by law for its being done, and we then appropriate, by another act of legislation, the money necessary to accomplish the specified object. The error of the argument lies in its beginning too soon. It supposes the money to be in the treasury, and then seeks to disburse it. But how came it there? Congress cannot impose taxes without an object. Their imposition must be in reference to the whole mass of our powers, to the general purposes of government, or with the view to the fulfilment of some one of those powers, or to the attainment of some one of those purposes. In either case, we consult the constitution, and ascertain the extent of the authority which is confided to us. We cannot, constitutionally lay the taxes without regard to the extent of our powers; and then, having acquired the money of the public, appropriate it because we have got it, to any object that

Nor do I claim the power in question, from the consent or grant of any particular State or States, through which an object of internal improvement may pass. It may, indeed, be prudent to consult a State through which such an improvement may happen to be carried, from considerations of deference and respect to its sovereign power; and from a disposition to maintain those relations of perfect amity which are ever desirable between the general and State governments. But the power to establish the improvement, must be found in the constitution, or it does not exist. And what is granted by all, it cannot be necessary to obtain the consent of some to perform.

The gentleman from Virginia, in speaking of incidental powers, used a species of argument which I entreat him candidly to reconsider. He said, that the chain of cause and effect was without end; that if we argued from a power expressly granted to all others, which might be convenient or necessary to its execution, there were no bounds to the power of this government; that, for example, under the power "to provide and maintain a navy," the right might be assumed to the timber necessary to its construction, and the soil on which it grew. The gentleman might have added, the acorns from which it sprung. What, upon the gentleman's own hypothesis, ought to have been his conclusion? That Congress possessed no power to provide and maintain a navy. Such a conclusion would have been quite as logical, as that Congress has no power over internal improvements, from the possible lengths to which this power may be pushed. No one ever has, or can controvert the existence of incidental powers. We may apply different rules for their extraction, but all must concur in the necessity of their actual existence. They result from the imperfections of our nature, and from the utter impossibility of foreseeing all the turns and vicissitudes in human affairs. They cannot be defined. Much is attained when the power, the end, is specified and guarded. Keeping that constantly in view, the means necessary to its attainment must be left to the sound and responsible discretion of the public functionary. Intrench him as you please, employ what language you may, in the constitutional instrument, "necessary and proper," "indispensably necessary," or any other, and the question is still left open—does the proposed measure fall within the scope of the incidental power, circumscribed as it may be? Your safety against abuse must rest in his interest, his integrity, his responsibility to the exercise of the elective franchise; finally, in the ultimate right, when all other redress fails, of an appeal to the remedy, to be used only in extreme cases, of forcible resistance against intolerable oppression.

Doubtless, by an extravagant and abusive enlargement of incidental powers, the State governments may be reduced within too narrow limits. Take any power, however incontestably granted to the general government, and employ that kind of process of reasoning in which the gentleman from Virginia is so skilful, by tracing it to its remotest effects, you may make it absorb the powers of the State governments. Pursue the opposite course; take any incontestable power belonging to the State governments, and follow it out into all its possible ramifications, and you may make it thwart and defeat the great operations of the government of the whole. This is the consequence of our systems. Their harmony is to be preserved only by forbearance, liberality, practical good sense, and mutual concession. Bring these dispositions into the administrations of our various institutions, and all the dreaded conflicts of authorities will be found to be perfectly imaginary.

I disclaim, for myself, several sources to which others have ascended, to arrive at the power in question. In making this disclaimer, I mean to cast no imputation on them. I am glad to meet them by whatever road they travel, at the point of a constitutional conclusion. Nor do their positions weaken mine; on the contrary, if correctly taken, and mine also are justified by fair interpretation, they add strength to mine. But I feel it my duty, frankly and sincerely, to state my own views of the constitution. In coming to the ground on which I make my stand to maintain the power, and where I am ready to meet its antagonist, I am happy, in the outset, to state my hearty concurrence with the gentleman from Virginia, in the old 1798 republican principles (now become federal also), by which the constitution is to be interpreted. I agree with him, that this is a limited government; that it has no powers but the granted powers; and that the granted powers are those which are expressly enumerated, or such as, being implied, are necessary and proper to effectuate the enumerated powers. And, if I do not show the power over federative, national, internal improvements, to be fairly deducible, after the strictest application of these principles, I entreat the committee unanimously to reject the bill. The gentleman from Virginia has rightly anticipated, that, in regard to roads, I claim the power; under the grant, to establish post offices and post roads. The whole question, on this part of the subject, turns upon the true meaning of this clause, and that again upon the genuine signification of the word "establish." According to my understanding of it, the meaning of it is, to fix, to make firm, to build. According to that of the gentleman from Virginia, it is to designate, to adopt. Grammatical criticism was to me always unpleasant, and I do not profess to be any proficient in it. But I will confidently appeal, in support of my definition, to any vocabulary whatever, of respectable authority, and to the common use of the word. That it cannot mean only adoption, is to me evident; for adoption pre-supposes establishment, which is precedent in its very nature. That which does not exist, which is not established, cannot be adopted. There is, then, an essential difference between the gentleman from Virginia and me.

I consider the power as original and creative; he as derivative, adoptive. But I will show, out of the mouth of the President himself, who agrees with the gentleman from Virginia, as to the sense of this word, that what I contend for is its genuine meaning. The President, in almost the first lines of his message to this House, of the fourth of May, 1822, returning the Cumberland bill with his veto, says, "a power to establish turnpikes, with gates and tolls, &c., implies a power to adopt and execute a complete system of internal improvement." What is the sense in which the word "establish" is here used? Is it not creative? Did the President mean to adopt or designate some pre-existing turnpikes, with gates, &c., or, for the first time, to set them up, under the authority of Congress? Again, the President says, "if it exist as to one road [that is, the power to lay duties of transit, and to take the land on a valuation], it exists as to any other, and to as many roads as Congress may think proper to 'establish.'" In what sense does he here employ the word? The truth is, that the President could employ no better than the constitutional word, and he is obliged to use it in the precise sense for which I contend. But I go to a higher authority than that of the chief magistrate—to that of the constitution itself. In expounding that instrument, we must look at all its parts; and if we find a word, the meaning of which it is desirable to obtain, we may safely rest upon the use which has been made of the same word in other parts of the instrument. The word "establish" is one of frequent recurrence in the constitution; and I venture to say, that it will be found uniformly to express the same idea. In the clause enumerating our powers, Congress has power "to establish a uniform rule of naturalization," &c. In the preamble, "We, the people of the United States, in order to form a more perfect union, establish justice, &c., do ordain and establish this constitution," &c. What pre-existing code of justice was adopted? Did not the people of the United States, in this high, sovereign act, contemplate the construction of a code adapted to their federal condition? The sense of the word, as contended for, is self-evident, when applied to the constitution.

But let us look at the nature, object and purposes of the power. The trust confided to Congress was one of the most beneficial character. It was the diffusion of information among all the parts of this republic. It was the transmission and circulation of intelligence; it was to communicate knowledge of the laws and acts of government; and to promote the great business of society in all its relations. This was a great trust, capable of being executed in a highly salutary manner. It could be executed only by Congress, and it should be as well performed as it could be, considering the wants and exigencies of government. And here I beg leave to advert to the principle which I some time ago laid down, that the powers granted to this government are to be carried into execution by its own inherent force and energy, without necessary dependence upon the State governments. If my construction secures this object; and if that of my opponents places the execution of this trust at the pleasure and mercy of the State governments, we must reject theirs and assume mine. But the construction of the President does not make it so dependent. He contends that we can only use, as post-roads, those which the States shall have previously established; that they are at liberty to alter, to change, and of course to shut them up at pleasure. It results from this view of the President that any of the great mail routes now existing, that, for example, from south to north, may be closed at pleasure or by caprice, by any one of the States, or its authorities, through which it passes—by that of Delaware or any other. Is it possible that that construction of the constitution can be correct, which allows a law of the United States, enacted for the good of the whole, to be obstructed or defeated in its operation by any one of twenty-four sovereignties? The gentleman from Virginia, it is true, denies the right of a State to close a road which has been designated as a post road. But suppose the State, no longer having occasion to use it for its own separate and peculiar purposes, withdraws all care and attention from its preservation. Can the State be compelled to repair it? No! the gentleman from Virginia must say, and I will say—may not the general government repair this road which is abandoned by the State power? May it not repair it in the most efficacious manner? And may it not protect and defend that which it has thus repaired, and which there is no longer an interest or inclination in the State to protect and defend? Or does the gentleman mean to contend that a road may exist in the statute book, which a State will not, and the general government cannot, repair and improve? And what sort of an account should we render to the people of the United States, of the execution of the high trust confided, for their benefit, to us, if we were to tell them that we had failed to execute it, because a State would not make a road for us?

The roads, and other internal improvements of States, are made in reference to their individual interests. It is the eye only of the whole, and the power of the whole, that can look to the interests of all. In the infancy of the government, and the actual state of the public treasury, it may be the only alternative left us to use those roads which are made for State purposes, to promote the national object, ill as they may be adapted to it. It may never be necessary to make more than a few great national arteries of communication, leaving to the States the lateral and minor ramifications. Even these should only be executed, without pressure upon the resources of the country, and according to the convenience and ability of government. But, surely, in the performance of a great national duty imposed upon this government, which has for its object the distribution of intelligence

civil, commercial, literary and social, we ought to perform the substance of the trust, and not content ourselves with a mere inefficient paper execution of it. If I am right in these views, the power to establish post roads being in its nature original and creative, and the government having adopted the roads made by State means, only from its inability to exert the whole extent of its authority, the controverted power is expressly granted to Congress, and there is an end of the question.

It ought to be borne in mind, that this power over roads was not contained in the articles of confederation, which limited Congress to the establishment of post-offices; and that the general character of the present constitution, as contrasted with those articles, is that of an enlargement of power. But, if the construction of my opponents be correct, we are left precisely where the articles of confederation left us, notwithstanding the additional words contained in the present constitution. What, too, will the gentlemen do with the first member of the clause to establish post-offices? Must Congress adopt, designate, some pre-existing office, established by State authority? But there is none such. May it not then fix, build, create, establish offices of its own?

The gentleman from Virginia sought to alarm us by the awful emphasis with which he set before us the total extent of post roads in the union. Eighty thousand miles of post roads! exclaimed the gentleman; and will you assert for the general government jurisdiction, and erect turnpikes, on such an immense distance? Not to-day, nor to-morrow; but this government is to last, I trust, forever: we may at least hope it will endure until the wave of population, cultivation and intelligence, shall have washed the rocky mountains and mingled with the Pacific. And may we not also hope that the day will arrive when the improvements and the comforts of social life shall spread over the wide surface of this vast continent? All this is not to be suddenly done. Society must not be burdened or oppressed. Things must be gradual and progressive. The same species of formidable array which the gentleman makes, might be exhibited in reference to the construction of a navy, or any other of the great purposes of government. We might be told of the fleets and vessels of great maritime powers, which whiten the ocean; and triumphantly asked if we should vainly attempt to cope with or rival that tremendous power? And we should shrink from the effort, if we were to listen to his counsels, in hopeless despair. Yes, sir, it is a subject of peculiar delight to me to look forward to the proud and happy period, distant as it may be, when circulation and association between the Atlantic and Pacific and the Mexican gulf, shall be as free and perfect as they are at this moment in England, or in any other the most highly-improved country on the globe. In the mean time, without bearing heavily upon selves to the accomplishment of what is most practicable and immediately necessary.

But what most staggers my honorable friend, is the jurisdiction over the sites of roads and other internal improvements which he supposes Congress might assume; and he considers the exercise of such a jurisdiction as furnishing the just occasion for serious alarm. Let us analyze the subject. Prior to the erection of a road under the authority of the general government, there existed, in the State through which it passes, no actual exercise of jurisdiction over the ground which it traverses as a road. There was only the possibility of the exercise of such a jurisdiction, when the State should, if ever, erect such a road. But the road is made by the authority of Congress, and out of the fact of its erection arises a necessity for its preservation and protection. The road is some thirty or fifty or sixty feet in width, and with that narrow limit passes through a part of the territory of the State. The capital expended in the making of the road incorporates itself with, and becomes a part of the permanent and immovable property of the State. The jurisdiction which is claimed for the general government, is that only which relates to the necessary defence, protection, and preservation of the road. It is of a character altogether conservative. Whatever does not relate to the existence and protection of the road remains with the State. Murders, trespasses, contracts, all the occurrences and transactions of society upon the road, not affecting its actual existence, will fall within the jurisdiction of the civil or criminal tribunals of the State, as if the road had never been brought into existence. How much remains to the State? How little is claimed for the general government? Is it possible that a jurisdiction so limited, so harmless, so unambitious, can be regarded as seriously alarming to the sovereignty of the States? Congress now asserts and exercises, without contestation, a power to protect the mail in its transit, by the sanction of all suitable penalties. The man who violates it is punished with death, or otherwise, according to the circumstances of the case. This power is exerted as incident to that of establishing post-offices and post roads. Is the protection of the thing in transitu a power more clearly deducible from the grant, than that of facilitating, by means of a practicable road, its actual transportation? Mails certainly imply roads, roads imply their own preservation, their preservation implies the power to preserve them, and the constitution tells us, in express terms, that we shall establish the one and the other.

In respect to cutting canals, I admit the question is not quite so clear as in regard to roads. With respect to these, as I have endeavored to show, the power is expressly granted. In regard to canals it appears to me to be fairly comprehended in, or deducible from, certain granted powers. Congress has power to regulate com-

eral States. Precisely the same measure of power which is granted in the one case is conferred in the other. And the uniform practical exposition of the constitution as to the regulation of foreign commerce, is equally applicable to that among the several States. Suppose, instead of directing the legislation of this government constantly, as heretofore, to the object of foreign commerce, to the utter neglect of the interior commerce among the several States, the fact had been reversed, and now for the first time we were about to legislate for our foreign trade. Should we not in that case hear all the constitutional objections made to the erection of buoys, beacons, lighthouses, the surveys of coasts and the other numerous facilities accorded to the foreign trade, which we now hear to the making of roads and canals? Two years ago a sea-wall, or in other words a marine canal was authorized by an act of Congress, in New Hampshire; and I doubt not that many of those voted for it who have now constitutional scruples on this bill. Yes, any thing, every thing may be done for foreign commerce; any thing, every thing on the margin of the ocean; but nothing for domestic trade; nothing for the great interior of the country! Yet the equity and the beneficence of the constitution equally comprehends both. The gentleman does indeed maintain that there is a difference as to the character of the facilities in the two cases. But I put it to his own candor, whether the only difference is not that which springs from the nature of the two elements on which the two species of commerce are conducted—the difference between land and water. The principle is the same, whether you promote commerce by opening for it an artificial channel where now there is none, or by increasing the ease and safety with which it may be conducted through a natural channel, which the bounty of Providence has bestowed. In the one case your object is to facilitate arrival and departure from the ocean to the land. In the other it is to accomplish the same object from the land to the ocean. Physical obstacles may be greater in the one case than in the other, but the moral or constitutional power equally includes both. The gentleman from Virginia has, to be sure, contended that the power to make these commercial facilities was to be found in another clause of the constitution—that which enables Congress to obtain cessions of territory for specific objects, and grants to it an exclusive jurisdiction. These cessions may be obtained for the "erection of forts, magazines, arsenals, dock yards, or other needful buildings." It is apparent that it relates altogether to military or naval affairs, and not to the regulation of commerce. How was the marine canal covered by this clause? Is it to be considered as a "needful building?" The object of this power is perfectly obvious. The convention saw that, in military or naval posts, such as are indicated, it was indispensably necessary, for their proper government, to vest in we claimed over objects of internal improvement, an exclusive jurisdiction, the gentleman might urge, with much force, the clause in question. But the claim of concurrent jurisdiction only is asserted. The gentleman professes himself unable to comprehend how concurrent jurisdiction can be exercised by two different governments at the same time, over the same persons and things. But is not this the fact with respect to the State and Federal governments? Does not every person and every thing within our limits sustain a twofold relation to the State and to the Federal authority? The power of taxation, as exerted by both governments, that over the militia, besides many others, is concurrent. No doubt embarrassing cases may be conceived and stated by gentlemen of acute and ingenious minds. One was put to me yesterday. Two canals are desired, one by the Federal and the other by a State government; and there is not a supply of water but for the feeder of one canal—which is to take it? The constitution, which ordains the supremacy of the laws of the United States, answers the question. The good of the whole is paramount to the good of a part. The same difficulty might possibly arise in the exercise of the incontestable power of taxation. We know that the imposition of taxes has its limits. There is a maximum which cannot be transcended. Suppose the citizen to be taxed by the general government to the utmost extent of his ability, or a thing as much as it can possibly bear, and the State imposes a tax at the same time—which authority is to take it? Extreme cases of this sort may serve to amuse and to puzzle; but they will hardly ever arise in practice. And we may safely confide in the moderation, good sense and mutual good dispositions of the two governments, to guard against the imagined conflicts.

It is said by the President that the power to regulate commerce merely authorizes the laying of imposts and duties. But Congress has no power to lay imposts and duties on the trade among the several States. The grant must mean, therefore, something else. What is it? The power to regulate commerce among the several States, if it has any meaning, implies authority to foster it, to promote it, to bestow upon it facilities similar to those which have been conceded to our foreign trade. It cannot mean only an empty authority to adopt regulations, without the capacity to give practical effect to them. All the powers of this government should be interpreted in reference to its first, its best, its greatest object, the union of these States. And is not that union best invigorated by an intimate social and commercial connexion between all the parts of the confederacy? Can that be accomplished, that is, can the federative objects of this government be attained but by the application of federative resources?

Of all the powers bestowed on this government, I think none are more clearly vested than

regulate the distribution of its commerce; and to regulate the distribution of the physical force of the Union. In the execution of the high and solemn trust which these beneficial powers imply, we must look to the great ends which the framers of our admirable constitution had in view. We must reject as wholly incompatible with their enlightened and beneficent intentions that construction of these powers which would resuscitate all the debility and inefficiency of the ancient confederacy. In the vicissitudes of human affairs who can foresee all the possible cases in which it may be necessary to apply the public force, within or without the Union? This government is charged with the use of it to repel invasions, to suppress insurrections, to enforce the laws of the Union; in short for all the unknown and undefinable purposes of war, foreign or intestine, wherever and however it may rage. During its existence may not government, for its effectual prosecution, order a road to be made, or a canal to be cut, to relieve for example, an exposed point of the Union? If, when the emergency comes, there is a power to provide for it, that power must exist in the constitution, and not in the emergency. A wise, precautionary, and parental policy, anticipating danger, will beforehand provide for the hour of need. Roads and canals are in the nature of fortifications, since, if not the deposits of military resources, they enable you to bring into rapid action the military resources of the country, whatever they may be. They are better than any fortifications, because they serve the double purposes of peace and war. They dispense, in a great degree, with fortifications, since they have all the effect of that concentration at which fortifications aim. I appeal from the precepts of the President to the practice of the President. While he denies to Congress the power in question, he does not scruple, upon his sole authority, as numerous instances in the statute book will testify, to order at pleasure, the opening of roads by the military, and then come here to ask us to pay for them. Nay, more, sir; a subordinate, but highly respectable officer of the executive government, I believe, would not hesitate to provide a boat or cause a bridge to be erected over an inconsiderable stream, to insure the regular transportation of the mail. And it happens to be within my personal knowledge that the head of the post office department, as a prompt and vigilant officer should do, has recently despatched an agent to ascertain the causes of the late frequent vexatious failures of the great northern mail, and to inquire if a provision of a boat or bridge over certain small streams in Maryland, which have produced them, would not prevent their recurrence.

I was much surprised at one argument of the honorable gentleman. He told the House, that the constitution had carefully guarded against inequality, among the several States, in the public burdens, by certain restrictions upon the tion of a system of internal improvements would be to draw the resources from one part of the Union, and to expand them in the improvements of another; and that the spirit, at least, of the constitutional equality, would be thus violated. From the nature of things, the constitution could not specify the theatre of the expenditure of the public treasure. That expenditure, guided by and looking to the public good, must be made, necessarily, where it will most subserve the interests of the whole Union. The argument is, that the locale of the collection of the public contributions, and the locale of their disbursement, should be the same. Now, sir, let us carry this argument out; and no man is more capable than the ingenious gentleman from Virginia, of tracing an argument to its utmost consequences. The locale of the collection of the public revenue is the pocket of the citizen; and, to abstain from the violation of the principle of equality adverted to by the gentleman, we should restore back to each man's pocket precisely what was taken from it. If the principle contended for be true, we are habitually violating it. We raise about twenty millions of dollars, a very large revenue, considering the actual distresses of the country. And, sir, notwithstanding all the puffing, flourishing statements of its prosperity, emanating from printers who are fed upon the pap of the public treasury, the whole country is in a condition of very great distress. Where is this vast revenue expended? Boston, New York, the great capitals of the north, are the theatres of its disbursement. There the interest upon the public debt is paid. There the expenditure in the building, equipment, and repair of the national vessels takes place. There all the great expenditures of the government necessarily concentrate. This is no cause of just complaint. It is inevitable, resulting from the accumulation of capital, the state of the arts, and other circumstances belonging to our great cities. But, sir, if there be a section of this Union having more right than any other to complain of this transfer of the circulating medium from one quarter of the Union to another, the west, the poor west--[Here Mr. Barbour explained. He had meant that the constitution limited Congress as to the proportions of revenue to be drawn from the several States; but the principle of this provision would be vacated by internal improvements of immense expense, and yet of a local character. Our public ships, to be sure, are built at the seaports, but they do not remain there. Their home is the mountain wave; but internal improvements are essentially local; they touch the soil of the States, and their benefits, at least the largest part of them, are confined to the States where they exist.]. The explanation of the gentleman has not materially varied the argument. He says that the home of our ships is the mountain wave. Sir, if the ships go to sea, the money with which they were built, or refitted, remains

takes place derive the benefit of the expenditure. It requires no stretch of the imagination to conceive the profitable industry—the axes, the hammers, the saws—the mechanic arts, which are put in motion by this expenditure. And all these, and other collateral advantages, are enjoyed by the seaports. The navy is built for the interest of the whole. Internal improvements, of that general, federative character, for which we contend, would also be for the interest of the whole. And, I should think their abiding with us, and not going abroad on the vast deep, was rather cause of recommendation than objection.

But, Mr. Chairman, if there be any part of this Union more likely than all others to be benefited by the adoption of the gentleman's principle, regulating the public expenditure, it is the west. There is a perpetual drain from that embarrassed and highly distressed portion of our country, of its circulating medium to the east. There, but few and inconsiderable expenditures of the public money take place. There we have none of those public works, no magnificent edifices, forts, armories, arsenals, dockyards, &c., which more or less are to be found in every Atlantic State. In at least seven States beyond the Alleghany, not one solitary public work of this government is to be found. If, by one of those awful and terrible dispensations of Providence, which sometimes occur, this government should be unhappily annihilated, every where on the seaboard traces of its former existence would be found; whilst we should not have, in the west, a single monument remaining on which to pour out our affections and our regrets. Yet, sir, we do not complain. No portion of your population is more loyal to the Union, than the hardy freemen of the west. Nothing can weaken or eradicate their ardent desire for its lasting preservation. None are more prompt to vindicate the interests and rights of the nation from all foreign aggression. Need I remind you of the glorious scenes in which they participated, during the late war—a war in which they had no peculiar or direct interest, waged for no commerce, no seamen of theirs. But it was enough for them that it was a war demanded by the character and the honor of the nation. They did not stop to calculate its cost of blood, or of treasure. They flew to arms; they rushed down the valley of the Mississippi, with all the impetuosity of that noble river. They sought the enemy. They found him at the beach. They fought; they bled; they covered themselves and their country with immortal glory. They enthusiastically shared in all the transports occasioned by our victories, whether won on the ocean or on the land. They felt, with the keenest distress, whatever disaster befell us. No, sir, I repeat it, neglect, injury itself, cannot alienate the affections of the West from this government. They cling to it, as to their best, their greatest, their last hope. You may impoverish them, reduce them to ruin, by the mistakes of your policy, and you cannot drive them from you. They do not complain of the expenditure of the public money, where the public exigencies require its disbursement. But, I put it to your candor, if you ought not, by a generous and national policy, to mitigate, if not prevent, the evils resulting from the perpetual transfer of the circulating medium from the west to the east. One million and a half of dollars annually, is transferred for the public lands alone; and almost every dollar goes, like him who goes to death—to a bourne from which no traveller returns. In ten years it will amount to fifteen millions; in twenty to—— but I will not pursue the appalling results of arithmetic. Gentlemen who believe that these vast sums are supplied by emigrants from the east, labor under great error. There was a time when the tide of emigration from the east bore along with it the means to effect the purchase of the public domain. But that tide has, in a great measure, now stopped. And as population advances farther and farther west, it will entirely cease. The greatest migrating States in the Union, at this time, are Kentucky first, Ohio next, and Tennessee. The emigrants from those States carry with them, to the States and territories lying beyond them, the circulating medium, which, being invested in the purchase of the public land, is transmitted to the points where the wants of government require it. If this debilitating and exhausting process were inevitable, it must be borne with manly fortitude. But we think that a fit exertion of the powers of this government would mitigate the evil. We believe that the government incontestably possesses the constitutional power to execute such internal improvements as are called for by the good of the whole. And we appeal to your equity, to your parental regard, to your enlightened policy, to perform the high and beneficial trust thus sacredly reposed. I am sensible of the delicacy of the topic to which I have reluctantly adverted, in consequence of the observations of the honorable gentleman from Virginia. And I hope there will be no misconception of my motives in dwelling upon it. A wise and considerate government should anticipate and prevent, rather than wait for the operation of causes of discontent.

Let me ask, Mr. Chairman, what has this government done on the great subject of internal improvements, after so many years of its existence, and with such an inviting field before it? You have made the Cumberland road, only. Gentlemen appear to have considered that a western road. They ought to recollect that not one stone has yet been broken, not one spade of earth has been yet removed in any western State. The road begins in Maryland and it terminates at Wheeling. It passes through the States of Maryland, Pennsylvania and Virginia. All the direct benefit of the expenditure of the public money on that road, has accrued to those three States. Not one cent in any western State. And yet we have

had to beg, entreat, supplicate you, session after session, to grant the necessary appropriations to complete the road. I have myself toiled until my powers have been exhausted and prostrated, to prevail on you to make the grant. We were actuated to make these exertions for the sake of the collateral benefit only to the west; that we might have a way by which we should be able to continue and maintain an affectionate intercourse with our friends and brethren; that we might have a way to reach the capital of our country, and to bring our counsels, humble as they may be, to consult and mingle with yours in the advancement of the national prosperity.

Yes, sir, the Cumberland road has only reached the margin of a western State; and, from some indications which have been given during this session, I should apprehend it would there pause for ever, if my confidence in you were not unbounded, if I had not before witnessed that appeals were never unsuccessful to your justice, to your magnanimity, to your fraternal affection.

But, sir, the bill on your table is no western bill. It is emphatically a national bill, comprehending all, looking to the interests of the whole. The people of the West never thought of, never desired, never asked, for a system exclusively for their benefit. The system contemplated by this bill looks to great national objects, and proposes the ultimate application to their accomplishment of the only means by which they can be effected, the means of the nation—means which, if they be withheld from such objects, the Union, I do most solemnly believe, of these now happy and promising States, may, at some distant (I trust a far, far distant) day, be endangered and shaken at its centre.

SPEECH ON THE TARIFF. *

This speech, on a bill proposing to increase the duties on various articles imported from foreign countries, was delivered in the House of Representatives of the United States, on the thirtieth and thirty-first days of March, 1824:

The gentlemen from Virginia, Mr. Barbour, has embraced the occasion produced by the proposition of the gentleman from Tennessee to strike out the minimum price in the bill on cotton fabrics, to express his sentiments at large on the policy of the pending measure; and it is scarcely necessary for me to say he has evinced his usual good temper, ability, and decorum. The parts of the bill are so intermingled and interwoven together, that there can be no doubt of the fitness of this occasion to exhibit its merits or its defects. It is my intention, with the permission of the committee, to avail myself also of this opportunity, to present to its consideration those general views, as they appear to me, of the true policy of this country, which imperiously demand the passage of this bill. I am deeply sensible, Mr. Chairman, of the high responsibility of my present situation. But that responsibility inspires me with no other apprehension than that I shall be unable to fulfil my duty; with no other solicitude than that I may, at least, in some small degree, contribute to recall my country from the pursuit of a fatal policy, which appears to me inevitably to lead to its impoverishment and ruin. I do feel most awfully this responsibility. And, if it were allowable for us, at the present day, to imitate ancient examples, I would invoke the aid of the Most High. I would anxiously and fervently implore His divine assistance; that He would be graciously pleased to shower on my country His richest blessings; and that He would sustain, on this interesting occasion, the humble individual who stands before Him, and lend him the power, moral and physical, to perform the solemn duties which now belong to his public station.

Two classes of politicians divide the people of the United States. According to the system of one, the produce of foreign industry should be subjected to no other impost than such as may be necessary to provide a public revenue; and the produce of American industry should be left to sustain itself, if it can, with no other than that incidental protection, in its competition, at home as well as abroad, with rival foreign articles. According to the system of the other class, while they agree that the imposts should be mainly, and may under any modification be safely relied on as a fit and convenient source of public revenue, they would so adjust and arrange the duties on foreign fabrics as to afford a gradual but adequate protection to American industry, and lessen our dependence on foreign nations, by securing a certain and ultimately a cheaper and better supply of our own wants from our own abundant resources. Both classes are equally sincere in their respective opinions, equally honest, equally patriotic, and desirous of advancing the prosperity of the country. In the discussion and consideration of these opposite opinions, for the purpose of ascertaining which has the support of truth and reason, we should, therefore, exercise every indulgence, and the greatest spirit of mutual moderation and

* See the Speech of John Randolph, on the same subject, at page 169—ante.

forbearance. And, in our deliberations on this great question, we should look fearlessly and truly at the actual condition of the country, retrace the causes which have brought us into it, and snatch, if possible, a view of the future. We should, above all, consult experience—the experience of other nations, as well as our own—as our truest and most unerring guide.

In casting our eyes around us, the most prominent circumstance which fixes our attention, and challenges our deepest regret, is the general distress which pervades the whole country. It is forced upon us by numerous facts of the most incontestable character. It is indicated by the diminished exports of native produce; by the depressed and reduced state of our foreign navigation; by our diminished commerce; by successive unthreshed crops of grain, perishing in our barns and barn-yards for the want of a market; by the alarming diminution of the circulating medium; by the numerous bankruptcies, not limited to the trading classes, but extending to all orders of society; by a universal complaint of the want of employment, and a consequent reduction of the wages of labor; by the ravenous pursuit after public situations, not for the sake of their honors and the performance of their public duties, but as a means of private subsistence; by the reluctant resort to the perilous use of paper money; by the intervention of legislation in the delicate relation between debtor and creditor; and, above all, by the low and depressed state of the value of almost every description of the whole mass of the property of the nation, which has, on an average, sunk not less than about fifty per centum within a few years. This distress pervades every part of the Union, every class of society; all feel it, though it may be felt, at different places, in different degrees. It is like the atmosphere which surrounds us—all must inhale it, and none can escape it. In some places it has burst upon our people, without a single mitigating circumstance to temper its severity. In others, more fortunate, slight alleviations have been experienced in the expenditure of the public revenue, and in other favoring causes. A few years ago, the planting interest consoled itself with its happy exemptions, but it has now reached this interest also, which experiences, though with less severity, the general suffering. It is most painful to me to attempt to sketch or to dwell on the gloom of this picture. But I have exaggerated nothing. Perfect fidelity to the original would have authorized me to have thrown on deeper and darker hues. And it is the duty of the statesman, no less than that of the physician, to survey, with a penetrating, steady, and undismayed eye, the actual condition of the subject on which he would operate; to probe to the bottom the diseases of the body politic, if he would apply efficacious remedies. We have not, thank God, suffered in any great degree for food. But distress, resulting from the absence of a supply of the mere physical wants of our nature, is not the only nor perhaps the keenest distress, to which we may be exposed. Moral and pecuniary suffering is, if possible, more poignant. It plunges its victim into hopeless despair. It poisons, it paralyzes, the spring and source of all useful exertion. Its unsparing action is collateral as well as direct. It falls with inexorable force at the same time upon the wretched family of embarrassment and insolvency, and upon its head. They are a faithful mirror, reflecting back upon him, at once, his own frightful image, and that, no less appalling, of the dearest objects of his affection. What is the CAUSE of this wide-spreading distress, of this deep depression, which we behold stamped on the public countenance? We are the same people. We have the same country. We cannot arraign the bounty of Providence. The showers still fall in the same grateful abundance. The sun still casts its genial and vivifying influence upon the land; and the land, fertile and diversified in its soils as ever, yields to the industrious cultivator, in boundless profusion, its accustomed fruits, its richest treasures. Our vigor is unimpaired. Our industry has ot relaxed. If ever the accusation of wasteful extravagance could be made against our people, it cannot now be justly preferred. They, on the contrary, for the few last years, at least, have been practising the most rigid economy. The causes, then, of our present affliction, whatever they may be, are human causes, and human causes not chargeable upon the people, in their private and individual relations.

What, again I would ask, is the CAUSE of the unhappy condition of our country, which I have faintly depicted? It is to be found in the fact, that during almost the whole existence of this government, we have shaped our industry, our navigation, and our commerce, in reference to an extraordinary war in Europe, and to foreign markets, which no longer exist; in the fact, that we have depended too much upon foreign sources of supply, and excited too little the native; in the fact that, while we have cultivated, with assiduous care, our foreign resources, we have suffered those at home to wither, in a state of neglect and abandonment.

The consequence of the termination of the war of Europe has been, the resumption of European commerce, European navigation, and the extension of European agriculture and European industry, in all its branches. Europe, therefore, has no longer occasion, to any thing like the same extent as that she had during her wars, for American commerce, American navigation, the produce of American industry. Europe, in commotion, and convulsed throughout all her members, is to America no longer the same Europe as she is now, tranquil, and watching with the most vigilant attention all her own peculiar interests, without regard to the operation of her policy upon us. The effect of this altered state of Europe upon us has been to circumscribe the employment of our marine, and greatly to reduce the value of the produce of our territorial labor. The further effect of

this twofold reduction has been, to decrease the value of all property, whether on the land or on the ocean, and which I suppose to be about fifty per centum. And the still further effect has been, to diminish the amount of our circulating medium, in a proportion not less, by its transmission abroad, or its withdrawal by the banking institutions, from a necessity which they could not control. The quantity of money, in whatever form it may be, which a nation wants, is in proportion to the total mass of its wealth, and to the activity of that wealth. A nation that has but little wealth, has but a limited want of money. In stating the fact, therefore, that the total wealth of the country has diminished, within a few years, in a ratio of about fifty per centum, we shall, at once, fully comprehend the inevitable reduction which must have ensued, in the total quantity of the circulating medium of the country. A nation is most prosperous when there is a gradual and untempting addition to the aggregate of its circulating medium. It is in a condition the most adverse, when there is a rapid diminution in the quantity of the circulating medium, and a consequent depression in the value of property. In the former case, the wealth of individuals insensibly increases, and income keeps ahead of expenditure. But in the latter instance, debts have been contracted, engagements made, and habits of expense established, in reference to the existing state of wealth and of its representative. When these come to be greatly reduced, individuals find their debts still existing, their engagements unexecuted, and their habits inveterate. They see themselves in the possession of the same property, on which, in good faith, they had bound themselves. But that property, without their fault, possesses no longer the same value; and hence discontent, impoverishment, and ruin, arise. Let us suppose, Mr. Chairman, that Europe was again the theatre of such a general war as recently raged throughout all her dominions—such a state of the war as existed in her greatest exertions and in our greatest prosperity; instantly there would arise a greedy demand for the surplus produce of our industry, for our commerce, for our navigation. The languor which now prevails in our cities, and in our seaports, would give way to an animated activity. Our roads and rivers would be crowded with the produce of the interior. Every where we should witness excited industry. The precious metals would reflow from abroad upon us. Banks, which have maintained their credit, would revive their business; and new banks would be established to take the place of those which have sunk beneath the general pressure. For it is a mistake to suppose that they have produced our present adversity; they may have somewhat aggravated it, but they were the effect and the evidence of our prosperity. Prices would again get up; the former value of property would be restored. And those embarthe augmented value of their property, and the renewal of their business, ample means to extricate themselves from all their difficulties. The greatest want of civilized society is, a market for the sale and exchange of the surplus of the produce of the labor of its members. This market may exist at home or abroad, or both; but it must exist somewhere, if society prospers; and, wherever it does exist, it should be competent to the absorption of the entire surplus of production. It is most desirable that there should be both a home and a foreign market. But, with respect to their relative superiority, I cannot entertain a doubt. The home market is first in order, and paramount in importance. The object of the bill under consideration, is, to create this home market, and to lay the foundations of a genuine American policy. It is opposed; and it is incumbent upon the partisans of the foreign policy (terms which I shall use without any invidious intent) to demonstrate that the foreign market is an adequate vent for the surplus produce of our labor. But is it so? First, foreign nations cannot, if they would, take our surplus produce. If the source of supply, no matter of what, increases in a greater ratio than the demand for that supply, a glut of the market is inevitable, even if we suppose both to remain perfectly unobstructed. The duplication of our population takes place in terms of about twenty-five years. The term will be more and more extended as our numbers multiply. But it will be a sufficient approximation to assume this ratio for the present. We increase, therefore, in population, at the rate of about four per centum per annum. Supposing the increase of our production to be in the same ratio, we should, every succeeding year, have of surplus produce, four per centum more than that of the preceding year, without taking into the account the differences of seasons which neutralize each other. If, therefore, we are to rely upon the foreign market exclusively, foreign consumption ought to be shown to be increasing in the same ratio of four per centum per annum, if it be an adequate vent for our surplus produce. But, as I have supposed the measure of our increasing production to be furnished by that of our increasing population, so the measure of their power of consumption must be determined by that of the increase of their population. Now, the total foreign population, who consume our surplus produce, upon an average, do not double their aggregate number in a shorter term than that of about one hundred years. Our powers of production increases then, in a ratio four times greater than their powers of consumption. And hence their utter inability to receive from us our surplus produce.

But, secondly, if they could, they will not. The policy of all Europe is adverse to the reception of our agricultural produce, so far as it comes into collision with its own; and under that limitation we are absolutely forbid to enter

The policy of all Europe rejects those great staples of our country which consist of objects of human subsistence. The policy of all Europe refuses to receive from us any thing but those raw materials of smaller value, essential to their manufactures, to which they can give a higher value, with the exception of tobacco and rice, which they cannot produce. Even Great Britain, to which we are its best customer, and from which we receive nearly one half in value of our whole imports, will not take from us articles of subsistence produced in our country cheaper than can be produced in Great Britain. In adopting this exclusive policy, the States of Europe do not inquire what is best for us, but what suits themselves respectively; they do not take jurisdiction of the question of our interests, but limit the object of their legislation to that of the conservation of their own peculiar interests, leaving us free to prosecute ours as we please. They do not guide themselves by that romantic philanthropy, which we see displayed here, and which invokes us to continue to purchase the produce of foreign industry, without regard to the state of prosperity of our own, that foreigners may be pleased to purchase the few remaining articles of ours, which their restricted policy has not yet absolutely excluded from their consumption. What sort of a figure would a member of the British Parliament have made, what sort of a reception would his opposition have obtained, if he had remonstrated against the passage of the corn-law, by which British consumption is limited to the bread-stuffs of British production, to the entire exclusion of American, and stated, that America could not and would not buy British manufactures, if Britain did not buy American flour?

Both the inability and the policy of foreign powers, then, forbid us to rely upon the foreign market, as being an adequate vent for the surplus produce of American labor. Now let us see if this general reasoning is not fortified and confirmed by the actual experience of this country. If the foreign market may be safely relied upon, as furnishing an adequate demand for our surplus produce, then the official documents will show a progressive increase, from year to year, in the exports of our native produce, in a proportion equal to that which I have suggested. If, on the contrary, we shall find from them that, for a long term of past years, some of our most valuable staples have retrograded, some remained stationary, and others advanced but little, if any, in amount, with the exception of cotton, the deductions of reason and the lessons of experience will alike command us to withdraw our confidence in the competency of the foreign market. The total amount of all our exports of domestic produce for the year, beginning in 1795, and ending on the thirtieth of September, 1796, was forty millions seven hundred and sixty-four thousand and ninety-seven. Estimating the increase according to the ratio of the increase of our population, that is, at four per centum per annum, the amount of the exports of the same produce, in the year ending on the thirtieth of September last, ought to have been eighty-five millions four hundred and twenty thousand eight hundred and sixty-one. It was, in fact, only forty-seven millions one hundred and fifty-five thousand four hundred and eight. Taking the average of five years, from 1803 to 1807, inclusive, the amount of native produce exported, was forty-three millions two hundred and two thousand seven hundred and fifty-one for each of those years. Estimating what it ought to have been, during the last year, applying the principle suggested to that amount, there should have been exported seventy-seven millions seven hundred and sixty-six thousand seven hundred and fifty-one, instead of forty-seven millions one hundred and fifty-five thousand four hundred and eight. If these comparative amounts of the aggregate actual exports, and what they ought to have been, be discouraging, we shall find, on descending into particulars, still less cause of satisfaction. The export of tobacco in 1791, was one hundred and twelve thousand four hundred and twenty-eight hogsheads. That was the year of the largest exportation of that article; but it is the only instance in which I have selected the maximum of exportation. The amount of what we ought to have exported last year, estimated according to the scale of increase which I have used, is two hundred and sixty-six thousand three hundred and thirty-two hogsheads. The actual export was ninety-nine thousand and nine hogsheads. We exported, in 1803, the quantity of one million three hundred and eleven thousand eight hundred and fifty-three barrels of flour; and ought to have exported last year, two millions three hundred and sixty-one thousand three hundred and thirty-three barrels. We, in fact, exported only seven hundred and fifty-six thousand seven hundred and two barrels. Of that quantity, we sent to South America one hundred and fifty thousand barrels, according to a statement furnished me by the diligence of a friend near me (Mr. Poinsett), to whose valuable mass of accurate information, in regard to that interesting quarter of the world, I have had occasion frequently to apply. But that demand is temporary, growing out of the existing state of war. Whenever peace is restored to it, and I now hope that the day is not distant when its independence will be generally acknowledged, there cannot be a doubt that it will supply its own consumption. In all parts of it, the soil, either from climate or from elevation, is well adapted to the culture of wheat; and nowhere can better wheat be produced, than in some portions of Mexico and Chili. Still the market of South America is one which, on other accounts, deserves the greatest consideration. And I congratulate you, the committee, and the country, on the recent adoption of a more auspicious policy toward it.

We exported, in 1803, Indian corn to the amount of two millions seventy-four thousand six hundred and eight bushels. The quantity

should have been, in 1823, three millions seven hundred and thirty-four thousand two hundred and eighty-eight bushels. The actual quantity exported, was seven hundred and forty-nine thousand and thirty-four bushels, or about one-fifth of what it should have been, and a little more than one-third of what it was more than twenty years ago. We ought not, then, to be surprised at the extreme depression of the price of that article, of which I have heard my honorable friend (Mr. Bassett) complain, nor of the distress of the corn-growing districts adjacent to the Chesapeake Bay. We exported seventy-seven thousand nine hundred and thirty-four barrels of beef in 1803, and last year but sixty-one thousand four hundred and eighteen, instead of one hundred and forty thousand two hundred and seventy-four barrels. In the same year (1803) we exported ninety-six thousand six hundred and two barrels of pork, and last year fifty-five thousand five hundred and twenty-nine, instead of one hundred and seventy-three thousand eight hundred and eighty-two barrels. Rice has not advanced, by any means, in the proportion, which it ought to have done. All the small articles, such as cheese, butter, candles, and so forth, too minute to detail, but important in their aggregate, have also materially diminished. Cotton alone has advanced. But, while the quantity of it is augmented, its actual value is considerably diminished. The total quantity last year, exceeded that of the preceding year, by nearly thirty millions of pounds. And yet the total value of the year of smaller exportation, exceeded that of the last year by upward of three and a half millions of dollars. If this article, the capacity of our country to produce which was scarcely known in 1790, were subtracted from the mass of our exports, the value of the residue would only be a little upward of twenty-seven millions during the last year. The distribution of the articles of our exports throughout the United States, cannot fail to fix the attention of the committee. Of the forty-seven millions one hundred and fifty-five thousand four hundred and eight, to which they amounted last year, three articles alone (cotton, rice, and tobacco) composed together twenty-eight millions five hundred and forty-nine thousand one hundred and seventy-seven. Now these articles are chiefly produced at the South. And if we estimate that portion of our population who are actually engaged in their culture, it would probably not exceed two millions. Thus, then, less than one-fifth of the whole population of the United States produced upward of one-half, nearly two-thirds, of the entire value of the exports of the last year.

Is this foreign market, so incompetent at present, and which, limited as its demands are, operates so unequally upon the productive labor of our country, likely to improve in future? If I am correct in the views which I have presented to the committee, it must become worse and worse. What can improve it? Europe will not abandon her own agriculture to foster ours. We may even anticipate that she will more and more enter into competition with us in the supply of the West India market. That of South America, for articles of subsistence, will probably soon vanish. The value of our exports, for the future, may remain at about what it was last year. But, if we do not create some new market; if we persevere in the existing pursuits of agriculture, the inevitable consequence must be, to augment greatly the quantity of our produce, and to lessen its value in the foreign market. Can there be a doubt on this point? Take the article of cotton, for example, which is almost the only article that now remunerates labor and capital. A certain description of labor is powerfully attracted toward the cotton-growing country. The cultivation will be greatly extended, the aggregate amount annually produced, will be vastly augmented. The price will fall. The more unfavorable soils will then be gradually abandoned. And I have no doubt that, in a few years, it will cease to be profitably produced, any where north of the thirty-fourth degree of latitude. But, in the mean time, large numbers of the cotton-growers will suffer the greatest distress. And while this distress is brought upon our own country, foreign industry will be stimulated by the very cause which occasions our distress. For, by surcharging the markets abroad, the price of the raw material being reduced, the manufacturer will be able to supply cotton fabrics cheaper; and the consumption, in his own country, and in foreign nations, other than ours (where the value of the import must be limited to the value of the export, which I have supposed to remain the same), being proportionably extended, there will be, consequently, an increased demand for the produce of his industry.

Our agriculture is our greatest interest. It ought ever to be predominant. All others should bend to it. And, in considering what is for its advantage, we should contemplate it in all its varieties, of planting, farming, and grazing. Can we do nothing to invigorate it; nothing to correct the errors of the past, and to brighten the still more unpromising prospects which lie before us? We have seen, I think, the causes of the distresses of the country. We have seen, that an exclusive dependence upon the foreign market must lead to still severer distress, to impoverishment, to ruin. We must then change somewhat our course. We must give a new direction to some portion of our industry. We must speedily adopt a genuine American policy. Still cherishing the foreign market, let us create also a home market, to give further scope to the consumption of the produce of American industry. Let us counteract the policy of foreigners, and withdraw the support which we now give to their industry, and stimulate that of our own country. It should be a prominent object with wise legislators, to multiply the vocations and extend the business of society, as far as it can be done, by the protection of our interests at home,

against the injurious effects of foreign legislation. Suppose we were a nation of fishermen, or of skippers, to the exclusion of every other occupation, and the legislature had the power to introduce the pursuits of agriculture and manufactures, would not our happiness be promoted by an exertion of its authority? All the existing employments of society—the learned professions—commerce—agriculture—are now overflowing. We stand in each other's way. Hence the want of employment. Hence the eager pursuit after public stations, which I have before glanced at. I have been again and again shocked, during this session, by instances of solicitation for places, before the vacancies existed. The pulse of incumbents, who happen to be taken ill, is not marked with more anxiety by the attending physicians, than by those who desire to succeed them, though with very opposite feelings. Our old friend, the faithful sentinel, who has stood so long at our door, and the gallantry of whose patriotism deserves to be noticed, because it was displayed when that virtue was most rare and most wanted, on a memorable occasion in this unfortunate city, became indisposed some weeks ago. The first intelligence which I had of his dangerous illness, was by an application for his unvacated place. I hastened to assure myself of the extent of his danger, and was happy to find that the eagerness of succession outstripped the progress of disease. By creating a new and extensive business, then, we would not only give employment to those who want it, and augment the sum of national wealth, by all that this new business would create, but we should meliorate the condition of those who are now engaged in existing employments. In Europe, particularly Great Britain, their large standing armies, large navies, large even on their peace arrangement, their established church, afford to their population employments, which, in that respect, the happier constitution of our government does not tolerate but in a very limited degree. The peace establishments of our army and our navy are extremely small, and I hope ever will be. We have no established church, and I trust never shall have. In proportion as the enterprise of our citizens in public employments is circumscribed, should we excite and invigorate it in private pursuits.

The creation of a home market is not only necessary to procure for our agriculture a just reward for its labors, but it is indispensable to obtain a supply for our necessary wants. If we cannot sell, we cannot buy. That portion of our population (and we have seen that it is not less than four fifths), which makes comparatively nothing that foreigners will buy, has nothing to make purchases with from foreigners. It is in vain that we are told of the amount of our exports supplied by the planting interest. They may enable the planting interest to supply all its wants; but they bring no ability to the interests not planting; unless, which cannot be pretended, the planting interest was an adequate vent for the surplus produce of the labor of all other interests. It is in vain to tantalize us with the greater cheapness of foreign fabrics. There must be an ability to purchase, if an article be obtained, whatever may be the price, high or low, at which it is sold. And a cheap article is as much beyond the grasp of him who has no means to buy, as a high one. Even if it were true that the American manufacturer would supply consumption at dearer rates, it is better to have his fabrics than the unattainable foreign fabrics; because it is better to be ill supplied than not supplied at all. A coarse coat, which will communicate warmth and cover nakedness, is better than no coat. The superiority of the home market results, first, from its steadiness and comparative certainty at all times; secondly, from the creation of reciprocal interest; thirdly, from its greater security; and lastly, from an ultimate and not distant augmentation of consumption (and consequently of comfort), from increased quantity and reduced prices. But this home market, highly desirable as it is, can only be created and cherished by the protection of our own legislation against the inevitable prostration of our industry, which must ensue from the action of foreign policy and legislation. The effect and the value of this domestic care of our own interests will be obvious from a few facts and considerations. Let us suppose that half a million of persons are now employed abroad in fabricating, for our consumption, those articles, of which by the operation of this bill, a supply is intended to be provided within ourselves. That half a million of persons are, in effect, subsisted by us; but their actual means of subsistence are drawn from foreign agriculture. If we could transport them to this country, and incorporate them in the mass of our own population, there would instantly arise a demand for an amount of provisions equal to that which would be requisite for their subsistence throughout the whole year. That demand, in the article of flour alone, would not be less than the quantity of about nine hundred thousand barrels, besides a proportionate quantity of beef, and pork, and other articles of subsistence. But nine hundred thousand barrels of flour exceeds the entire quantity exported last year, by nearly one hundred and fifty thousand barrels. What activity would not this give, what cheerfulness would it not communicate, to our now dispirited farming interest! But if, instead of these five hundred thousand artisans emigrating from abroad, we give, by this bill, employment to an equal number of our own citizens, now engaged in unprofitable agriculture, or idle from the want of business, the beneficial effect upon the productions of our farming labor would be nearly doubled. The quantity would be diminished by a subtraction of the produce from the labor of all those who should be diverted from its pursuits to manufacturing industry, and the value of the residue would be enhanced, both by that diminution and the creation of the home mar-

ket, to the extent supposed. And the honorable gentleman from Virginia may repress any apprehensions which he entertains, that the plow will be abandoned, and our fields remain unsown. For, under all the modifications of social industry, if you will secure to it a just reward, the greater attractions of agriculture will give to it that proud superiority which it has always maintained. If we suppose no actual abandonment of farming, but, what is most likely, a gradual and imperceptible employment of population in the business of manufacturing, instead of being compelled to resort to agriculture, the salutary effect would be nearly the same. Is any part of our common country likely to be injured by a transfer of the theatre of fabrication, for our own consumption, from Europe to America? All that those parts, if any there be, which will not, and cannot engage in manufactures, should require, is, that their consumption should be well supplied; and if the objects of that consumption are produced in other parts of the Union, that can manufacture, far from having on that account any just cause of complaint, their patriotism will and ought to inculcate a cheerful acquiescence in what essentially contributes, and is indispensably necessary, to the prosperity of the common family.

The great desideratum in political economy is the same as in private pursuits; that is, what is the best application of the aggregate industry of a nation, that can be made honestly to produce the largest sum of national wealth? Labor is the source of all wealth; but it is not natural labor only. And the fundamental error of the gentleman from Virginia, and of the school to which he belongs, in deducing, from our sparse population, our unfitness for the introduction of the arts, consists in their not sufficiently weighing the importance of the power of machinery. In former times, when but little comparative use was made of machinery, manual labor, and the price of wages, were circumstances of the greatest consideration. But it is far otherwise in these latter times. Such are the improvements and the perfection of machinery, that, in analyzing the compound value of many fabrics, the element of natural labor is so inconsiderable as almost to escape detection. This truth is demonstrated by many facts. Formerly, Asia, in consequence of the density of the population, and the consequent lowness of wages, laid Europe under tribute for many of her fabrics. Now Europe reacts upon Asia, and Great Britain, in particular, throws back upon her countless millions of people the rich treasures produced by artificial labor, to a vast amount, infinitely cheaper than they can be manufactured by the natural exertions of that portion of the globe. But Britain is herself the most striking illustration of the immense power of machinery. Upon what other principle can you account for the enormous wealth which she has accumulated, and which she annually pro-

several years ago, estimated the total amount of the artificial or machine labor of the nation, to be equal to that of one hundred millions of able-bodied laborers. Subsequent estimates of her artificial labor, at the present day, carry it to the enormous height of two hundred millions. But the population of the three kingdoms is twenty-one millions five hundred thousand. Supposing, that to furnish able-bodied labor to the amount of four millions, the natural labor will be but two per centum of the artificial labor. In the production of wealth she operates, therefore, by a power (including the whole population) of two hundred and twenty-one millions five hundred thousand; or, in other words, by a power eleven times greater than the total of her natural power. If we suppose the machine-labor of the United States to be equal to that of ten millions of able-bodied men, the United States will operate, in the creation of wealth, by a power (including all their population) of twenty millions. In the creation of wealth, therefore, the power of Great Britain, compared to that of the United States, is as eleven to one. That these views are not imaginary, will be, I think, evinced by contrasting the wealth, the revenue, the power, of the two countries. Upon what other hypothesis can we explain those almost incredible exertions which Britain made during the late wars of Europe? Look at her immense subsidies! Behold her standing, unaided and alone, and breasting the storm of Napoleon's colossal power, when all continental Europe owned and yielded to its irresistible sway; and finally, contemplate her vigorous prosecution of the war, with and without allies, to its splendid termination on the ever-memorable field of Waterloo! The British works which the gentleman from Virginia has quoted, portray a state of the most wonderful prosperity, in regard to wealth and resources, that ever was before contemplated. Let us look a little into the semi-official pamphlet, written with great force, clearness, and ability, and the valuable work of Lowe, to both of which that gentleman has referred. The revenue of the United Kingdom amounted, during the latter years of the war, to seventy millions of pounds sterling; and one year it rose to the astonishing height of ninety millions sterling, equal to four hundred millions of dollars. This was actual revenue, made up of real contributions, from the purses of the people. After the close of the war, ministers slowly and reluctantly reduced the military and naval establishments, and accommodated them to a state of peace. The pride of power, every where the same, always unwillingly surrenders any of those circumstances, which display its pomp and exhibit its greatness. Cotemporaneous with this reduction, Britain was enabled to lighten some of the heaviest burdens of taxation, and particularly that most onerous of all, the income tax. In this lowered state, the revenue of peace, gradually rising from the momentary depression

1822, the vast amount of fifty-five millions sterling, upward of two hundred and forty millions of dollars, and more than eleven times that of the United States for the same year; thus indicating the difference, which I have suggested, in the respective productive powers of the two countries. The excise alone (collected under twenty-five different heads) amounted to twenty-eight millions, more than one-half of the total revenue of the kingdom. This great revenue allows Great Britain to constitute an efficient sinking fund of five millions sterling, being an excess of actual income beyond expenditure, and amounting to more than the entire revenue of the United States.

If we look at the commerce of England, we shall perceive that its prosperous condition no less denotes the immensity of her riches. The average of three years' exports, ending in 1789, was between thirteeen and fourteen millions. The average for the same term, ending in 1822, was forty millions sterling. The average of the imports for three years, ending in 1789, was seventeen millions. The average for the same term, ending in 1822, was thirty-six millions, showing a favorable balance of four millions. Thus, in a period not longer than that which has elapsed since the establishment of our constitution, have the exports of that kingdom been tripled; and this has mainly been the effect of the power of machinery. The total amount of the commerce of Great Britain is greater since the peace, by one-fourth, than it was during the war. The average of her tonnage, during the most flourishing period of the war, was two millions four hundred thousand tons. Its average, during the three years, 1819, 1820, and 1821, was two millions six hundred thousand—exhibiting an increase of two hundred thousand tons. If we glance at some of the more prominent articles of her manufactures, we shall be assisted in comprehending the true nature of the sources of her riches. The amount of cotton fabrics exported, in the most prosperous year of the war, was eighteen millions sterling. In the year 1820 it was sixteen millions six hundred thousand; in 1821, twenty millions five hundred thousand; in 1822, twenty-one millions six hundred and thirty-nine thousand pounds sterling—presenting the astonishing increase, in two years, of upward of five millions. The total amount of imports in Great Britain, from all foreign ports, of the article of cotton wool, is five millions sterling. After supplying most abundantly the consumption of cotton fabrics within the country (and a people better fed, and clad, and housed, are not to be found under the sun than the British nation) by means of her industry, she gives to this cotton wool a new value, which enables her to sell to foreign nations to the amount of twenty-one millions six hundred and thirty-nine thousand pounds, making a clear profit of upward of sixteen millions five hundred thousand pounds sterling! *In 1821, the value of the export of woollen manufactures was four millions three hundred thousand pounds. In 1822, it was five millions five hundred thousand pounds. The success of her restrictive policy is strikingly illustrated in the article of silk. In the manufacture of that article she labors under great disadvantages, besides that of not producing the raw material. She has subdued them all, and the increase of the manufacture has been most rapid. Although she is still unable to maintain, in foreign countries, a successful competition with the silks of France, of India, and of Italy, and therefore exports but little, she gives to the two millions of the raw material which she imports, in various forms, a value of ten millions, which chiefly enter into British consumption. Let us suppose that she was dependent upon foreign nations for these ten millions, what an injurious effect would it not have upon her commercial relations with them! The average of the exports of British manufactures, during the peace, exceeds the average of the most productive years of the war. The amount of her wealth, annually produced, is three hundred and fifty millions sterling; bearing a large proportion to all of her pre-existing wealth. The agricultural portion of it is said, by the gentleman from Virginia, to be greater than that created by any other branch of her industry. But that flows mainly from a policy similar to that proposed by this bill. One-third only of her population is engaged in agriculture; the other two-thirds furnishing a market for the produce of that third. Withdraw this market, and what becomes of her agriculture? The power and the wealth of Great Britain cannot be more strikingly illustrated than by a comparison of her population and revenue with those of other countries and with our own.

Here Mr. Clay exhibited the following table, made out from authentic materials.

	Population.	Taxes and public burdens.	Taxation. per capita.
Russia in Europe,	37,000,000	£17,000,000	£0 9 9
France, including Corsica,	30,700,000	37,000,000	1 4 0
Great Britain, exclusive of Ireland (the taxes computed according to the value of money on the European continent).	14,500,000	40,000,000	2 15 0
Great Britain & Ireland collectively,	21,500,000	44,000,000	2 0 0
England alone,	11,600,000	86,000,000	3 2 0
Spain,	11,000,000	6,000,000	0 11 0
Ireland,	7,000,000	4,000,000	0 11 0
The United States of America,	10,000,000	4.500,000	0 9 0

From this exhibit we must remark, that the wealth of Great Britain, and consequently her power, is greater than that of any of the other nations with which it is compared. The amount of the contributions which she draws from the pockets of her subjects is not referred to for imitation, but as indicative of their wealth. The burden of taxation is always relative to the ability of the subjects of it. A

poor nation can pay but little. And the heavier taxes of British subjects, for example, in consequence of their greater wealth, may be more easily borne, than the much lighter taxes of Spanish subjects, in consequence of their extreme poverty. The object of wise governments should be, by sound legislation, so to protect the industry of their own citizens against the policy of foreign powers, as to give to it the most expansive force in the production of wealth. Great Britain has ever acted, and still acts, on this policy. She has pushed her protection of British interest further than any other nation has fostered its industry. The result is, greater wealth among her subjects, and consequently greater ability to pay their public burdens. If their taxation is estimated by their natural labor alone, nominally it is greater than the taxation of the subjects of any other power. But, if on a scale of their natural and artificial labor, compounded, it is less than the taxation of any other people. Estimating it on that scale, and assuming the aggregate of the natural and artificial labor of the United Kingdom to be what I have already stated, two hundred and twenty-one millions five hundred thousand, the actual taxes paid by a British subject are only about three and seven-pence sterling. Estimating our own taxes on a similar scale—that is, supposing both descriptions of labor to be equal to that of twenty millions of able-bodied persons—the amount of tax paid by each soul in the United States is four shillings and six-pence sterling.

The committee will observe from that table, that the measure of the wealth of a nation is indicated by the measure of its protection of its industry; and that the measure of the poverty of a nation is marked by that of the degree in which it neglects and abandons the care of its own industry, leaving it exposed to the action of foreign powers. Great Britain protects most her industry, and the wealth of Great Britain is consequently the greatest. France is next in the degree of protection, and France is next in the order of wealth. Spain most neglects the duty of protecting the industry of her subjects, and Spain is one of the poorest of European nations. Unfortunate Ireland, disinherited, or rendered in her industry subservient to England, is exactly in the same state of poverty with Spain, measured by the rule of taxation. And the United States are still poorer than either.

The views of British prosperity, which I have endeavored to present, show that her protecting policy is adapted alike to a state of war and of peace. Self-poised, resting upon her own internal resources, possessing a home market, carefully cherished and guarded, she is ever prepared for any emergency. We have seen her coming out of a war of incalculable exertion, and of great duration, with her power unbroken, her means undiminished. We have seen that almost every revolving year of peace has brought along with it an increase of her manufactures, of her commerce, and, consequently, of her navigation. We have seen that, constructing her prosperity upon the solid foundation of her own protecting policy, it is unaffected by the vicissitudes of other states. What is our own condition? Depending upon the state of foreign powers, confiding exclusively in a foreign, to the culpable neglect of a domestic policy, our interests are affected by all their movements. Their wars, their misfortunes, are the only source of our prosperity. In their peace and our peace we behold our condition the reverse of that of Great Britain, and all our interests stationary or declining. Peace brings to us none of the blessings of peace. Our system is anomalous; alike unfitted to general tranquillity, and to a state of war or peace on the part of our own country. It can succeed only in the rare occurrence of a general state of war throughout Europe. I am no eulogist of England. I am far from recommending her systems of taxation. I have adverted to them only as manifesting her extraordinary ability. The political and foreign interests of that nation may have been, as I believe them to have been, often badly managed. Had she abstained from the wars into which she has been plunged by her ambition, or the mistaken policy of her ministers, the prosperity of England would, unquestionably, have been much greater. But it may happen that the public liberty and the foreign relations of a nation have been badly provided for, and yet that its political economy has been wisely managed. The alacrity or sullenness with which a people pay taxes depends upon their wealth or poverty. If the system of their rulers leads to their impoverishment, they can contribute but little to the necessities of the state; if to their wealth, they cheerfully and promptly pay the burdens imposed on them. Enormous as British taxation appears to be, in comparison with that of other nations, but really lighter, as it in fact is, when we consider its great wealth and its powers of production, that vast amount is collected with the most astonishing regularity.

Having called the attention of the committee to the present adverse state of our country, and endeavored to point out the causes which have led to it; having shown that similar causes, wherever they exist in other countries, lead to the same adversity in their condition; and having shown that, wherever we find opposite causes prevailing, a high and animating state of national prosperity exists, the committee will agree with me in thinking that it is the solemn duty of government to apply a remedy to the evils which afflict our country, if it can apply one. Is there no remedy within the reach of the government? Are we doomed to behold our industry languish and decay yet more and more? But there is a remedy, and that remedy consists in modifying our foreign policy, and in adopting a genuine AMERICAN SYSTEM. We must naturalize the arts in our country; and we must naturalize them by the only means

which the wisdom of nations has yet discovered to be effectual; by adequate protection against the otherwise overwhelming influence of foreigners. This is only to be accomplished by the establishment of a tariff, to the consideration of which I am now brought.

And what is this tariff? It seems to have been regarded as a sort of monster, huge and deformed—a wild beast, endowed with tremendous powers of destruction, about to be let loose among our people, if not to devour them, at least to consume their substance. But let us calm our passions, and deliberately survey this alarming, this terrific being. The sole object of the tariff is to tax the produce of foreign industry, with the view of promoting American industry. The tax is exclusively levelled at foreign industry. That is the avowed and the direct purpose of the tariff. If it subjects any part of American industry to burdens, that is an effect not intended, but is altogether incidental, and perfectly voluntary.

It has been treated as an imposition of burdens upon one part of the community by design, for the benefit of another; as if, in fact, money were taken from the pockets of one portion of the people and put into the pockets of another. But is that a fair representation of it? No man pays the duty assessed on the foreign article by compulsion, but voluntarily; and this voluntary duty, if paid, goes into the common exchequer, for the common benefit of all. Consumption has four objects of choice. First, it may abstain from the use of the foreign article, and thus avoid the payment of the tax. Second, it may employ the rival American fabric. Third, it may engage in the business of manufacturing, which this bill is designed to foster. Fourth, or it may supply itself from the household manufactures. But it is said by the honorable gentleman from Virginia, that the South, owing to the character of a certain portion of its population, cannot engage in the business of manufacturing. Now I do not agree in that opinion to the extent in which it is asserted. The circumstance alluded to may disqualify the South from engaging in every branch of manufacture, as largely as other quarters of the Union, but to some branches of it, that part of our population is well adapted. It indisputably affords great facility in the household or domestic line. But if the gentleman's premises were true, could his conclusion be admitted? According to him, a certain part of our population, happily much the smallest, is peculiarly situated. The circumstance of its degradation unfits it for the manufacturing arts. The well-being of the other, and the larger part of our population, requires the introduction of those arts. What is to be done in this conflict? The gentleman would have us abstain from adopting a policy called for by the interest of the greater and freer part of our population. But is that reasonable? Can it be expected that the interests of the greater part should be made to bend to the condition of the servile part of our population? That, in effect, would be to make us the slaves of slaves. I went, with great pleasure, along with my Southern friends, and I am ready again to unite with them in protesting against the exercise of any legislative power, on the part of Congress, over that delicate subject, because it was my solemn conviction, that Congress was interdicted, or at least not authorized, by the Constitution, to exercise any such legislative power. And I am sure that the patriotism of the South may be exclusively relied upon to reject a policy which should be dictated by considerations altogether connected with that degraded class, to the prejudice of the residue of our population. But does not a perseverance in the foreign policy, as it now exists in fact, make all parts of the Union, not planting, tributary to the planting parts? What is the argument? It is that we must continue freely to receive the produce of foreign industry, without regard to the protection of American industry, that a market may be retained for the sale abroad of the produce of the planting portion of the country; and that, if we lessen in all parts of America—those which are not planting as well as the planting sections—the consumption of foreign manufactures, we diminish to that extent the foreign market for the planting produce. The existing state of things, indeed, presents a sort of tacit compact between the cotton-grower and the British manufacturer, the stipulations of which are, on the part of the cotton-grower, that the whole of the United States, the other portions as well as the cotton-growing, shall remain open and unrestricted in the consumption of British manufactures; and, on the part of the British manufacturer, that in consideration thereof, he will continue to purchase the cotton of the South. Thus, then, we perceive that the proposed measure, instead of sacrificing the South to the other parts of the Union, seeks only to preserve them from being absolutely sacrificed under the operation of the tacit compact which I have described. Supposing the South to be actually incompetent, or disinclined, to embark at all in the business of manufacturing, is not its interest, nevertheless, likely to be promoted by creating a new and an American source of supply for its consumption? Now foreign powers, and Great Britain principally, have the monopoly of the supply of Southern consumption. If this bill should pass, an American competitor, in the supply of the South, would be raised up, and ultimately, I cannot doubt, that it will be supplied more cheaply and better. I have before had occasion to state, and will now again mention, the beneficial effects of American competition with Europe, in furnishing a supply of the article of cotton bagging. After the late war, the influx of the Scottish manufacture prostrated the American establishments. The consequence was, that the Scotch possessed the monopoly of the supply; and the price of it rose, and attained, the year before the last, a height which amounted to more than an equivalent for ten

years' protection to the American manufacturer. This circumstance tempted American industry again to engage in the business, and several valuable manufactories have been established in Kentucky. They have reduced the price of the fabric very considerably; but, without the protection of government, they may again be prostrated, and then, the Scottish manufacturer, engrossing the supply of our consumption, the price will probably again rise. It has been tauntingly asked, if Kentucky cannot maintain herself in a competition with the two Scottish towns of Inverness and Dundee? But is that a fair statement of the case? Those two towns are cherished and sustained by the whole protecting policy of the British empire, while Kentucky cannot, and the general government will not, extend a like protection to the few Kentucky villages in which the article is made.

If the cotton-growing consumption could be constitutionally exempted from the operation of this bill, it might be fair to exempt it, upon the condition that foreign manufactures, the proceeds of the sale of cotton abroad, should not enter at all into the consumption of the other parts of the United States. But such an arrangement as that, if it could be made, would probably be objected to by the cotton-growing country itself.

Second. The second objection to the proposed bill, is, that it will diminish the amount of our exports. It can have no effect upon our exports, except those which are sent to Europe. Except tobacco and rice, we send there nothing but the raw materials. The argument is, that Europe will not buy of us, if we do not buy of her. The first objection to it is, that it calls upon us to look to the question, and to take care of European ability in legislating for American interests. Now if, in legislating for their interests, they would consider and provide for our ability, the principle of reciprocity would enjoin us so to regulate our intercourse with them, as to leave their ability unimpaired. But I have shown that, in the adoption of their own policy, their inquiry is strictly limited to a consideration of their peculiar interests, without any regard to that of ours. The next remark I would make is, that the bill only operates upon certain articles of European industry, which it is supposed our interest requires us to manufacture within ourselves; and although its effect will be to diminish the amount of our imports of those articles, it leaves them free to supply us with any other produce of their industry. And since the circle of human comforts, refinements, and luxuries, is of great extent, Europe will still find herself able to purchase from us what she has hitherto done, and to discharge the debt in some of those objects. If there be any diminution in our exports to Europe, it will probably be in the article of cotton to Great Britain. I have stated that Britain buys cotton wool to the amount of about five millions sterling, and sells to foreign States to the amount of upward of twenty-one millions and a half. Of this sum, we take a little upward of a million and a half. The residue, of about twenty millions, she must sell to other foreign powers than to the United States. Now their market will continue open to her, as much after the passage of this bill, as before. She will therefore require from us the raw material to supply their consumption. But, it is said, she may refuse to purchase from us, and seek a supply elsewhere. There can be but little doubt that she now resorts to us, because we can supply her more cheaply and better than any other country. And it would be unreasonable to suppose that she would cease, from any pique toward us, to pursue her own interest. Suppose she was to decline purchasing from us. The consequence would be, that she would lose the market for the twenty millions sterling, which she now sells other foreign powers, or enter it under a disadvantageous competition with us, or with other nations, who should obtain their supplies of the raw material from us. If there should be any diminution, therefore, in the exportation of cotton, it would only be in the proportion of about one and a half of twenty; that is, a little upward of five per centum; the loss of a market for which, abroad, would be fully compensated by the market for the article created at home. Lastly, I would observe, that the new application of our industry, producing new objects of exportation, and they possessing much greater value than in the raw state, we should be, in the end, amply indemnified by their exportation. Already the item in our foreign exports of manufactures is considerable; and we know that our cotton fabrics have been recently exported in a large amount to South America, where they maintain a successful competition with those of any other country.

Third. The third objection to the tariff is, that it will diminish our navigation. This great interest deserves every encouragement, consistent with the paramount interest of agriculture. In the order of nature it is secondary to both agriculture and manufactures. Its business is the transportation of the productions of those two superior branches of industry. It cannot therefore be expected, that they shall be moulded and sacrificed to suit its purposes; but on the contrary, navigation must accommodate itself to the actual state of agriculture and manufactures. If, as I believe, we have nearly reached the maximum in value of our exports of raw produce to Europe, the effect hereafter will be, as it respects that branch of our trade, if we persevere in the foreign system, to retain our navigation at the point which it has now reached. By reducing, indeed, as will probably take place, the price of our raw materials, a further quantity of them could be exported, and, of course, additional employment might, in that way, be given to our tonnage; but that would be at the expense of the agricultural interest. If I am right in supposing that no effect will be produced by this measure upon any other branch of our export trade, but that to Europe; that, with regard to that, there will be no sensible

diminution of our exports; and the new direction given to a portion of our industry will produce other objects of exportation; the probability is, that our foreign tonnage will be even increased under the operation of this bill. But, if I am mistaken in these views, and it should experience any reduction, the increase in our coasting tonnage, resulting from the greater activity of domestic exchanges, will more than compensate the injury. Although our navigation partakes in the general distress of the country, it is less depressed than any other of our great interests. The foreign tonnage has been gradually, though slowly, increasing since 1818. And our coasting tonnage, since 1816, has increased upwards of one hundred thousand tons.

Fourth. It is next contended that the effect of the measure will be to diminish our foreign commerce. The objection assumes, what I have endeavored to controvert, that there will be a reduction in the value of our exports. Commerce is an exchange of commodities. Whatever will tend to augment the wealth of a nation must increase its capacity to make these exchanges. By new productions, or creating new values in the fabricated forms which shall be given to old objects of our industry, we shall give to commerce a fresh spring, a new aliment. The foreign commerce of the country, from causes, some of which I have endeavored to point out, has been extended as far as it can be. And I think there can be but little doubt that the balance of trade is, and for some time past has been, against us. I was surprised to hear the learned gentleman from Massachusetts (Mr. Webster) rejecting, as a detected and exploded fallacy, the idea of a balance of trade. I have not time nor inclination now to discuss that topic. But I will observe, that all nations act upon the supposition of the reality of its existence, and seek to avoid a trade, the balance of which is unfavorable, and to foster that which presents a favorable balance. However the account be made up, whatever may be the items of a trade, commodities, fishing industry, marine labor, the carrying trade, all of which I admit should be comprehended, there can be no doubt, I think, that the totality of the exchanges of all descriptions, made by one nation with another, or against the totality of the exchanges of all other nations together, may be such as to present the state of an unfavorable balance with the one or with all. It is true that, in the long run, the measures of these exchanges, that is, the totality in value of what is given and of what is received, must be equal to each other. But great distress may be felt long before the counterpoise can be effected. In the mean time, there will be an export of the precious metals to the deep injury of internal trade, an unfavorable state of exchange, an export of public securities, a resort to credit, debt, mortgages. Most of, if not all, these circumstances, are believed now to be indicated by our country. But have we received, for example, for the public stocks sent to England? Goods. But those stocks are our bond, which must be paid. Although the solidity of the credit of the English public securities is not surpassed by that of our own, strong as it justly is, when have we seen English stocks sold in our market, and regularly quoted in the prices current, as American stocks are in England? An unfavorable balance with one nation, may be made up by a favorable balance with other nations; but the fact of the existence of that unfavorable balance is strong presumptive evidence against the trade. Commerce will regulate itself! Yes, and the extravagance of a spendthrift heir, who squanders the rich patrimony which has descended to him, will regulate itself ultimately. But it will be a regulation which will exhibit him in the end safely confined within the walls of a jail. Commerce will regulate itself! But is it not the duty of wise governments to watch its course, and, beforehand, to provide against even distant evils, by prudent legislation, stimulating the industry of their own people, and checking the policy of foreign powers as it operates on them? The supply, then, of the subjects of foreign commerce, no less than the supply of consumption at home, requires of us to give a portion of our labor such a direction as will enable us to produce them. That is the object of the measure under consideration, and I cannot doubt that, if adopted, it will accomplish its object.

Fifth. The fifth objection to the tariff is, that it will diminish the public revenue, disable us from paying the public debt, and finally compel a resort to a system of excise and internal taxation. This objection is founded upon the supposition that the reduction in the importation of the subjects, on which the increased duties are to operate, will be such as to produce the alleged effect. All this is matter of mere conjecture, and can only be determined by experiment. I have very little doubt, with my colleague (Mr. Trimble), that the revenue will be increased considerably, for some years at least, under the operation of this bill. The diminution in the quantity imported will be compensated by the augmentation of the duty. In reference to the article of molasses, for example, if the import of it should be reduced fifty per centum, the amount of duty collected would be the same as it now is. But it will not, in all probability, be reduced by any thing like that proportion. And then there are some other articles which will continue to be introduced in as large quantities as ever, notwithstanding the increase of duty, the object in reference to them being revenue, and not the encouragement of domestic manufactures. Another cause will render the revenue of this year, in particular, much more productive than it otherwise would have been; and that is, that large quantities of goods have been introduced into the country, in anticipation of the adoption

keener gaze upon his intended prey, than that with which the British manufacturer and merchant watches the foreign market, and the course even of our elections as well as our legislation. The passage of this bill has been expected; and all our information is that the importations, during this spring, have been immense. But, further, the measure of our importations is that of our exportations. If I am right in supposing that, in future, the amount of these, in the old or new forms of the produce of our labor, will not be diminished, but probably increased, then the amount of our importations, and consequently of our revenue, will not be reduced, but may be extended. If these ideas be correct, there will be no inability on the part of government to extinguish the public debt. The payment of that debt, and the consequent liberation of the public resources from the charge of it, is extremely desirable. No one is more anxious than I am to see that important object accomplished. But I entirely concur with the gentleman from Virginia (Mr. Barbour) in thinking that no material sacrifice of any of the great interests of the nation ought to be made to effectuate it. Such is the elastic and accumulating nature of our public resources, from the silent augmentation of our population, that if, in any given state of the public revenue, we throw ourselves upon a couch and go to sleep, we may, after a short time, awake with an ability abundantly increased to redeem any reasonable amount of public debt with which we may happen to be burdened. The public debt of the United States, though nominally larger now than it was in the year 1791, bears really no sort of discouraging comparison to its amount at that time, whatever standard we may choose to adopt to institute the comparison. It was, in 1791, about seventy-five millions of dollars. It is now about ninety. Then we had a population of about four millions. Now we have upward of ten millions. Then we had a revenue short of five millions of dollars. Now our revenue exceeds twenty. If we select population as the standard, our present population is one hundred and fifty per centum greater than it was in 1791; if revenue, that is four times more now than at the former period; while the public debt has increased only in a ratio of twenty per centum. A public debt of three hundred millions of dollars, at the present day, considering our actual ability, compounded both of the increase of population and of revenue, would not be more onerous now than the debt of seventy-five millions of dollars was, at the epoch of 1791, in reference to the same circumstances. If I am right in supposing that, under the operation of the proposed measure, there will not be any diminution, but a probable increase of the public revenue, there will be no difficulty in defraying the current expenses of government, and paying the principal as well as the interest of the public debt, as it becomes due. Let us for a moment, however, indulge the improbable supposition of the opponents of the tariff, that there will be a reduction of the revenue to the extent of the most extravagant calculation which has been made, that is to say, to the extent of five millions. That sum deducted, we shall still have remaining a revenue of about fifteen millions. The treasury estimates of the current services of the years 1822, 1823, and 1824, exceed, each year, nine millions. The lapse of revolutionary pensions, and judicious retrenchments which might be made, without detriment to any of the essential establishments of the country, would probably reduce them below nine millions. Let us assume that sum, to which add about five millions and a half for the interest of the public debt, and the wants of government would require a revenue of fourteen and a half millions, leaving a surplus of revenue of half a million beyond the public expenditure. Thus, by a postponement of the payment of the principal of the public debt, in which the public creditors would gladly acquiesce, and confiding, for the means of redeeming it, in the necessary increase of our revenue from the natural augmentation of our population and consumption, we may safely adopt the proposed measure, even if it should be attended (which is confidently denied) with the supposed diminution of revenue. We shall not, then, have occasion to vary the existing system of taxation; we shall be under no necessity to resort either to direct taxes or to an excise. But, suppose the alternative were really forced upon us of continuing the foreign system, with its inevitable impoverishment of the country, but with the advantage of the present mode of collecting the taxes, or of adopting the American system, with its increase of the national wealth, but with the disadvantage of an excise, could any one hesitate between them? Customs and an excise agree in the essential particulars, that they are both taxes upon consumption, and both are voluntary. They differ only in the mode of collection. The office for the collection of one is located on the frontier, and that for the other within the interior. I believe it was Mr. Jefferson, who, in reply to the boast of a citizen of New York of the amount of the public revenue paid by that city, asked who would pay it, if the collector's office were removed to Paulus Hook, on the New Jersey shore? National wealth is the source of all taxation. And, my word for it, the people are too intelligent to be deceived by mere names, and not to give a decided preference to that system which is based upon their wealth and prosperity, rather than to that which is founded upon their impoverishment and ruin.

Sixth. But, according to the opponents of the domestic policy, the proposed system will force capital and labor into new and reluctant employments; we are not prepared, in consequence of the high price of wages, for the successful establishment of manufactures, and we must fail in the experiment. We have seen that the existing occupations of our society, those of agriculture, commerce, navigation, and

the learned professions, are overflowing with competitors, and that the want of employment is severely felt. Now what does this bill propose? To open a new and extensive field of business, in which all that choose may enter. There is no compulsion upon any one to engage in it. An option only is given to industry, to continue in the present unprofitable pursuits, or to embark in a new and promising one. The effect will be, to lessen the competition in the old branches of business, and to multiply our resources for increasing our comforts, and augmenting the national wealth. The alleged fact of the high price of wages is not admitted. The truth is, that no class of society suffers more, in the present stagnation of business, than the laboring class. That is a necessary effect of the depression of agriculture, the principal business of the community. The wages of able-bodied men vary from five to eight dollars per month, and such has been the want of employment, in some parts of the Union, that instances have not been unfrequent of men working merely for the means of present subsistence. If the wages for labor here and in England are compared, they will be found not to be essentially different. I agree with the honorable gentleman from Virginia that high wages are a proof of national prosperity; we differ only in the means by which that desirable end shall be attained. But, if the fact were true, that the wages of labor are high, I deny the correctness of the argument founded upon it. The argument assumes that natural labor is the principal element in the business of manufacture. That was the ancient theory. But the valuable inventions and vast improvements in machinery, which have been made within a few past years, have produced a new era in the arts. The effect of this change, in the powers of production, may be estimated, from what I have already stated in relation to England, and to the triumphs of European artificial labor over the natural labor of Asia. In considering the fitness of a nation for the establishment of manufactures, we must no longer limit our views to the state of its population, and the price of wages. All circumstances must be regarded, of which that is, perhaps, the least important. Capital, ingenuity in the construction, and adroitness in the use of machinery, and the possession of the raw materials, are those which deserve the greatest consideration. All these circumstances (except that of capital, of which there is no deficiency) exist in our country in an eminent degree, and more than counterbalance the disadvantage, if it really existed, of the lower wages of labor in Great Britain. The dependence upon foreign nations for the raw material of any great manufacture, has been considered as a discouraging fact. The state of our population is peculiarly favorable to the most extensive introduction of machinery. We have no prejudices to combat, no persons to drive out of employment. The pamphlet, to which we have had occasion so often to refer, in enumerating the causes which have brought in England their manufactures to such a state of perfection, and which now enable them, in the opinion of the writer, to defy all competition, does not specify, as one of them, low wages. It assigns three: first, capital; secondly, extent and costliness of machinery; and, thirdly, steady and persevering industry. Notwithstanding the concurrence of so many favorable causes, in our country, for the introduction of the arts, we are earnestly dissuaded from making the experiment, and our ultimate failure is confidently predicted. Why should we fail? Nations, like men, fail in nothing which they boldly attempt, when sustained by virtuous purpose and firm resolution. I am not willing to admit this depreciation of American skill and enterprise. I am not willing to strike before an effort is made. All our past history exhorts us to proceed, and inspires us with animating hopes of success. Past predictions of our incapacity have failed, and present predictions will not be realized. At the commencement of this government, we were told that the attempt would be idle to construct a marine adequate to the commerce of the country, or even to the business of its coasting trade. The founders of our government did not listen to these discouraging counsels; and, behold the fruits of their just comprehension of our resources! Our restrictive policy was denounced, and it was foretold that it would utterly disappoint all our expectations. But our restrictive policy has been eminently successful; and the share which our navigation now enjoys in the trade with France, and with the British West India Islands, attests its victory. What were not the disheartening predictions of the opponents of the late war? Defeat, discomfort and disgrace, were to be the certain, but not the worst effect of it. Here, again, did prophecy prove false; and the energies of our country, and the valor and the patriotism of our people, carried us gloriously through the war. We are now, and ever will be, essentially an agricultural people. Without a material change in the fixed habits of the country, the friends of this measure desire to draw to it, as a powerful auxiliary to its industry, the manufacturing arts. The difference between a nation with and without the arts, may be conceived by the difference between a keel-boat and a steamboat, combating the rapid torrent of the Mississippi. How slow does the former ascend, hugging the sinuosities of the shore, pushed on by her hardy and exposed crew, now throwing themselves in vigorous concert on their oars, and then seizing the pendent boughs of overhanging trees: she seems hardly to move; and her scanty cargo is scarcely worth the transportation! With what ease is she not passed by the steamboat, laden with the riches of all quarters of the world, with a crew of gay, cheerful and protected passengers, now dashing into the midst of the current, or gliding through the eddies near the shore! Nature herself seems to survey, with astonish-

ment, the passing wonder, and, in silent submission, reluctantly to own the magnificent triumphs, in her own vast dominion, of Fulton's immortal genius.

Seventh. But it is said that, wherever there is a concurrence of favorable circumstances, manufactures will arise of themselves, without protection; and that we should not disturb the natural progress of industry, but leave things to themselves. If all nations would modify their policy on this axiom, perhaps it would be better for the common good of the whole. Even then, in consequence of natural advantages and a greater advance in civilization and in the arts, some nations would enjoy a state of much higher prosperity than others. But there is no universal legislation. The globe is divided into different communities, each seeking to appropriate to itself all the advantages it can, without reference to the prosperity of others. Whether this is right or not, it has always been, and ever will be the case. Perhaps the care of the interests of one people is sufficient for all the wisdom of one legislature; and that it is among nations as among individuals, that the happiness of the whole is best secured by each attending to its own peculiar interests. The proposition to be maintained by our adversaries is, that manufactures, without protection, will, in due time, spring up in our country, and sustain themselves, in a competition with foreign fabrics, however advanced the arts, and whatever the degree of protection may be in foreign countries. Now I contend that this proposition is refuted by all experience, ancient and modern, and in every country. If I am asked, why unprotected industry should not succeed in a struggle with protected industry, I answer, the FACT has ever been so, and that is sufficient; I reply, that UNIFORM EXPERIENCE evinces that it cannot succeed in such an unequal contest, and that is sufficient. If we speculate on the causes of this universal truth, we may differ about them. Still the indisputable fact remains. And we should be as unwise in not availing ourselves of the guide which it furnishes, as a man would be who should refuse to bask in the rays of the sun, because he could not agree with Judge Woodward as to the nature of the substance of that planet, to which we are indebted for heat and light. If I were to attempt to particularize the causes which prevent the success of the manufacturing arts without protection, I should say that they are, first, the obduracy of fixed habits. No nation, no individual, will easily change an established course of business, even if it be unprofitable; and least of all is an agricultural people prone to innovation. With what reluctance do they adopt improvements in the instruments of husbandry, or in modes of cultivation! If the farmer makes a good crop, and sells it badly; or makes a short crop; buoyed up by hope he perseveres, and trusts that a favorable change of the market, or of the to repair the misfortunes of the past. Secondly, the uncertainty, fluctuation, and unsteadiness of the home market, when liable to an unrestricted influx of fabrics from all foreign nations; and, thirdly, the superior advance of skill, and amount of capital, which foreign nations have obtained, by the protection of their own industry. From the latter or from other causes, the unprotected manufactures of a country are exposed to the danger of being crushed in their infancy, either by the design or from the necessities of foreign manufacturers. Gentlemen are incredulous as to the attempts of foreign manufacturers to accomplish the destruction of ours. Why should they not make such attempts? If the Scottish manufacturer, by surcharging our market, in one year, with the article of cotton bagging, for example, should so reduce the price as to discourage and put down the home manufacture, he would secure to himself the monopoly of the supply. And now, having the exclusive possession of the market, perhaps for a long term of years, he might be more than indemnified for his first loss, in the subsequent rise in the price of the article. What have we not seen under our own eyes? The competition for the transportation of the mail, between this place and Baltimore, so excited, that to obtain it an individual offered, at great loss, to carry it a whole year for one dollar! His calculation, no doubt was, that by driving his competitor off the road, and securing to himself the carriage of the mail, he would be afterward able to repair his original loss by new contracts with the department. But the necessities of foreign manufacturers, without imputing to them any sinister design, may oblige them to throw into our markets the fabrics which have accumulated on their hands, in consequence of obstruction in the ordinary vents, or from over-calculation; and the forced sales, at losing prices, may prostrate our establishments. From this view of the subject, it follows, that, if we would place the industry of our country upon a solid and unshakable foundation, we must adopt the protecting policy, which has every where succeeded, and reject that which would abandon it, which has every where failed.

Eighth. But if the policy of protection be wise, the gentleman from Virginia (Mr. Barbour) has made some ingenious calculations to prove that the measure of protection, already extended, has been sufficiently great. With some few exceptions, the existing duties, of which he has made an estimate, were laid with the object of revenue, and without reference to that of encouragement to domestic industry; and although it is admitted that the incidental effect of duties, so laid, is to promote our manufactures, yet if it falls short of competent protection, the duties might as well not have been imposed, with reference to that purpose. A moderate addition may accomplish this desirable end; and the proposed tariff is believed to have

Ninth. The prohibitory policy, it is confidently asserted, is condemned by the wisdom of Europe, and by her most enlightened statesmen. Is this the fact? We call upon gentlemen to show in what instance a nation that has enjoyed its benefits has surrendered it.

Here Mr. Barbour rose, Mr. Clay giving way, and said, that England had departed from it in the China trade, in allowing us to trade with her East India possessions, and in tolerating our navigation to her West India colonies.

With respect to the trade to China, the whole amount of what England has done, is, to modify the monopoly of the East India Company, in behalf of one, and a small part of her subjects, to increase the commerce of another and the greater portion of them. The abolition of the restriction, therefore, operates altogether among the subjects of England; and does not touch at all the interests of foreign powers. The toleration of our commerce to British India, is for the sake of the specie, with which we mainly carry on that commerce, and which, having performed its circuit, returns to Great Britain in exchange for British manufactures. The relaxation from the colonial policy, in the instance of our trade and navigation with the West Indies, is a most unfortunate example for the honorable gentleman; for in it is an illustrious proof of the success of our restrictive policy, when resolutely adhered to. Great Britain had prescribed the terms on which we were to be graciously allowed to carry on that trade. The effect of her regulations was, to exclude our navigation altogether, and a complete monopoly, on the part of the British navigation, was secured. We forbade it, unless our vessels should be allowed a perfect reciprocity. Great Britain stood out a long time, but finally yielded, and our navigation now fairly shares with hers in the trade. Have gentlemen no other to exhibit than these trivial relaxations from the prohibitory policy, which do not amount to a drop in the bucket, to prove its abandonment by Great Britain? Let them show us that her laws are repealed which prohibit the introduction of our flour and provisions; of French silks, laces, porcelain, manufactures of bronze, mirrors, woollens; and of the manufactures of all other nations; and then, we may be ready to allow that Great Britain has really abolished her prohibitory policy. We find there, on the contrary, that system of policy in full and vigorous operation, and a most curiously interwoven system it is, as she enforces it. She begins by protecting all parts of her immense dominions against foreign nations. She then protects the parent country against the colonies; and, finally, one part of the parent country against another. The sagacity of Scotch industry has carried the process of distillation to a perfection which would place the art in England, and English distillation has been protected accordingly. But suppose it were even true that Great Britain had abolished all restrictions upon trade, and allowed the freest introduction of the produce of foreign labor, would that prove it unwise for us to adopt the protecting system? The object of protection is the establishment and perfection of the arts. In England it has accomplished its purpose, fulfilled its end. If she has not carried every branch of manufacture to the same high state of perfection that any other nation has, she has succeeded in so many, that she may safely challenge the most unshackled competition in exchanges. It is upon this very ground that many of her writers recommend an abandonment of the prohibitory system. It is to give greater scope to British industry and enterprise. It is upon the same selfish principle. The object of the most perfect freedom of trade, with such a nation as Britain, and of the most rigorous system of prohibition, with a nation whose arts are in their infancy, may both be precisely the same. In both cases, it is to give greater expansion to native industry. They only differ in the theatres of their operation. The abolition of the restrictive system by Britain, if by it she could prevail upon other nations to imitate her example, would have the effect of extending the consumption of British produce in other countries, where her writers boldly affirm it could maintain a fearless competition with the produce of native labor. The adoption of the restrictive system, on the part of the United States, by excluding the produce of foreign labor, would extend the consumption of American produce, unable, in the infancy and unprotected state of the arts, to sustain a competition with foreign fabrics. Let our arts breathe under the shade of protection; let them be perfected, as they are in England, and we shall then be ready, as England now is said to be, to put aside protection, and to enter upon the freest exchanges. To what other cause, than to their whole prohibitory policy, can you ascribe British prosperity? It will not do to assign it to that of her antiquity; for France is no less ancient; though much less rich and powerful, in proportion to the population and natural advantages of France. Hallam, a sensible and highly approved writer on the middle ages, assigns the revival of the prosperity of the north of Europe to the success of the woollen manufactories of Flanders, and the commerce of which their fabrics became the subject; and the commencement of that of England to the establishment of similar manufactures there under the Edwards, and to the prohibitions which began about the same time. As to the poor-rates, the theme of so much reproach without England, and of so much regret within it, among her speculative writers, the system was a strong proof, no less of her unbounded wealth than of her pauperism. What other nation can dispense, in the form of regulated charity, the

lions sterling? The number of British paupers was the result of pressing the principle of population to its utmost limits, by her protecting policy, in the creation of wealth, and in placing the rest of the world under tribute to her industry. Doubtless the condition of England would be better, without paupers, if in other respects it remained the same. But in her actual circumstances, the poor system has the salutary effect of an equalizing corrective of the tendency to the concentration of riches, produced by the genius of her political institutions and by her prohibitory system.

But is it true, that England is convinced of the impolicy of the prohibitory system, and desirous to abandon it? What proof have we to that effect? We are asked to reject the evidence deducible from the settled and steady practice of England, and to take lessons in a school of philosophical writers, whose visionary theories are nowhere adopted; or, if adopted, bring with them inevitable distress, impoverishment, and ruin. Let us hear the testimony of an illustrious personage, entitled to the greatest attention, because he speaks after the full experiment of the unrestrictive system made in his own empire. I hope I shall give no offence in quoting from a publication issued from "the mint of Philadelphia;" from a work of Mr. Carey, of whom I seize, with great pleasure, the occasion to say, that he merits the public gratitude, for the disinterested diligence with which he has collected a large mass of highly useful facts, and for the clear and convincing reasoning with which he generally illustrates them. The Emperor of Russia, in March, 1822, after about two years' trial of the free system, says, through Count Nesselrode:

"To produce happy effects, the principles of commercial freedom must be generally adopted. The State which adopts, while others reject them, must condemn its own industry and commerce to pay a ruinous tribute to those of other countries.

"From a circulation exempt from restraint, and the facility afforded by reciprocal exchanges, almost all the governments at first resolved to seek the means of repairing the evil which Europe had been doomed to suffer; but experience and more correct calculations, because they were made from certain data, and upon the results already known of the peace that had just taken place, forced them soon to adhere to the prohibitory system.

"England preserved hers. Austria remained faithful to the rule she had laid down, to guard herself against the rivalship of foreign industry. France, with the same views, adopted the most rigorous measures of precaution. And Prussia published a new tariff in October last, which proves that she found it impossible not to follow the example of the rest of Europe.

"In proportion as the prohibitory system is extended and rendered perfect in other countries, that State which pursues a contrary system makes, from day to day, sacrifices more extensive and more considerable. * * * It offers a continual encouragement to the manufactures of other countries, and its own manufactures perish in the struggle which they are, as yet, unable to maintain.

"It is with the most lively feelings of regret we acknowledge it is our own proper experience which enables us to trace this picture. The evils which it details have been realized in Russea and Poland, since the conclusion of the act of the 7th and 19th of December, 1818. Agriculture without a market, industry without protection, languish and decline. Specie is exported, and the most solid commercial houses are shaken. The public prosperity would soon feel the wound inflicted on private fortunes, if new regulations did not promptly change the actual state of affairs.

"Events have proved that our agriculture and our commerce, as well as our manufacturing industry, are not only paralyzed but brought to the brink of ruin."

The example of Spain has been properly referred to, as affording a striking proof of the calamities which attend a State that abandons the care of its own internal industry. Her prosperity was the greatest when the arts, brought there by the Moors, flourished most in that kingdom. Then she received from England her wool, and returned it in the manufactured state; and then England was least prosperous. The two nations have reversed conditions. Spain, after the discovery of America, yielding to an inordinate passion for the gold of the Indies, sought in their mines that wealth which might have been better created at home. Can the remarkable difference in the state of the prosperity of the two countries be otherwise explained, than by the opposite systems which they pursued? England, by a sedulous attention to her home industry, supplied the means of an advantageous commerce with her colonies. Spain, by an utter neglect of her domestic resources, confided altogether in those which she derived from her colonies, and presents an instance of the greatest adversity. Her colonies were infinitely more valuable than those of England; and if she had adopted a similar policy, is it unreasonable to suppose that in wealth and power she would have surpassed that of England? I think the honorable gentleman from Virginia does great injustice to the Catholic religion, in specifying that as one of the leading causes of the decline of Spain. It is a religion entitled to great respect; and there is nothing in its character incompatible with the highest degree of national prosperity. Is not France, the most polished, in many other respects the most distinguished state of Christendom, Catholic? Is not Flanders, the most populous part of Europe, also Catholic? Are the Catholic parts of Switzerland and of Germany less prosperous than those which are Protestant?

Tenth. The next objection of the honorable

gentleman from Virginia, which I shall briefly notice is, that the manufacturing system is adverse to the genius of our government in its tendency to the accumulation of large capitals in a few hands; in the corruption of the public morals, which is alleged to be incident to it; and in the consequent danger to the public liberty. The first part of the objection would apply to every lucrative business, to commerce, to planting, and to the learned professions. Would the gentleman introduce the system of Lycurgus? If his principle be correct it should be extended to any and every vocation which had a similar tendency. The enormous fortunes in our country—the nabobs of the land—have been chiefly made by the profitable pursuit of that foreign commerce, in more propitious times, which the honorable gentleman would so carefully cherish. Immense estates have also been made in the South. The dependents are, perhaps, not more numerous upon that wealth which is accumulated in manufactures than they are upon that which is acquired by commerce and by agriculture. We may safely confide in the laws of distribution, and in the absence of the rule of primogeniture, for the dissipation, perhaps, too rapid, of large fortunes. What has become of those which were held two or three generations back in Virginia? Many of the descendants of the ancient aristocracy, as it was called, of that State, are now in the most indigent condition. The best security against the demoralization of society is the constant and profitable employment of its members. The greatest danger to public liberty is from idleness and vice. If manufactures form cities, so does commerce. And the disorders and violence which proceed from the contagion of the passions, are as frequent in one description of those communities as in the other. There is no doubt but that the yeomanry of a country is the safest depository of public liberty. In all time to come, and under any probable direction of the labor of our population, the agricultural class must be much the most numerous and powerful, and will ever retain, as it ought to retain, a preponderating influence in our councils. The extent and the fertility of our lands constitute an adequate security against an excess in manufactures, and also against oppression, on the part of capitalists, toward the laboring portions of the community.

Eleventh. The last objection, with a notice of which I shall trouble the committee, is, that the constitution does not authorize the passage of the bill. The gentleman from Virginia does not assert, indeed, that it is inconsistent with the express provisions of that instrument, but he thinks it incompatible with the spirit of the constitution. If we attempt to provide for the internal improvement of the country, the constitution, according to some gentlemen, stands in our way. If we attempt to protect American industry against foreign policy and the rivalry of foreign industry, the constitution presents an insuperable obstacle. This constitution must be a most singular instrument! It seems to be made for any other people than our own. Its action is altogether foreign. Congress has power to lay duties and imposts, under no other limitation whatever than that of their being uniform throughout the United States. But they can only be imposed, according to the honorable gentleman, for the sole purpose of revenue. This is a restriction which we do not find in the constitution. No doubt revenue was a principal object with the framers of the constitution in investing Congress with the power. But, in executing it, may not the duties and imposts be so laid as to secure domestic interests? Or is Congress denied all discretion as to the amount or the distribution of the duties and imposts?

The gentleman from Virginia has, however, entirely mistaken the clause of the constitution on which we rely. It is that which gives to Congress the power to regulate commerce with foreign nations. The grant is plenary, without any limitation whatever, and includes the whole power of regulation, of which the subject to be regulated is susceptible. It is as full and complete a grant of the power as that is to declare war. What is a regulation of commerce? It implies the admission or exclusion of the object of it, and the terms. Under this power, some articles, by the existing laws, are admitted freely; others are subjected to duties so high as to amount to their prohibition, and various rates of duties are applied to others. Under this power, laws of total non-intercourse with some nations, embargoes, producing an entire cessation of commerce with all foreign countries, have been from time to time passed. These laws I have no doubt met with the entire approbation of the gentleman from Virginia. [Mr. Barbour said that he was not in Congress.] Wherever the gentleman was, whether on his farm or in the pursuit of that professsion of which he is an ornament, I have no doubt that he gave his zealous support to the laws referred to.

The principle of the system under consideration has the sanction of some of the best and wisest men, in all ages, in foreign countries as well as *in our own*—of the Edwards, of Henry the Great, of Elizabeth, of the Colberts, abroad; of our Franklin, Jefferson, Madison, Hamilton, at home. But it comes recommended to us by a higher authority than any of these, illustrious as they unquestionably are—by the master-spirit of the age—that extraordinary man, who has thrown the Alexanders and the Cæsars infinitely further behind him than they stood in advance of the most eminent of their predecessors—that singular man who, whether he was seated on his imperial throne, deciding the fate of nations, and allotting kingdoms to the members of his family, with the same composure, if not with the same affection, as that with which a Virginia father divides his plantations among his children, or on the miserable rock of St. Helena, to which he was condemned by the

cruelty and the injustice of his unworthy victors, is equally an object of the most intense admiration. He appears to have comprehended with the rapidity of intuition, the true interests of a State, and to have been able, by the turn of a single expression, to develope the secret springs of the policy of cabinets. We find that Las Casas reports him to have said:

"He opposed the principles of economists, which he said were correct in theory, though erroneous in their application. The political constitution of different States, continued he, must render these principles defective; local circumstances continually call for deviations from their uniformity. Duties, he said, which were so severely condemned by political economists, should not, it is true, be an object to the treasury; they should be the guaranty and protection of a nation, and should correspond with the nature and the objects of its trade. Holland, which is destitute of productions and manufactures, and which has a trade only of transit and commission, should be free of all fetters and barriers. France, on the contrary, which is rich in every sort of production and manufactures, should incessantly guard against the importations of a rival, who might still continue superior to her, and also against the cupidity, egotism, and indifference of mere brokers.

"I have not fallen into the error of modern systematizers," said the emperor, "who imagine that all the wisdom of nations is centred in themselves. Experience is the true wisdom of nations. And what does all the reasoning of economists amount to? They incessantly extol the prosperity of England, and hold her up as our model; but the custom-house system is more burdensome and arbitrary in England than in any other country. They also condemn prohibitions; yet it was England set the example of prohibitions; and they are in fact necessary with regard to certain objects. Duties cannot adequately supply the place of prohibitions; there will always be found means to defeat the object of the legislator. In France we are still very far behind on these delicate points, which are still unperceived or ill understood by the mass of society. Yet what advancement have we now made; what correctness of ideas has been introduced by *my* gradual classification of agriculture, industry, and trade; objects so distinct in themselves, and which present so great and positive a graduation!

"First. Agriculture; the soul, the first basis of the empire.

"Second. Industry; the comfort and happiness of the population.

"Third. Foreign trade; the superabundance, the proper application, of the surplus of agriculture and industry.

"Agriculture was continually improved during the whole course of the revolution. Foreigners thought it ruined in France. In 1814, however, the English were compelled to admit that we had little or nothing to learn from

"Industry or manufactures, and internal trade, made immense progress during my reign. The application of chemistry to the manufactures, caused them to advance with giant strides. I gave an impulse, the effects of which extended throughout Europe.

"Foreign trade, which, in its results, is infinitely inferior to agriculture, was an object of subordinate importance in my mind. Foreign trade is made for agriculture and home industry, and not the two latter for the former. The interests of these three fundamental cases are diverging and frequently conflicting. I always promoted them in their natural gradation, but I could not and ought not to have ranked them all on an equality. Time will unfold what I have done, the national resources which I created, and the emancipation from the English which I brought about. We have now the secret of the commercial treaty of 1783. France still exclaims against its author; but the English demanded it on pain of resuming the war. They wished to do the same after the treaty of Amiens, but I was then all-powerful; I was a hundred cubits high. I replied, that if they were in possession of the heights of Montmartre I would still refuse to sign the treaty. These words were echoed through Europe.

"The English will now impose some such treaty on France, at least, if popular clamor and the opposition of the mass of the nation, do not force them to draw back. This thraldom would be an additional disgrace in the eyes of that nation, which is now beginning to acquire a just perception of her own interests.

"When I came to the head of the government, the American ships, which were permitted to enter our ports on the score of their neutrality, brought us raw materials, and had the impudence to sail from France without freight, for the purpose of taking in cargoes of English goods in London. They, moreover, had the insolence to make their payments, when they had any to make, by giving bills on persons in London. Hence the vast profits reaped by the English manufacturers and brokers, entirely to our prejudice. I made a law that no American should import goods, to any amount, without immediately exporting their exact equivalent. A loud outcry was raised against this: it was said that I had ruined trade. But what was the consequence? Notwithstanding the closing of my ports and in spite of the English who ruled the seas, the Americans returned and submitted to my regulations. What might I not have done under more favorable circumstances?

"Thus I naturalized in France the manufacture of cotton, which includes,

"First, spun cotton. We did not previously spin it ourselves; the English supplied us with it, as a sort of favor.

"Secondly, the web. We did not yet make it; it came to us from abroad.

"Thirdly, the printing. This was the only

selves. I wished to naturalize the two first branches; and I proposed to the Council of State, that their importation should be prohibited. This excited great alarm. I sent for Oberkamp, and I conversed with him a long time. I learned from him, that this prohibition would doubtless produce a shock, but that, after a year or two of perseverance, it would prove a triumph, whence we should derive immense advantages. Then I issued my decree in spite of all; this was a true piece of statesmanship.

"I at first confined myself merely to prohibiting the web; then I extended the prohibition to spun cotton; and we now possess, within ourselves, the three branches of the cotton manufacture, to the great benefit of our population, and the injury and regret of the English; which proves that, in civil government, as well as in war, decision of character is often indispensable to success."

I will trouble the committee with only one other quotation, which I shall make from Lowe; and from hearing which, the committee must share with me in the mortification which I felt on perusing it. That author says, "It is now above forty years since the United States of America were definitely separated from us, and since, their situation has afforded a proof that the benefit of mercantile intercourse may be retained, in all its extent, without the care of governing, or the expense of defending, these once regretted provinces." Is there not too much truth in this observation? By adhering to the foreign policy which I have been discussing, do we not remain essentially British, in every thing but the form of our government? Are not our interests, our industry, our commerce, so modified as to swell British pride, and to increase British power?

Mr. Chairman, our confederacy comprehends, within its vast limits, great diversity of interests; agricultural, planting, farming, commercial, navigating, fishing, manufacturing. No one of these interests is felt in the same degree, and cherished with the same solicitude, throughout all parts of the Union. Some of them are peculiar to particular sections of our common country. But all these great interests are confided to the protection of one government—to the fate of one ship—and a most gallant ship it is, with a noble crew. If we prosper, and are happy, protection must be extended to all; it is due to all. It is the great principle on which obedience is demanded from all. If our essential interests cannot find protection from our own government against the policy of foreign powers, where are they to get it? We did not unite for sacrifice, but for preservation. The inquiry should be, in reference to the great interests of every section of the Union (I speak not of minute subdivisions), what would be done for those interests if that section stood alone and separated from the residue of the republic? If the promotion of those interests then every thing should be done for them, which would be done if it formed a distinct government. If they come into absolute collision with the interests of another section, a reconciliation, if possible, should be attempted, by mutual concession, so as to avoid a sacrifice of the prosperity of either to that of the other. In such a case, all should not be done for one which would be done, if it were separated and independent, but something; and, in devising the measure, the good of each part and of the whole, should be carefully consulted. This is the only mode by which we can preserve, in full vigor, the harmony of the whole Union. The South entertains one opinion, and imagines that a modification of the existing policy of the country, for the protection of American industry, involves the ruin of the South. The North, the East, the West, hold the opposite opinion, and feel and contemplate in a longer adherence to the foreign policy, as it now exists, their utter destruction. Is it true, that the interests of these great sections of our country are irreconcilable with each other? Are we reduced to the sad and afflicting dilemma of determining which shall fall a victim to the prosperity of the other? Happily, I think, there is no such distressing alternative. If the North, the West, and the East, formed an independent state, unassociated with the South, can there be a doubt that the restrictive system would be carried to the point of prohibition of every foreign fabric of which they produce the raw material, and which they could manufacture? Such would be their policy, if they stood alone; but they are fortunately connected with the South, which believes its interests to require a free admission of foreign manufactures. Here then is a case for mutual concession, for fair compromise. The bill under consideration presents this compromise. It is a medium between the absolute exclusion and the unrestricted admission of the produce of foreign industry. It sacrifices the interest of neither section to that of the other; neither, it is true, gets all that it wants, nor is subject to all that it fears. But it has been said that the South obtains nothing in this compromise. Does it lose any thing? is the first question. I have endeavored to prove that it does not, by showing that a mere transfer is effected in the source of the supply of its consumption from Europe to America; and that the loss, whatever it may be, of the sale of its great staple in Europe, is compensated by the new market created in America. But does the South really gain nothing in this compromise? The consumption of the other sections, though somewhat restricted, is still left open by this bill, to foreign fabrics purchased by southern staples. So far its operation is beneficial to the South, and prejudicial to the industry of the other sections, and that is the point of mutual concession. The South will also gain by the extended consumption of its great staple, produced by an increased capacity to consume it in consequence

the South cannot exert its industry and enterprise in the business of manufactures! Why not? The difficulties, if not exaggerated, are artificial, and may, therefore, be surmounted. But can the other sections embark in the planting occupations of the South? The obstructions which forbid them are natural, created by the immutable laws of God, and, therefore, unconquerable.

Other and animating considerations invite us to adopt the policy of this system. Its importance, in connection with the general defence in time of war, cannot fail to be duly estimated. Need I recall to our painful recollection the sufferings, for the want of an adequate supply of absolute necessaries, to which the defenders of their country's rights and our entire population, were subjected during the late war? Or to remind the committee of the great advantage of a steady and unfailing source of supply, unaffected alike in war and in peace? Its importance, in reference to the stability of our Union, that paramount and greatest of all our interests, cannnot fail warmly to recommend it, or at least to conciliate the forbearance of every patriot bosom. Now our people present the spectacle of a vast assemblage of jealous rivals, all eagerly rushing to the sea-board, jostling each other in their way, to hurry off to glutted foreign markets the perishable produce of their labor. The tendency of that policy, in conformity to which this bill is prepared, is to transform these competitors into friends and mutual customers; and, by the reciprocal exchanges of their respective productions, to place the confederacy upon the most solid of all foundations, the basis of common interest. And is not government called upon, by every stimulating motive, to adapt its policy to the actual condition and extended growth of our great republic? At the commencement of our constitution, almost the whole population of the United States was confined between the Alleghany mountains and the Atlantic ocean. Since that epoch, the western part of New York, of Pennsylvania, of Virginia, all the western States and Territories, have been principally peopled. Prior to that period we had scarcely any interior. An interior has sprung up, as it were by enchantment, and along with it new interests and new relations, requiring the parental protection of government. Our policy should be modified accordingly, so as to comprehend all, and sacrifice none. And are we not encouraged by the success of past experience, in respect to the only article which has been adequately protected? Already have the predictions and the friends of the American system, in even a shorter time than their most sanguine hopes could have anticipated, been completely realized in regard to that article; and consumption is now better and more cheaply supplied with coarse cottons, than it was under the prevalence of the foreign system.

Even if the benefits of the policy were limited to certain sections of our country, would it not wherever situated, active, animated, and thrifty, rather than persevere in a course which renders us subservient to foreign industry? But these benefits are twofold, direct, and collateral, and, in the one shape or the other, they will diffuse themselves throughout the Union. All parts of the Union will participate, more or less, in both. As to the direct benefit, it is probable that the North and the East will enjoy the largest share. But the West and the South will also participate in them. Philadelphia, Baltimore, and Richmond, will divide with the northern capitals the business of manufacturing. The latter city unites more advantages for its successful prosecution than any other place I know, Zanesville, in Ohio, only excepted. And where the direct benefit does not accrue, that will be enjoyed of supplying the raw material and provisions for the consumption of artisans. Is it not most desirable to put at rest and prevent the annual recurrence of this unpleasant subject, so well fitted, by the various interests to which it appeals, to excite irritation and to produce discontent? Can that be effected by its rejection? Behold the mass of petitions which lie on our table, earnestly and anxiously entreating the protection interposition of Congress against the ruinous policy which we are pursuing. Will these petitioners, comprehending all orders of society, entire States and communities, public companies and private individuals, spontaneously assembling, cease in their humble prayers by your lending a deaf ear? Can you expect that these petitioners and others, in countless numbers, that will, if you delay the passage of this bill, supplicate your mercy, should contemplate their substance gradually withdraw to foreign countries, their ruin slow, but certain and as inevitable as death itself, without one expiring effort? You think the measure injurious to you; we believe our preservation depends upon its adoption. Our convictions, mutually honest, are equally strong. What is to be done? I invoke that saving spirit of mutual concession under which our blessed constitution was formed, and under which alone it can be happily administered. I appeal to the South—to the high-minded, generous, and patriotic South—with which I have so often co-operated, in attempting to sustain the honor and to vindicate the rights of our country. Should it not offer, upon the altar of the public good, some sacrifice of its peculiar opinions? Of what does it complain? A possible temporary enhancement in the objects of consumption. Of what do we complain? A total incapacity, produced by the foreign policy, to purchase, at any price, necessary foreign objects of consumption. In such an alternative, inconvenient only to it, ruinous to us, can we expect too much from Southern magnanimity? The just and confident expectation of the passage of this bill has flooded the country with recent importations of foreign fabrics. If it should not pass, they will complete the work of destruction of our domestic

any considerable rise in the price of foreign commodities, until our own industry shall be able to supply competent substitutes.

To the friends of the tariff I would also anxiously appeal. Every arrangement of its provisions does not suit each of you; you desire some further alterations; you would make it perfect. You want what you will never get. Nothing human is perfect. And I have seen, with great surprise, a piece signed by a member of Congress, published in the "National Intelligencer," stating that this bill must be rejected, and a judicious tariff brought in as its substitute.

A judicious tariff! No member of Congress could have signed that piece; or, if he did, the public ought not to be deceived. If this bill do not pass, unquestionably no other can pass at this session, or probably during this Congress. And who will go home and say, that he rejected all the benefits of this bill, because molasses has been subjected to the enormous additional duty of five cents per gallon? I call, therefore, upon the friends of the American policy, to yield somewhat of their own peculiar wishes, and not to reject the practicable in the idle pursuit after the unattainable. Let us imitate the illustrious example of the framers of the Constitution, and always remembering that whatever springs from man partakes of his imperfections, depend upon experience to suggest, in future, the necessary amendments.

We have had great difficulties to encounter. First, the splendid talents which are arrayed in this House against us. Second, we are opposed by the rich and the powerful in the land. Third, the executive government, if any, affords us but a cold and equivocal support. Fourth, the importing and navigating interest, I verily believe from misconception, are adverse to us. Fifth, the British factors and the British influence are inimical to our success. Sixth, long-established habits and prejudices oppose us. Seventh, the reviewers and literary speculators, foreign and domestic. And, lastly, the leading presses of the country, including the influence of that which is established in this city, and sustained by the public purse.

From some of these, or other causes, the bill may be postponed, thwarted, defeated. But the cause is the cause of the country, and it must and will prevail. It is founded in the interests and affections of the people. It is as native as the granite deeply imbosomed in our mountains. And, in conclusion, I would pray God, in his infinite mercy, to avert from our country the evils which are impending over it, and, by enlightening our councils, to conduct us into that path which leads to riches, to greatness, to glory.

ADDRESS TO LAFAYETTE.

This address was delivered by Mr. Clay, on the occasion of the presentation of General Lafayette to the House of Representatives of the United States, on the tenth of December, 1824.

GENERAL: The House of Representatives of the United States, impelled alike by its own feelings, and by those of the whole American people, could not have assigned to me a more gratifying duty than that of presenting to you cordial congratulations upon the occasion of your recent arrival in the United States, in compliance with the wishes of Congress, and to assure you of the very high satisfaction which your presence affords on this early theatre of your glory and renown. Although but few of the members who compose this body shared with you in the war of our Revolution, all have, from impartial history, or from faithful tradition, a knowledge of the perils, the sufferings, and the sacrifices, which you voluntarily encountered, and the signal services, in America and in Europe, which you performed for an infant, a distant, and an alien people; and all feel and own the very great extent of the obligations under which you have placed our country. But they have been, do not constitute the only motive of the respect and admiration which the House of Representatives entertain for you. Your consistency of character, your uniform devotion to regulated liberty, in all the vicissitudes of a long and arduous life, also commands its admiration. During all the recent convulsions of Europe, amid, as after the dispersion of, every political storm, the people of the United States have beheld you, true to your old principles, firm and erect, cheering and animating with your well-known voice, the votaries of liberty, its faithful and fearless champion, ready to shed the last drop of that blood which here you so freely and nobly spilled, in the same holy cause.

The vain wish has been sometimes indulged, that Providence would allow the patriot, after death, to return to his country, and to contemplate the intermediate changes which had taken place; to view the forests felled, the cities built, the mountains levelled, the canals cut, the highways constructed, the progress of the arts, the advancement of learning, and the increase of population. General, your present visit to the United States is a realization of the consoling object of that wish. You are in the midst of

moral, which have occurred since you left us. Even this very city, bearing a venerated name, alike endeared to you and to us, has since emerged from the forest which then covered its site. In one respect you behold us unaltered, and this is in the sentiment of continued devotion to liberty, and of ardent affection and profound gratitude to your departed friend, the father of his country, and to you, and to your illustrious associates in the field and in the cabinet, for the multiplied blessings which surround us, and for the very privilege of addressing you which I now exercise. This sentiment, now fondly cherished by more than ten millions of people, will be transmitted, with unabated vigor, down the tide of time, through the countless millions who are destined to inhabit this continent, to the latest posterity.

REPLY TO JOHN RANDOLPH.*

Sir, I am growing old. I have had some little measure of experience in public life, and the result of that experience has brought me to this conclusion, that when business, of whatever nature, is to be transacted in a deliberative assembly, or in private life, courtesy, forbearance, and moderation, are best calculated to bring it to a successful conclusion. Sir, my age admonishes me to abstain from involving myself in personal difficulties; would to God that I could say, I am also restrained by higher motives. I certainly never sought any collision with the gentleman from Virginia. My situation at this time is peculiar, if it be nothing else, and might, I should think, dissuade, at least, a generous heart from any wish to draw me into circumstances of personal altercation. I have experienced this magnanimity from some quarters of the House. But I regret, that from others it appears to have no such consideration. The gentleman from Virginia was pleased to say, that in one point at least he coincided with me—in an humble estimate of my grammatical and philological acquirements. I know my deficiencies. I was born to no proud patrimonial estate; from my father I inherited only infancy, ignorance, and indigence. I feel my defects; but, so far as my situation in early life is concerned, I may, without presumption, say they are more my misfortune than my fault. But, however I regret my want of ability to furnish to the gentleman a better specimen of powers of verbal criticism, I will venture to say, it is not greater than the disappointment of this committee as to the strength of his argument.

* Made in the House of Representatives in 1824.

TRISTAM BURGES.

Tristam Burges was of a poor but worthy family, who for many years resided in the old colony of Plymouth, Massachusetts. His father settled at Rochester in that colony, where he managed a small farm; devoting the intervals of his agricultural pursuits to the employments of his trade, which was that of a cooper. On the commencement of the Revolution, he was appointed a lieutenant, and rendered important and valuable assistance in recruiting, and raising clothing for the army. After the battle of Lexington, he returned to his farm, much shattered in health, and, failing gradually, died in 1792.

At Rochester, Tristam was born on the twenty-sixth of February, 1770. The indigence of his parents, added to the illness of his father, rendered it necessary for him to assist in the labors of the farm and the shop, and thus the first fifteen years of his life were passed, without receiving any instruction, except such as was imparted to him by his eldest sister, "in the long winter evenings," and occasional lessons from his father in writing and arithmetic. At the age of fifteen he received six weeks' tuition in the village school, and, two years after, studied mathematics six weeks more, under the charge of one Hugh Montgomery. This was all the "schooling" he received until he attained the age of twenty-one. His youth, however, was not spent unprofitably. In the leisure he could command from his double duties as farmer and cooper, he was devoted to his books, "begging and borrowing" those he could not buy; and, as soon as he was capable of writing join-hand, many of his hours were employed in composition. Among the earliest books he read were the Pilgrim's Progress, and the life of Joseph, works to which he often reverted with pleasure, in the later period of his life. Soon after he reached his twenty-first year, he made every preparation to start on a whaling voyage, but the unexpected departure of the vessel in which he was to serve, altered his plans of life, and he determined to study medicine and prepare himself "to ride with a country doctor." To this end he borrowed Chesselden's Anatomy and Cullen's Theory, from the family physician, and applied himself with the greatest assiduity to study; but his medical career was of short duration. In 1793, having sold his share in the farm, to afford him a support during his collegiate course, he entered Rhode Island College, now Brown University, and, after spending three years there, graduated with the honors of his class. He then opened a school in Providence, and at the same time continued the study of law, to which he had devoted a portion of the time while in the University.

In 1799 he commenced practice in the Rhode Island courts, and soon rose to distinction. He attained a great influence as an advocate. "The powers of his mind, and his enthusiastic feelings, were enlisted in every cause in which he took part, and so deeply was he interested, so persuaded of the justice of his side of the question, that he never was known to admit his client to be in the wrong. If doubts were suggested by the opposite party, before trial, he would repel them in an instant, as if they reflected upon his own honor and judgment. His practice was very extensive; and few important causes were argued, in which he was not engaged. The power of his eloquence was supreme over judges, juries and spectators; when he spoke, the court was often thronged, and none listened without a tribute of admiration." He continued his duties at the bar, with a constantly increasing reputation, until 1825, when he was elected to the United States House of Representatives. In connection with his legal duties, he held a

seat in the Rhode Island Legislature, in 1811, was appointed Chief Justice of his adopted State, and for a short time occupied the chair of Oratory and Belles-Lettres, in Brown University.

Mr. Burges appeared in Congress in December, 1825. His first speech, which is spoken of as one of the greatest displays of eloquence ever made in the House of Representatives, was delivered during the debate on the Judiciary Bill, and placed him in the first rank of the orators and statesmen of his country. Again in 1827 he was elected to Congress, and continued there by re-election until 1835, taking an active part in all its deliberations, and always manifesting the deepest solicitude for the welfare of the country. His argument on the claim of Marigny D'Auterive for indemnity for injury sustained by a slave during the battle of New Orleans, gained him great applause, as did his eloquent appeal for the surviving soldiers of the Revolution; for whom he implored that the protecting arm of government might, "like the bright bow of Heaven," visit them with tokens of relief—that their descendants, for whom was established the broad basis of independence, "might give them one look of kindness, and pour one beam of gladness on the melancholy twilight of their days." But the most celebrated of his efforts, while in Congress, was the reply to John Randolph, during the debate on the Tariff.

Mr. Randolph had taken every opportunity, before that occasion, to ridicule and abuse the character, habits and institutions of New England, and to oppose any and every measure calculated to advance her interests.

Mr. Burges, in his remarks on the Tariff, observed, that there was a disposition among some gentlemen to support the interests of Great Britain rather than those of the United States; when Mr. Randolph rose, and interrupted him, saying, "This hatred of aliens, sir, is the undecayed spirit which called forth the proposition to enact the Alien and Sedition Laws: I advise the gentleman from Rhode Island to move a re-enactment of those laws, to prevent the impudent foreigner from rivalling the American seller. New England—what is she? Sir, do you remember that appropriate exclamation,—*Delenda est Carthago?*"

Mr. Burges now continued—"Does the gentleman mean to say, sir, New England must be destroyed? If so, I will remind him that the fall of Carthage was the precursor of the fall of Rome. Permit me to suggest to him to carry out the parallel. Further, sir, I wish it to be distinctly understood, that I am not bound by any rules to argue against Bedlam;—but when I hear any thing rational in the hallucinations of the gentleman, I will answer them." Here the Speaker interposed, and Mr. Burges resumed his seat, saying, "Perhaps it is better, sir, that I should not go on."

On the following day he continued his remarks, and after devoting some time to the refutation of the assertions made by Mr. Randolph a few days previous, on the subject of the Tariff, he concluded with the following:—

"Whence all this abuse of New-England, this misrepresentation of the North and the West? It is, sir, because they, and all the patriots in the nation, would pursue a policy calculated to secure and perpetuate the national independence of Great Britain. It is because they are opposed by another policy, which, by its entire, and by every part of its operation, will inevitably bring the American people into a condition of dependence on Great Britain, less profitable, and not more to our honor, than the condition of colonies. I cannot, I would not look into the secrets of men's hearts: but the nation will examine the nature and tendencies of the American, and the anti-American systems; and they can understand the arguments offered in support of each plan of national policy; and they too can read, and will understand the histories of all public men, and of those two systems of national policy. Do we, as it has been insinuated, support the American policy, in wrong, and for the injury and damage of Old England? I do not; those with whom I have the honor to act, do not pursue this course—No, sir,

'Not that I love England less,
But that I love my country more.'

Who, sir, would wrong; who would reduce the wealth, the power of England? Who, without a glorious national pride, can look to that as to our mother country? It is the land of comfort, accommodation, and wealth; of science and literature; song, sentiment, heroic valor, and deep,

various, political philosophy. Who is not proud, that our fathers were the compeers of Wolfe; that Burke, and Chatham spoke our mother tongue? Who does not look for the most prosperous eras of the world, when English blood shall warm the human bosom over the habitable breadth of every zone—when English literature shall come under the eye of the whole world—English intellectual wealth enrich every clime; and the manners, morals, and religion, of us and our parent country, spread civilization under the whole star-lighted heaven; and, in the very language of our deliberations, the hallowed voice of daily prayer shall arise to God, throughout every longitude of the sun's whole race.

"I would follow the course of ordinary experience; render the child independent of the parent; and from the resources of his own industry, skill, and prudence, rich, influential, and powerful, among nations. Then, if the period of age and infirmity shall, as God send it may never, but if it shall come, then, sir, the venerated parent shall find shelter behind the strong right hand of her powerful descendant."

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"The policy of the gentleman from Virginia calls him to a course of legislation resulting in the entire destruction of one part of this Union. Oppress New-England until she shall be compelled to remove her manufacturing labor and capital to the regions of iron, wool, and grain; and nearer to those of rice and cotton. Oppress New-England until she shall be compelled to remove her commercial labor and capital to New York, Norfolk, Charleston, and Savannah. Finally oppress that proscribed region, until she shall be compelled to remove her agricultural labor and capital—her agricultural capital? No, she cannot remove that. Oppress and compel her, nevertheless, to remove her agricultural labor to the far-off West; and there people the savage valley, and cultivate the deep wilderness of the Oregon. She must, indeed, leave her agricultural capital; her peopled fields; her hills with culture carried to their tops; her broad deep bays; her wide, transparent lakes, long-winding rivers, and populous waterfalls; her delightful villages, flourishing towns, and wealthy cities. She must leave this land, bought by the treasure, subdued by the toil, defended by the valor of men, vigorous, athletic, and intrepid; men, god-like in all, making man resemble the moral image of his Maker; a land endeared, oh! how deeply endeared, because shared with women pure as the snows of their native mountains; bright, lofty, and overawing, as the clear, circumambient heavens, over their heads; and yet lovely as the fresh opening bosom of their own blushing and blooming June. 'Mine own romantic country,' must we leave thee? Beautiful patrimony of the wise and good; enriched from the economy, and ornamented by the labor and perseverance of two hundred years! Must we leave thee, venerable heritage of ancient justice and pristine faith? And, God of our fathers! must we leave thee to the demagogues who have deceived, and traitorously sold us? We must leave thee to them; and to the remnants of the Penobscots, the Pequods, the Mohicans, and Narragansetts; that they may lure back the far retired bear, from the distant forest, again to inhabit in the young wilderness, growing up in our flourishing cornfields and rich meadows, and spreading, with briars and brambles, over our most 'pleasant places.'

"All this shall come to pass, to the intent that New-England may again become a lair for wild beasts, and a hunting-ground for savages. The graves of our parents be polluted; and the place made holy by the first footsteps of our pilgrim forefathers become profaned by the midnight orgies of barbarous incantation. The evening wolf shall again howl on our hills, and the echo of his yell mingle once more with the sound of our waterfalls. The sanctuaries of God shall be made desolate. Where now a whole people congregate in thanksgiving for the benefactions of time, and in humble supplication for the mercies of eternity, there those very houses shall then be left without a tenant. The owl, at noonday, may roost on the high alter of devotion, and the 'fox look out the window,' on the utter solitude of a New-England Sabbath.

"New-England shall, indeed, under this proscribing policy, be what Switzerland was under that of France. New-England, which, like Switzerland, is the eagle nest of Freedom; New-England, where, as in Switzerland, the cradle of infant liberty 'was rocked by whirlwinds, in their rage;' New-England shall, as Switzerland was, in truth, be 'the immolated

nothing but the skin remains unconsumed by the sacrifice;' New-England, as Switzerland had, shall have 'nothing left but her rocks, her ruins, and her demagogues.'

"The mind, sir, capable of conceiving a project of mischief so gigantic, must have been early schooled, and deeply imbued with all the great principles of moral evil.

"What, then, sir, shall we say of a spirit, regarding this event as a 'consummation devoutly to be wished?'—a spirit without one attribute, or one hope, of the pure in heart; a spirit which begins and ends every thing, not with prayer, but with imprecation; a spirit which blots from the great canon of petition, 'Give us this day our daily bread;' that, foregoing bodily nutriment, he may attain to a higher relish for that unmingled food, prepared and served up to a soul 'hungering and thirsting after wickedness;' a spirit, which, at every rising sun, exclaims, '*Hodie! hodie! Carthago delenda!*' 'To-day, to-day! let New-England be destroyed!'

"Sir, Divine Providence takes care of his own universe. Moral monsters cannot propagate. Impotent of every thing but malevolence of purpose, they can no otherwise multiply miseries, than by blaspheming all that is pure, and prosperous, and happy. Could demon propagate demon, the universe might become a Pandemonium; but I rejoice that the father of Lies can never become the father of liars. One 'adversary of God and man' is enough for one universe. Too much! Oh! how much too much for one nation."

Mr. Burges's labors were not alone confined to legal and political pursuits. He was often called upon to appear as the orator of popular assemblies, and, in addition to these duties, he contributed extensively to the periodical publications of the day. Among his occasional orations, *The Spirit of Independence*, delivered before the Providence Association of Manufacturers, in 1800, and another entitled, *Liberty, Glory, and Union, or American Independence*, pronounced at Providence, on the fourth of July, 1810, were highly commended, and obtained an extensive circulation.

At the close of Mr. Burges's term in Congress, he retired to his home, where he spent the rest of his life, free from any participation in public affairs, and chiefly devoted to rural and literary occupations. He died on the thirteenth of October, 1853

SPEECH ON THE JUDICIARY.

In December, 1825, Mr. Mercer, of Virginia, introduced a resolution in relation to the Judiciary of the United States, in the House of Representatives, which was subsequently modified as follows:—"Resolved, That the bill be recommitted to the committee, that brought it in, with an instruction so to amend it, as to discharge the Judges of the Supreme Court from attendance on the Circuit Court of the United States; and further, to provide an uniform efficient system for the administration of justice in the inferior Courts of the United States." Mr. Burges addressed the House as follows:

Mr. Speaker: Unused to occasions like the present, and without any practice, other than forensic, I find myself, unadvisedly, engaged in deliberative debate, where nothing is worthy of attention, unless most valuable in material, and in detail most finished. If I could now fairly proceed. Abandoning myself, therefore, to your candor, sir, and that of the House, I will look to the question for that support which a great question never fails to afford.

This great question is the entire Judiciary of the United States. It was placed before Congress by the President; has been by this House referred to the appropriate committee; and they have detailed to us the great judicial diseases of the country, and proposed, by this bill, a remedy for them. It, therefore, concerns the administration of national justice, and our attention is, moreover, loudly called to it by a great and respectable portion of the American people.

The resolution moved by the honorable gentleman from Virginia, (Mr. Mercer,) proposes a recommitment of the whole subject, to the intent that, the Judiciary, built at several times, and in distinct parcels, may be re-edified into one great whole, and accommodated to the present and future wants of the nation. The system of the bill is a Supreme Court, holding one term only, each year, sitting at Washington

day of February, as now is done; a Circuit Court, according to the present circuits, and four new ones, to be formed from the circuit and the districts comprehending the nine States in the Valley of the Mississippi. These ten circuits are to embrace all the districts in the United States, excepting those of West New-York, West Pennsylvania, and West Virginia, alone. In every district but these three, district Judges alone shall be compelled to sustain district jurisdiction only, hold district rank, and receive district salary; in these three, with the same pay, and same rank, they shall be obliged to perform circuit duties, and sustain circuit jurisdiction. In each of the other districts, formed into ten circuits, justice shall be administered by a circuit Judge, sustaining the jurisdiction, holding the rank, and receiving the salary of a circuit Judge and a supreme Judge, at the same time; and these, united together, shall form a Supreme Court of ten Judges. These, sir, are the peculiar provisions of the bill.

The resolution is intended to embrace another system. Each district shall remain as now. All the districts of the United States shall be formed into ten circuits. The whole United States shall be arranged into three great Supreme Court Departments; an Eastern, a Central, and a Western. In each district, as now, shall be a District Court, holden, as at present, by the same Judge, with the same jurisdiction, rank, and salary. In each circuit shall be a Circuit Court, holden at the same times and places as at present, and a circuit Judge shall be appointed for each circuit, with only Circuit Court salary, rank, and jurisdiction. In each of the Supreme Court departments, shall be holden a term of the Supreme Court once in each year. At Washington, Philadelphia, or Richmond, on the first Monday of January; at Columbus, Lexington, or a city in Tennessee, once in each year, on the first Monday in June; and at New-York or Boston once in each year, and on the first Monday of September. This court, so soon as constitutional causes shall have reduced it to that number, shall consist of six Judges, sustaining all the constitutional jurisdiction of the Supreme Court of the United States, and bearing the same rank, and receiving the same salary, as Judges of the Supreme Judicial Court of the United States now bear and receive. These, sir, are the provisions intended to be secured by the resolution. You therefore perceive, sir, that the subject of debate is a choice between the provisions of the bill and the proposals of the resolution. To me it seems proper, first to speak concerning the bill, and then to say a few things concerning the resolution.

Perhaps it may be needful, before debating the question, to remove some general and specific objections. It has been said, that this is an improper time to amend the Judiciary. Because: 1st. One of the States is agitated and Another is deeply dissatisfied with the result of the Presidential election; 3d. Resolutions are poured in from every quarter for altering the constitution; 4th. The President is not yet quietly seated on his throne. To all these it may be replied, that the agitations of that State sound more in words than in substantial damages. Men whom we daily see here with us from that State, are too wise and too patriotic to suffer that or their country to receive any serious injury from these discords. One eminent citizen lately returned to her bosom, has exchanged too many and too high pledges with the nation, ever to give the aid of his influence to any unreasonable sectional demands; and without that aid, no such demands can be dangerous to this Union. After all, none of us can fairly say, that this question, growing as it does out of a treaty, either fairly or fraudulently made, threatening as it is represented to be, is of legislative, and not rather of judicial jurisdiction. It would be indeed surprising if a suit either at law or in equity, between parties of the highest rank, should ever agitate or endanger the government of this country. The other dissatisfied State has deposited a stake in the Union, too dear to her ambition to do or consent to a single deed, perilous to that depository. Her illustrious citizen is a candidate for the next Presidency. Will she abate the title, and sink the fee-simple of the whole estate, before she can place her tenant in possession of his term?

The numerous resolutions for altering the form of our government, will follow the numerous generations of the same race, which have gone before them. We shall discourse and vote concerning them; bind, letter, and deposite them in the legislative archives; and the million copies of them printed, and spread over the country, will survive as long, and subserve the same purpose, as does the fugitive fabric "in which they live, and move, and have their being." The people will (thanks be to Him who has blessed them with the right) if they please, and when they please, amend their constitution; all our profound reasonings, and patriotic recommendations, to the contrary notwithstanding.

The President does not, and I trust no Chief Magistrate of the United States ever will, sit on a throne. There now lives, and delightful is the hope that for many coming centuries there will live, in this first, and perhaps last, region of genuine republican governments, many a Junius ready to raise the hand, brandish the crimson steel, and swear by the Guardian Power of Nations, that in our Rome, while he lives, no king shall ever reign. The distinguished gentleman, now directing the executive affairs of the United States, was placed in his seat, in the same constitutional manner, as was one other great citizen of our nation, heretofore placed there; and I trust he will hold his

have another term, is another question. The solution of it depends on the nation and on himself. If that be not oblivious of its own interest; and if he continue to be the same profound scholar, the same enlightened statesman, the same ardent patriot, the same exemplary Christian, prophecy need not be invoked to tell us, that the nation will, for the usual period, continue to enjoy the benefit of his labors, and to participate in his fame.

Throughout the whole debate, the opposers of the system of the resolution misconceive, for they continually misstate, the objections made by the opposers to the system of the bill. They call them, 1st. A denial of justice; 2d. They pronounce them to be the same oppressive measures which originated the war of Independence; 3d. They denounce against them the "lex talionis;" 4th. They warn them that their Supreme Court will become odious to the people.

Does the present system deny justice to any man? Extra judicial causes may obstruct the course of it; but is that a denial of the right to justice itself? As well may they say, that, because the snags and sawyers of their rivers obstruct the passage of their vessels upon them, government, unless she remove these obstructions, denies the right of these people to navigate those waters. The opposers of this bill are not answerable for the inconvenient structure and slow movements of the old judiciary machine, or the diminished quantity of work produced by its operations. Neither do they propose to repair it by some two or three additional wheels, or any quantity of supplemental gearing. They do not believe it worth repairing; or that any amount of costs will put it in condition to do the judicial work of the nation even "pretty well," for any thing like "twenty years." They propose to rebuild it on the true constitutional model; and accommodate its structure, speed, and production, to the movements and wants of the present, and probable future condition of the nation. Adopt the system of the resolution, and you will have no obstruction, no delay, no denial of justice.

What is there, in the opposition to this bill, resembling the unfeeling and oppressive cases of the Revolutionary war? Are the opposers kings? Are the advocates of it their colonists? Do these men, at their own pleasure, appoint, pay, and displace the judges of those courts? Do they deprive them of the trial by jury? or do they, for trial, transport them out of the vicinage, and beyond sea? These were among the causes which produced the War of the Revolution; and separated these States from the parent nation. What in this procedure resembles those causes? Yet this parallel has been drawn in this House; and the sketch, such as it is, published, sent over our country, and will be spread over Europe. "On eagles' wings, immortal scandals fly." The next importation of reviews will bring us a profound

States; so, and so grossly, do we abuse "Heaven's first, best gift to man," language—the rich medium, by which alone, any portion of the treasured capital of intellectual opulence can be circulated in the world. We debase it to the very offices of the miser's woollen purse, which, elastic in its texture, adheres closely to his thumb and finger, cautiously introduced to extract a four-pence-half-penny; or stretches to the extended hand of his heir, thrust in up to his elbow, to clutch and draw out a fist full of eagles. Well might the lad swear "his sister should have no name; because a name was a word, and a word might be abused; and so his sister's good name might come to be abused by every clown."

Why are the opposers of this bill from the "Old Thirteen," threated with retaliation, by its advocates from the new States? Whom, and what do they menace? Their brethren, and the home of their fathers. "They went out from us," not "because they were not of us." They are still children of the great household, though settled upon, and cultivating different allotments of the common inheritance. Their paternal sepulchres are with us; and will they leave us alone to defend them? The Scythian, though he might not fight for his pasture, his flocks, or his tent, yet, when retreat had brought him back to the grave of his father, would he there, by that consecrated mound, and in defence of it, make the deadly stand, and mortal battle. When, in our sober autumns, they visit us, as they often do, they see the frail memorial yet standing on the green hill-side, and may there read many a holy legend "that teach the rustic moralist to die."

"The time will come," they exclaim, "when the government shall be agitated to the very centre: and we may want some boon, like that now demanded by them." The perilous day may indeed arrive, when our common country, debased by luxury, agitated by faction, hardened by ambition, arrogant by power, shall not, by piling all the massy and mountainous weight of our laws and institutions, upon this gigantic and bloody brotherhood of crime and slaughter, be able to hold them down subdued. In this tremendous day of national agitation and jeopardy, will these men, or the sons of these men, be found wanting? They will not. We are all embarked in one great national vessel, bound on one great, and, we hope, long and prosperous national voyage. Will they, in the night of storm, throw overboard our share of the cargo, with the vain hope of preserving their own? We know they will not. Will they, on some lee shore, scuttle the ship to terminate the voyage? Will they, in the hour of assailment or battle, pull down the colors and give up the ship? We say, we know they will not. Why, then, these unavailing threats? Brave men should never use them to brave men. Leave them for the accommodation of those who "die many times before their death."

Court shall be odious, unless the judges of it continue to perform their own, and the additional duties of circuit court judges? This doctrine is unknown to the constitution. That projects a Supreme Judicial Court, separate and supervising all courts of inferior jurisdiction. Will it become odious because it is supreme? Because neither the executive or legislative arm can demolish or diminish its power, or move a finger within the pale of its jurisdiction? Or will it become odious, because it was established to protect, and will probably for ever protect, the people from the usurpations of their own national servants? Should it become odious because stationary, and jealousy may lead the nation to suspect that it is influenced by "the powers that be" and that act in this place? Make it then, sir, moveable, as the resolution proposes. Place it before the nation, in the great departments of our country, that the people may see, and we know they will then reverence this hallowed ark of our national covenant.

This apprehended odiousness is but an apprehension. Such a court cannot be suspected; it cannot be odious so long as it is filled by the Marshalls and the Storys of our country. I do not name these gentlemen in derogation of other Judges of that tribunal; but because I have the honor and pleasure of acquaintance with one of them, and because, not to know the character of the other would argue myself more unknown than, humble as I am, I can willingly acknowledge myself to be.

One thing further: Some opposers of the bill object, 1st—The augmented number of judges; 2d—These judges will be selected from the west, and bring into the court sectional prejudications; 3d—A majority law is to ride in upon the back of this bill, making the unanimous vote of six, seven, eight, or perhaps nine Judges necessary to a decision.

If adding three, and making the number of judges ten, were the only objection, I would have given the House no trouble on the present occasion. Ten judges may deliberate nearly as well as six. It belongs to the advocates of this bill to prove that the greater number can deliberate better than the lesser number can. If they cannot prove this, why should the judiciary field be encumbered with supernumerary laborers, or the national means consumed in creating and paying sinecure salaries?

The second objection is, I agree, answered by the consideration that the President cannot, by law, be restricted to any district of the Union, in selecting judges of the Supreme Court. When he does nominate, I will not believe he will nominate, or the Senate approve any but men superior to all sectional, legal, or moral objections.

Congress cannot control the decisions of the Supreme Court. They, as a separate, co-ordinate, and independent power, received, like the legislature, their authority from the people, by

but could not circumscribe their adjudication; and would subserve no other purpose than that of showing to the nation and the world, that we neither regard the political rights of others nor understand the limits of our own.

The argument of my colleague, delivered to this House against this bill, in Committee of the Whole, has drawn from our honorable friend from Ohio, (Mr. Wright,) something like a reproach, if a gentleman of so much genuine courtesy could utter a reproach, on Rhode Island. "She did not join the Union till the eleventh hour, and though so late herself at the wedding feast, would now hinder others at this late hour, from receiving their full share of it." Let the gentleman take the entire benefit of his sarcasm. Rhode Island did come late to the wedding. She was always late when national bounties were to be divided; but always early when national dangers were to be encountered. She was indeed, for herself, "last at the feast;" but she was, for her country, first at the fight.

What then, sir, are the judicial evils pressed on the attention of this House by the movers of this bill? They are: 1st—an accumulation of causes in the Supreme Judicial Court; and, 2d—an accumulation of causes in the Circuit Courts of the west. For the purposes of this argument, I agree with these gentlemen in the several items of these evils; and in the sum total, according to their stated account of them. One hundred and eighty causes lie over, yearly, on the docket of the Supreme Court. These remain there, continued from term to term, from three to five years. The amount of expenses to each party, at each term, on an average of all the causes, cannot be, for fees, attendance and agency, much less than six hundred dollars; so that probably all the plaintiffs pay yearly, one hundred and eight thousand dollars; and all the defendants a like annual amount. This accumulation, it must be confessed, will be greatly augmented when you shall, as proposed by the bill, have removed the obstructions now literally choking the channels of justice in the western States. All the great causes accumulated there in consequence of the entire deficiency of judicial labor in that vast region, fertile as it is represented to be by the friends of the bill, in legal question and controversy, will, by the three new judges, and four new circuits, be speedily tried, adjudged, and appealed; or at least, a great number of the most heavy in amount and intricate in principle, will be appealed to the Supreme Court. In the west this accumulation is still more appalling; in some districts three hundred, some four hundred, some five hundred, and seven hundred causes; in all, from seventeen hundred to two thousand, lie over, untried, at each term; and the number is increasing to an alarming amount of accumulation.

These evils are to be remedied by this bill. The nine States of the Mississippi valley are arranged into four circuits; and three new judges

Court. The reasons for this measure are widely spread and of various character. They may, however, sir, all be comprehended in three: 1st—it will equalize judicial administration: 2d—it will equalize judicial representation: 3d—it will equalize judicial knowledge of State laws.

Judicial administration is said to be unequal, because district judges in the western districts hold circuit courts, and decide great causes of life and property; while such causes are, in other circuits, decided by judges of the Supreme Court. These district judges are of inferior rank; inferior salary; and of course, say the gentlemen, of inferior talents. This inequality was the basis of the able argument, made in favor of this Bill, by the gentleman of the Judiciary Committee, from South Carolina. Does this Bill remedy this inequality? It does not even propose to do it. In West New York, west Pennsylvania, and west Virginia, at least one million of people are left to endure this inequality. Away then with all pretensions to equality, when you exclude one-tenth part of the people from all benefit of your new system.

The gentleman from Louisiana, aware of this difficulty, claims this system for each State. "It is enough that our pride demands it; enough that it will gratify our pride." "If it will feed nothing else it will feed" our pride. Be it so then; but let the indulgence be equal. Let every State have her judge; for every State has her something whereof to be proud. If judges are to be allotted by this ratio, we shall all give the first rank to Virginia; and the same reference to revolutionary glory will give the second to Rhode Island. If, in the last war, Tennessee were justly proud of her Wellington of the West, might not the sea-green Island of New England, with equal pride, as fairly boast her Nelson of the Lakes? This question of pride, I am willing to own, has little connection with the appointment of judges. States are not recognized in the judicial system of the nation.

By the constitution they are amalgamated; and by the law of 1789, they were divided into districts and circuits; and their several boundaries are no otherwise regarded than as the limits of these judicial territories. These were established not to create offices and salaries for individual benefit, but to dispense that justice which, by the Constitution of the United States, the government promised to provide for the people.

What instance, sir, of injustice has been detailed in all this debate? No error of intention, no error of neglect, no error of ignorance has been set down to the account of these meritorious and much-abused district judges. The smallest and the greatest causes have been examined and adjudged, with the most scrupulous regard to justice. Not one judicial injury has been done by these men throughout those whole nine States. It is not for lack of justice that they cry out; but for lack of rank and salary. They are satisfied with the service of the altar, not say the victim is not well selected for sacrifice and for food; but they are utterly dissatisfied with the richness of the garland. The viands of justice are abundant and wholesome. They only complain that they are served up and distributed to them on plain porcelain, and not on massy and glittering plate. Our country, sir, our country is yearly doing miracles for the millions of her children; and yet how justly might she address to them the mild and merciful rebuke of the Prophet of Nazareth: "Ye follow me not for the miracles which I wrought, but because ye ate of the loaves and were filled."

The second great argument for this Bill, sir, is, that it will equalize judicial representation. We are told by the honorable gentleman from Ohio, (Mr. Wright,) of the Judiciary Committee, that our government is representative, and the Judiciary, because it is a part of it, is therefore representative. The honorable gentleman from Massachusetts, (Mr. Webster,) chairman of the committee, has told us that the extent of the number of judges of the Supreme Court must be limited only by the line of practical inconvenience. This is, indeed, heterodoxy in politics. No such doctrine can be found in the constitution. What does it mean, this judicial representation? Is it a representation of the talents, science, and legal learning of the several States? If so, why did not the constitution provide that a judge or judges should be selected from a particular State, or number of States? No such provision is found in the constitution, as made by the people; nor can Congress, in the plenitude of their power, now add such a provision to that great political charter. The President and Senate have, therefore, the whole range of the United States for nomination and approval; and talents, learning, and integrity are excluded from the bench by no sectional disqualification. A representation of these exalted qualities, then, can form no part of that judicial representation, intended to be secured by the provisions of this bill.

It must, therefore, sir, be, that political representation is to be secured by this system. A judge must bring a knowledge of the statistics of his circuit, into the Supreme Court. He must lay before the learned bench the extent of its territory, amount of its population, capital, labor, skill, production, commerce, consumption; and all the various details of "the nature and causes of the wealth of States." Not to know these things would disgrace the character of any man of science and knowledge in the nation; and, therefore, instituting a system of judicial law, with any view of bringing the learned bench of our Supreme Court acquainted with these things, would not only be utterly useless, but highly derogatory to that distinguished body. What have they to do with questions of this kind, as judges? Is not the smallest, equally with the largest, the poorest, equally with the most opulent and flourishing State, entitled to justice before the Supreme

Still the advocates of the bill demand political representation in this tribunal. Although they have not committed themselves to the restraint of definition, yet, if their representation be not of talent, if it be not of statistics, then, sir, it must be a representation of the political parties of a State. It must comprehend all the great doctrine of electioneering; the whole learning of public address, either from the press or the stump; and the entire array of interests, sections, families, patronage, proper to be brought into service, to push a man either into office, or out of it. Can any individual not lost to reason, desire a plan for carrying this kind of representation into the Supreme Judicial Court of our country? The naked possibility that such an event may ever happen, fills the mind with horror. Well might the honorable gentleman from North Carolina exclaim, in the fulness of patriotic indignation, "that it would, indeed, be abominable." From whatever point of view, therefore, sir, you look at this political representation, in our august tribunal of national justice, you see it at war with the constitution, and abhorrent to the principles of reason, and the feelings of patriotism.

The third great reason, sir, offered in support of the provisions of this bill, is, that they will equalize a knowledge of State laws. This argument is unsound. Because, 1st—No such inequality exists; and 2d—if it did, the method here proposed would not afford a remedy for it. Consider, if you please, sir, what, by his oath, a judge of the Supreme Court is fairly presumed to know; the extent and variety of his law learning; and the questions which may come before him either by original jurisdiction, or appeal. 1st—All causes of ambassadors, other public ministers, and consuls. Here may be, and is, required, extensive knowledge of the laws of nations. 2d—All cases in law and equity. The requirements of these will spread before him all the principles of the common, and all the principles of the civil law. These two great codes dividing the empire of almost the whole civilized world; not by perpetual war, like the German and Roman, who originated them, but with a peaceable, common, and, in many countries, a concurrent dominion —remain to nations as a kind of imperishable memorial of the conquests of mind, when those of arms have long since ceased to have a place on the earth. They remain to these United States, and to each of them. They were brought to this country by our ancestors; who shared them with their countrymen, as an unalienable portion of their political heritage. They are the great elements of all the laws of all the States. Wherever a drop of Saxon blood circulates in American veins, there, the people's law, the common law, is the citizen's birthright. There, too, the civil law, the controlling and ameliorating principles of equity and good conscience, are found and enjoyed. These mark and rights of things, to be cherished and protected; and all the wrongs of persons, and wrongs of things, to be eschewed and punished; and, moreover, cover them all with a great and healing system of protection and remedy. No man can be elevated to the Supreme judicial tribunal of our country, without comprehensive, minute, and extensive knowledge of these laws. 3d—These cases are to arise under the constitution. This judge must, then, make himself acquainted with every various construction of that instrument; and be, in all respects, a great constitutional lawyer. 4th—Or they are to arise under the laws of the United States; for adjudicating such causes, therefore, he must be equally and profoundly read in the laws and constitution of our country. 5th—All cases of admiralty and maritime jurisdiction come before him. The principles governing these cases, comprehend the laws of ships, freight, wages, insurance, prize, ransom, salvage; and all the laws of the sea, now extant, originating since the Phœnician mariner first spread his purple pennon to the light breeze of the Levant; or, more adventurous, drove with oar and sail his foaming prow out between the pillars of Hercules. 6th—The constitution, laws and treaties of the United States, are the supreme law of the land, notwithstanding the constitution and laws of any or all the several States may conflict with them. Such a judge must, therefore, have studied the laws of every State, so far as they are to be compared with the laws, or treaties, or constitution of the United States. 7th—Cases where a State is a party, come before the Supreme Court originally; but States may be made parties where citizens of the same State litigate land-titles derived from different States; a judge of the Supreme Court is, therefore, bound to know all the land laws of such cases, as well in these western States, as all others in the Union. 8th—Questions between States are of original jurisdiction in the Supreme Court. A judge of that court must, therefore, know all that relates to original charter, or boundary law of each State; as well as all confirming or conflicting State law, or adjudication, on all such questions as may come before him, on trial between such high contending parties. How, sir, shall he make himself master of all these various, and almost innumerable laws? Why, sir, truly, not so much from the practice of courts, or conversation with men, as from books; from his twenty years' conversation with those great, and though silent, yet communicative masters of the treasured erudition of past ages. Can he not, then, sir, learn what it may further befit him to know of any other laws, in the same manner, and by the same diligence? Can he not learn this, also, from books? What is it? Why, sir, the statute alteration of the Common Law in each State, and their court adjudications upon such statutes. These are all contained in their books, or in the records of such decisions. These nine States

Law: for the oldest of them is not forty, and the youngest not five years of age; and no usage can have grown up among them into the strength and vigor of Common Law, in any time less than that, "whereof the memory of man runneth not to the contrary."

Can a judge, sir, not learn these by reading and study? Can he thus make himself master of all the almost infinite variety and extent of all other laws? and must he depend for a knowledge of these few items of State law, on the testimony of local judges? Tell it not, sir, in hearing of those nations who, by their ambassadors, are near our government in this city of Washington. Tell it not in hearing of that gifted citizen, who, first in honorable field, lifted targe and lance against the learned chivalry of Europe, and in defence of the talent and science of our own country. Leave us not, sir, leave us not to the literary tomahawk and scalping-knife of the Giffords and Buffons of the old world.

Judges, we are told, sir, are to learn by travel. Whither, how, and addressing themselves to whom? Not to visit law schools, or colleges of civilians; not as the Solons or Platos of antiquity travelled, to consult the Initiati of Sais, the Sanhedrim of Palestine, or the disciples of the Persian Zoroaster. They must, however, have the benefit of travel; and, if so, in the common method in coaches, wagons, solos, gigs, carryalls; in steamboats, packet-boats, and ferry-boats; receiving the full benefit in eating-houses, taverns, boarding-houses and bar-rooms, of the conversation of learned tapsters, stewards, and stage-coach drivers. No man, I must own, who travels in the ordinary method—and judges can hardly afford to travel in different style—will lose any portion of these several sorts of accommodation and instruction. Judges will, in serious truth it is said, by travel, mingle with the people, and often come in contact with them. Will they mingle with the poor, the ordinary? With mechanical men; with middling interest men; with the great community of toil, and sinew, and production? No, sir, they can do no such thing. Let them have the humility of Lazarus, and the versatile affability of Alcibiades, and they can do no such thing. There is to such men, as it was once said of a learned judge—than whom no man ever bore his honors more meekly—there is, I say, to the feelings of such men, around a judge, a kind of repulsive atmosphere. They stand aloof, and give him large room. They bow, not, indeed, with servility, but with profound respect; and look towards him with a kind of hallowed reverence, as one set apart, and consecrated to the service, and surrounded by the ritual of justice. With all these men, the judge can hold no tangible communion. The assurance of wealth, the confidence of rank, office, power, will press through this medium, and come hand to hand with him. Do the gentlemen, sir, mean to say that, for such purposes, judges should mingle with the people?

Sir, judges of the circuits, as we are told, are to communicate to the Supreme Court their various local knowledge. How? Yes, sir, how? By books or by parol? The facts, in the appealed causes, are placed on the record; the law on which they have been decided is, like the ballad of the ancient bard, committed to memory; and is to be said or sung in open court. In this manner, each of the ten judges of the Supreme Court is to learn all his knowledge of the "leges loci," governing appealed causes. He may possibly know, and indeed by the reasonings on this bill, he is supposed to know one-tenth parts of his legal alphabet of twenty-four States; that is to say, two letters and four-tenth parts of a letter. This may comprehend all the great doctrine of locatives and entries, as the same was learnedly expounded to us, early in this debate. The court, sir, who try the appealed cause, must, according to the arguments of the friends of the bill, learn the facts, the law, and the decision, from the judge who tried the cause in the court below; and who, in sustaining his own decision is interested by the pride of opinion, the pride of character, and the avarice of fame; and who, if he do not produce the books from which he drew his law, ought to place over his oral tradition of it, the Scotch bard's apology—

> "I cannot say how the truth may be;
> I tell you the tale as 't was told to me."

Will this mode of procedure, sir, secure to appellants the benefit of a second trial? Of the facts, there can be, there needs no second trial; they are ascertained and placed on the record. They are to measure the facts by the law, and observe if that measure result in the former decision. Who places this measure in their hand? The judge who measured the article and placed the amount on the record. If the judge honestly give the law, as he understood, and still understands it to be, the Supreme Court must understand it as he understood it, and the cause must be decided as he decided it. You weigh the same article at the same scale beam, with the same weights. Its weight must be the same. The beam may be out of balance; the weights too light or too heavy. These men, "measuring themselves are not wise." If you measure the same thing by the same thing ten thousand times, you cannot detect a single error. Would you, sir, avoid this repetition of error? Give your Supreme Court a check on the circuit judge. What shall it be? A knowledge of the laws. If, therefore, sir, your Supreme judges are qualified for Supreme judges, and all the nation know that they are, there exists no inequality in their knowledge of local law; but if that inequality do exist, the provisions of this bill cannot remove it.

Sir, this bill proposes to add three judges to the Supreme Judicial Court, and to make the number ten. This, if a remedy for the evils at the west, is none for those at the very vitals of the judiciary—the accumulated mass of causes

which have laid in the Supreme Court till, like an ossification in the heart of the animal body, they paralyze pulsation, and obstruct the wholesome circulation of justice, to the very extremities of the body politic. The bill proposes for this evil no other remedy than three additional judges. Can ten men do more judicial labor than seven can perform? Moral, like mechanic or mathematical truth, is discovered by induction—a kind of process at which but one mind can labor. We do not learn that either Archimedes, or Euclid, or Sir William Jones, was joined with any co-thinker adminicular to either of them, in his sublime speculations or discoveries. In money there may be copartnership; there can be none in mind. Here each one, unless a plagiarist, must trade on his own capital. Make your judges, sir, if you please, seventy-two, and, like Ptolemy, you will call on each one for a complete version.

These gentlemen will tell us that, although this bill gives no relief to the Supreme Court, yet there is on the stick a little bill, No. 15, giving a perfect remedy. Yes, sir, sheets of legislation for the western States; ten lines only for the whole nation. It adds a month to the term of the Supreme Court; a month did I say? No, not so much; "not a little month;" three weeks, eighteen working days. One long maritime cause from the east, or one broad land cause from the west, will consume two days; and thus, the next year, nine more causes will be tried than will have been this year; and so the number, standing over on the docket, will truly be one hundred and seventy-one, and not one hundred and eighty.

This bill proposes to increase the Supreme Court, originally six but now seven, by adding three new judges, and making the whole number ten. Can this, sir, be constitutionally done? All supreme judicial power is now lodged in the Supreme Court. What judicial power have you, then, sir, to confer on your three new judges? Circuit court power you certainly have, for all inferior courts are within your control; but all the supreme judicial power is already vested, and no part of it can be taken away. The Supreme Court is a whole, in all its parts, its properties, its extension, its relations. Have you the power to alter it? How, then, can you add to it? Or is it that wonderful entity which addition to it does not increase, or which, multiplied any number of times by itself, would continue to be the same? We shall all acknowledge, sir, that Congress cannot require, by law, the President to select a judge of the Supreme Court from any particular district or part of the United States; but Congress can create a court inferior to the Supreme Court, and among the legal qualifications of the judge, insert an inhabitancy or residence within his territorial jurisdiction. This may be the circuit court. If, sir, you then annex the office of such a circuit judge to that of a judge of the Supreme Court, and designated district of the United States; that is to say, from the territorial jurisdiction of such circuit judge. The constitutional power of the Supreme Court is vested in the majority of that court; whatever shall change this relative proportion to the whole number of the number creating that majority, must change the vested power of that court, and must, for that reason, be unconstitutional; but four, the majority of six, is two-thirds of that court; whereas six, the majority of ten, is less than two-thirds of that court. Making the number of judges ten, is, therefore, altering the power of the court, vested in two-thirds thereof, and giving it to a lesser proportionate number.

It may, sir, be set down as a political axiom, that, when you shall have added so many judges to the original number of the Supreme Court, as will make a majority or constitutional quorum of that court, the judicial article of the constitution will have been expunged. Add your three new judges, it makes ten. This is four more than the original number; six is a constitutional quorum of ten: but four is a majority of that quorum, and may reverse all the decisions of the original court.

All decisions of the Supreme Court, on the constitution, on treaties, and on laws, not enacted by Congress, are beyond the control of the National Legislature: but if we can send into the Supreme Court an overruling majority, whenever the united ambition of Congress and the Executive may choose to do it, we place the constitution, and all treaties, and all constitutions and laws of all the States, in the power of two branches of the government, and thus erect ourselves into a complete tyranny; and that, too, as the advocates of the bill must contend, upon perfectly constitutional principles. Does the constitution, sir, thus place the judiciary at the good will and pleasure of the other two branches of the government? No, sir; the patriots who built, and the people who consecrated that glorious fabric, did not intend to devote their temple to the polluted oblations of legislative ambition, or the unhallowed rites of executive subserviency.

The wisdom of legislation, sir, should look to the durability of her works. How long, sir, will the judiciary, as amended by the provisions of the bill, continue to subserve and satisfy the wants of the country? Some of its advocates say twenty, some fifty, and some one hundred years. Yes, sir, those gentlemen, who have, with all the force of facts, and all the resistless conclusions of reason, pressed on this House the unparalleled growth of western wealth and western population, do say that new States will not, in less than one hundred years, have been added to this Union in such a number as to require even one additional judicial circuit. Have they duly considered the various expansive principles of production and population in this country? A prescient policy should look to

augmented to more than ten millions of people, covering eight hundred and forty-seven thousand one hundred and eighteen square miles of territory, arranged into twenty-four United States, and requiring ten judicial circuits. Through this whole course, the people and the country seem to have multiplied and extended in nearly a geometrical ratio. Ten millions of people not quite five years ago; five millions of couples for heads of families; and, at this moment, not less than two millions five hundred thousand of the whole number placed in that relation. Ordinary calculation may, under ordinary prosperity, expect to find in each family eight children. This, will, in less than twenty years, give to our population twenty additional millions of people. Will not new States arise? Already, sir, you have three new territories. Florida is spreading her population down to the very margin of her waters, and enriching her cultivation from the "cane-bearing isles of the west." Arkansas is looking up the channel of her long rivers, towards the mountains of Mexico, and will soon become rich, populous and highly cultivated. The tide of migration is setting up the grand canal towards Michigan, and that peninsula will, in a short period, be located and peopled, from lake to lake. These three, sir, in less than five years, with due courtesy, and fair cause for admission, will knock at your door, and propose to sit down in the family circle of political union. This is not all, sir. Population is travelling up the latitude, across your north-western territory, towards the great Caspian of our continent: and when they shall have heard of your ships on the waters of the Oregon, and of your colonies along the rich valley of that river—as from the able report of the gentleman from Massachusetts, whose mind is capacious of such things, we may predict, they will very soon hear—these people will then, sir, with the rapidity of a deep sea-lead, thrown from the chains of a seventy-four, plunge down the longitude to meet and to mingle with their countrymen on the waters of the Pacific.

Twenty years, sir! Are we told the system of the bill will accommodate and satisfy the judicial wants of this country for twenty years? In twenty years you will have ten new States, and thirty millions of people! Why, sir, in such a country—such a sun-bright region of hill and vale, mountain and moor, river, plain, lake, and all of boundless fertility—where population is busy on land and on ocean; where, from the plough, the loom, and the soil, are continually drawn the materials of food, clothing, habitation; where the human arteries swell and pulsate with teeming existence; where the human bosom heaves and palpitates with the fostering current of incipient life—what calculation will you make? What calculation can you make, approximating in any reasonable degree towards reality?

What then, sir, the advocates of the system of the bill may ask—what shall be done? The opposers of it are prepared for the interrogatory: Adopt the system recommended by the resolution. Restore the constitution. Trace out, and fill up, the great judiciary map of 1789: revise, and correct, and establish the constitutional lines of the law of 1801. We are told, sir, by the gentleman from Illinois, that the experience of a single year overthrew that system. Was, then, the system of 1801 overthrown by experience? As well might the honorable gentleman tell us that brick, and granite, and marble, are improper materials for houses, and palaces, and temples; because experience has taught us, that, at some times, and in some places, earthquakes have overthrown and demolished such buildings. "It was," says the honorable gentleman from Massachusetts, chairman of the Judiciary Committee, "repealed in one year *in toto*." Was it because that, or the law on which it was founded, was "enacted in the hurried session of the summer of 1789?" Because it was built on false analogies, or contained awkward provisions? That session, sir, was begun on the 4th of March, and ended on the 24th of September. In this session of somewhat more than six months, those illustrious men enacted twenty-seven laws, and passed three resolutions. Was this hurried legislation? Why, sir, many a Congress, since that period, putting no extraordinary vigor or hasty effort to the work, have, in less time, sent into the world a legislative progeny of from two to three hundred laws, great and little. What have we now, sir, valuable, or of probable durability, and which was not produced by that Congress, at that session? The fiscal, the foreign, the war, the naval, and the judicial department, were then, and by those men, founded, erected, and finished. These great national edifices have stood, and I trust will continue to stand: for, when the vandalism of faction shall demolish them, we shall cease to be a nation. Later times, it is true, have added, now and then, a piece of tiling, or a patch of paint; and the nation has put itself to costs upon the interior garniture of them, the drapery, and other various ornament and accommodation; but, otherwise, these valuable edifices are as old, as unaltered, and quite as venerable as the constitution itself. "Awkward provisions and false analogies," do we call any part of the Judiciary Act of that session? It was, sir, indited by the Ellsworths and Hamiltons of those times—men, whose political little finger was larger than the loins of politicians in these degenerate days. Why, sir, do not men who know, tell us boldly for what cause the judiciary law of 1801 was repealed? Men of candor, and I trust, sir, such men are in great numbers here, will all agree, that party overthrew that system. Why disguise it? Those unhappy days are past, and we are indeed now all "brothers of the same principle." What was not demolished in those inconsiderate times? The National Bank, the Army, the Navy, Fortifications—almost all that told the understanding, or the eye, that we are one—tumbled into ruins, in the shock of that tremendous political earth-

quake. Coming years brought better feelings and sounder reasonings; and men have profited of their experience, and re-edified all that was most valuable: the Bank, the Army, the Navy, the system of fortifications; and we are again a nation. Our fortresses on the ocean and on the land, look out from many a hundred iron eyes, ready with indignation to blaze annoyance and destruction against hostile approach. Why, sir, do you not follow this enlightened experience in your judiciary? The very Turk or Tartar, though he demolish the palace and temple of classical antiquity, yet will he draw from the ruins materials for his stable and his seraglio. He who does not profit by that of others, stands in the next rank of fatuity to him who is a fool in spite of his own experience.

Let us not be told, sir, that the system of the resolution will augment the judiciary expenses. What will be expended in one way, will be saved in another. A saving to the citizen is a saving to the nation. These courts will perform and finish the judiciary labor in every district, circuit, and department. It will bring justice home, "and that right early," to those who are now compelled to travel for it; to wait for it; and to lavish their subsistence on the means of acquiring it. It may diminish a productive employment for us who come here to legislate for our constituents, and to litigate for our clients; but I trust we are sufficiently patriotic not to feel any attachment to a system, because it may augment our emoluments, when we know it must diminish the productive capital of our country. Sir, the people now expend less on the judiciary than on foreign relations. You give more, by some scores of thousands of dollars, for courtesy to other nations, than you pay for justice to your own citizens. It would be dishonorable to the Republic to be wanting to its dignity abroad; but can it be honest to be wanting in justice to its own citizens at home?

The system of the bill, sir, cannot, it is agreed that it cannot endure; for circuits will become too numerous to add a new judge to the Supreme Judicial Court for each circuit. We are told in reply, that we should not legislate for posterity: "let posterity take care of itself." In what country, in what house, are we, sir, told this? Did the Pilgrims, the Bradfords, the Williamses, the Penns, the Smiths, migrate to this country for themselves, and not for posterity? Look out upon our American world: not a government was instituted; not a forest felled; not a city founded; not a house built; not a tree planted; and not for posterity. Where, and what should we have been, but for those who cared for posterity? This House, sir, the great model of art and taste; the pride and ornament of our country, and of the republican world; the magnificent forum of legislation; the hallowed temple of justice—this House, sir, was it built for us, and for the present generation only? No, sir, it was founded by that man whose name spreads the light of glory over our nation, and whose whole life was but one act for his country—for the world, and for posterity. "Let posterity take care of itself!" To a gentleman who could feel and utter such a sentiment, I would address the words of the bereaved Macduff: "he hath no children."

The system of the resolution carries in itself the principles of durability. When new States shall be added to this Union, and form new districts, their judges will distribute justice, until enough for a new circuit shall have been formed, and then this circuit shall receive a new judge. This may be repeated as often as a new circuit may be formed; until circuit after circuit shall be extended to the utmost limits of our national domain. The Supreme Court will sit a supervising tribunal—regulating and correcting every inferior jurisdiction. When the multiplied calls for justice shall require, then it may be separated, like the highest English courts, into a fiscal, a criminal, and a civil tribunal. Two judges in each department, as they must of necessity be unanimous, will, almost of necessity, secure correct decisions.

Thus, sir, you may legislate, not for twenty years only, but, by Divine aid, for twenty centuries. Your judicial edifice will be extended, with your extending country; and will subserve the wants, and satisfy the requirements of these increasing States, and the multiplying millions of this great nation; until the American Eagle shall, with one wing, winnow the breezes of the Atlantic, and with the other, hover over the quiet waters of the Pacific; until the colossal power of the republic, standing on the lofty mountains of this continent, shall, with one hand, extend the olive branch to the peaceful nations of the earth, and with the other, wave the sword of justice over the satisfied and tranquil citizens of these widely extended regions.

I have thus, sir, according to the limited measure of my ability, made an effort to sustain the resolution, moved by the honorable gentleman from Virginia; and I should be in some sort satisfied with that effort, could I have brought to his aid any portion of that efficiency, which, on a great and former occasion, was brought to the aid of an illustrious citizen of that State, by a son of Rhode Island.

REMOVAL OF WASHINGTON'S REMAINS.

On the 13th of February, 1832, a Resolution was introduced into the House of Representatives, to remove the remains of Washington from Virginia, and to place them in a vault under the centre of the Capitol. Mr. Burges addressed the House on the Resolution in the following speech:

Mr. Speaker: Permit me to join my voice to that of the many who have already mingled in this discussion. There is a kind of immortality associated with what may be deemed the perishable part of this mighty theme; and he who speaks of the venerated remains of Washington, must catch something of inspiration; and feel himself elevated to the loftiest purposes of our nature. Twice has this question come before this House, twice without a dissenting voice. Once, soon after the death of the illustrious Father of his Country covered the nation with mourning; and once, when, a few years ago, enquiry was made here, concerning the most appropriate method of carrying into effect the arrangement originally made between the bereaved family and the national government. If that arrangement of piety and patriotism cannot now be consummated with equal unanimity; nothing surely need fall in the way of performing it, under the exercise of our purest and best feelings.

In this controversy of patriotism among great States, concerning their respective interests in this question, it may be thought of one, geographically so inconsiderable as Rhode Island, that silence might more become her Representatives in this House, than any, the most perfect form of speech. Sir, in any arduous passage of arms, in any intricate question of council, Washington himself in his time did not so decide. Nor will one man in this Hall very severely censure my wish to be heard on this occasion; if he call to mind, that he, who in the darkest hour of revolutionary conflict, stood, in the estimation of the nation, and of that illustrious man, next to himself, was a native of that State. There was, there was a time, sir, when this man was the property of his whole country. If I look back towards the beginning of life, memory is in a moment filled with bright and joyous recollections of that time, when, even in the distant and humble neighborhood of my birth, the lessons of youth, and of childhood, when the very songs of the cradle, were the deeds, the glory, the praises of Washington.

Think you, sir, these teachings have ceased in the land; that these feelings are dead in our country? What then do we hear from the gentleman from South Carolina (Mr. McDuffie)? Cannot we, who regard the buried remains of the great Father of our Country, as the earthly remains of no other mortal man are regarded; cannot we, awed and subdued with gratitude, with more than filial piety; cannot we approach the hallowed repository, and roll back the stone from the door of the sepulchre, without the guilt of sacrilege? Cannot his country remove the remains of this, its great Founder; and carry them in solemn procession, accompanied by all the rites of religion, and all the sanctity of its ministers; and finally deposit them in the national cemetery provided for that purpose under the foundation of this building; which thenceforth shall be, not only the temple of freedom, legislation, and justice, but also the august mausoleum of Washington? Who, sir, who, of all the civilized world, will, while these reverential movements are performing, who will point his finger at these solemnities, and call them a mere pageant?

It is the feeling, sir, the purpose of the persons, and not the place or the subject, which renders their deeds pious or profane. Can we never again without sacrilege look into the dark house of those so dear to us, until they, bursting the cerements of the tomb, are clothed with immortality? How often does the piety of children, how often the anxious affection of parents, induce them to remove the remains of endeared relatives, to places of more appropriate sepulture? How often do nations remove to their own countries, from distant foreign lands, the bones of their illustrious dead? Was it sacrilege in the Hebrews, when migrating from Egypt, to take from the consecrated catacomb or pyramid, where for centuries they had been deposited, the bones of the illustrious founder of one of their families, and the preserver of them all; and bearing them from the populous valley of the Nile, the learned and luxurious realm of the Pharaohs, the scene of all his glory; that they might carry them to a land of rocks and mountains; and render his burial place one of the eternal monuments of their country? So it has continued; and at this day it is, by the dwellers on the hill or on the plain, pointed out to the traveller as the tomb of Joseph the Patriarch.

Sir, what man is there who does not shudder with horror when he is told, that, not many years ago, a felonious gardener of the late proprietor of Mount Vernon, conceived the sacrilegious project of plundering the family cemetery of those sacred remains; and of transporting to Europe the bones of Washington, and there offering them for sale as relics to the disciples or the fanatics of freedom in the old world. Procuring a false, or purloining the true key, he entered the tomb; but, in the darkness of night, and under the excitement of horror natural to the deed, he bore away those of another, by mistake; and left the hallowed bones of him, whose country would now with

filial piety place those sacred remains perfectly secured in a national mausoleum, under the eye, and in the safe-keeping of all future generations. We are told that the last will and testament of Washington, points out the place and directs the manner of his interment; and if we remove his bones from their present repository, we shall violate that will, and set at defiance principles dear to all civilized nations. Did indeed, then, this great man by his will prohibit this people from doing honor to his remains, by placing them in a mausoleum more suitable to his illustrious life, and to the gratitude of Americans? He, like all Christian men, directed by his last will, that his body should have Christian burial; and prescribed the manner, and selected the place for that purpose. How shall we expound that will? It has been expounded for us; and that too by one, who was the partner of his perils and triumphs, his labors and councils. One, who shared with him all life could give —and stood by him in the hour of dissolution. Think you, that she would have violated his will: and that too, in the beginning of her bereavement; in the first dark hours of her earthly desolation? "Taught by his great example," she gave up those remains at the call of her country. For to her, as in life to him, the nation was their family; the whole people were their children. What man can believe, that this distinguished woman, alike beloved and honored by a whole people, would have given her consent to the removal, requested by the whole Congress in 1799, if she had believed what the gentleman from South Carolina now tells us, that such removal would have violated his last will, and been a sacrilege committed against the sanctuary of the tomb?

Sir, how often has the attention of the nation been called to this great consummation, so devoutly wished by all the people! How often has the arrangement of 1799 come to the public ear, from that estimable man, the grandson of that illustrious matron! How often have we heard from him, not in the language of rebuke, which was merited; no, nor of complaint which he might justly utter; but in the language of deep and heartfelt regret, that the bones of Washington were mouldering into dust, at a distance from that mausoleum, which the gratitude of his country had already prepared for them! It cannot then, sir, it cannot be said, that the consent of the family will be wanted for us to do, what seems to have been so earnestly desired by them.

I cannot, sir, join in the pious incantation of some gentlemen, who would, in imagination, call up the mighty dead, and put them to inquisition, concerning these obsequies. Who, if he might, would bring back from the blessedness of heaven, to the cares of earth, one purified spirit; or for a moment interrupt the felicities of those realms of reality, by any thing which agitates human feelings, in this region of dust and shadows? Permit me to learn from his life, what his country may, with propriety, do with his remains, after his death. When that immortal soul, now as we trust in beatitude, inhabited and animated his mortal part, where was the place, what was the service to which the voice of his country called him, and he was not there? In the toils of war, in the councils of peace, he was, soul and body, devoted to that people, whom he labored through life to build up into one great nation. Should that body think you, sir, at this time be less at the service of his country, than when alive with the imperishable soul it was Washington, and walked the world, for human welfare? If his whole life doth tell us, that he placed himself at the call of his country, then truly where should all that remains of him, be finally found, but where the same voice would place them?

We would not, in the language of the gentleman from South Carolina, raise over him "a pyramid, a monument, like the eternal mountains." No, sir, the folly of ancient ambition has perished from the earth, while these its monuments still stand unmoved upon its surface. This House, we trust, will endure as long as this nation endures. Let this be the Mausoleum of Washington. We would place his remains in the cemetery built for that purpose, under the centre of that dome which covers the Rotundo. Directly over this on that floor, in accordance with the Resolution two years ago submitted to this House, we would erect a pedestrian statue of that man, sufficiently colossal, and placed on a pedestal so high and massy as might be required to fill and satisfy the eye, in the centre of that broad and lofty room, which, probably, has no equal in the architecture of the world.

The ever-during marble will give to coming generations the form and the features of Washington; and the traveller of future ages shall learn where he may find his tomb. This House, this Mausoleum of one, who, prospered by Divine assistance, performed more for his country and for the human race, than any other mortal, shall be a place of pilgrimage for all nations. Hither will come the brave, the wise, the good, from every part of our country; not to worship, but to stand by the sepulchre and to relume the light of patriotism at the monument of Washington.

We must with deep and anxious regret have perceived, that Virginia prefers her separate and exclusive claim to these venerated remains. It will never be forgotten, that Washington was a son of that distinguished State. Is not this honor enough to gratify the ambition of any people of any region of our earth? Why so avaricious of his glory, which like that of the sun falls with no diminished brightness on one region, because it shines on a thousand others? She needs it not. She will still have sons enough, warmed with noble ambition, to perfect and preserve the fabric of her glory. Washington was born, and lived for his country. Let the mighty base of his fame extend to his country, his united country, and to every part

of it. Then shall the young and the aspiring, in every region of our land, and through all coming generations, whether of humble or elevated origin, read the history of the great and the good; here they shall see by what monumental honors his country has consecrated his name; and thus, he who lived the most perfect man of one age, shall become the great and enduring model for all future time.

Let me, then, in behalf of our common country, implore Virginia, and the distinguished sons of Virginia now in this Hall, to look to a consummation of the arrangement of 1799. I do entreat them now to recollect and regard the unanimity of a no less distinguished delegation then, as worthy of all imitation. Let Virginia, "the fruitful mother of heroes and statesmen," not disregard the memory of her most illustrious matron, who, at the call of her country, surrendered her own individual and peculiar affection, to the promptings of a glorious patriotism.

At first, I confess it did appear to me that there might be something, in the removal of these remains, inappropriate to a birth-day celebration. It is not so. These two days, that of his birth, and that of this celebration, are separated by the whole duration of an hundred years. Between these two points, what a tide of events has rolled over the world! When the eye of recollection looks back towards that birth-day morning, what a succession of benefits, blessings, glories, seem to have been lighted up by that auspicious sun! Our Independence, institutions, government, with all their concomitant excellences, we behold; and in all, the mighty agency of Washington! He seems to stand on earth among us, in the midst of his achievements, to receive our gratitude, and to witness his own fame. If we carry in procession these mouldering remains, it will help to bring us back to a perception of our common allotment, and teach us to realize his and our own mortality. In the midst of our gratulations, that such a man was born, we shall have before our eyes the memorial, that such a man has died; and the joys of the Centennial Birth-Day shall be chastened by those teachings of wisdom which remind us that no human life, no sublunary good, can endure for ever.

Let us then be permitted to hope that this nation may now, at last, discharge its high obligation to that venerated family, by doing appropriate honors to the remains of this most illustrious man; so that, hereafter, the filial piety of no son or daughter of America may be agitated with the anxious fear, that some felonious hand may violate the sanctuary of his tomb, and give to a foreign land the glory of being the Mausoleum of WASHINGTON.

WILLIAM HUNTER.

William Hunter was born in Newport, Rhode Island, in the year 1776. His father, of the same name, was a Scotch physician, a graduate of the University of Edinburgh. Having joined the Pretender, in his professional capacity, he found it necessary to embark for America, soon after the battle of Culloden. Settling in Newport, he entered successfully upon the practice of his profession, and is said to have been the first lecturer on anatomy in the United States. He married a daughter of Godfrey Malbone, an eminent shipping merchant of Newport, and one of the most opulent and influential citizens in the then Colonies. He died soon after the birth of his son William, who was his youngest child.

About the year 1785, Mrs. Hunter, accompanied by her three daughters, visited England, to consult an oculist about the eyes of the eldest, whose sight had become impaired through excessive study. William was left at Newport, where he attended the famous Latin school of Robert Rogers, at which, among others, Washington Alston was his schoolmate. From this institution, he proceeded to Brown University, at Providence, where the late Jonathan Russell* was his classmate, and whence he graduated, in 1791, with great distinction, receiving the salutatory, and Russell the valedictory oration. At his mother's request, shortly after graduating, he went to England, and entered himself as a student with the celebrated surgeon, John Hunter, who was a first cousin of his father. Anatomy, however, and especially dissections, proved to be so distasteful to him, that he soon abandoned the profession of medicine, and entered himself as a student of law in the Temple at London. For some time he was under Tid, and had Chitty as a fellow-student. Afterwards, he was under the learned Arthur Murphy, who he materially assisted in his admirable translation of Tacitus. When Murphy took to Burke his dedication of that work, Hunter accompanied him. They found Burke playing at jackstraws with his son. Mr. Hunter was a frequent attendant on the debates in Parliament, and at the argument of cases in the courts of law. As this time was at a period when Pitt, Fox, and Erskine were in the maturity of their powers, a young man, ambitious to become an orator, could not fail to derive advantage from listening to them.

In 1793, Mr. Hunter returned to Newport, where he was admitted to the bar, and soon rose to the head of his profession in Rhode Island. In 1799, he was elected to represent his native town in the General Assembly, and was subsequently re-elected at different periods from that time until the year 1811. He was then chosen a Senator of the United States, in which station he remained ten years. In politics he was a Federalist. At the period of his senatorship,

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* Jonathan Russell was born in Providence, Rhode Island, in 1771. His early life was devoted to studying the best models of English and the classical writers, and after graduating, he was prepared for the profession of law, but subsequently relinquished it for that of commerce. His tastes, however, directed him to politics, and he was called upon to fill several positions of high diplomatic trust. For many years he was Minister Plenipotentiary from his native country at Stockholm, and in 1814, was one of the five commissioners who negotiated the treaty of Ghent. On his return to the United States, he was elected a representative in the lower House of Congress, from Massachusetts. In 1817, he received the degree of Doctor of Laws, from Brown University. Mr. Russell "had no skill as a forensic or parliamentary speaker; but he was a versatile, forcible, elegant and facile writer, and when the subject permitted, handled his pen with a caustic severity which is seldom passed." Few of his literary productions have been preserved.

speeches were not so frequently made in Congress as at the present time, and there were no regular reporters, so that those senators, especially of the minority, who wished to have their speeches printed, were obliged to write them out themselves. To these circumstances, the absence of Mr. Hunter's name from the debates reported in the Annals of Congress, may, it is presumed, be ascribed.

On the proposition for seizing and occupying the province of East Florida, in 1813, during the war between the United States and Great Britain, Mr. Hunter made a speech in secret session of the Senate, which he afterwards dictated to an amanuensis, and caused to be printed at Newport. This production will be found in the subsequent pages of this volume. It shows comprehensive views of the subject, expressed in a style unusually dignified and elevated, and contains passages of a high order of eloquence.

Mr. Hunter questioned the constitutionality of the Missouri restriction; voted accordingly, and failing to obtain a re-election to the Senate, he resumed his practice at the bar, and continued it until 1834, when he was appointed, by President Jackson, Chargé d'Affaires to Brazil. At Rio de Janeiro, he acquired the respect of the diplomatic body, and of the Brazilian government; and at the special request of the young emperor, was elevated to the position of Minister Plenipotentiary. During his residence in Brazil, he accumulated, from the various libraries of that country, and from every quarter to which he could gain access, vast stores of learning and research, which he would probably have published, had his life been spared.

In 1845, he returned to the United States, and on the tenth of December, 1849, died at Newport, in the seventy-sixth year of his age.

As a lawyer Mr. Hunter was distinguished for the extent and variety of his learning, while his diverse accomplishments gave him power as an advocate. In person he was tall, commanding and comely. In gesture graceful, natural and appropriate. His voice had a rare depth and melody, and his elocution was distinct and dignified. His language was rich and flowing, and his fancy quite poetical. His literary attainments were of a high order. He was quite familiar with the Latin classics, and apt in his quotations from them. In the French and Italian languages he was also well versed, and he spoke the former with as much ease and correctness as could be expected from one who had learned it in his childhood, from the French officers who were quartered in his father's house at Newport, and who had not many opportunities for practising it after their departure.

Mr. Hunter excelled in convivial talent, and was sure at a dinner-table to command at least as much attention as any one present whenever he thought proper to speak. His wit was keen and classical. Many of his good sayings are treasured up and repeated by his contemporaries in Congress. A man important as a politician in Pennsylvania, but otherwise quite insignificant, was a candidate for the office of Secretary of the Senate. Aspiring senators were eager in canvassing for him, so much so that the surprise of a newly elected senator was excited, and he asked Mr. Hunter why it was that such eminent men should take so lively an interest in the success of the candidates. Mr. Hunter replied, "Perhaps, my friend, you have not yet been long enough in Washington to be aware that Pennsylvania avenue leads to the President's house."

On another occasion, Mr. Little, of Maryland, was indulging in remarks of a personal character upon Mr. Law, of North Carolina, in the House of Representatives. Mr. Hunter happened to be among the auditors, and a gentleman near him asked if he thought Law would answer Little in the same strain. "No, indeed," said Mr. Hunter, "de minimis non curat lex."

ON SEIZING EAST FLORIDA.

This speech, on the proposition for seizing and occupying the Province of East Florida by the troops of the United States, was delivered by Mr. Hunter, in secret session of the Senate of the United States, on the second of February, 1818:

MR. PRESIDENT: It is, sir, with the utmost reluctance, that I make the attempt to suggest some remarks on the present subject. For although the question now under consideration is confessed on all sides to be one of the deepest interest and importance, involving in its decision no less a consequence than that of a change of our relations with a friendly power from a state of peace to that of war, yet we have been informed by the honorable gentleman from Maryland* (whose judgment on all occasions, from his experience and standing here, is entitled to peculiar respect) that every exertion will be unavailing, and that it is the pre-determination of a majority of this Senate to adopt the present bill. If that gentleman desponds after his own able and ample discussion of the present bill, and his own vigorous efforts to prevent his own prediction, it would be presumption in me to hope. Whoever, too, moves in the discussion of this question must go on depressed, if not alarmed, by the denunciation of the honorable gentleman from Georgia, who in the overflowing of an allowable zeal and anxiety (connected as he deems the success of this bill to be with the peculiar interest and advantage of his own State) has declared it not less than infatuation, that pretends to foresee any evil consequences resulting from its adoption.

In spite, however, of the forlorn hope to which I am condemned by the honorable gentleman from Maryland, and the certainty of incurring the penalty of the denunciation of the honorable gentleman from Georgia (to whose personal good opinion I am far from being indifferent), I feel myself impelled by obligations of duty, by a fair interpretation of the instructions of my constituents in reference to another occasion, and the clearest convictions of my understanding, to record my vote against the present proposition; and from the pressure of the same motives, I find myself induced, hopeless and unpropitious as is the occasion, to assign my reasons for that vote.

And in the first place, is it nothing, is it a consideration worthy of no regard, that this House has but lately, after a protracted and solemn discussion, rejected the very proposition contained in the bill before us? Is a character for consistency in its measures of no importance to this branch of the legislature? Does not the peculiarity of its construction—the duration of its members in office, and the very mode of their appointment, indicate the hope that it would be, and the design that it ought to be, distinguished for the consistency of its conduct? Do not all the speculations upon the theoretic perfection of our constitution, contemplate this, as the body that, resisting temporary impulses, and opposing its own firmness to a fluctuating and imbecile policy, would give something like system and stability to our national councils?

Sir, I doubt not our power at all times—and upon great and extraordinary occasions I doubt not the right, the expediency and propriety of reversing our decisions. No body of men can be infallible, and therefore its decisions ought not to be irreversible. All I contend for is, that a case clear and strong indeed ought to be made out, to induce the Senate to forfeit, or even to hazard its character for stability and consistency. I do not say that our deliberate decisions, a few months since, is such conclusive proof of its absolute perfection, of its entire impeccability, as that it operates as an estoppel upon all subsequent inquiry, and necessarily precludes all debate; but grounding myself upon a well-known distinction, I do say, it is most persuasive, convincing and satisfactory evidence of the correctness of that decision, and that according to all the principles of parliamentary usage, deducible either from the rules of a sound logic, or from judicial analogies, it imposes on the honorable mover of this proposition and all its advocates, the necessity of substantiating, by new and further evidence, by arguments not before adduced, and by considerations of policy, arising out of a new juncture of our affairs—the wisdom, propriety and necessity of the present proceeding.

This too, sir, ought to be done with a clearness and copiousness of proof, sufficient to repel the warrantable, and inevitable suspicion, which always attaches to a renewed effort for a rejected measure; to an application for a new trial, upon a suggestion of new and further evidence. What is the actual case? have we new proofs? even new statements? have we had any thing but arguments before refuted? Is the relation of our country different? Has any new event taken place? No, sir, it is not even pretended. I do therefore, on the ground of our former decision, on the ground that we were then right, and on the absence of all new inducement from proof, statement or argument, to do away that presumption, call upon gentlemen, as they respect themselves individually—upon the Senate, whose character for consistency and dignity (most important and essential attributes of that character) will be compromitted and hazarded with the nation, to resist this overthrow of their best resolves—to stand to their former opinions, and to permit no con-

* General Samuel Smith.

tradictory record to be produced against them —to the degradation of their established political character and consequence.

Sir, on this point of consistency and adherence to our former resolves, we ought to be the more tenacious, because we have excited hopes and expectations among our constituents, and especially the commercial class, that we ought not to disappoint. Next to an English, a Spanish war is the most disastrous in which this country can be engaged. It affects, most deeply, the little commercial enterprise that is suffered to exist in the country. Upon the suggestion that you were playing at this deep game last session, a hundred commercial enterprises connected with shipments to Spanish countries and colonies were suspended. Upon your wise and virtuous rejection of this measure, hundreds of shipments of enterprises grounded on your consistency, upon your permanency of system, have commenced, and are now proceeding.

Sir, it will be a gross breach of faith towards the commercial world; they will be ruined by this secret declaration of war. It will burst upon them, from this conclave, like a hurricane from the cave of Æolus, sweeping into the power of your new enemy as large an amount of property as that for which we pretend we are solicitous to seek indemnification. Where is our property? our commerce? at Cadiz—at Havana—at Lisbon. Do you suppose that the Spaniards, and the Portuguese, their allies, are dullards and fools? and that they will omit the fair and honest exercise of the rights of reprisal and retaliation? Will they not preach our doctrines against ourselves; practice our own arts, and repel aggression by aggression?

It is not on the mere ground of obstinate, unenlightened, indiscriminating adherence to your former measures, that I appeal to your sense of honor, magnanimity and consistency; but in relation to the prospect of loss, of disastrous consequences, of wide-spread distress. The merchants are now pursuing a lucrative honest trade with a friendly nation, upon the ground of their special and unsuspecting confidence in this Senate. Will you disappoint that confidence, and expose them to inevitable ruin; yourselves to inevitable censure?

Sir, why should we, as a Senate, at this time introduce this proposition? Is it by way of penitence for our former sin? a means of obtaining pardon for our past offences? a reparation for wrongs we have done? Or is it that some terrible necessity exists, that the Senate should entitle itself to forgiveness, and propitiate selfish and senseless clamor, by an act of submission and a surrender of its former opinions? Sir, I know we have the right to originate this measure; but is it proper, expedient, decorous in us to do it? It was, at first, the measure of the House of Representatives: let them at least re-produce it. Why this attempt to oblige us to adopt a bantling they have abandoned? Why court a perilous responsibility, which it seems they have no longer the fortitude to encounter? At second-hand with our intermediate decision to break off the storm of public censure, they may be willing to adopt it. But let us leave to them the honor and the peril of this at least contingent measure. If it will be so productive of good as some gentlemen predict, it will be an act of condescension and liberality for us to relinquish our pretensions in their favor; but if it be an act pregnant with innumerable evils, let the responsibility rest upon the broad shoulders of the immediate representatives of the people. They have a power to which we cannot pretend, that of originating money-bills—of devising the systems of taxation. The present war has exceeded, in expense, all previous calculation; has transcended every estimate:—and the expense of the next year will be at least double that of the last. A new war must inevitably lead to a farther enormous increase of the public burdens. Shall we originate measures, and leave to them the laborious, and I am afraid odious task of exacting from the pockets of the people the means of executing them? Or shall we heedlessly precipitate the country into a new war, ignorant whether the means will ever be provided to carry it on? Let us at least wait to see what is the system of taxation which their wisdom and patriotism will present to us. It may be too intolerable to be adopted;—then this measure must fail; and we shall as a Senate have lavished our precious stock of public favor in a legislative effort at once premature and impotent.

Sir, I wish to husband our peculiar reputation. Prudence, caution, and circumspection, but above all, independence; a firm, severe, and erect independence, ought to be the distinguishing qualities of this grave and dignified assembly. It is not for us to court popularity—but I am not unwilling to augment and corroborate our claims upon the public gratitude. We have already this session done much. We originated and carried through with uncommon despatch and unanimity, the bill for the augmentation of the navy. We conducted, with like dispatch and unanimity, our proceedings in regard to the Merchants' Bonds. We have unbound from the rack the victims of financial extortion, and preserved an useful and unoffending class of citizens from ruin, and the nation from disgrace. Let us not surrender these strong holds upon the public confidence. Let us at least not invoke public execration, by a rash declaration of an additional, unjust, and unnecessary war. If the car of the state is to be driven Jehu-like to destruction, let us refuse to be the charioteers.

I admit, that these objections are entirely preliminary; and relate not so much to the specific merits of the question now under consideration, as to the point whether we ought to consider it at all. Whether (if I may so express myself) we ought to assume of it any cognizance whatever. But in my humble conception, these objections are not less valid and important, for being preliminary considerations · such as natu-

rally and necessarily precede, and for a time exclude the discussion of the main question.

And, sir, there is another remaining topic, under this head of argument, of more prevailing force, than either of those I have attempted to illustrate.

Why, I ask, is there, in the mode of presenting this measure, a total evasion of presidential responsibility? Is it a measure of the cabinet? Then, why has it not the sanction of presidential recommendation? Why are we to be used as a constitutional screen, interposed between the people, and the efficient initiator of this measure? Where is the message, where is the manifesto, spreading out in the expansion of detail, this declaration of another war, against an innocent, neutral, and friendly country?

Is it not a presidential measure? then we are driving on to the consummation of a deed of dreadful import, without the usual and necessary instructions on this subject. It may be that we are doing something in opposition to another branch of the Government, who may hold, on this subject, opinions adverse to ours; —and we are voluntarily subjecting ourselves to the peril of a dangerous conflict between the constitutional authorities. This, I again admit, we have the power of doing;—but is it right, proper, expedient and decorous to do it? There may be an extreme case presumed, when it might be proper, at all hazards, to exercise this power. But will gentlemen pretend that the case has, in this instance, occurred? Is this an occasion of such pressing emergency, of such imperious necessity, of such obvious enormity, as compels us from duty and principle to act, even at the hazard of interrupting the harmony of the different departments of the Government?

By the third Section of the 2d Article of the constitution, it is made the duty of the President, from time to time, to 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. It is his imperative duty;—he shall do it. It is a fair presumption, that if he thought this measure advisable, just, honest, practicable and expedient, that he would have recommended it.

I know, sir, that some gentlemen object to this course of observation;—and alarm themselves with a jealousy, that there is in this argument, something that imports a surrender of the independent powers of this House, and they repel, with some warmth and indignation, the opinion that we should not act upon our own plans and conceptions, without a previous presidential recommendation. Most undoubtedly the gentleman from Pennsylvania is correct. I admit it—this is the theory of the constitution, and there may be cases in which it would not only be the duty of this House to act without presidential communication, but something like treason not to act. But is this such a case? This resort to the dormant, theoretic principles of the constitution, in contradistinction to the daily, well-understood and unobjectionable practice of every administration—this assertion of a truism, which, in the abstract, nobody is disposed to deny; this stripping a case of all its circumstances, for the purpose of facilitating the progress of an unusual and unexplained course, is, I confess, not a mode of reasoning, for which my plain and unscholastic mind has a preference. I admired the animation and the spirit with which the gentleman from Pennsylvania asserted his own personal independence in regard to the executive, and feel grateful to him for the clear exposition of the principles upon which our independence as a political body is constitutionally upheld. And I accord with him in the assertion, that initiative legislation in all cases but those of revenue, and uninfluenced deliberation in all cases without exception, is the right and privilege of this House.

But the exercise of this right, to be practically useful and beneficial, will, from its very nature, be infrequent. It is no corroboration of that right to assert it in unqualified terms, or to resort to it without judicious discrimination or self-evident necessity. And, sir, in a case involving a change of our relations from a state of peace with a friendly nation to that of war, no instance can hardly be imagined, in which our primary interference would be justifiable. It was clearly shown by my honorable friend from Connecticut, with a peculiar felicity of illustration, and an irrefutable force of argument, to be in as little accordance with the spirit of the constitution as it is contrary to the uniform practice under it. It may be, sir, reprobated as a tory doctrine;—but I have imbibed it, from an attention to the cases that have occurred, under the administrations of Messrs. Jefferson and Madison. In the great cases of the two embargoes, in that of the war with England, in this very measure heretofore, and indeed in all where a change of our relative situation with foreign powers was contemplated, we have had an executive message—a distinct recommendation. And, sir, this is the true whig doctrine—it is the correct republican course—it fixes the responsibility upon one person—it limits—it defines it—it reduces it to a single point. We can judge of the recommendation, by the reasons by which it is enforced; we can venture to indulge in a warrantable confidence, as to the truth of the statements that are made;—because we know they are made under the consciousness and the peril of the highest official responsibility. If the measure recommended, and made the basis of our proceedings, should afterwards appear to have proceeded from base, corrupt, or traitorous motives, by the constitutional process of impeachment, the transgression would be visited on the actual transgressor—the national honor would be redeemed, and public justice would be vindicated.

But in the present mode who is responsible? who, in any event would be impeachable? To

trusted the treaty-making power. He watches over our concerns with foreign nations—he has the means of intelligence—the power of interference. If the former relative situation of our affairs with Spain has changed, he ought and will, unless you presume him criminally indifferent to his sacred duty and his country's welfare, annbunce that change. Shall we clamorously rush to arms, when the sentinel on the watch-tower has lighted no beacon—has sounded no trumpet—has rung no alarm-bell?

How do we know that the functions of the treaty-making power in this instance have ceased? that the virtuous attempt to preserve the country in peace has been abandoned in despair? May we not heedlessly and officiously interfere with unclosed negotiations on this very subject—and thus disappoint the best concerted efforts of the proper authority directed to the attainment of this very object, by peaceful, in preference to belligerent means? Was not this the very argument urged successfully last session, in relation to France?

Were not the manifold and enormous injuries committed against us by France equally reprobated by all parties, and did we not all agree that reparation—prompt, comprehensive, effectual reparation was due? What restrained us from requiring it in the same way from France as we did from England? because the President announced to us that negotiations with the one power and not with the other were closed. Let us wait for the same communication in regard to Spain.

These considerations, drawn from the nature of the treaty-making power, when first urged by my honorable friend from Connecticut, seemed by the admission of the honorable gentleman from Kentucky on my right, to have made their proper impression on his candid and intelligent mind. But he has struggled manfully against his tendency to be convinced against his will, and has reconciled himself (as we all too easily can) to a former favorite prepossession. But the course of reasoning by which the honorable gentleman achieved this victory over himself, is to my humble conception as fallacious in principle, as it has been, when acted on by ministers and politicians, baneful in its effects. It is grounded on the assumption of the fact that there is no existing authority in Spain with whom it is safe and proper to treat. This, too, is the favorite argument of the honorable gentleman from Georgia, who last addressed you. The stress and substance of his very able address, appeared to me to be this: You must do this act—necessity constrains you to adopt it, as a measure of security and precaution. You cannot negotiate—there is no Spain with whom to treat; or, at any rate, there is no Spain but as identified with Great Britain.

In the true republican language of old times, I should say, that is the government which the people *will* to be so: and I should take the evidence of that will, not from an English newspaper, by the honorable gentleman from Georgia, but from their formal public acts. I agree the hereditary king was Charles; the rightful king is Ferninand; the intrusive, usurping king is Joseph. The country is invaded by France and is closely allied with England; but still, in principle and fact, and for all efficient purposes, the government is Spanish;—legitimately Spanish; represented and conducted by the agents of the Spanish nation; who make treaties, contract alliances, fight battles, achieve victories, and perform all the essential duties and mighty functions of a great nation. We have, at this very moment, a minister from that nation resident in this country, (why he has not been publicly acknowledged it is not for me to say,) who has tendered reparation for all the wrongs Spain has, at any time, inflicted on this country—on her part unintentional wrongs, occasioned by the peculiarity of her situation—and inflicted, not from injustice, but in consequence of French instigation, and French despotic dictation. The whole of our unpublished correspondence with Spain proves that she acted under duress. These wrongs, sir, were accidental blows, which in the paroxysm of distress, she directed without aim against a friend; and for which, now restored to sanity and freedom, she feels penitence and offers reparation. It would be unjust to avenge ourselves, in her present distresses; ungenerous, because her house is on fire, to plunder it of its precious effects; unchristian not to meet penitence with forgiveness.

According, sir, to our American principles, grounding ourselves on the acknowledged rules of public law, there always is a legitimate government, the government "de facto;" we interfere not with the independency or interior constitutions of foreign nations. I admit that there may exist circumstances to which this, as a general rule, must bend; but it is a fact that has been repeatedly stated in print, and never contradicted, and to the conviction of my mind, ascertained by circumstances, that the reparation offered by the Minister of the Cortes of Spain, was an immediate reparation; a reparation in rem—by the delivery of dollars actually in this country—to the amount of all our fair claims; the amount to be settled by commissioners, upon the principle of the very convention made by Mr. Charles Pinckney, once acquiesced in by this very Senate, and highly advantageous to this country. If we get the reparation by honest means, if we were snug in our indemnity by consent of parties, we clearly should have an equitable, and at all events a legal right to retain it, let what would happen. No matter who might hereafter occupy the government of Spain; no action for money, had and received, could rightfully be instituted against us; and if attempted to be exacted by force, we should then clearly have a right to repel force by force. We ought to have disdained the menaces of an interfering, usurping power, have consulted solely American interests

over to the suffering merchants to whom it belonged.

It strikes me as something strange indeed, that gentlemen should assert that Spain has no government; and yet in the same breath assert that she is in strict alliance with Great Britain. Is she incapable of maintaining the relations of peace and amity, and yet in strict alliance with another nation? Has she not, lately, likewise formed a treaty with Russia, who has acknowledged her independence? Has she not, lately, issued a declaration of neutrality, in regard to this country and our present war? If Spain has no government, she has no colonies—no jurisdiction over them—they are separated from the mother, or metropolitan country—they become, as to her, foreign, independent countries; as such, their rights ought to be by us respected. We have no right to avenge ourselves for Spanish wrongs on countries not Spanish.

Sir, the experience of all ages proves that it is idle to debate upon the theories of a constitution in relation to the observance of treaties. If a fair and rational treaty be made so that it is the mutual interest of parties to observe it, you have obtained the true security and only wise dependence for the continuance of peace. Treaties made by a government when under one form of internal constitution, are still binding, though that form may be changed. We have acted on and recognized this principle. Do we know of any King of Spain but Ferdinand? It is admitted *he* has been announced to us. Has the pretended claim of Joseph Bonaparte to the crown of Spain, its territories and colonies, ever been made known in a formal and official manner to this government? Have we ever acknowledged it? Have we had any legal or even constructive notice of his arrogant pretensions? If so, where is the correspondence? Who is his minister? Do we mean to take possession of this country under color of that title? Have we bargained, in the treaty of limits negotiated by Mr. Barlow, for the cession of this country to us? What was the consideration of that bargain? What were its terms? Is it indeed true, that the offered compensation for the robberies committed on us by France, is to be an issue of a batch of licenses and a cession of East-Florida? A reparation of ill faith, by permitting us again to be exposed to its treachery—a restitution for plunder, by authorizing us to plunder.

On a former occasion, when we were about to take a territory confessedly ours by treaty and purchase—we were told by France to stay our hand; did we not obey her? Was not even at that time the magnanimity (as it was called) of France a theme of eulogy in this country? Was not the answer of Talleyrand to our minister, (I think Mr. Livingston,) a plain, and if the phrase can be applied to him, an honest one? If you go to war with Spain, France will take the part of Spain; and did we not in consequence desist? You either have or have not got the assent of France to this seizure; if you have got it, it is by private, covert negotiation, a mean acceptance of illegal plunder from a power whose ten thousand wrongs, injuries and insults, are unredressed, uncompensated, unrevenged.

If we have not got her assent, we act inconsistently—and encounter the very danger, that of a contested title, which we affect to be solicitous to avoid; and in case, which God forbid! France should be victorious in her attempt to overthrow the liberties of mankind, we should have to restore it at her bidding. She will convert us into a mere trustee of her own appointment, for her own benefit. She will have a cession from Spain, previous to our conquest.

Every thing in relation to the claim or right of France seems to be evaded; but gently touched, hinted at with the utmost delicacy and caution; traced, as it were, in doubtful characters, in chemical ink, which the heat of some future occasion is to bring out. We know our Spanish concerns are closely linked with our French concerns; but how, to what extent, we are not permitted to know. We are too scrupulous to treat with Spain as the ally of England, because we deem it beneath our dignity to treat otherwise than with an independent and co-equal power. Yet is it not true, that when Spain was in a state of vassalage to France, this was deemed no objection to frequent negotiations? We asserted her nominal independence, and treated with the vassal by permission of the Lord, and for his benefit.

Does the gentleman mean to say we ought to take possession of St. Augustine, because the Spanish local authorities are opposed by conspirators, traitors to their own country; no, they have no country—by renegadoes—a banditti; or to state this in terms as little inoffensive as possible to the feelings of gentlemen, because there is a Jacobin, revolutionary movement in that country? Does a really deep, honest, spontaneous, revolutionary movement exist there? Is it not, on the contrary, an artificial, concerted, contrived, petty, patched-up miserable treason, paid for by our money, fomented by our people? Who caused that movement? was it not solely occasioned by American interference? by American instigation? When the names were read, from Matthews' communication and the other papers, could the gravest among us forbear to smile, at the paucity of Spanish names, among the conspirators? There was here and there a Don Juan, and a Don Gomez, in a long list of well-known American names and characters.

I ask gentlemen, did we find a Revolution there, or did we create it? And shall we, in violation of the principle which protects us, and every civilized Society, from hateful, corrupt, foreign interference, in shameful inconsistency with all we said and did in Henry's affair, take advantage of our own wrong, and with an hypocrisy unrivalled but by Bonaparte himself, practise the very arts, against an innocent, un-

offending people, against which we were justly indignant, when we had even a distant suspicion, that they might be used against our honor, our integrity, our independence? But, sir, I will not further, at present, pursue this topic; my object is not to excite adverse feeling, but merely to awaken a strict attention, and direct a temperate investigation, to the proposition before us. What is that proposition? what is the statement of the case, as presented us by the honorable chairman of the committee?

It is to seize a province, belonging to Spain—to seize and occupy it by the armies of the United States—to besiege an important and formidable fortress—to use force against a present, friendly, neutral power. That is, in short, to wage war against Spain. What are the avowed reasons, or rather pretexts? I say pretexts, because it is historically and proverbially true, that those who are determined on war, who are greedy for conquest, can always find pretexts, and dignify them with the name of reasons. War indeed is the "ultima ratio regum;" and when we read the manifestoes of kings determined to make war, it is more that literary curiosity may be gratified, than that our consciences may be enlightened, or our understandings convinced. We may occasionally be delighted with the speciousness of statement, and dexterity of argument—we may be momentarily dazzled with the splendid colors with which ingenuity may deck the robe of fraud, but the inherent deformity of the design it is impossible to conceal.

Imbecile indeed must be the understanding, disingenuous indeed the moral nature of that man, who does not instantly detect and despise, the miserable though elaborate sophistry which justifies invasion, and instigates to plunder, and in wretched inconsistency, seeks a confirmation of independence and a guarantee of the integrity of empire, in the subjugation of an innocent neighbor, and in propagating as the precursor of arms, the holy doctrines of insurrection, treason, and rebellion. I own that I rejoice, that so much pains has been taken to apologize for this measure. It shows that we still retain some sense of shame; that we do not surrender our innocence without some decent struggles to save appearances. We have not as yet acquired the unblushing hardihood of our great prototypes and models. Though unjust in our design, we pay some homage to justice; we dare not openly despise what mankind have hitherto deemed most sacred. We acknowledge, that flagrant injustice ought to arouse indignation. The invasions that have been carried on by other nations—the different partitions of Poland—the capture of the Danish fleet—we agree were atrocious acts. But our occupation of East-Florida, partly by force of arms, and partly by subornation of treason, is a different affair; our pretext is indemnity. It has long ago been

But sir, I recollect there is an argument which has been distinctly announced, and was strenuously urged by the honorable gentleman from Tennessee, on my right, which is worthy of examination, though I humbly conceive susceptible of easy refutation. He denies this will be war. As this argument comes from so respectable a quarter, I will endeavor to obviate it, not by reasonings of my own, but by the most complimentary course I can adopt, by the quotation of respectable and conclusive authority. We will appeal to the writers on the law of nations, and to Vattel, as the most authoritative and judicious of all those writers.

Here Mr. Hunter quoted Vattel.

Leaning then, sir, upon this staff of authority, I say this is not only war, but an offensive war; not only an offensive, but an unjust war; not only unjust, but I am, for the honor of my country, deeply apprehensive, that in the minds of foreign nations, in the minds of a majority of this nation, whose moral sense it will offend—it is liable to the odious epithet contained in the last sentence I have quoted. It is a wicked war; it is robbery.

If this is not war, but something done only in reference to and for the security of an indemnity—a reducing of a legal lien into possession—a process to confirm peace—an instrument of negotiation—it is a measure the President already has in his power. It is the treaty-making power; he can act without our aid.

But, sir, can there be any doubt that this act will be war against Spain? If we reject Vattel's definition, shall we adopt that of Mr. Jefferson? Is it not an effort to do, in this instance, as much harm as we can? Is it not an attempt to reduce the people of East Florida to a foreign yoke? Are gentlemen discontented at the expression—let them examine it—it is strictly correct. Their independence of us, is to be presumed as valuable to them as our independence of them is valuable to us. They have an equal right to self-government. Their peculiar habits, usages and institutions, their very prejudices and errors, are as dear to them as ours are to us. Do we affect to pity them, and compassionate their real or imaginary sufferings, under what Mr. Monroe calls a tottering and irresolute government? They deeply reciprocate your commiseration, and congratulate themselves, that they are not as we are, protestants, republicans, and sinners.

Shall we adopt Mr. Madison's definition of war? He describes, and a majority here must say justly describes, impressment, as an assumption of self-redress—a substitution of force which falls within the definition of war. Do we pretend that we can invest fortresses, circumvallate cities, raise fleets and armies, and move them against a foreign nation, have all the pride,

Sir, I cannot for a moment hesitate to believe it will be war in fact—so deemed by Spain and her allies—so deemed by the people of the United States—it is, at least, the contemplated, apprehended, inevitable consequence of our act. Why not, then, declare it directly, unequivocally, and without evasion? The rule of common law, is, in this respect, the rule of common sense, and of universal equity. What you ought not to do directly, you ought not to do indirectly. Intending war, at least calculating that the inevitable consequence of your proceedings will be war, why do we not frankly, manfully, magnanimously declare it? Let the people of this country understand it. Let us have an open war for an avowed object. Why should we shroud our intention in dastardly ambiguity? This evasive course, this doing a thing "per obliquum, per fraudem," is what our constitution, springing as it does from our republican habits, from our inborn love of justice, from our moral aversion to conquest, and our physical inaptitude for it, from our love of peace, from our well-founded apprehensions that our extent of territory is already dangerously excessive;—this evasive course, this obliquity of conduct, is what our constitution, influenced by these considerations—prohibits, deprecates, and disdains.

Though I am afraid, sir, this argument, in reference to the constitutionality of our course, according to the fashion of the day, will be deemed a point of little consequence, yet, sir, I deem it proper to suggest and enforce it. By our constitution there can be no merely constructive declaration of an offensive war. It must be a direct one. As a Legislature, we have the power, not of making war, but of declaring war. Congress shall have power to "declare war." This clause, so worded, most evidently settles the old litigated question raised by many writers on the law of nations, viz., Whether a declaration should not always precede an offensive war? We are to declare it, to announce it in plain terms to our people, and to the enemy. It is intended we should refer them to a plain declaration of the change of our condition, not draw them into it by an act circuitously leading to this result, and involving this as an inevitable consequence.

In interpreting our constitution, when it refers to the topics treated of, and the terms used in the law of nations, our construction ought to be in conformity to the law of nations; as much as when it adopts the principles and terms of the common law, we must refer to them, by them elicit its meaning, and modify its construction. War has a technical meaning in the law of nations. To declare war, is a precise, technical, appropriate, unambiguous, undeceiving phrase. It is the peculiar idiom of a just and wise nation. The declaration, with us, must always precede the act;—of course, I refer to offensive war:—defensive war explains and declares itself. The framers of our constitution intended that our offensive wars should be few indeed;—never, except in a case of terrible necessity. They intended they should be lawful wars, in due form—the justa bella of Grotius. There must be a denunciatio belli. This is one of the restraints imposed, and intended by the constitution, as a check, against the sudden or frequent breaking out of this pestilence of the human race.

Sir, if you pass this law, to take possession of the colony of a foreign, friendly, European power, you make no previous declaration of war. But by the concession of all, it is war. It is absurd to say, you can shatter my arm, and cut off my limbs, and pretend it is not war upon my person. To say nothing of the unfairness and injustice of this course, towards the foreign nation who has thus no chance of making you voluntary reparation for real or imaginary wrong, what is your conduct towards your own citizens? what is their miserable, because uncertain condition? Would it be treason, to-morrow, for American citizens to give information to the Government of St. Augustine, to supply their settlement with arms and provisions? Would it be treason to supply the European mother country with grain? Sir, there are no means of a nation carrying into effect an extra-territorial law, against a foreign resisting nation, but by force, but by war. Ought you not to apprise your own citizens? are they to be endangered and entrapped? If they can supply without treason, they certainly can without misdemeanor. For this act is included in the definition of treason, and all mere misdemeanors are merged. The people of St. Augustine become your enemies;—can you carry them succor? will you venture to indict for treason those who supply them? or will you, most inconsistently and absurdly, permit your own citizens to counteract your purpose, and frustrate your object? Will you place yourselves in the undignified, embarrassing attitude, of seeing them violate your laws, and yet be dispunishable?

Sir, there is something in this proceeding at which the genius of our constitution revolts; it violates all our fundamental maxims of international intercourse and constitutional construction; it inverts all our theories, it overthrows all our precedents.

What, sir, are the justificatory causes of this war, as understood by General Pinckney?—not that he approves them; he seems anxious to explain to the government, that he acts as a soldier in obedience to commands—he accepts with reluctance his compound character, half military, half diplomatic, and industriously collects apologies for the act he is compelled to execute, from his correspondence with the government. He enumerates six distinct grounds, on which he understands he is to justify his occupation of the Province of East Florida. 1st. Indemnity for the spoliations committed by Spain. 2d. Refusal to grant an amnesty to the Spanish revolutionary patriots. 3d. The pretendedly illegal attack upon the troops at

Moosa, during the negotiation. 4th. Excitement of the Indians. 5th. Seduction of negroes into the service of the Spaniards. 6th. The apprehension of the use that may be made of the country, by our present enemy, Great Britain. They may be all included in the convenient and comprehensive phrase of Mr. Pitt, the splendid apology of years of protracted war,—indemnity for the past, security for the future; but, above all, satisfaction for our honor.

The first general ground, indemnity for the past, consists in an assertion that injuries have been committed against us by Spain, and that reparation has been and is refused. The second general ground, resolves itself into necessity. This but too frequently is the tyrant's plea, but in the present case it is asserted to be an honest necessity, justifying on military maxims this measure as the dictate of self-defence.

That Spain, unregenerated, unrevolutionized, ancient Spain, as the ally of France and as instigated by France, committed unwarrantable spoliations on our commerce, is true; but that she has ever denied reparation and indemnity, I conceive that every step taken in the various negotiations with her will disprove. It can hardly be expected that I shall enter into a minute and elaborate discussion of these negotiations—the mere perusal of documents, published and unpublished, would occupy more of the precious time of the Senate than I feel myself authorized to consume. But, sir, I have felt it my incumbent duty to peruse these documents—to consider them with all the attention the importance of the subject demanded, and I have perused them with that eagerness of curiosity and that spirit of impartial inquiry which a young and unhacknied politician—who avows himself free from prejudices and propossessions, in common liberality I hope may be presumed to feel.

Sir, the honest and sincere conviction of my mind is, that Spain is not only guiltless of unwillingness of reparation, and of reluctance to indemnity, but that with such guilt our government never charged her, until circumstances rendered it as difficult for Spain to consummate reparation as it was unfair and improper for our government to urge, or to expect it. A nation as well as an individual has claims upon our compassion and humanity.

Ungenerous indeed must be his nature, who would press even his legal claim with the same stubborn and indiscriminate pertinacity against an individual struggling with adversity, and oppressed by misfortunes, as against one who was thriving and prosperous, and who resisted justice from the pride of power, and the arrogance of wealth. But, sir, I will not rest this point upon an appeal to our generosity, estimable as that feeling is, and prevalent as it is in this nation and this assembly. The facts,—evidence,—justice bear me out in the assertion, that Spain has not refused, does not refuse compensation; a fair reparation for all losses sustained by individuals, in consequence of *her own* spoliations on our commerce.

By the treaty of 1795, concluded by General Thomas Pinckney, our merchants received not only adequate indemnity, but even a lucrative compensation for their losses. In opening the negotiation of 1802, Mr. Charles Pinckney refers to this fact, and eulogizes in a style of more than ordinary diplomatic courtesy, the integrity, the good faith, and the magnanimity of the Spanish government. Spain had become strictly allied to France, and through the pusillanimity, perhaps corruption, of the favorite, the Prince of Peace, had also become meanly subordinate to her designs, a partaker in her crimes and follies, though not in her spoils. She was at once the dupe of her councils and the prey of her rapacity. At the instigation of France she depredated upon our commerce. She grounded her proceedings upon French decrees. But these were wrongs, as I have before said, unintentionally committed, and which she was, solicitons to repair. But few difficulties, and no great delay occurred in the settlement of the convention of 11th August, 1802. The principal difficulty arose from the attempt on the part of our negotiators, to have included in the treaty, compensation as well for Spanish wrongs as for those inflicted by France in Spanish territories. This was resisted—certainly with some show of reason and equity on the part of Spain. But Count Cevallos, the Spanish Minister, offered to include even these, in a certain way. That is, he was willing that the general question, how far Spain ought to be liable for French aggressions in her territories, on American property, should be left to the commissioners, who were to be appointed, according to an article of the convention. He was willing to leave it on the grounds of equity and justice, and the circumstances of the case, for them to determine. A proposition, in a transaction of this nature, certainly importing uncommon fairness and integrity; especially when we consider that the commissioners were to be mutually appointed—Mr. Pinckney, either from error of judgment or the strictness of his instructions, rejected this proposition, and insisted on and obtained an article holding in reserve and unextinguished our claims for French depredations, as matter for future negotiation. This convention, as has been explained by the honorable gentleman from Vermont, rested for a length of time, session after session, before the Senate. It was at length ultimately approved, and ratified here. Before, however, it was returned to Spain, the transfer of Louisiana by France to the United States took place—an event which was, as Mr. Jefferson informs us, as unexpected as disagreeable to Spain—an act which she bitterly regretted, against which she solemnly but unavailingly protested. But our convention with France in respect to Louisiana, including as that did a settlement of all our claims for all French spoliations and depredations, had now materially and rightfully chang-

ed our relative situation with Spain: She no longer assented to that clause of the treaty, which kept alive against her, claims for French spoliations. As has been explained by the honorable gentleman from Vermont, she denied our right to a double satisfaction for the same injuries; a double payment of the same debt. She contended she was virtually released; and in this she was supported by the express declaration of France, and by the opinion of the most celebrated lawyers and civilians of this country—some of them officers of the government.

But she never refused compensation for her own spoliations. Fruitless negotiations on this and other topics still continued. And by the message of Mr. Jefferson, in 1808, we are informed, that "The important negotiation with Spain, which had been alternately suspended and resumed, necessarily experiences a pause, under the extraordinary and interesting crisis, which distinguishes her internal situation."

That crisis has not yet subsided. This, sir, is a very concise, and I hope not uncandid history of our negotiation with Spain. I refer with confidence to the documents. They are in the hands of gentlemen, who can detect any involuntary error. If I have committed one, I assure them it is involuntary. I said, sir, that the interesting and extraordinary crisis, to which Mr. Jefferson referred, as distinguishing the internal situation of Spain, had not subsided. What was that crisis? A mighty effort by the great mass of the people abandoned by their king, deserted by their nobles, rising up in their might to expel a foreign invader and usurper, from their dear native soil. Examine the history of all previous revolutions—that which expelled Austria from Switzerland, Spain from Holland, the Stuarts from England, and England from this country, and you will discover none of them to be the effect of a more genuine deep-felt popular emotion, than the revolution achieved by the patriots of Spain. Yes, sir, that people are engaged in a war of defence of their native soil, their firesides, their altars, against a foreign invader;—in a war of that kind, that does and ought to excite the most sensitive interest, the most affectionate sympathy, in the bosoms of a free people, especially of a people themselves but recently independent, and who had to fight for their Independence. Strange indeed it is, that the wars of Greece against Persia should retain an unfading interest in our memories, and excite, even at this day, sublime and pious emotions; and that the wars of the Spanish patriots should be forgotten. Strange indeed, that we remember Marathon, and forget Saragossa.

Sir, what was the first effect of this revolution in Spain, in regard to this country?—a restoration, in mass, of all the vessels and property belonging to American citizens. An order, to their Court of Prizes, to act no more on the French decrees. An observance of all the articles of the treaty with us. This they did voluntarily, as an act of justice, and as a pledge of that good-will towards us, which a newly emancipated people felt towards one happily already free and independent. What was the further effect, when the government was in some degree settled, and had leisure to attend to its foreign concerns? a mission to this country, in the person of Chevalier Onis Why, sir, is there this dexterous evasion, this strenuous effort on the part of the Administration, to keep from the sight of the people, from the sight of the Senate, a co-ordinate branch of the treaty-making power, the correspondence of Don Onis, or rather his attempts at correspondence. Why cannot this nation be authentically informed of the fact, whether he made a formal and express offer, to place in the hands of our government in advance, a sum in specie sufficient to satisfy all the claims for captures, and for injuries sustained, through the withholding the permission of deposit at New Orleans. That he likewise offered to adjust the subject of the boundaries of Louisiana, in a manner satisfactory to ourselves? That he offered substantially to do all this, I am convinced. It has been published in Spain, under the eye of the Cortes; it has been published, over and over again, in this country. It has never been contradicted. It has been made the ground of ministerial assertion in England, to evince the nature of French influence in the United States; it has been made the ground of reasoning, in the discussion of the French Moniteurs, to evince to the Spaniards, how much safer they were under French protection than that of the patriots. France, say they, protected you against the arrogant and enormous claims of those trans-Atlantic, shop-keeping democrats. She gave you the means of restraining their rapacity, or participating in their ill-got profits. She was a guarantee to you against their ambitious intentions, hostile to your valuable but unprotected colonies. But your patriotic government yields to these insolent demands, and seems to favor their projects. It offers them the treasures, of which you are in want. It opens the protective barriers of your colonies, and endangers the mines of Mexico—the source of your opulence, and the basis of your national grandeur.

Sir, we have served a notice on the President, to produce the correspondence, to detail the verbal offers of Don Onis—not being produced, we have a right to state what we justly suppose to be their substance. Our divinations, conjectures, if they be conjectures, can be put down at once; falsified by the production of the papers—but by nothing else. This again, sir, is a rule of common law, and common sense. Circumstances, the absence of all contrary proof—the cautious forbearance of all denial—the non-production of papers, when called for by friends, the gratuitous assumption of limiting the intentions of the Senate, in their call of papers, to those which had occurred since the last session; all this tends convincingly to prove, that this offer of indemnity, on the part of the

Spanish government, has been made, and has been rejected.

How stands the case, then, on the foot of indemnity?—not a refusal on the part of Spain, to make adequate and liberal indemnity; but a refusal on our part, to accept it. Sir, the mass of papers produced, bulky as they are, is more remarkable for its deficiency, than its contents. There is something, not produced, which if it were produced, would be fatal, on the head of indemnity. There are various other topics of argument, which might be urged against this strong ground of pretended indemnity. If you are injured, and deem yourself entitled to indemnity, ought you not previously to demand it? Even the British demanded the Danish fleet, and it was refused, before they seized it. Has the honorable chairman of the committee forgotten his own able and successful arguments, and those of his friends, on this point, in this Senate, on Mr. Ross's resolutions in 1803? A positive injury was inflicted, a perfect and essential right, secured, and consecrated by treaty, was denied you; but, then, the honorable gentleman, with his usual ability—supported by his amiable friend De Witt Clinton, manfully, triumphantly stemmed the torrent of the redundant—I will not say overbearing eloquence of Ross and Gouverneur Morris—explained to the nation the duty, the necessity, the justice, of previous negotiation, and preserved this young and prosperous nation from a premature and unnecessary conflict. What was correct, judicious, and moral then, I humbly apprehend will be so now.

But, sir, upon the mere principles of indemnity—conceding that you had a right to take it—it would not, in any sense of the term, be one. It is inadequate, if obtained; even if it cost nothing to obtain it. Waving the consideration of the amount of spoliations, it will cost more to recover the thing sued for than it is worth. It is no indemnity to the actual sufferers by Spanish spoliations, and this act is accompanied by no pledge of the national faith, that they shall be individually compensated from this fund for their losses, while their losses are made the only ground or pretext of this proceeding. Even, sir, at the risk of being tedious and uninteresting, I must concisely examine each of these points. Will it be pretended that Florida is worth the whole claim of our government against Spain? We must take gentlemen on their own principles, and calculate the amount set down by our government, including Spanish spoliations—French spoliations in Spanish territories—and the injuries sustained by the prohibition of the right of deposit at New Orleans. The first item amounts to three, the second to two millions—the last may be stated at one, making six millions principal—with the interest for ten years—constituting an aggregate of about ten millions of dollars. And would you as a matter of purchase, give a fourth of this sum for Florida, if you would not absolutely reject it. But if you carve out your own remedy—convert into possession and enjoyment, your deposit—your pledge—consummate your right of lien by ownership—select your means and chance of indemnity—estreat your bond with all its amount of penalties—you have all that in law, justice or equity you can demand. The question is closed—you have no action open on your covenants or assumpsits. But, sir, to whom is Florida, with its wide waste of sands—its dismal swamps—its mixed, mongrel population, transferred? To the actual sufferers by Spanish and French spoliations?—to the individual sufferers in the cities of Charleston, Baltimore, Philadelphia, New York, Boston, Salem, Providence, and Newport? No, sir; it is transferred nominally to the United States, who takes it in her corporate capacity as Trustee for the State of Georgia. She will have the greatest, if not the sole beneficiary interest; as for the claims of the merchants, they will still be uncompensated; Spain or France, or the United States, will still stand debited in their ledgers. Sir, I know a house in the town of Providence, who are interested in this claim to the amount of $200,000. I know of another in the city of New York interested to double this amount; and whose right and chance of compensation, under the Convention of August, 1802, were admitted and ascertained.

Sir, I would as soon shake at them the sand of an hour-glass—as measure out to them the sands of Florida as a compensation, even if you meant to give them that—which you do not intend. It would indeed be a memento mori of their claim. If this transaction is bottomed upon a pure and comprehensive equity, why is it not accompanied with a pledge of the faith of the United States to compensate the individual sufferers? Are they to be left to their legal remedies, against sovereigns not suable? Is one part of the Union to convert to their own exclusive benefit the misfortunes of the other part? Are the planters of the South, (against whom I certainly have no prejudices,) to thrive and prosper upon the losses of the merchants of the North? Are they, who have paid no consideration, to hold and enjoy this estate? I put this plain matter to the understandings and consciences of gentlemen, on both sides of the House. It is not a matter of party politics. I do not, on the ground of party, oppose this measure.

But, sir, I must hurry on to consider what this indemnity will cost you; what will be the expenses of this suit, to reduce to possession this pledge. What will you have to pay for the instrument, by which you are to carve out your own remedy? Will it not cost much more than you will actually obtain? What is this project as described by Gen. Pinckney? To reduce the fortress of St. Augustine—to occupy East Florida. What force will this require? Omitting the walled

and art, in the world. Attend to the description of it in the papers produced. Recollect the failure of General Oglethorpe, in the year '39, and the discomfiture (I will not say disgrace) that then on this account was attached to the arms of Great Britain and her colonies.

To give a probability of success to this measure, 4,000 regular troops, an immense train of battering artillery, all the volunteer force that Tennessee, South Carolina, and Georgia are able to supply, will be necessary, besides a large maritime force of gunboats, brigs, &c. —Ten thousand men, in different ways, must be employed in this expedition, and its connected and associated objects of the subjugation of the Seminoles, the Creeks and other Indian nations. Even if you are successful, you will lose one-half of your troops by battle, or by sickness. You will not be able to commence the siege until April; and in June the climate would oblige you to abandon it. The troops must come from the upland country of the adjoining States. Sir, it is a medical fact, that they, no more than the men of an extreme northern climate, can endure the intense heat, the pestilential vapors, and the clouds of musquitoes that darken and pollute the swamps and sands of Florida. If you are successful, it will be by the destruction of 5,000 lives, and by the expenditure of five millions of dollars. Is your object worth this price? If you gain it, you obtain nothing: for that nothing you pay in a vast effusion of blood and treasure. The northern and middle States, those to whom you pretend indemnity, obtain none. They bear their full, their over proportion in the expenses of this new war, and obtain no compensation at last. I must dismiss this point of indemnity, not because it is exhausted, but because I feel myself trespassing on your patience.

The second general justificatory ground on which this measure is defended, is that of necessity. The apprehension of the use that may be made of the country by our enemy, or, in the words of the honorable gentleman from Georgia, a military measure of self-defence. Sir, I do not mean to undervalue this plea. There are palpable occasions, and desperate emergencies, in which it may rightfully be urged. "Salus populi suprema lex." I will not say, that if the danger is instant and imminent, that an enemy can and will seize a point of annoyance that we ought not to anticipate his design; but I do say that if the danger apprehended be inconsiderable, remote, and contingent, and especially if it be but too apparently matter of artificial contrivance, proceeding from your own wrong, attended with circumstances of suspicion, that it never can warrant so atrocious an act as that of seizing on the territory of a friendly neutral power. Gentlemen must all allow, that it is an act exhibiting a most signal exception to the general pacific policy, the cautious forbearance—the solicitous neutrality of this country. It is, at once, an overthrow of all our sublime and romantic theories of the law of nations, and especially of our profound system of controlling warlike and ambitious States, by the precepts of justice, philosophy, and philanthropy; it is a lash of satire, that cuts to pieces all the pretty, flowery phrases of Mr. Jefferson, and shivers, into a thousand shreds, the sturdy dissertations of Mr. Madison. This country was but lately deemed the last retreat and sanctuary of the good old-fashioned law of nations; we affected to reverence that law, and the virtues on which it was founded; and we acknowledged and congratulated ourselves upon the benefits which were its result. On this account we have been comparatively happy at home, and applauded and admired abroad. This national habit and disposition, has been worth to us fleets and armies; and, combined with ordinary foresight, with strict impartiality, and a continuance of the Washingtonian policy, of preparing in peace for war, would still avail us, as our cheap and efficient defence.

Sir, what is the point on which this plea of necessity now rests? What is the danger apprehended? The occupation of Florida by England. But it is three years since you have had or feigned this fear; this is the third time you have called us to drive out the wolves from among the sheep. But the English, restrained by their treaty of alliance which guarantees the integrity of the Spanish empire, have shown no inclination to go there, and, while your present law remains, never will. They know of course, as well as you do, the contingency upon which, by the law of 1810, you have placed your right or intention of occupying East Florida. It would be an act as impolitic in itself, as treacherous to their allies, to create that very contingency which is to be the apology of your operations, and the occasion of immense mischief to their friends. They benefit their friends by forbearance, they embarrass you, they suspend you in a ridiculous attitude, panting with the eagerness of desire, and the pressure of prohibition. They have made no attempt to seize East Florida, they will make none. But if by the adoption of the act now under consideration, you alter your present policy, and, fatigued with waiting for English aggression and despising the contingent remainder, you grasp at a present absolute estate, their system both of policy in regard to themselves, and of good will to their allies, of course must change. The moment you raise your entrenchments against St. Augustine, the English will succor it, and defeat your enterprise. You have drawn attention to your project, you have served them with a notice. Withdraw your troops from East Florida, where they have been now for two years—abandon this undertaking, and you are secure from English interference or Spanish aggression. Let them alone, and they will let you alone. It appears to me clearly that the adoption of this bill accelerates and renders certain the very event which you have reason to dread. Then, sir, the ground of ne-

cessity not only fails you, but the reasons you render are converted against you.

But the Spaniards will excite the Indians. Do not the papers before us prove that the Indians were peaceable, undisturbing, undisturbed, until you invaded Florida? Put an end to your invasion, and you put an end to Indian excitement. Indians on their own soil defend themselves, and this you call crime; they retaliate as far as they can your wrong, and this you call abomination. But the Spanish seduce the negroes. Is the fact verified? How can they have communication with the negroes of Georgia? And if they had, did they ever do so until you invaded their territory—until you had promised fifty acres of land to every Spaniard who would betray his country, and violate his allegiance? It stands an undisputed fact, that Matthews, the agent of this government, did this. Mr. Foster expressly charges it on Mr. Monroe, and he does not deny the fact. He admits it. I appeal to the correspondence of November, 1811. In the whole progress of this business you make your previous wrong an apology for subsequent wrong. All the evils that have happened, all that you apprehend, are the necessary and natural consequences of your previous acts:

> "I do the wrong, and first begin the brawl;
> The secret mischiefs that I set abroach,
> I lay unto the grievous charge of others."

But so far from its being a sound position, that military necessity irresistibly compels you to this measure, I venture to assert that, in a merely military point of view, you cannot do any thing so erroneous, probably so fatal as the occupation of East Florida.

If you mean to press this undertaking with zeal, and with that ardor and promptitude that can alone give you a chance of success, the whole force of the southern country ought in May next to be driving at this object. Will you not then invite an invasion by Great Britain at the very spot, at the very time she desires? This enterprise will at any rate suggest to her the design, because it affords the opportunity—the enviable opportunity, of causing a diversion from your Canada project, and dispensing at the same time the most effectual relief to their allies. I ask, whether this project, drawing as it necessarily must the whole of the southern defensive force from the points of defence, does not insure an invasion from your present enemy, and at the very point, where, from peculiar circumstances, you are most vulnerable?

Gentlemen seem to hug themselves in the notion that Charleston is secure, as though that were the only point to be preserved; but examine the maps of that country, recollect the military and naval operations of colonial times, and inquire into the practicability of an English fleet entering the harbor of Port Royal, and effecting at that point the invasion of the is engaged at the distance of several hundred miles in foreign conquest. Would you not soon be compelled to raise your siege of the capital of Florida, and, hurrying home to relieve a deserted and unprotected country, pursued by the emancipated and enraged troops of St. Augustine, harassed night and day by parties of Seminoles and Creeks, arrive, if you arrive at all, faint and exhausted, to encounter a new and formidable enemy. Proceed with this fatal enterprise, and deplorable indeed will be the fate of our Southern brethren.

It is made matter of serious accusation against the Spaniards, that in defence of their own homes, they intend to employ black troops. I do not know what right we have to dictate to them on this important point of complexion. We provoke to combat. We are assailants, and for plunder, and yet undertake to prescribe to our devoted victim the mode of his defence. Black troops were employed by Spain in 1739, at the same place and for the same purpose they are now employed. England has thousands and tens of thousands of black and colored troops in her pay, as I am afraid we shall to our cost discover.

We employed black troops in the war of our Revolution. The State of Rhode Island raised a black regiment. But though we have neither the power nor the right to prohibit the employment of such troops by our enemy, I admit, as has been suggested, that the consequences may be tremendous. That unhappy species of population, which prevails in our southern country, aroused to reflection by the sight of black soldiers, and black officers, may suspect themselves to be fellow-men, and fondly dream they likewise could be soldiers and officers. The bloody tragedy of St. Domingo, may be acted over again, in this devoted country. If your enemy has half the malignity of motive, or atrocity of design, which, for the purpose of goading a reluctant people to drag on an unprofitable and unnecessary war, you daily impute to him, he will aid the in this nefarious business.

Refrain, then, from this measure, which has such a host of evils in its train. If I were a citizen of South Carolina or Georgia, I should doubly deplore and deprecate this attack on St. Augustine. I would down on my knees, to entreat the government to forbear. I should protest against this withdrawing all the efficient force of the country, to a distant and dangerous point, for the purpose of a wicked war of offence, when all that force will be wanted for defence and protection at home, and to repel the invasion which this measure will inevitably suggest and superinduce. I do address this consideration, most sincerely and solemnly, to the honorable gentlemen from those States. Take care, that while you are pursuing foreign conquest, your own homes are not devastated. Take care, that while your war eagle is soaring a sublime and romantic flight, and "beating widely on the wing for prey," her own eyry be not plundered, and she compelled to turn her course home-

ones' cries." Will you, for the chance of conquering East Florida—of annexing the Island of Amelia to your territory—of satisfying the cupidity of land-speculators, or even of gratifying a mistaken sense of interest in a respectable State, encounter the terrible contingencies, the almost certain horrors of negro insurrection, of Indian hostility, of midnight conflagration, of widespread ruin and indiscriminate massacre?

Sir, it appears to me, that the prominent argument, that is urged for the adoption of this measure, viz., the war with England, is the strongest argument against it. What is the great object of your policy, your solitary hope of success, in your war against England? It is avowed to be, the conquest of Canada. How is this to be effected? by frittering your force into various divisions; an army of the south, an army of the north, and an army of the west? No, sir, if like our ally France, we are impelled by this lust of conquest, and aspire to like success, we must adopt her mode of ensuring it. Select one great point for attainment, and keeping that steadily in view, press upon it with all the energy of your means. Why scatter your forces, in numerous, frivolous, and unavailing plans? Why not make one grand, undivided effort, and conquer Canada? Why divert into such various channels that force, which ought to be accumulated and contracted into one irresistible torrent?

By pursuing both, we shall be disappointed in both objects. Your war with Spain will ruin your war with England. Your war with England will ruin your war with Spain. Is it true that a war with England and at the same time with Spain, has always been intended? Last year the propositions to seize East Florida, and to conquer Canada, were associated. The inducements then held out were an enlargement and arrondissement of territory at the two extremities—a fair division of the spoil. We consent that you may conquer Canada; permit us to conquer Florida. The declaration that Canada should be conquered and retained was the exacted pledge of the northern men who voted for the war. You have got their votes. You have not, you cannot redeem your pledge. How is it that the proposition for seizing Florida is revived and so strenuously enforced, and so little is said, or done, or wished as to the conquest and incorporation of Canada? Where is the promised benefit to the North?

But, sir, it seems a point of honor demands that we should continue our efforts to reduce the fortress of St. Augustine, because the Spaniards refuse an amnesty to those worthy individuals who were willing to betray their country into our hands. Not only our sympathies are addressed, and even our deliberate approbation challenged for traitors and conspirators, dignified with the name of patriots, but we are invoked for their sakes solely, to plunge into a new war. And to this we are invoked in the hallowed name of the national faith. It is almost degradation to be obliged to examine such an allegation. Have we not denied the acts of Matthews—refused to ratify them? I will not say, that by this the government did not violate its faith with Matthews—so far as it relates to this, instead of imputing exclusive blame to this unfortunate, and, as I understand, confessedly meritorious officer, I cannot but believe that he thought he acted with perfect good faith to the government; strictly in virtue of his private, if not public instructions—and that he counted not only on the support but the applause of government. Cruelly disappointed in the result, he conceived that he had just cause of complaint—he considered himself the victim of a temporising, vacillating, insidious policy—and I ask the honorable gentleman from Georgia, did not Matthews die with such sentiments trembling to the very last on his lips? The averment of his own honor and innocence—of the tergiversation and pusillanimity of his employers. Was he not hurrying on to Washington, literally for his vindication; when, fortunately for those he had it in his power to expose, death arrested his course? But, sir, what is the ground of the government? They distinctly assert that Matthews has transcended his powers; that he has acted without the scope of his authority. He cannot, say the government, produce our letter of permission to sanction what he has done. Then, clearly, the consequence is, our faith was not compromitted, for our name and authority were not legally or fairly used. Our sympathies cannot justly be awakened for those conspirators. We are not interested in this amnesty. Let the Spanish Government deal with these men, as we should have done with Arnold, had he fallen into our power. Let them meet the punishment of traitors; or let them, rousing themselves to a new, and by us unprompted effort, deserve to be successful. Let them take the chance of being rebels or patriots; of swallowing the hemlock, or being crowned with myrtle.

That indeed is a suspicious patriotism, which bargains beforehand for foreign aid: that is hardly a valorous patriotism, that submits nothing to hazard—that conditions for amnesty before guilt, and secures the spoil, without fighting the battle. I will not say I have no sympathy for these people. I would save them if I could; but I will not, on their account, endanger my country's peace or fame. But another claim upon our honor is, our troops were attacked at Moosa—Moosa, where is it? within two miles of the fortress of St. Augustine. And if you had the camp of an enemy at Georgetown, threatening the capitol, the existence of your government—a foreign force, combined with domestic traitors, to overwhelm you, to throw you heck and heels into the Potomac, as one of your choice spirits once proposed—would you not attack? This is, of all others, the most miserable subterfuge. Good God! where are we? In what age do we live? In what country, when it is made a crime to extirpate the invaders of our native soil? In what age,

in what country, when it is made a virtue for a nation, itself at war for neutral rights, to invade an unoffending, helpless, friendly, neutral country?

But it is asked, Is not this measure defensible on the ground of precedents, and the practices of nations? O yes, undoubtedly. For this, as for every other enormity, you can find an example, but not a justification. I am apprehensive, sir, that in pursuing this unprofitable reference to precedents and authorities, less skilful than the learned gentlemen who have preceded me, I cannot avoid giving to my remarks an air of pedantry. I call this an unprofitable, and perhaps deceptive pursuit; because a recent experience shows, how pervertible are the clearest texts of the soundest authors. For when I discovered the honorable chairman making quotations from Vattel, in support of the present proposition, which authorizes us to take possession of that, to which we have no right, I could not help recollecting, that attending as a spectator in your gallery, during the debate on Mr. Ross's resolution, I heard the same honorable gentleman adduce passages from the same author, to prove that we ought not to take, what of perfect right did belong to us.

The earliest precedent on record was the one so pleasantly, not irrelevantly, alluded to by the honorable gentleman from Vermont, who is without question, of any one among us, the best read in the most ancient and authentic of all histories, the Holy Bible. Who, at any rate, does the most frequently and the most aptly quote the scriptures that were written for our instruction. He referred to the leading case of Ahab and Naboth. Sir, I will not dwell upon it long enough to inquire who is the Jezebel that has inspired our councils. I will not ask in the language of Mr. Barlow, whether this is not the mode devised, "the least onerous to the French treasury" to do us a nominal favor, and a real injury. But I believe and I hope—I say I hope, while it is lawful to say so, that the answer of the insulted and oppressed Spaniards will be that of Naboth to Ahab, "The Lord forbid me that I should give the inheritance of my fathers unto thee."

But do gentlemen prefer classical to biblical authority; the example of a republic, or rather an aristocracy to a theocracy? Lacedemon affords it. The fortress of Cadmea was won by a Lacedemonian general, by the same means of treasonable correspondence, which our general has used. The Ephori condemned their general as we have done, but retained their conquest. Do you want an instance from history to condemn you, to make you blush for your conduct? Take it from Florence—a real republic. With a territory so small as to render the desire of its extension natural and pardonable, such was the magnanimity of its republican character, its inviolable adherence to principle, and its abhorrence of the "selfish object of territorial aggrandizement," that when the city of Arezzo was betrayed into its hands, it disdained to profit by the treason, and restored that city to its freedom and independence. In what age did this happen? In comparatively a benighted period, the thirteenth century. Will you, Americans—you who have styled yourselves the most enlightened people, of a most enlightened age, be put to shame, by such an event happening, in such an era—in such a country?

But still, you have a thousand instances to encourage you. You have not the merit of novelty in your wickedness. Deeds as reprehensible, as nefarious as yours, and on the same grounds and pretences, crowd and deform the page of history. The annals of despotism help you out. Louis the XIVth was in the heart of the Netherlands, before it was known he had a pretence to any part of those rich provinces, under a pretended right of his wife. Frederick of Prussia, in 1741, gave the intimation of his claim against Silesia, at the head of 60,000 men. Shall I mention the two divisions of Poland, the recent instances of French usurpation in Holland, in Switzerland, in Portugal, in Italy, and Spain? No; these instances are too identical for illustration. It is unnecessary to exhibit those instances, of which your proceedings are but polygraphic copies. I will hasten to the great precedent, which has been alluded to on both sides, as affording pertinent matter for illustration; the seizure of the Danish fleet.

I have a right to refer to it triumphantly, as an "argumentum ad hominem." All the disinterested part of mankind condemned this measure. In this country, all parties, federal and republican, assailed it. Let me prove a measure to be within the scope of the policy of that—let me prove a conformity, or even a strong analogy of conduct, and the proof concludes; the argument is victorious, against any individual or party in this country, the author of such a measure—more especially against those who were instinctively offended with Copenhagen Jackson—more especially against the present administration—the asserters of neutral rights—the asserters of exclusive territorial rights, even in cases of doubtful or common jurisdiction. So sensible was the honorable gentleman from Tennessee, on my right, of this, that in the early stages of this discussion, he directed his most vigorous efforts to dislodge this train of ideas from the mind of the Senate. The gentleman showed his usual correctness and acuteness, in discovering the stress of the argument, and selecting the turning point. But what was his mode of refutation? How did he attempt to efface the impression that was instantly made on our minds, when the similarity of our conduct to that of the English, in seizing the Danish fleet, was referred to by the honorable gentleman from Vermont? Why, forsooth, by joining in the denunciation against that measure—by magnifying its injustice—by exaggerating, if possible, its enormity—by darkening its atrocity. Sir, this may be allowable in rhetoric, but it is at best but an able evasion of the very point, which a not over strict logic

would say he was bound to meet. The gentleman expressed his surprise that any American could charge his country with an intention to perform an act so nefarious as that of the seizure of the Danish fleet by the English. Sir, I am not obliged to contend, though with the utmost fairness and propriety I might, that our contemplated act transcends that in enormity, in its outrage on the law of nations, in its prostration of the principles of right and justice.

One point of difference we surely cannot forget, viz., that the Danish fleet was first demanded, and demanded from those who had a right to cede it. In this case you have made no demand, and even if you had, it is of those who have no right to convey. The mere local authorities of Florida have no right to dismember the Spanish empire. Another point of difference is, that the French were at hand. They occupied a part of Denmark, the Duchy of Holstein. Their ulterior success, which was not only probable, but inevitable, would have given them possession of the Danish fleet. In addition to this, the English ministry urged, (with what propriety of course I cannot tell,) the secret articles of the treaty of Tilsit, in justification of this measure.

But after all, it was an indefensible act, deserving all the epithets of reprobation which the honorable gentleman has bestowed upon it. It was as fatal in its effects, as censurable in its principle. It gave the hearts of the Danish nation to France, it made an ally of the continental system; it startled Sweden, it irritated Russia, it turned the tide of public opinion against ministers in England, it alarmed and alienated America; and for all this, Britain gained sixteen hulks, some tons of hemp, and naval stores—and the distrust of the world.

Of all the ill-consequences resulting to Great Britain from this act, the most deeply fatal to her was the opinion, justly entertained in England and in America, the only remaining countries where public opinion retains through the press and the freedom of institutions, any operation; that she, who pretended to execrate the outrages of Bonaparte, who professed a reverence for the law of nations, and declared herself the advocate of the principles of justice, virtue and religion, should, overcome by the lure of gain, or intimidated by an unreal necessity, have fallen from her high pretensions, have forfeited her moral character, have stained her hitherto comparatively spotless reputation.

In miserable contradiction to herself, she overthrew, at one blow, that system of universal public law, whose maxims and precedents have been long acknowledged—and by no nation more than herself—to be of the same force and obligation, as the municipal constitutions of particular States: "A system," as it is observed by Lord Erskine, in his celebrated protest upon this subject, "which has gradually ripened with the advancement of learning and the extension of commerce, and which ought to be held sacred and inviolable by all governments, as binding the whole world under one politic and moral dominion."

I implore you, sir, that we still adhere to this system—that wise and philanthropic system, that is founded on justice, that favors the innocent, that protects the weak, that suspects and opposes the strong and the unprincipled; that disdains conspiracy in usurpation and fellowship in guilt, though the spoil of defenceless and afflicted neighbors be the bribe, and the splendid example of exalted potentates, the justification.

By abandoning this system, what has Europe become? A scene of ruins. And still, amid these very ruins, we meet at every turn, the flames of war bursting out anew into wider conflagration. Let us adhere to the ancient system of the law of nations. Let us snatch this sacred palladium from its burning temple, and re-consecrate it in this our new and virtuous empire.

I perceive, sir, that time will not permit me to examine this question, in the various other relations which have suggested themselves to my mind. I have so strong an opinion that this, as a military enterprise, will, having regard to our present and probable means, after all, prove abortive and unfortunate, that I had almost felt myself emboldened to submit my reasons for that opinion. St. Augustine, without a naval superiority, cannot be subdued; let General Pinckney, brave and intelligent as I know him to be, do his best. My reasons would be drawn from a detailed consideration of General Oglethorpe's operations, in 1739. I have consulted various accounts of that siege. I have a plan of his attack, taken by an engineer employed in the service, now before me. Oglethorpe's best chance of success depended on his naval superiority. But he was defeated. Can we then hope for success, when the sea is open to Spanish and British squadrons; and when, so far as relates to our naval preparations, we have committed the same mistake here as in our Canadian campaign—a mistake, or rather negligence, that has been the principal, if not the sole cause of our repeated disasters? But this subject, in all its military bearings, has been, and can be so much better illustrated by the honorable gentleman from Maryland, that I forbear to enlarge upon it. I leave also to that gentleman and others, the important topic of the disastrous consequences of this measure, to the miserable remains of our foreign commerce. The conjectures and predictions that Spain will not, because she cannot, from the depression of her fortunes, the inadequacy of her means, and the imbecility of her national character, resent this lawless aggression, I believe rather illustrative of the meanness of our motives, than of the true nature of her disposition and resources. The merchants, those who have the best means of knowing, distinctly understand that your hostile occupation of East Florida will be the signal of the immediate confiscation of American property. In relation to the interests of my own State, the consequences of this measure

will be indeed deplorable. The little remnant of trade we have left is that to the Havana, which will be inevitably cut off. And it is a singular fact, well known to my honorable colleague, that real property, plantations of a very considerable value, in the Island of Cuba, belong to native citizens of the State of Rhode Island. They are owned principally by the fast friends of the present administration, by gentlemen who have already loaned to the government more than some whole patriotic States, and whose private armed ships have captured from the enemy more than half a million sterling. These, to be sure, are not considerations of great moment. Since gentlemen choose to sacrifice their friends, it is officious in me to interfere, perhaps; but they are my constituents, and I deem it my duty to suggest their danger and their interests.

But there are resulting from this measure, political consequences connected with your foreign relations, with your present war with England—with the present peculiar circumstances of the world, which are worthy of the gravest consideration. Do you wish to make the present contest with England popular beyond any instance in their history—to unite against you the undivided opinions—the enthusiastic feelings—the animated efforts of the English people—to make this a war indefinite in continuance, vindictive in its mode of operation, and victorious to England in the end? Do you mean to render suspected, and of course unavailing, all your pacificatory propositions? Then do this dastardly act against a helpless people—wage your war with Spain. If ever there was a subject which united the opinions of the British nation, it was the late Spanish revolution. If there ever was an object in which the hopes, interests, and efforts of the English nation concentred, it is Spanish emancipation. This act of yours will entirely alienate from us our friends in the British Parliament. We shall be so notoriously in the wrong, that no one in that assembly will dare defend us. But a few months ago, we could refer to the majority that effected the repeal of the Orders in Council, as equally the advocates of their own best national interests, and of our most important national rights. We unwisely continue our war with England after the acquisition of the great avowed object of that war. The people of England now understand that we fight on the single ground of maritime rights. And they are taught to believe that this cruel contest is intended, not so much for our own protection, as for their destruction. On this ground of maritime rights are placed the pride, the hopes, the fears of this sometimes misgoverned, but always magnanimous nation.

Add then a Spanish war to your English war, and you will not have a friend left in England. Do gentlemen affect to deem this of no consequence? Then they have forgotten history, or read it but to little advantage. Sir, this Spanish war will corroborate into certainty the suspicion (if you please,) that our councils are influenced by an undue partiality for France. I am not taking upon myself to say that this would be a fair deduction; but the adoption of this measure would give an apparent sanction to this accusation, which we ought to avoid when we can so easily avoid it, not only without detriment, but with safety and advantage. Let us not only be chaste but unsuspected. What will be the inevitable consequence of a war with Spain? a non-intercourse with the Peninsula. The great object of France will be effected. This in addition to our concurrence in the continental system, and our war with England, is all that the ruler of France in the insolence of his power, the extravagance of his desires, the arrogance of his contempt, or the deadliness of his hatred, sanguine, haughty, insatiable, exorbitant, and inexorable as he is, ever demanded from us, and more than he could ever expect to obtain even from our trembling acquiescence.

It will seem to England that this coincidence in conduct must arise from coincidence in views. She would deem us a party in the great design of her vindictive foe, and our impolitic and unfortunate war would be by her associated in principle and duration with that war, which she now wages for her own security, and the liberation of mankind. Sir, I must conclude. The subject is not exhausted, but I am. I will not attempt to recapitulate, or arrange in a more correct and compact form, the desultory remarks I have thrown out. But I must demand it of every individual member of the Senate, again and again to ask himself what right have we to the territory of East Florida? Is it any other than the right created by desire—the right suggested by ambition—the right of taking advantage of the troubles of our neighbors, of plundering weakness, of imposing on misfortune, of oppressing the oppressed? What right would Spain have to occupy St. Mary's or Cumberland Island? the same we have to occupy Augustine and Amelia.

I have directed my attention solely to East Florida. The other member of the question in regard to the Mobile is easily disposed of. If the territory be ours under the treaties and laws of the United States, there is no need of this law to authorize the President to take possession—he ought to do it by the obligation of general duty—he wants no particular law to enable him to assert the claims of the United States. He must take care that the laws and treaties are executed. He encounters no hazardous responsibility; he is empowered so to do, not by a constructive, but by a plain, direct, and absolute authority.

Sir, let us presume for a moment that we shall be completely successful as to the attainment of these countries; that they cost us no money, no blood, no actual privation, no present suffering. Will not this policy of indefinitely increasing our territory be productive of the most baneful future consequences? Is it not accelerating that

have foreboded and deprecated as the catastrophe of our political drama? We have conquered Louisiana by our money; we aspire to the possession of Canada; we intend to occupy the Floridas—we have relinquished our system of philanthropy towards the Indians—we are extinguishing Indian claims in Indian blood. The Indian tribes are no longer our fellow-citizens and red brethren, but wretches to be hated, barbarians to be exterminated. All external pressure binding us into union is to be removed. All cause of external alarm and apprehension is to be put at rest. A careless and indolent security will ensue, or what is worse, a restless ambition and turbulent arrogance will seek new gratifications, interfere with the concerns of other nations, meditate further conquests, and the fatal result will be, that this fortunate and homogeneous composition of pure and simple republics, will be a vast empire made up of various foreign states, with discordant institutions, and the conflicting prejudices and passions of irreconcilable interests, which can only be constrained into union, and subdued into tranquillity by the energy and power of a single despot—the chief of a mighty army, the oppressor of a once free and virtuous people.

TECUMSEH.

Tecumseh, one of the most remarkable warriors and orators of the aboriginal tribes of America, was born on the Scioto river, in Ohio, about the year 1770. He was the son of a Shawanee warrior. At an early period of his life he seems to have commenced his savage operations against the whites. His first exploit of which there is any record, was performed near Hacker's creek, in the month of May, 1792, when, with a small band of warriors, he surprised the family of John Waggoner, and carried them into captivity. After this he was engaged in various incursions upon the settlements of the whites, and often intercepted the boats as they passed and repassed on the Ohio river. It is said that, in 1806, he and his brother the *Prophet* formed a plan of uniting all the western tribes of Indians, in opposition to the Americans, and previous to the war of 1812, he visited all the southern tribes, for the same purpose. Wherever he went he called councils of their tribes, and, with a bold and commanding eloquence, exhausted every topic calculated to operate on their minds, and alienate their affections. His speeches had a powerful influence amongst all those nations, with the Creeks particularly, although the more considerate rejected his interference. In the course of his harangues, he was accustomed to reproach them with their civilization; and, in the keenest and most sarcastic manner, contrasted their degenerate effeminacy with every thing that was great and noble in the estimation of the Indians. Against the United States he pronounced the most furious abuse, and by every method endeavored to establish in the minds of his hearers a belief that the humane system for their improvement, which had been established by the Americans, was but a plan to deprive them of "the homes of their fathers."

Among the many strange, and some strongly characteristic events in his life, the council which General Harrison held with the Indians at Vincennes, in 1811, affords an admirable instance of the sublimity which sometimes distinguished his eloquence. The chiefs of some tribes had come to complain of a purchase of lands which had been made from the Shawanees and other tribes. (This council effected nothing, but broke up in confusion, in consequence of Tecumseh having called General Harrison "a liar.") It was in the progress of the long talks that took place in the conference, that Tecumseh, having finished one of his speeches, looked round, and seeing every one seated, while no seat was prepared for him, a momentary frown passed over his countenance. Instantly, General Harrison ordered that a chair should be given him. Some person presented one, and bowing, said to him, "Warrior, your father, General Harrison, offers you a seat." Tecumseh's dark eye flashed: "My father!" he exclaimed, indignantly extending his arm towards the heavens; "the sun is my father, and the earth is my mother; she gives me nourishment, and I repose upon her bosom." As he ended, he sat down suddenly on the ground.

In the late war between the United States and Great Britain, Tecumseh was an ally of the British, and held the rank of brigadier-general. He distinguished himself at the battle of Brownstown, on the fifth of August, 1812, and a few days after led his Indians with great bravery in the conflict between the English forces and the Americans under General Miller. He was killed at the battle of the Thames, on the fifth of October, after making a most desperate stand, in conjunction with the British under General Proctor, against the American troops under the command of General Harrison.

"Tecumseh received the stamp of greatness from the hand of nature, and had his lot been

cast in a different state of society, he would have shone as one of the most distinguished of men. He was endowed with a powerful mind, with the soul of a hero. There was an uncommon dignity in his countenance and manners; by the former he was easily discovered after death, among the rest of the slain, for he wore no insignia of distinction. When girded with a silk sash, and told by General Proctor that he was made a brigadier in the British service, for his conduct at Brownstown and Magagua, he returned the present with respectful contempt. Born with no title to command but his native greatness, every tribe yielded submission to him at once, and no one ever disputed his precedence. Subtle and firm in war, he was possessed of uncommon eloquence; his speeches might bear a comparison with those of the most celebrated orators of Greece or Rome. His invective was terrible, as may be seen in the reproaches which he applied to General Proctor, a few days previous to his death. His form was uncommonly elegant; his stature about six feet, and his limbs were perfectly proportioned. He was honorably interred by the Americans, who respected him, as an inveterate, but a magnanimous enemy. He left a son, who, when his father fell, was about seventeen years of age, and who fought by his side. To this son, the King of England, in 1814, sent a present of a handsome sword, as a mark of respect for the memory of his father.*

SPEECH AT VINCENNES.

In 1809 Governor Harrison purchased of the Delawares and other tribes of Indians, a large tract of country on both sides of the Wabash, and extending up the river sixty miles above Vincennes. Tecumseh was absent during the time of the negotiation, and at his return expressed great dissatisfaction with the sale. On the twelfth of August of the next year (1810) he met the governor in council at Vincennes, when he addressed him as follows: †

It is true I am a Shawanee. My forefathers were warriors. Their son is a warrior. From them I only take my existence; from my tribe I take nothing. I am the maker of my own fortune; and oh! that I could make that of my red people, and of my country, as great as the conceptions of my mind, when I think of the Spirit that rules the universe. I would not then come to Governor Harrison, to ask him to tear the treaty and to obliterate the landmark; but I would say to him, sir, you have liberty to return to your own country. The being within, communing with past ages, tells me that once, nor until lately, there was no white man on this continent. That it then all belonged to red men, children of the same parents, placed on it by the Great Spirit that made them, to keep it, to traverse it, to enjoy its productions, and to fill it with the same race. Once a happy race. Since made miserable by the white people, who are never contented, but always encroaching. The way, and the only way to check and to stop this evil, is for all the red men to unite in claiming a common and equal right in the land, as it was at first, and should be yet; for it never was divided, but belongs to all for the use of each. That no part has a right to sell, even to each other, much less to strangers; those who want all, and will not do with less.

The white people have no right to take the land from the Indians, because they had it first; it is theirs. They may sell, but all must join. Any sale not made by all is not valid. The late sale is bad. It was made by a part only. Part do not know how to sell. It requires all to make a bargain for all. All red men have equal rights to the unoccupied land. The right of occupancy is as good in one place as in another. There cannot be two occupations in the same place. The first excludes all others. It is not so in hunting or travelling; for there the same ground will serve many, as they may follow each other all day; but the camp is stationary, and that is occupancy. It belongs to the first who sits down on his blanket or skins which he has thrown upon the ground; and till he leaves it no other has a right.*

Having thus explained his reasons against the validity of the purchase, Tecumseh took his seat amidst his warriors.

* Biography and History of the Indians of North America, by Samuel G. Drake: National Intelligencer, 1813: Memoirs of Harrison; and the New York Gazette, 1813.

† Drake's Biography and History of the Indians of North America.

* Mr. Drake, the author from whom this speech is taken, expresses some doubts of the correctness of this version of it; but adds: "nevertheless it may give the true meaning. One important paragraph ought to be added, which was, 'that the Americans had driven them from the sea-coast, and that they would shortly push them into the lakes, and that they were determined to make a stand where they were.'"

SPEECH TO GENERAL PROCTOR.

The following speech, "in the name of the Indian chiefs and warriors to Major General Proctor, as the representative of their Great Father—the King," is supposed to have been delivered a short time prior to the battle of the Thames, on the fifth of October, 1813.*

FATHER, listen to your children! you have them now *all before you.* The war before this our British father gave the hatchet to his red children, when old chiefs were alive. They are *now* dead. In that war our father was thrown on his back by the Americans, and our father took them by the hand without our knowledge; and we are afraid that our father will do so again at this time.

Summer before last, when I came forward with my red brethren, and was ready to take up the hatchet, in favor of our British father, we were told not to be in a hurry, that he had not yet determined to fight the Americans.

Listen! When war was declared, our father stood up and gave us the tomahawk, and told us that he was ready to strike the Americans; that he wanted our assistance, and that he would certainly get us our lands back, which the Americans had taken from us.

Listen! You told us, at that time, to bring forward our families to this place, and we did so:—and you promised to take care of them, and that they should want for nothing, while the men would go and fight the enemy. That we need not trouble ourselves about the enemy's garrisons; that we knew nothing about them, and that our father would attend to that part of the business. You also told your red children, that you would take good care of your garrison here, which made our hearts glad.

Listen! When we were last at the Rapids, it is true we gave you little assistance. It is hard to fight people who live like ground-hogs.

Father, listen! Our fleet has gone out; we know they have fought: we have heard the great guns: but know nothing of what has happened to our father with one arm. Our ships have gone one way, and we are much astonished to see our father tying up every thing and preparing to run away the other, without letting his red children know what his intentions are. You always told us to remain here and take care of our lands. It made our hearts glad to hear that was your wish. Our great father, the King, is the head, and you represent him. You always told us that you would never draw your foot off British ground; but now, father, we see you are drawing back, and we are sorry to see our father doing so without seeing the enemy. We must compare our father's conduct to a fat animal that carries its tail upon its back, but when affrighted, it drops it between its legs and runs off.

Listen, Father! The Americans have not yet defeated us by land; neither are we sure that they have done so by water—we therefore wish to remain here and fight our enemy, should they make their appearance. If they defeat us, we will then retreat with our father.

At the battle of the Rapids, last war, the Americans certainly defeated us; and when we retreated to our father's fort in that place, the gates were shut against us—We were afraid that it would now be the case, but instead of that, we now see our British father preparing to march out of his garrison.

Father! You have got the arms and ammunition which our great father sent for his red children. If you have an idea of going away, give them to us, and you may go and welcome, for us. Our lives are in the hands of the Great Spirit. We are determined to defend our lands, and if it is his will, we wish to leave our bones upon them.

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* This speech was published in the National Intelligencer in 1813, with the subjoined introduction:

"The gentleman to whom we are indebted for the following speech, informs us it was found among General Proctor's papers after his flight. It is undoubtedly genuine. Its truth makes it severe; its language gives force and point to the truth."

Danl Webster

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DANIEL WEBSTER.

Ebenezer Webster, the father of the subject of the present sketch, was an independent and frugal farmer, who enjoyed the confidence and respect of his fellow-citizens, and for some time served them both in a military and civil capacity. During the *Seven Years War*, he distinguished himself as a soldier in the ranks of Sir Jeffrey Amherst, and General Wolfe; and was present at the battles of Bennington and White Plains, in the war of the Revolution. At the time of his death, in 1806, he had occupied for several years, the position of judge of the Court of Common Pleas, for the county of Rockingham, in New Hampshire. He was twice married. His second wife, the mother of Ezekiel and Daniel Webster, was Abigail Eastman, a woman of Welsh extraction, and "like the mothers of so many men of eminence, she was a woman of more than ordinary intellect, and possessed a force of character which was felt throughout the humble circle in which she moved. She was proud of her sons and ambitious that they should excel. Her anticipations went beyond the narrow sphere in which their lot seemed to be cast, and the distinction attained by both, and especially by the younger, may well be traced in part to her early promptings and judicious guidance."

Daniel Webster was born in the town of Salisbury, New Hampshire, on the eighteenth day of January, 1782. His early opportunities for education were exceedingly limited. The village school, kept during the few months of winter, by persons illy qualified for the task, was the scene of his youthful instruction, and thither he daily went, on foot, trusting for an occasional ride with the miller or the blacksmith, whose course lay in the same direction with his own. These advantages Mr. Webster enjoyed much more than his older brothers; partly because he evinced a greater desire for learning, and partly because his father thought he was of too frail a constitution for any robust employment. "But Joe, his eldest half brother, who was somewhat of a wag, used to say that 'Dan was sent to school, in order that he might know as much as the other boys.'" As soon as he was able to read, which must have been when he was very young, for he says, in his letter to Master Tappan, "I have never been able to recollect the time when I could not read the Bible," he manifested an ardent desire for books, and owing to the scarcity of them in the neighborhood of his father's house, he read the old ones over and over, till he had committed most of their contents to memory. Before he was fourteen years of age, he could repeat the whole *Essay on Man*, and at a subsequent period he committed to memory Watts' Psalms and Hymns.

In the spring of 1796, Mr. Webster left his father's house and went to Exeter, where he entered Phillips Academy, at that time the only institution in the State, with the exception of Dartmouth College, above the rank of a district school. Here he remained only a few months, but during that brief period, receiving the aid and encouragement of the celebrated Joseph Stevens Buckminster, who was a member of the senior class of the Academy, he made rapid advancement in his studies. A singular fact of his connection with this school has been related by Mr. Webster himself. "I believe," says he, "I made tolerable progress in most branches which I attended to while in this school; but there was one thing I could not do. I

Buckminster sought especially to persuade me to perform the exercise of declamation, like other boys, but I could not do it. Many a piece did I commit to memory, and recite and rehearse in my own room, over and over again; yet when the day came, when the school collected to hear declamations, when my name was called, and I saw all eyes turned to my seat, I could not raise myself from it. Sometimes the instructors frowned, sometimes they smiled. Mr. Buckminster always pressed and entreated, most winningly, that I would venture. But I never could command sufficient resolution." *

At the termination of his studies in Exeter, Mr. Webster returned to Salisbury, and shortly after was placed under the instruction of the Rev. Samuel Woods, in Boscawen, to prepare for College. While with Mr. Woods he applied himself with the greatest zeal to his studies, and "learned all that his preceptor could teach." He read Virgil and Cicero, and at the same time devoted much of his leisure to reading and the study of general literature. Here, for the first time, he met Don Quixote in English. "I began to read it," he said, in a conversation with Mr. March, "and it is literally true that I never closed my eyes till I had finished it; nor did I lay it down any time for five minutes; so great was the power of this extraordinary book on my imagination."

In August, 1797, Mr. Webster entered the freshman class of Dartmouth College. Here he devoted himself attentively to the prescribed studies, at the same time spending many of his hours in general reading; especially in English history and literature. He took part in the publication of a college periodical, often contributing original articles to its pages, besides making selections for it from the current books and magazines. During his college life he maintained a high reputation among his classmates for wit and talent. "It is, known," says Mr. Ticknor, "in many ways, that by those who were acquainted with him at this period of life, he was already regarded as a marked man, and that to the more sagacious of them the honors of his subsequent career have not been unexpected." In the intervals of his student life, he was engaged in teaching school, not only for the purpose of providing a means of his own support, but to aid his elder brother, who was at that time preparing to enter college.

Mr. Webster graduated in August, 1801, and immediately commenced the study of law in the office of Mr. Thompson, a neighbor of his father. Here he continued until "he felt it necessary to go somewhere and do something to earn a little money." To this end he took charge of an academy at Fryeburg, in Maine. In September, 1802, he returned to his legal studies with Mr. Thompson, where he remained until the spring of 1804. He now went to Boston and obtained admission as a student in the office of Christopher Gore, at that time one of the principal lawyers, and among the most eminent men of the State. With Mr. Gore he remained until his admission to the bar in March, 1805. About this time he received a letter from his father, in which he was informed that the appointment of clerk in the Court of Common Pleas, for the county of Hillsborough, in New Hampshire, had been procured for him, and he was advised to hasten home and take possession of the office. His father considered the appointment as a very favorable position, but Mr. Webster, before deciding to accept it thought it most proper to consult with his preceptor, Mr. Gore. The case being laid before him, that gentleman suggested that should he accept the office, he would probably remain a mere clerk of the court all his life, and advised him to refuse it. He accordingly declined, and soon after opened an office at Boscawen, not far from his father's residence, where he commenced practice. His personal appearance at this period of his life, has been described by one who was present at the trial of one of his first cases, as "a tall, gaunt young man, with rather a thin face, but all the peculiarities of feature and complexion by which he was distinguished in later life. The case alluded to, was concerning the property of a certain sheep, of the value of thirty shillings or thereabouts; and was tried in a long hall, before a justice of the peace, and the assembled idlers of the village. The case was argued at great length, and though Mr. Webster, who had not yet become known, did not seem to attract any great attention, he spoke and reasoned after the same fashion, with the same plainness, point and force, for which he has since been so much celebrated." †

* Reminiscences of Congress, by Charles W. March, page 12.

In the spring of 1807, Mr. Webster was admitted to the bar of the Superior Court of New Hampshire, and in the following autumn, relinquishing his practice to his brother Ezekiel, he removed to Portsmouth, and continued there in the practice of his profession during the greater part of nine years. "They were years of assiduous labor, and of unremitted devotion to the study and practice of law." During this time his practice was an extensive but not a lucrative one. Though his energies were devoted almost exclusively to his profession, it never afforded him more than a bare livelihood.

From an early period, Mr. Webster evinced a decided inclination for politics. He was a frequent contributor to the newspapers, and occasionally took part in the discussions in the local meetings and conventions, which abounded in New Hampshire during the eventful period preceding the war of 1812. About that time he was chosen to represent his native State in the United States House of Representatives, and took his seat at the extra session in May 1813. On the tenth of the following June, he delivered his first speech in Congress, on a series of resolutions, submitted by himself, in relation to the repeal of the Berlin and Milan Decrees. The design of these resolutions was to "elicit information that might throw some light upon the proximate causes of the war, and enable the members best to judge the most proper manner of conducting it." The speech was not reported, and is only known from the imperfect sketches presented in cotemporaneous periodicals, and from the recollection of those who heard it. Chief Justice Marshall, writing to a friend, some time after its delivery, says, "At the time when this speech was delivered, I did not know Mr. Webster, but I was so much struck with it that I did not hesitate then to state, that Mr. Webster was a very able man, and would become one of the very first statesmen in America, and perhaps the very first." This effort attracted great attention, and first made Mr. Webster known throughout the country. His arguments prevailed, and an elaborate report on the subject of the resolutions was presented to the Congress.

During the same session he made several other speeches, the ablest of which were upon the *Increase of the Navy*, the *Repeal of the Embargo*, and one, on an appeal from the Chair on a motion for the previous question. Of the two last Mr. Everett says:—"His speeches on these questions raised him to the front rank of debaters. He manifested upon his entrance into public life, that variety of knowledge, familiarity with the history and traditions of the government, and self-possession on the floor, which in most cases are acquired by time and long experience. They gained for him the reputation indicated by the well-known remark of Mr. Lowndes, that "the North had not his equal, nor the South his superior." In the session of 1814–1815, Mr. Webster delivered a masterly speech on the re-charter of the United States Bank, in which he denounced it as a mere machine for making irredeemable paper. At the adjournment of Congress he returned to New Hampshire and resumed his attendance upon the courts.

In 1817 he established his residence in Boston, and for many years devoted himself almost altogether to his profession. His congressional career had won him a wide spread reputation, and his business increased very rapidly. During the autumn of this year he was engaged in the celebrated Dartmouth College case, and on its removal to the Supreme Court of the United States, in March, 1818, he there appeared and delivered his powerful exposition of constitutional law, which placed him in the front rank of the American bar. It is hardly necessary to refer to his practice from this period. In the Supreme Court of the United States as well as those of the several States, his career was a continual exhibition of the most gigantic powers and consequent successes. A detail of them would far exceed the limits of this sketch.

On the meeting of the Massachusetts convention, in 1820, held for the revision of the State Constitution, Mr. Webster took his seat in that body as a delegate from Boston. This was, perhaps, the ablest and most venerable public body ever assembled in New England; and during its session, Mr. Webster gained high distinction by several powerful speeches on most of the important points which came up for consideration. In the winter of the same year, he pronounced the oration at Plymouth, commemorative of the landing of the Pilgrims.

After serving for a brief period in the Massachusetts legislature, he was chosen to represent the city of Boston in the seventeenth Congress, and took his seat in December, 1822. He remained in the House of Representatives until 1826, at which time he was transferred to the

Senate. Of his speeches, while in the lower House of Congress, that in favor of the Greeks, one on the Congress of Panama, and that on the Tariff, are the most important. In 1825 he delivered the address at the laying of the corner-stone of Bunker Hill monument, and during the summer of the year following he pronounced the eulogy in commemoration of the lives and services of John Adams and Thomas Jefferson; one of the most sublime and beautiful specimens of panegyrical eloquence in the English language.

Mr. Webster entered the Senate of the United States in January, 1828, and continued a member of that assembly until 1841. Of the many oratorical efforts made by him during this portion of his senatorial career, no one has gained more celebrity than the reply to Mr. Hayne, delivered during the debate on the resolution of Mr. Foot. That speech, together with that of Mr. Hayne, will be found among the selections of this work. In the summer of 1839 he visited Europe, where he met with the most distinguished consideration, in all places, and from all classes of citizens. On his return to America, he took an active part in the presidential election of 1840, and, on the elevation of General Harrison to the chief magistracy of the nation, he was called to the head of the State Department, where he remained until 1843. The settlement of the protracted and long disputed question of the northeastern boundary, by the Ashburton treaty, was the prominent feature of his secretaryship. Soon after the adjustment of this question, he resigned his office and returned to Massachusetts, from whence he was elected again to the Senate in 1845. In 1850, on the accession of President Fillmore, he was once more elected to the State Department, in the occupancy of which he died on the twenty-fourth of October, 1852.

Of the numerous tributes to his memory, and estimates of his public character and statesmanship, no one will have more interest to the reader than the following, by his friend and contemporary, Rufus Choate:—It was while Mr. Webster was ascending through the long gradations of the legal profession to its highest rank, that by a parallel series of display on a stage, and in parts totally distinct, by other studies, thoughts, and actions, he rose also to be at his death the first of American Statesmen. The last of the mighty rivals was dead before, and he stood alone. Give this aspect also of his greatness a passing glance. His public life began in May, 1813, in the House of Representatives in Congress, to which this State had elected him. It ended when he died. If you except the interval between his removal from New Hampshire and his election in Massachusetts, it was a public life of forty years. By what political morality, and by what enlarged patriotism, embracing the whole country, that life was guided, I shall consider hereafter. Let me now fix your attention rather on the magnitude and variety and actual value of the service. Consider that from the day he went upon the Committee of Foreign Relations, in 1813, in time of war, and more and more, the longer he lived and the higher he rose, he was a man whose great talents and devotion to public duty placed and kept him in a position of associated or sole command; command in the political connection to which he belonged, command in opposition, command in power; and appreciate the responsibilities which that implies, what care, what prudence, what mastery of the whole ground—exacting for the conduct of a party, as Gibbon says of Fox, abilities and civil discretion equal to the conduct of an empire. Consider the work he did in that life of forty years—the range of subjects investigated and discussed; composing the whole theory and practice of our organic and administrative politics, foreign and domestic: the vast body of instructive thought he produced and put in possession of the country; how much he achieved in Congress as well as at the bar; to fix the true interpretation, as well as to impress the transcendent value of the constitution itself, as much altogether as any jurist or statesman since its adoption; how much to establish in the general mind the great doctrine that the government of the United States is a government proper, established by the people of the States, not a compact between sovereign communities,—that within its limits it is supreme, and that whether it is within its limits or not, in any given exertion of itself, is to be determined by the Supreme Court of the United States—the ultimate arbiter in the last resort—from which there is no appeal but to revolution; how much he did in the course of the discussions which grew out of the proposed mission to Panama, and, at a later day, out of the removal of the deposits, to place the executive department of the government on

its true basis, and under its true limitations; to secure to that department all its just powers on the one hand, and on the other hand to vindicate to the legislative department, and especially to the Senate, all that belonged to them; to arrest the tendencies which he thought at one time threatened to substitute the government of a single will, of a single person of great force of character and boundless popularity, and of a numerical majority of the people, told by the head, without intermediate institutions of any kind, judicial or senatorial, in place of the elaborate system of checks and balances, by which the constitution aimed at a government of laws, and not of men; how much, attracting less popular attention, but scarcely less important, to complete the great work which experience had shown to be left unfinished by the judiciary act of 1789, by providing for the punishment of all crimes against the United States; how much for securing a safe currency and a true financial system, not only by the promulgation of sound opinions, but by good specific measures adopted, or bad ones defeated; how much to develope the vast material resources of the country, and push forward the planting of the West—not troubled by any fear of exhausting old States—by a liberal policy of public lands, by vindicating the constitutional power of Congress to make or aid in making large classes of internal improvements, and by acting on that doctrine uniformly from 1813, whenever a road was to be built, or a rapid suppressed, or a canal to be opened, or a breakwater or a lighthouse set up above or below the flow of the tide, if so far beyond the ability of a single State, or of so wide utility to commerce or labor as to rise to the rank of a work general in its influences—another tie of union because another proof of the beneficence of union; how much to protect the vast mechanical and manufacturing interests of the country, a value of many hundreds of millions—after having been lured into existence against his counsels, against his science of political economy, by a policy of artificial encouragement—from being sacrificed, and the pursuits and plans of large regions and communities broken up, and the acquired skill of the country squandered by a sudden and capricious withdrawal of the promise of the government; how much for the right performance of the most delicate and difficult of all tasks, the ordering of the foreign affairs of a nation, free, sensitive, self-conscious, recognising, it is true, public law and a morality of the State, binding on the conscience of the State, yet aspiring to power, eminence, and command, its whole frame filled full and all on fire with American feeling, sympathetic with liberty every where; how much for the right ordering of the foreign affairs of such a state—aiming in all its policy, from his speech on the Greek question in 1823, to his letters to M. Hulsemann in 1850, to occupy the high, plain, yet dizzy ground which separates influence from intervention, to avow and promulgate warm, good will to humanity, wherever striving to be free, to inquire authentically into the history of its struggles, to take official and avowed pains to ascertain the moment when its success may be recognised, consistently, ever, with the great code that keeps the peace of the world, abstaining from every thing which shall give any nation a right under the law of nations to utter one word of complaint, still less to retaliate by war—the sympathy, but also the neutrality, of Washington; how much to compose with honor a concurrence of difficulties with the first power in the world, which any thing less than the highest degree of discretion, firmness, ability, and means of commanding respect and confidence at home and abroad would inevitably have conducted to the last calamity—a disputed boundary line of many hundred miles, from St. Croix to the Rocky Mountains, which divided an exasperated and impracticable border population, enlisted the pride and affected the interests and controlled the politics of particular States, as well as pressed on the peace and honor of the nation, which the most popular administrations of the era of the quietest and best public feelings, the times of Monroe and of Jackson, could not adjust; which had grown so complicated with other topics of excitement that one false step, right or left, would have been a step down a precipice—this line settled for ever—the claim of England to search our ships for the suppression of the slave-trade silenced for ever, and a new engagement entered into by treaty, binding the national faith to contribute a specific naval force for putting an end to the great crime of man—the long practice of England to enter an American ship and impress from its crew, terminated for ever; the deck henceforth guarded sacredly and completely by the flag; how much, by profound discernment, by eloquent speech, by devoted life to strengthen the ties

much most of all, last of all, after the war with Mexico, needless if his counsels had governed, had ended in so vast an acquisition of territory, in presenting to the two great antagonist sections of our country so vast an area to enter on, so imperial a prize to contend for, and the accursed fraternal strife had begun—how much then, when rising to the measure of a true, and difficult, and rare greatness, remembering that he had a country to save as well as a local constituency to gratify, laying all the wealth, all the hopes, of an illustrious life on the altar of a hazardous patriotism, he sought and won the more exceeding glory which now attends—which in the next age shall more conspicuously attend—his name who composes an agitated and saves a sinking land; recall this series of conduct and influences, study them carefully in their facts and results—the reading of years—and you attain to a true appreciation of this aspect of his greatness—his public character and life.*

ADDRESS AT BUNKER HILL.

MR. WEBSTER delivered this address at the laying of the corner-stone of the Bunker Hill Monument, on the seventeenth of June, 1825.

This uncounted multitude before me, and around me, proves the feeling which the occasion has excited. These thousands of human faces, glowing with sympathy and joy, and, from the impulses of a common gratitude, turned reverently to heaven, in this spacious temple of the firmament, proclaim that the day, the place, and the purpose of our assembling have made a deep impression on our hearts.

If, indeed, there be any thing in local association fit to affect the mind of man, we need not strive to repress the emotions which agitate us here. We are among the sepulchres of our fathers. We are on ground distinguished by their valor, their constancy, and the shedding of their blood. We are here, not to fix an uncertain date in our annals, nor to draw into notice an obscure and unknown spot. If our humble purpose had never been conceived, if we ourselves had never been born, the 17th of June, 1775, would have been a day on which all subsequent history would have poured its light, and the eminence where we stand, a point of attraction to the eyes of successive generations. But we are Americans. We live in what may be called the early age of this great continent; and we know that our posterity, through all time, are here to suffer and enjoy the allotments of humanity. We see before us a probable train of great events; we know that our own fortunes have been happily cast; and it is natural, therefore, that we should be moved by the contemplation of occurrences which have guided our destiny before many of us were born, and settled the condition in which we should pass that portion of our existence, which God allows to men on earth.

We do not read even of the discovery of this continent, without feeling something of a personal interest in the event; without being reminded how much it has affected our own fortunes, and our own existence. It is more impossible for us, therefore, than for others, to contemplate with unaffected minds that interesting, I may say, that most touching and pathetic scene, when the great Discoverer of America stood on the deck of his shattered bark, the shades of night falling on the sea, yet no man sleeping; tossed on the billows of an unknown ocean, yet the stronger billows of alternate hope and despair tossing his own troubled thoughts; extending forward his harassed frame, straining westward his anxious and eager eyes, till heaven at last granted him a moment of rapture and ecstasy, in blessing his vision with the sight of the unknown world.

Nearer to our times, more closely connected with our fates, and therefore still more interesting to our feelings and affections, is the settlement of our own country by colonists from England. We cherish every memorial of these worthy ancestors; we celebrate their patience and fortitude; we admire their daring enterprise; we teach our children to venerate their piety; and we are justly proud of being descended from men who have set the world an example of founding civil institutions on the great and united principles of human freedom and human knowledge. To us, their children, the story of their labors and sufferings can never be without its interest. We shall not stand unmoved on the shore of Plymouth, while the sea continues to wash it; nor will our brethren, in another early and ancient colony, forget the place of its first establishment, till their river shall cease to flow by it. No vigor of youth, no maturity of manhood, will lead the nation to forget the spots where its infancy was cradled and defended.

But the great event, in the history of the continent, which we are now met here to com-

* Discourse delivered before the Faculty, Students and Alumni of Dartmouth College, on the day preceding Commencement, July 27, 1853, commemorative of Daniel Webster, by Rufus Choate, page 40.

memorate; that prodigy of modern times, at once the wonder and the blessing of the world, is the American Revolution. In a day of extraordinary prosperity and happiness, of high national honor, distinction, and power, we are brought together, in this place, by our love of country, by our admiration of exalted character, by our gratitude for signal services and patriotic devotion.

The society, whose organ I am, was formed for the purpose of rearing some honorable and durable monument to the memory of the early friends of American Independence. They have thought, that for this object no time could be more propitious than the present prosperous and peaceful period; that no place could claim preference over this memorable spot; and that no day could be more auspicious to the undertaking, than the anniversary of the battle which was here fought. The foundation of that monument we have now laid. With solemnities suited to the occasion, with prayers to Almighty God for his blessing, and in the midst of this cloud of witnesses, we have begun the work. We trust it will be prosecuted, and that springing from a broad foundation, rising high in massive solidity and unadorned grandeur, it may remain, as long as heaven permits the works of man to last, a fit emblem, both of the events in memory of which it is raised, and of the gratitude of those who have reared it.

We know, indeed, that the record of illustrious actions is most safely deposited in the universal remembrance of mankind. We know that if we could cause this structure to ascend, not only till it reached the skies, but till it pierced them, its broad surfaces could still contain but part of that, which, in an age of knowledge, hath already been spread over the earth, and which history charges itself with making known to all future times. We know that no inscription on entablatures less broad than the earth itself, can carry information of the events we commemorate, where it has not already gone; and that no structure, which shall not outlive the duration of letters and knowledge among men, can prolong the memorial. But our object is, by this edifice to show our own deep sense of the value and importance of the achievements of our ancestors; and, by presenting this work of gratitude to the eye, to keep alive similar sentiments, and to foster a constant regard for the principles of the Revolution. Human beings are composed not of reason only, but of imagination also, and sentiment; and that is neither wasted nor misapplied which is appropriated to the purpose of giving right direction to sentiments, and opening proper springs of feeling in the heart. Let it not be supposed that our object is to perpetuate national hostility, or even to cherish a mere military spirit. It is higher, purer, nobler. We consecrate our work to the spirit of national independence, and we wish that the light of peace may rest upon it for ever. We rear a benefit, which has been conferred on our own land, and of the happy influences which have been produced, by the same events, on the general interests of mankind. We come, as Americans, to mark a spot which must for ever be dear to us and our posterity. We wish, that whosoever, in all coming time, shall turn his eye hither, may behold that the place is not undistinguished where the first great battle of the Revolution was fought. We wish that this structure may proclaim the magnitude and importance of that event, to every class and every age. We wish that infancy may learn the purpose of its erection from maternal lips, and that weary and withered age may behold it and be solaced by the recollections which it suggests. We wish that labor may look up here, and be proud, in the midst of its toil. We wish that, in those days of disaster, which, as they come on all nations, must be expected to come on us also, desponding patriotism may turn its eyes hitherward, and be assured that the foundations of our national power still stand strong. We wish that this column, rising towards heaven among the pointed spires of so many temples dedicated to God, may contribute also to produce, in all minds, a pious feeling of dependence and gratitude. We wish, finally, that the last object on the sight of him who leaves his native shore, and the first to gladden his who revisits it, may be something which shall remind him of the liberty and the glory of his country. Let it rise, till it meet the sun in his coming; let the earliest light of the morning gild it, and parting day linger and play on its summit.

We live in a most extraordinary age. Events so various and so important, that they might crowd and distinguish centuries, are, in our times, compressed within the compass of a single life. When has it happened that history has had so much to record, in the same term of years, as since the 17th of June, 1775? Our own revolution, which, under other circumstances, might itself have been expected to occasion a war of half a century, has been achieved; twenty-four sovereign and independent States erected; and a general government established over them, so safe, so wise, so free, so practical, that we might well wonder its establishment should have been accomplished so soon, were it not for the greater wonder that it should have been established at all. Two or three millions of people have been augmented to twelve; and the great forests of the West prostrated beneath the arm of successful industry; and the dwellers on the banks of the Ohio and the Mississippi, become the fellow-citizens and neighbors of those who cultivate the hills of New England. We have a commerce, that leaves no sea unexplored; navies, which take no law from superior force; revenues, adequate to all the exigencies of government, almost without taxation; and peace with all nations, founded on equal rights and mutual respect.

agitated by a mighty revolution, which, while it has been felt in the individual condition and happiness of almost every man, has shaken to the centre her political fabric, and dashed against one another thrones, which had stood tranquil for ages. On this, our continent, our own example has been followed; and colonies have sprung up to be nations. Unaccustomed sounds of liberty and free government have reached us from beyond the track of the sun; and at this moment the dominion of European power, in this continent, from the place where we stand to the south pole, is annihilated for ever.

In the mean time, both in Europe and America, such has been the general progress of knowledge; such the improvements in legislation, in commerce, in the arts, in letters, and above all in liberal ideas, and the general spirit of the age, that the whole world seems changed.

Yet, notwithstanding that this is but a faint abstract of the things which have happened since the day of the battle of Bunker Hill, we are but fifty years removed from it; and we now stand here to enjoy all the blessings of our own condition, and to look abroad on the brightened prospects of the world, while we hold still among us some of those, who were active agents in the scenes of 1775, and who are now here, from every quarter of New England, to visit, once more, and under circumstances so affecting, I had almost said so overwhelming, this renowned theatre of their courage and patriotism.

VENERABLE MEN! you have come down to us, from a former generation. Heaven has bounteously lengthened out your lives, that you might behold this joyous day. You are now, where you stood, fifty years ago, this very hour, with your brothers, and your neighbors, shoulder to shoulder, in the strife for your country. Behold, how altered! The same heavens are indeed over your heads; the same ocean rolls at your feet; but all else, how changed! You hear now no roar of hostile cannon, you see no mixed volumes of smoke and flame rising from burning Charlestown. The ground strewed with the dead and the dying; the impetuous charge; the steady and successful repulse; the loud call to repeated assault; the summoning of all that is manly to repeated resistance; a thousand bosoms freely and fearlessly bared in an instant to whatever of terror there may be in war and death; all these you have witnessed, but you witness them no more. All is peace. The heights of yonder metropolis, its towers and roofs, which you then saw filled with wives and children, and countrymen in distress and terror, and looking with unutterable emotions for the issue of the combat, have presented you to-day with the sight of its whole happy population, come out to welcome and greet you with an universal jubilee. Yonder proud ships, by a felicity of position appropriately lying at the foot of this mount, and seeming fondly to cling around it, are not means of annoyance to you, but your country's own means of distinction and defence. All is peace; and God has granted you this sight of your country's happiness, ere you slumber in the grave for ever. He has allowed you to behold and to partake the reward of your patriotic toils; and he has allowed us, your sons and countrymen, to meet you here, and in the name of the present generation, in the name of your country, in the name of liberty, to thank you!

But, alas! you are not all here! Time and the sword have thinned your ranks. Prescott, Putnam, Stark, Brooks, Read, Pomeroy, Bridge! our eyes seek for you in vain amidst this broken band. You are gathered to your fathers, and live only to your country in her grateful remembrance, and your own bright example. But let us not too much grieve, that you have met the common fate of men. You lived, at least, long enough to know that your work had been nobly and successfully accomplished. You lived to see your country's independence established, and to sheathe your swords from war. On the light of Liberty you saw arise the light of Peace, like

> 'another morn,
> Risen on mid-noon;'—

and the sky, on which you closed your eyes, was cloudless.

But—ah!—Him! the first great Martyr in this great cause! Him! the premature victim of his own self-devoting heart! Him! the head of our civil councils, and the destined leader of our military bands; whom nothing brought hither, but the unquenchable fire of his own spirit; him! cut off by Providence, in the hour of overwhelming anxiety and thick gloom; falling, ere he saw the star of his country rise; pouring out his generous blood, like water, before he knew whether it would fertilize a land of freedom or of bondage! how shall I struggle with the emotions, that stifle the utterance of thy name! Our poor work may perish; but thine shall endure! This monument may moulder away; the solid ground it rests upon may sink down to a level with the sea; but thy memory shall not fail! Wheresoever among men a heart shall be found, that beats to the transports of patriotism and liberty, its aspirations shall be to claim kindred with thy spirit!

But the scene amidst which we stand does not permit us to confine our thoughts or our sympathies to those fearless spirits who hazarded or lost their lives on this consecrated spot. We have the happiness to rejoice here in the presence of a most worthy representation of the survivors of the whole Revolutionary Army.

VETERANS! you are the remnant of many a well-fought field. You bring with you marks of honor from Trenton and Monmouth, from Yorktown, Camden, Bennington, and Saratoga. VETERANS OF HALF A CENTURY! when in your youthful days, you put every thing at hazard in your country's cause, good as that cause was, and sanguine as youth is, still your fondest hopes

did not stretch onward to an hour like this! At a period to which you could not reasonably have expected to arrive; at a moment of national prosperity, such as you could never have foreseen, you are now met here, to enjoy the fellowship of old soldiers, and to receive the overflowings of an universal gratitude.

But your agitated countenances and your heaving breasts inform me that even this is not an unmixed joy. I perceive that a tumult of contending feelings rushes upon you. The images of the dead, as well as the persons of the living, throng to your embraces. The scene overwhelms you, and I turn from it. May the Father of all mercies smile upon your declining years, and bless them! And when you shall here have exchanged your embraces; when you shall once more have pressed the hands which have been so often extended to give succor in adversity, or grasped in the exultation of victory; then look abroad into this lovely land, which your young valor defended, and mark the happiness with which it is filled; yea, look abroad into the whole earth, and see what a name you have contributed to give to your country, and what a praise you have added to freedom, and then rejoice in the sympathy and gratitude which beam upon your last days from the improved condition of mankind.

The occasion does not require of me any particular account of the battle of the 17th of June, nor any detailed narrative of the events which immediately preceded it. These are familiarly known to all. In the progress of the great and interesting controversy, Massachusetts and the town of Boston had become early and marked objects of the displeasure of the British Parliament. This had been manifested in the Act for altering the Government of the Province, and in that for shutting up the port of Boston. Nothing sheds more honor on our early history, and nothing better shows how little the feelings and sentiments of the colonies were known or regarded in England, than the impression which these measures everywhere produced in America. It had been anticipated, that while the other colonies would be terrified by the severity of the punishment inflicted on Massachusetts, the other seaports would be governed by a mere spirit of gain; and that, as Boston was now cut off from all commerce, the unexpected advantage which this blow on her was calculated to confer on other towns, would be greedily enjoyed. How miserably such reasoners deceived themselves! How little they knew of the depth, and the strength, and the intenseness of that feeling of resistance to illegal acts of power, which possessed the whole American people! Everywhere the unworthy boon was rejected with scorn. The fortunate occasion was seized, everywhere, to show to the whole world that the colonies were swayed by no local interest, no partial interest, no selfish interest. The temptation to profit by the punishment of Boston was strongest to our neighbors of Salem. Yet Salem was precisely the place where this miserable proffer was spurned, in a tone of the most lofty self-respect, and the most indignant patriotism. "We are deeply affected," said its inhabitants, "with the sense of our public calamities; but the miseries that are now rapidly hastening on our brethren in the capital of the province, greatly excite our commiseration. By shutting up the port of Boston, some imagine that the course of trade might be turned hither, and to our benefit; but we must be dead to every idea of justice, lost to all feelings of humanity, could we indulge a thought to seize on wealth, and raise our fortunes on the ruin of our suffering neighbors." These noble sentiments were not confined to our immediate vicinity. In that day of general affection and brotherhood, the blow given to Boston smote on every patriotic heart, from one end of the country to the other. Virginia and the Carolinas, as well as Connecticut and New Hampshire, felt and proclaimed the cause to be their own. The Continental Congress, then holding its first session in Philadelphia, expressed its sympathy for the suffering inhabitants of Boston, and addresses were received from all quarters, assuring them that the cause was a common one, and should be met by common efforts and common sacrifices. The Congress of Massachusetts responded to these assurances; and in an address to the Congress at Philadelphia, bearing the official signature, perhaps among the last, of the immortal Warren, notwithstanding the severity of its suffering, and the magnitude of the dangers which threatened it, it was declared, that this colony "is ready, at all times, to spend and to be spent in the cause of America."

But the hour drew nigh, which was to put professions to the proof, and to determine whether the authors of these mutual pledges were ready to seal them in blood. The tidings of Lexington and Concord had no sooner spread, than it was universally felt that the time was at last come for action. A spirit pervaded all ranks, not transient, not boisterous, but deep, solemn, determined,

"totamque infusa per artus
Mens agitat molem, et magno se corpore miscet."

War, on their own soil and at their own doors, was, indeed, a strange work to the yeomanry of New England; but their consciences were convinced of its necessity, their country called them to it, and they did not withhold themselves from the perilous trial. The ordinary occupations of life were abandoned; the plough was staid in the unfinished furrow; wives gave up their husbands, and mothers gave up their sons, to the battles of a civil war. Death might come, in honor, on the field; it might come, in disgrace, on the scaffold. For either and for both they were prepared. The sentiment of Quincy was full in their hearts. "Blandishments," said that distinguished son of genius and patriotism, "will not fascinate us, nor will threats of a halter intimidate; for, under God,

we are determined, that wheresoever, whensoever, or howsoever we shall be called to make our exit, we will die free men."

The 17th of June saw the four New England colonies standing here, side by side, to triumph or to fall together; and there was with them from that moment to the end of the war, what I hope will remain with them forever, one cause, one country, one heart.

The battle of Bunker Hill was attended with the most important effects beyond its immediate result as a military engagement. It created at once a state of open, public war. There could now be no longer a question of proceeding against individuals, as guilty of treason or rebellion. That fearful crisis was past. The appeal now lay to the sword, and the only question was, whether the spirit and the resources of the people would hold out till the object should be accomplished. Nor were its general consequences confined to our own country. The previous proceedings of the colonies, their appeals, resolutions, and addresses, had made their cause known to Europe. Without boasting, we may say, that in no age or country, has the public cause been maintained with more force of argument, more power of illustration, or more of that persuasion which excited feeling and elevated principle can alone bestow, than the revolutionary state papers exhibit. These papers will forever deserve to be studied, not only for the spirit which they breathe, but for the ability with which they were written.

To this able vindication of their cause, the colonies had now added a practical and severe proof of their own true devotion to it, and evidence also of the power which they could bring to its support. All now saw, that if America fell, she would not fall without a struggle. Men felt sympathy and regard, as well as surprise, when they beheld these infant States, remote, unknown, unaided, encounter the power of England, and in the first considerable battle, leave more of their enemies dead on the field, in proportion to the number of combatants, than they had recently known in the wars of Europe.

Information of these events, circulating through Europe, at length reached the ears of one who now hears me. He has not forgotten the emotion which the fame of Bunker Hill, and the name of Warren, excited in his youthful breast.

Sir, we are assembled to commemorate the establishment of great public principles of liberty, and to do honor to the distinguished dead. The occasion is too severe for eulogy to the living. But, sir, your interesting relation to this country, the peculiar circumstances which surround you and surround us, call on me to express the happiness which we derive from your presence and aid in this solemn commemoration.

Fortunate, fortunate man! with what measure of devotion will you not thank God for the circumstances of your extraordinary life! You are connected with both hemispheres and with two generations. Heaven saw fit to ordain, that the electric spark of Liberty should be conducted, through you, from the new world to the old; and we, who are now here to perform this duty of patriotism, have all of us long ago received it in charge from our fathers to cherish your name and your virtues. You will account it an instance of your good fortune, sir, that you crossed the seas to visit us at a time which enables you to be present at this solemnity. You now behold the field, the renown of which reached you in the heart of France, and caused a thrill in your ardent bosom. You see the lines of the little redoubt thrown up by the incredible diligence of Prescott; defended, to the last extremity, by his lion-hearted valor; and within which the corner stone of our monument has now taken its position. You see where Warren fell, and where Parker, Gardner, McCleary, Moore, and other early patriots fell with him. Those who survived that day, and whose lives have been prolonged to the present hour, are now around you. Some of them you have known in the trying scenes of the war. Behold! they now stretch forth their feeble arms to embrace you. Behold! they raise their trembling voices to invoke the blessing of God on you, and yours, forever.

Sir, you have assisted us in laying the foundation of this edifice. You have heard us rehearse, with our feeble commendation, the names of departed patriots. Sir, monuments and eulogy belong to the dead. We give them, this day, to Warren and his associates. On other occasions, they have been given to your more immediate companions in arms, to Washington, to Greene, to Gates, Sullivan, and Lincoln. Sir, we have become reluctant to grant these, our highest and last honors, further. We would gladly hold them yet back from the little remnant of that immortal band. "Serus in cælum redeas." Illustrious as are your merits, yet far, oh, very far distant be the day, when any inscription shall bear your name, or any tongue pronounce its eulogy!

The leading reflection, to which this occasion seems to invite us, respects the great changes which have happened in the fifty years, since the battle of Bunker Hill was fought. And it peculiarly marks the character of the present age, that, in looking at these changes, and in estimating their effect on our condition, we are obliged to consider, not what has been done in our own country only, but in others also. In these interesting times, while nations are making separate and individual advances in improvement, they make, too, a common progress; like vessels on a common tide, propelled by the gales at different rates, according to their several structure and management, but all moved forward by one mighty current beneath, strong enough to bear onward whatever does not sink beneath it.

A chief distinction of the present day is a community of opinions and knowledge amongst

heretofore unknown. Knowledge has, in our time, triumphed, and is triumphing over distance, over difference of languages, over diversity of habits, over prejudice, and over bigotry. The civilized and Christian world is fast learning the great lesson, that difference of nation does not imply necessary hostility, and that all contact need not be war. The whole world is becoming a common field for intellect to act in. Energy of mind, genius, power, wheresoever it exists, may speak out in any tongue, and the *world* will hear it. A great chord of sentiment and feeling runs through two continents, and vibrates over both. Every breeze wafts intelligence from country to country; every wave rolls it; all give it forth, and all in turn receive it. There is a vast commerce of ideas; there are marts and exchanges for intellectual discoveries, and a wonderful fellowship of those individual intelligences which make up the mind and opinion of the age. Mind is the great lever of all things; human thought is the process by which human ends are ultimately answered; and the diffusion of knowledge, so astonishing in the last half century, has rendered innumerable minds, variously gifted by nature, competent to be competitors, or fellow-workers, on the theatre of intellectual operation.

From these causes, important improvements have taken place in the personal condition of individuals. Generally speaking, mankind are not only better fed, and better clothed, but they are able also to enjoy more leisure; they possess more refinement and more self-respect. A superior tone of education, manners, and habits prevails. This remark, most true in its application to our own country, is also partly true, when applied elsewhere. It is proved by the vastly augmented consumption of those articles of manufacture and of commerce, which contribute to the comforts and the decencies of life; an augmentation which has far outrun the progress of population. And while the unexampled and almost incredible use of machinery would seem to supply the place of labor, labor still finds its occupation and its reward; so wisely has Providence adjusted men's wants and desires to their condition and their capacity.

Any adequate survey, however, of the progress made in the last half century, in the polite and the mechanic arts, in machinery and manufactures, in commerce and agriculture, in letters, and in science, would require volumes. I must abstain wholly from these subjects, and turn, for a moment, to the contemplation of what has been done on the great question of politics and government. This is the master topic of the age; and during the whole fifty years, it has intensely occupied the thoughts of men. The nature of civil government, its ends and uses, have been canvassed and investigated; ancient opinions attacked and defended; new ideas recommended and resisted, by whatever power the mind of man could bring to the controversy. From the closet and the public halls the debate has been transferred to the field; and the world has been shaken by wars of unexampled magnitude, and the greatest variety of fortune. A day of peace has at length succeeded; and now that the strife has subsided, and the smoke cleared away, we may begin to see what has actually been done, permanently changing the state and condition of human society. And without dwelling on particular circumstances, it is most apparent, that, from the before-mentioned causes of augmented knowledge and improved individual condition, a real, substantial, and important change has taken place, and is taking place, greatly beneficial, on the whole, to human liberty and human happiness.

The great wheel of political revolution began to move in America. Here its rotation was guarded, regular, and safe. Transferred to the other continent, from unfortunate but natural causes, it received an irregular and violent impulse; it whirled along with a fearful celerity; till at length, like the chariot wheels in the races of antiquity, it took fire from the rapidity of its own motion, and blazed onward, spreading conflagration and terror around.

We learn from the result of this experiment, how fortunate was our own condition, and how admirably the character of our people was calculated for making the great example of popular governments. The possession of power did not turn the heads of the American people, for they had long been in the habit of exercising a great portion of self-control. Although the paramount authority of the parent State existed over them, yet a large field of legislation had always been open to our colonial assemblies. They were accustomed to representative bodies and the forms of free government; they understood the doctrine of the division of power among different branches, and the necessity of checks on each. The character of our countrymen, moreover, was sober, moral, and religious; and there was little in the change to shock their feelings of justice and humanity, or even to disturb an honest prejudice. We had no domestic throne to overturn, no privileged orders to cast down, no violent changes of property to encounter. In the American Revolution, no man sought or wished for more than to defend and enjoy his own. None hoped for plunder or for spoil. Rapacity was unknown to it; the axe was not among the instruments of its accomplishment; and we all know that it could not have lived a single day under any well-founded imputation of possessing a tendency adverse to the Christian religion.

It need not surprise us, that, under circumstances less auspicious, political revolutions elsewhere, even when well intended, have terminated differently. It is, indeed, a great achievement, it is the master work of the world, to establish governments entirely popular, on lasting foundations; nor is it easy, indeed, to introduce the popular principle at all, into

governments to which it has been altogether a stranger. It cannot be doubted, however, that Europe has come out of the contest, in which she has been so long engaged, with greatly superior knowledge, and, in many respects, a highly-improved condition. Whatever benefit has been acquired, is likely to be retained, for it consists mainly in the acquisition of more enlightened ideas. And although kingdoms and provinces may be wrested from the hands that hold them, in the same manner they were obtained; although ordinary and vulgar power may, in human affairs, be lost as it has been won; yet it is the glorious prerogative of the empire of knowledge, that what it gains it never loses. On the contrary, it increases by the multiple of its own power; all its ends become means; all its attainments helps to new conquests. Its whole abundant harvest is but so much seed wheat, and nothing has ascertained, and nothing can ascertain the amount of ultimate product.

Under the influence of this rapidly-increasing knowledge, the people have begun, in all forms of government, to think and to reason on affairs of state. Regarding government as an institution for the public good, they demand a knowledge of its operations, and a participation in its exercise. A call for the representative system, wherever it is not enjoyed, and where there is already intelligence enough to estimate its value, is perseveringly made. Where men may speak out, they demand it; where the bayonet is at their throats, they pray for it.

When Louis XIV. said, "I am the state," he expressed the essence of the doctrine of unlimited power. By the rules of that system, the people are disconnected from the state; they are its subjects; it is their lord. These ideas, founded in the love of power, and long supported by the excess and the abuse of it, are yielding in our age, to other opinions; and the civilized world seems at last to be proceeding to the conviction of that fundamental and manifest truth, that the powers of government are but a trust, and that they cannot be lawfully exercised but for the good of the community. As knowledge is more and more extended, this conviction becomes more and more general. Knowledge, in truth, is the great sun in the firmament. Life and power are scattered with all its beams. The prayer of the Grecian combatant, when enveloped in unnatural clouds and darkness, is the appropriate political supplication for the people of every country not yet blessed with free institutions:

> "Dispel this cloud, the light of heaven restore,
> Give me TO SEE—and Ajax asks no more."

We may hope, that the growing influence of enlightened sentiments will promote the permanent peace of the world. Wars, to maintain family alliances, to uphold or to cast down dynasties, to regulate successions to thrones, which have occupied so much room in the history of

will be less likely to become general and involve many nations, as the great principle shall be more and more established, that the interest of the world is peace, and its first great statute, that every nation possesses the power of establishing a government for itself. But public opinion has attained also an influence over governments which do not admit the popular principle into their organization. A necessary respect for the judgment of the world operates, in some measure, as a control over the most unlimited forms of authority. It is owing, perhaps, to this truth, that the interesting struggle of the Greeks has been suffered to go on so long, without a direct interference, either to wrest that country from its present masters, and add it to other powers, or to execute the system of pacification by force, and, with united strength, lay the neck of Christian and civilized Greece at the foot of the barbarian Turk. Let us thank God that we live in an age when something has influence besides the bayonet, and when the sternest authority does not venture to encounter the scorching power of public reproach. Any attempt of the kind I have mentioned, should be met by one universal burst of indignation; the air of the civilized world ought to be made too warm to be comfortably breathed by any who would hazard it.

It is, indeed, a touching reflection, that while, in the fulness of our country's happiness, we rear this monument to her honor, we look for instruction in our undertaking, to a country which is now in fearful contest, not for works of art or memorials of glory, but for her own existence. Let her be assured, that she is not forgotten in the world; that her efforts are applauded, and that constant prayers ascend for her success. And let us cherish a confident hope for her final triumph. If the true spark of religious and civil liberty be kindled, it will burn. Human agency cannot extinguish it. Like the earth's central fire it may be smothered for a time; the ocean may overwhelm it; mountains may press it down; but its inherent and unconquerable force will heave both the ocean and the land, and at some time or another, in some place or another, the volcano will break out and flame up to heaven.

Among the great events of the half century, we must reckon, certainly, the revolution of South America; and we are not likely to overrate the importance of that revolution, either to the people of the country itself or to the rest of the world. The late Spanish colonies, now independent states, under circumstances less favorable, doubtless, than attended our own revolution, have yet successfully commenced their national existence. They have accomplished the great object of establishing their independence; they are known and acknowledged in the world; and although in regard to their systems of government, their sentiments on religious toleration, and their provisions for public instruction, they may have yet much to learn, it must be admit-

settled and established states, more rapidly than could have been reasonably anticipated. They already furnish an exhilarating example of the difference between free governments and despotic misrule. Their commerce, at this moment, creates a new activity in all the great marts of the world. They show themselves able, by an exchange of commodities, to bear an useful part in the intercourse of nations.

A new spirit of enterprise and industry begins to prevail; all the great interests of society receive a salutary impulse; and the progress of information not only testifies to an improved condition, but constitutes itself the highest and most essential improvement.

When the battle of Bunker Hill was fought, the existence of South America was scarcely felt in the civilized world. The thirteen little colonies of North America habitually called themselves the "continent." Borne down by colonial subjugation, monopoly and bigotry, these vast regions of the South were hardly visible above the horizon. But in our day there hath been, as it were, a new creation. The southern hemisphere emerges from the sea. Its lofty mountains begin to lift themselves into the light of heaven; its broad and fertile plains stretch out, in beauty, to the eye of civilized man, and at the mighty bidding of the voice of political liberty the waters of darkness retire.

And now, let us indulge an honest exultation in the conviction of the benefit, which the example of our country has produced, and is likely to produce, on human freedom and human happiness. And let us endeavor to comprehend, in all its magnitude, and to feel, in all its importance, the part assigned to us in the great drama of human affairs. We are placed at the head of the system of representative and popular governments. Thus far our example shows, that such governments are compatible, not only with respectability and power, but with repose, with peace, with security of personal rights, with good laws, and a just administration.

We are not propagandists. Wherever other systems are preferred, either as being thought better in themselves, or as better suited to existing condition, we leave the preference to be enjoyed. Our history hitherto proves, however, that the popular form is practicable, and that with wisdom and knowledge men may govern themselves; and the duty incumbent on us is, to preserve the consistency of this cheering example, and take care that nothing may weaken its authority with the world. If, in our case, the representative system ultimately fail, popular governments must be pronounced impossible. No combination of circumstances more favorable to the experiment can ever be expected to occur. The last hopes of mankind, therefore, rest with us; and if it should be proclaimed, that our example had become an argument against the experiment, the knell of popular liberty would be sounded throughout the earth.

These are excitements to duty; but they are not suggestions of doubt. Our history and our condition, all that is gone before us, and all that surrounds us, authorize the belief, that popular governments, though subject to occasional variations, perhaps not always for the better, in form, may yet, in their general character, be as durable and permanent as other systems. We know, indeed, that in our country, any other is impossible. The principle of free governments adheres to the American soil. It is bedded in it; immovable as its mountains.

And let the sacred obligations which have devolved on this generation, and on us, sink deep into our hearts. Those are daily dropping from among us, who established our liberty and our government. The great trust now descends to new hands. Let us apply ourselves to that which is presented to us, as our appropriate object. We can win no laurels in a war for independence. Earlier and worthier hands have gathered them all. Nor are there places for us by the side of Solon, and Alfred, and other founders of States. Our fathers have filled them. But there remains to us a great duty of defence and preservation; and there is opened to us, also, a noble pursuit, to which the spirit of the times strongly invites us. Our proper business is improvement. Let our age be the age of improvement. In a day of peace, let us advance the arts of peace and the works of peace. Let us develop the resources of our land, call forth its powers, build up its institutions, promote all its great interests, and see whether we also, in our day and generation, may not perform something worthy to be remembered. Let us cultivate a true spirit of union and harmony. In pursuing the great objects, which our condition points out to us, let us act under a settled conviction, and an habitual feeling, that these twenty-four states are one country. Let our conceptions be enlarged to the circle of our duties. Let us extend our ideas over the whole of the vast field in which we are called to act. Let our object be, our country, our whole country, and nothing but our country. And, by the blessing of God, may that country itself become a vast and splendid monument, not of oppression and terror, but of wisdom, of peace, and of liberty, upon which the world may gaze with admiration, forever!

SPEECH ON MR. FOOT'S RESOLUTION.

In the Senate of the United States, on the twenty-sixth of January, 1830, following Mr. Hayne in the debate, Mr. Webster spoke as follows:*—

Mr. President,—When the mariner has been tossed for many days, in thick weather, and on an unknown sea, he naturally avails himself of the first pause in the storm, the earliest glance of the sun, to take his latitude, and ascertain how far the elements have driven him from his true course. Let us imitate this prudence, and, before we float farther on the waves of this debate, refer to the point from which we departed, that we may at least be able to conjecture where we now are. I ask for the reading of the resolution.

The Secretary read the resolution, as follows:

"*Resolved*, That the Committee on Public Lands be instructed to inquire and report the quantity of public lands remaining unsold within each State and Territory, and whether it be expedient to limit, for a certain period, the sales of the public lands to such lands only as have heretofore been offered for sale, and are now subject to entry at the minimum price. And, also, whether the office of surveyor-general, and some of the land offices, may not be abolished without detriment to the public interest; or whether it be expedient to adopt measures to hasten the sales, and extend more rapidly the surveys of the public lands."

We have thus heard, sir, what the resolution is, which is actually before us for consideration; and it will readily occur to every one that it is almost the only subject about which something has not been said in the speech, running through two days, by which the Senate has been now entertained by the gentleman from South Carolina. Every topic in the wide range of our public affairs, whether past or present—every thing, general or local, whether belonging to national politics, or party politics, seems to have attracted more or less of the honorable member's attention, save only the resolution before the Senate. He has spoken of every thing but the public lands. They have escaped his notice. To that subject, in all his excursions, he has not paid even the cold respect of a passing glance.

When this debate, sir, was to be resumed on Thursday morning, it so happened that it would have been convenient for me to be elsewhere. The honorable member, however, did not incline to put off the discussion to another day. He had a shot, he said, to return, and he wished to discharge it. That shot, sir, which it was kind thus to inform us was coming, that we might stand out of the way, or prepare ourselves to fall before it, and die with decency, has now been received. Under all advantages, and with expectation awakened by the tone which preceded it, it has been discharged, and has spent its force. It may become me to say no more of its effect, than that, if nobody is found, after all, either killed or wounded by it, it is not the first time, in the history of human affairs, that the vigor and success of the war have not quite come up to the lofty and sounding phrase of the manifesto.

The gentleman, sir, in declining to postpone the debate, told the Senate, with the emphasis of his hand upon his heart, that there was something rankling *here*, which he wished to relieve. [Mr. Hayne rose, and disclaimed having used the word *rankling*.] It would not, Mr. President, be safe for the honorable member to appeal to those around him upon the question, whether he did, in fact, make use of that word. But he may have been unconscious of it. At any rate, it is enough that he disclaims it. But still, with or without the use of that particular word, he had yet something *here*, he said, of which he wished to rid himself by an immediate reply. In this respect, sir, I have a great advantage over the honorable gentleman. There is nothing *here*, sir, which gives me the slightest uneasiness; neither fear, nor anger, nor that which is sometimes more troublesome than either—the consciousness of having been in the wrong. There is nothing, either originating *here*, or now received *here* by the gentleman's shot. Nothing original, for I had not the slightest feeling of disrespect or unkindness towards the honorable member. Some passages, it is true, had occurred since our acquaintance in this body, which I could have wished might have been otherwise; but I had used philosophy and forgotten them. When the honorable member rose, in his first speech, I paid him the respect of attentive listening; and when he sat down, though surprised, and, I must say, even astonished, at some of his opinions, nothing was farther from my intention than to commence any personal warfare: and through the whole of the few remarks I made in answer, I avoided, studiously and carefully, every thing which I thought possible to be construed into disrepect. And, sir, while there is thus nothing originating *here*, which I wished at any time, or now wish to discharge, I must repeat, also, that nothing has been received *here* which *rankles*, or in any way gives me annoyance. I will not accuse the honorable member of violating the rules of civilized war,—I will not say that he poisoned his arrows. But whether his shafts were, or were not, dipped in that which would have caused rankling, if they had reached, there was not, as it happened, quite strength enough in the bow to bring them to their mark. If he

* See the Speech of Mr. Hayne, in the subsequent pages of this volume.

wishes now to gather up those shafts, he must look for them elsewhere; they will not be found fixed and quivering in the object at which they were aimed.

The honorable member complained that I had slept on his speech. I must have slept on it, or not slept at all. The moment the honorable member sat down, his friend from Missouri rose, and, with much honeyed commendation of the speech, suggested that the impressions which it had produced were too charming and delightful to be disturbed by other sentiments or other sounds, and proposed that the Senate should adjourn. Would it have been quite amiable in me, sir, to interrupt this excellent good feeling? Must I not have been absolutely malicious, if I could have thrust myself forward to destroy sensations, thus pleasing? Was it not much better and kinder, both to sleep upon them myself, and to allow others also the pleasure of sleeping upon them? But if it be meant, by *sleeping upon his speech, that I took time to* prepare a reply to it, it is quite a mistake; owing to other engagements, I could not employ even the interval between the adjournment of the Senate and its meeting the next morning, in attention to the subject of this debate. Nevertheless, sir, the mere matter of fact is undoubtedly true—I did sleep on the gentleman's speech; and slept soundly. And I slept equally well on his speech of yesterday, to which I am now replying. It is quite possible that in this respect, also, I possess some advantage over the honorable member, attributable, doubtless, to a cooler temperament on my part; for, in truth, I slept upon his speeches remarkably well. But the gentleman inquires why *he* was made the object of such a reply? Why was *he* singled out? If an attack has been made on the east, he, he assures us, did not begin it—it was the gentleman from Missouri. Sir, I answered the gentleman's speech because I happened to hear it: and because, also, I chose to give an answer to that speech which, if unanswered, I thought most likely to produce injurious impressions. I did not stop to inquire who was the original drawer of the bill. I found a responsible endorser before me, and it was my purpose to hold him liable, and to bring him to his just responsibility without delay. But, sir, this interrogatory of the honorable member was only introductory to another. He proceeded to ask me whether I had turned upon him, in this debate, from the consciousness that I should find an overmatch, if I ventured on a contest with his friend from Missouri. If, sir, the honorable member, *ex gratia modestiæ*, had chosen thus to defer to his friend, and to pay him a compliment, without intentional disparagement to others, it would have been quite according to the friendly courtesies of debate, and not at all ungrateful to my own feelings. I am not one of those, sir, who esteem any tribute of regard, whether light and occasional, or more serious and deliberate, which may be bestowed on others, as so much unjustly withholden from themselves. But the tone and manner of the gentleman's question forbid me that I thus interpret it. I am not at liberty to consider it as nothing more than a civility to his friend. It had an air of taunt and disparagement, something of the loftiness of asserted superiority, which does not allow me to pass over it without notice. It was put as a question for me to answer, and so put, as if it were difficult for me to answer, Whether I deemed the member from Missouri an overmatch for myself in debate here. It seems to me, sir, that this is extraordinary language, and an extraordinary tone, for the discussions of this body.

Matches and overmatches! Those terms are more applicable elsewhere than here, and fitter for other assemblies than this.—Sir, the gentleman seems to forget where and what we are. This is a Senate; a Senate of equals: of men of individual honor and personal character, and of absolute independence. We know no masters: we acknowledge no dictators. This is a hall for mutual consultation and discussion; not an arena for the exhibition of champions. I offer myself, sir, as a match for no man; I throw the challenge of debate at no man's feet. But then, sir, since the honorable member has put the question in a manner that calls for an answer, I will give him an answer; and I tell him that, holding myself to be the humblest of the members here, I yet know nothing in the arm of his friend from Missouri, either alone, or when aided by the arm of *his* friend from South Carolina, that need deter even me from espousing whatever opinions I may choose to espouse, from debating whenever I may choose to debate, or from speaking whatever I may see fit to say, on the floor of the Senate. Sir, when uttered as matter of commendation or compliment, I should dissent from nothing which the honorable member might say of his friend. Still less do I put forth any pretensions of my own. But, when put to me as matter of taunt, I throw it back, and say to the gentleman that he could possibly say nothing less likely than such a comparison to wound my pride of personal character. The anger of its tone rescued the remark from intentional irony, which otherwise probably would have been its general acceptation. But, sir, if it be imagined that by this mutual quotation and commendation; if it be supposed that, by casting the characters of the drama, assigning to each his part; to one the attack, to another the cry of onset; or if it be thought that by a loud and empty vaunt of anticipated victory any laurels are to be won here; if it be imagined, especially, that any or all these things will shake any purpose of mine, I can tell the honorable member, once for all, that he is greatly mistaken, and that he is dealing with one of whose temper and character he has yet much to learn. Sir, I shall not allow myself on this occasion, I hope on no occasion, to be betrayed into any loss of temper; but if provoked, as I trust I never shall be, into crimi-

ber may perhaps find that, in that contest, there will be blows to take as well as blows to give; that others can state comparisons as significant, at least, as his own; and that his impunity may possibly demand of him whatever powers of taunt and sarcasm he may possess. I commend him to a prudent husbandry of his resources.

But, sir, the coalition! The coalition! Ay, "the murdered coalition!" The gentleman asks, if I were led or frightened into this debate by the spectre of the coalition—"Was it the ghost of the murdered coalition," he exclaims, "which haunted the member from Massachusetts; and which, like the ghost of Banquo, would never down?" "The murdered coalition!" Sir, this charge of a coalition, in reference to the late administration, is not original with the honorable member. It did not spring up in the Senate. Whether as a fact, as an argument, or as an embellishment, it is all borrowed. He adopts it, indeed, from a very low origin, and a still lower present condition. It is one of the thousand calumnies with which the press teemed during an excited political canvass. It was a charge of which there was not only no proof or probability, but which was, in itself, wholly impossible to be true. No man of common information ever believed a syllable of it. Yet it was of that class of falsehoods, which, by continued repetition, through all the organs of detraction and abuse, are capable of misleading those who are already far misled, and of further fanning passion, already kindling into flame. Doubtless it served in its day, and in greater or less degree, the end designed by it. Having done that it has sunk into the general mass of stale and loathed calumnies. It is the very cast off slough of a polluted and shameless press. Incapable of further mischief, it lies in the sewer, lifeless and despised. It is not now, sir, in the power of the honorable member to give it dignity or decency, by attempting to elevate it, and to introduce it into the Senate. He cannot change it from what it is, an object of general disgust and scorn. On the contrary, the contact, if he choose to touch it, is more likely to drag him down, down, to the place where it lies itself.

But, sir, the honorable member was not, for other reasons, entirely happy in his allusion to the story of Banquo's murder, and Banquo's ghost. It was not, I think, the friends, but the enemies of the murdered Banquo, at whose bidding his spirit would not down. The honorable gentlemen is fresh in his reading of the English classics, and can put me right if I am wrong; but, according to my poor recollection it was at those who had begun with caresses, and ended with foul and treacherous murder, that the gory locks were shaken! The ghost of Banquo, like that of Hamlet, was an honest ghost. It disturbed no innocent man. It knew where its appearance would strike terror, and who would cry out, a ghost! It made itself guilty, and the conscience smitten, and none others, to start, with,

> "Pr'ythee, see there! behold!—look! lo!
> If I stand here, I saw him!"

their eyeballs were seared (was it not so, sir?) who had thought to shield themselves, by concealing their own hand, and laying the imputation of the crime on a low and hireling agency in wickedness; who had vainly attempted to stifle the workings of their own coward consciences, by ejaculating, through white lips and chattering teeth, "Thou canst not say I did it!" I have misread the great poet if those who had no way partaken in the deed of the death, either found that they were, or feared that they should be, pushed from their stools by the ghost of the slain, or exclaimed, to a spectre created by their own fears, and their own remorse, "Avaunt! and quit our sight!"

There is another particular, sir, in which the honorable member's quick perception of resemblances might, I should think, have seen something in the story of Banquo, making it not altogether a subject of the most pleasant contemplation. Those who murdered Banquo, what did they win by it?—Substantial good? Permanent power? Or disappointment, rather, and sore mortification;—dust and ashes—the common fate of vaulting ambition, overleaping itself? Did not evenhanded justice ere long commend the poisoned chalice to their own lips? Did they not soon find that for another they had "filed their mind?" that their ambition, though apparently for the moment successful, had but put a barren sceptre in their grasp?—Ay, sir,

> "A barren sceptre in their gripe,
> Thence to be wrenched by an unlineal hand,
> No son of their's succeeding."

Sir, I need pursue the allusion no farther. I leave the honorable gentleman to run it out at his leisure, and to derive from it all the gratification it is calculated to administer. If he finds himself pleased with the associations, and prepared to be quite satisfied, though the parallel should be entirely completed, I had almost said, I am satisfied also—but that I shall think of. Yes, sir, I will think of that.

In the course of my observations the other day, Mr. President, I paid a passing tribute of respect to a very worthy man, Mr. Dane of Massachusetts. It so happened that he drew the ordinance of 1787, for the government of the northwestern territory. A man of so much ability, and so little pretence; of so great a capacity to do good, and so unmixed a disposition to do it for its own sake; a gentleman who had acted an important part forty years ago, in a measure the influence of which is still deeply felt in the very matter which was the subject of debate, might, I thought, receive from me a commendatory recognition.

But the honorable member was inclined to

posed to make it matter of ridicule that I had introduced into the debate the name of one Nathan Dane, of whom he assures us he had never before heard. Sir, if the honorable member had never before heard of Mr. Dane, I am sorry for it. It shows him less acquainted with the public men of the country, than I had supposed. Let me tell him, however, that a sneer from him, at the mention of the name of Mr. Dane, is in bad taste. It may well be a high mark of ambition, sir, either with the honorable gentleman or myself, to accomplish as much to make our names known to advantage, and remembered with gratitude, as Mr. Dane has accomplished. But the truth is, sir, I suspect, that Mr. Dane lives a little too far north. He is of Massachusetts, and too near the north star to be reached by the honorable gentleman's telescope. If his sphere had happened to range south of Mason and Dixon's line, he might, probably, have come within the scope of his vision!

I spoke, sir, of the ordinance of 1787, which prohibited slavery in all future times, northwest of the Ohio, as a measure of great wisdom and foresight; and one which had been attended with highly beneficial and permanent consequences. I supposed that on this point no two gentlemen in the Senate could entertain different opinions. But the simple expression of this sentiment has led the gentleman not only into a labored defence of slavery, in the abstract, and on principle, but, also, into a warm accusation against me, as having attacked the system of domestic slavery now existing in the southern states. For all this there was not the slightest foundation in any thing said or intimated by me. I did not utter a single word which any ingenuity could torture into an attack on the slavery of the south. I said only that it was highly wise and useful in legislating for the northwestern country, while it was yet a wilderness, to prohibit the introduction of slaves; and added, that I presumed, in the neighboring State of Kentucky, there was no reflecting and intelligent gentleman, who would doubt, that if the same prohibition had been extended at the same early period over that commonwealth, her strength and population would, at this day, have been far greater than they are. If these opinions be thought doubtful, they are, nevertheless, I trust, neither extraordinary nor disrespectful. They attack nobody and menace nobody. And yet, sir, the gentleman's optics have discovered, even in the mere expression of this sentiment, what he calls the very spirit of the Missouri question! He represents me as making an onset on the whole south, and manifesting a spirit which would interfere with, and disturb, their domestic condition! Sir, this injustice no otherwise surprises me, than as it is committed here, and committed without the slightest pretence of ground for it. I say it only surprises me as being done here; for I know full well that it is, and has been, the settled policy of some persons in the south, for years, to endeavor to persuade their neighbors that the north is unfriendly to them, and desirous to interfere with their local concerns. This is a delicate and sensitive point in southern feeling: and of late years it has always been touched, and generally with effect, whenever the object has been to unite the whole south against northern men or northern measures. This feeling, always carefully kept alive, and maintained at too intense a heat to admit discrimination or reflection, is a lever of great power in our political machine. It moves vast bodies, and gives to them one and the same direction. But it is without all adequate cause; and the suspicion which exists wholly groundless. There is not, and never has been, a disposition in the north to interfere with these interests of the south. Such interference has never been supposed to be within the power of government; nor has it been in any way attempted. The slavery of the south has always been regarded as a matter of domestic policy, left with the States themselves, and with which the federal government had nothing to do. Certainly, sir, I am, and ever have been of that opinion. The gentleman, indeed, argues that slavery, in the abstract, is no evil. Most assuredly I need not say I differ with him, altogether and most widely, on that point. I regard domestic slavery as one of the greatest of evils, both moral and political. But though it be a malady, and whether it be curable, and if so, by what means; or, on the other hand, whether it be the "vulnus immedicabile" of the social system, I leave it to those whose right and duty it is to inquire and to decide. And this I believe, sir, is, and uniformly has been, the sentiment of the north. Let us look a little at the history of this matter.

When the present constitution was submitted for the ratification of the people, there were those who imagined that the powers of the government which it proposed to establish, might, perhaps, in some possible mode, be exerted in measures tending to the abolition of slavery. This suggestion would of course attract much attention in the southern conventions. In that of Virginia, Governor Randolph said:

"I hope there is none here, who, considering the subject in the calm light of philosophy, will make an objection dishonorable to Virginia—that at the moment they are securing the rights of their citizens, an objection is started, that there is a spark of hope that those unfortunate men now held in bondage, may, by the operation of the general government, be made free."

At the very first Congress, petitions on the subject were presented, if I mistake not, from different States. The Pennsylvania society for promoting the abolition of slavery took a lead, and laid before Congress a memorial, praying Congress to promote the abolition by such powers as it possessed. This memorial was referred, in the House of Representatives, to a select committee, consisting of Mr. Foster, of New Hampshire, Mr. Gerry, of Massachusetts,

of New York, Mr. Sinnickson, of New Jersey, Mr. Hartley of Pennsylvania, and Mr. Parker, of Virginia,—all of them, sir, as you will observe, northern men, but the last. This committee made a report, which was committed to a committee of the whole House, and there considered and discussed on several days; and being amended, although without material alteration, it was made to express three distinct propositions, on the subject of slavery and the slave trade. First, in the words of the constitution; that Congress could not, prior to the year 1808, prohibit the migration or importation of such persons as any of the States then existing should think proper to admit. Second, that Congress had authority to restrain the citizens of the United States from carrying on the African slave trade, for the purpose of supplying foreign countries. On this proposition, our early laws against those who engage in that traffic are founded. The third proposition, and that which bears on the present question, was expressed in the following terms:

"*Resolved*, That Congress have no authority to interfere in the emancipation of slaves, or in the treatment of them in any of the States; it remaining with the several States alone to provide rules and regulations therein, which humanity and true policy may require."

This resolution received the sanction of the House of Representatives so early as March, 1790. And now, sir, the honorable member will allow me to remind him, that not only were the select committee who reported the resolution, with a single exception, all northern men, but also that of the members then composing the House of Representatives, a large majority, I believe nearly two-thirds, were northern men also.

The House agreed to insert these resolutions in its journal; and from that day to this, it has never been maintained or contended, that Congress had any authority to regulate, or interfere with, the condition of slaves in the several States. No northern gentleman, to my knowledge, has moved any such question in either House of Congress.

The fears of the south, whatever fears they might have entertained, were allayed and quieted by this early decision; and so remained, till they were excited afresh, without cause, but for collateral and indirect purposes. When it became necessary, or was thought so, by some political persons, to find an unvarying ground for the exclusion of northern men from confidence and from lead in the affairs of the republic, then, and not till then, the cry was raised, and the feeling industriously excited, that the influence of northern men in the public councils would endanger the relation of master and slave. For myself, I claim no other merit, than that this gross and enormous injustice towards the whole north, has not wrought upon me to change my opinions, or my political conduct. I hope I am above violating my principles, even

Unjust suspicions and undeserved reproach, whatever pain I may experience from them, will not induce me, I trust, nevertheless, to overstep the limits of constitutional duty, or to encroach on the rights of others. The domestic slavery of the south I leave where I find it—in the hands of their own governments. It is their affair, not mine. Nor do I complain of the peculiar effect which the magnitude of that population has had in the distribution of power under this federal government. We know, sir, that the representation of the States in the other House is not equal. We know that great advantage in that respect, is enjoyed by the slave-holding States; and we know, too, that the intended equivalent for that advantage, that is to say, the imposition of direct taxes in the same ratio, has become merely nominal; the habit of the government being almost invariably to collect its revenue from other sources and in other modes. Nevertheless, I do not complain: nor would I countenance any movement to alter this arrangement of representation. It is the original bargain, the compact—let it stand; let the advantage of it be fully enjoyed. The Union itself is too full of benefit to be hazarded in propositions for changing its original basis. I go for the constitution as it is, and for the Union as it is. But I am resolved not to submit, in silence, to accusations, either against myself, individually, or against the north, wholly unfounded and unjust; accusations which impute to us a disposition to evade the constitutional compact, and to extend the power of the government over the internal laws and domestic condition of the States. All such accusations, wherever and whenever made, all insinuations of the existence of any such purposes, I know, and feel to be groundless and injurious. And we must confide in southern gentlemen themselves; we must trust to those whose integrity of heart and magnanimity of feeling will lead them to a desire to maintain and disseminate truth, and who possess the means of its diffusion with the southern public; we must leave it to them to disabuse that public of its prejudices. But, in the mean time, for my own part, I shall continue to act justly, whether those towards whom justice is exercised receive it with candor or with contumely.

Having had occasion to recur to the ordinance of 1787, in order to defend myself against the inferences which the honorable member has chosen to draw from my former observations on that subject, I am not willing now entirely to take leave of it without another remark. It need hardly be said, that that paper expresses just sentiments on the great subject of civil and religious liberty. Such sentiments were common, and abound in all our State papers of that day. But this ordinance did that which was not so common, and which is not, even now, universal; that is, it set forth and declared, as a high and binding duty of government itself, to encourage schools, and advance

that religion, morality, and knowledge, are necessary to good government, and to the happiness of mankind. One observation further. The important provision incorporated into the Constitution of the United States, and several of those of the States, and recently, as we have seen, adopted into the reformed constitution of Virginia, restraining legislative power, in questions of private right, and from impairing the obligation of contracts, is first introduced and established, as far as I am informed, as matter of express written constitutional law, in this ordinance of 1787. And I must add, also, in regard to the author of the ordinance, who has not had the happiness to attract the gentleman's notice, heretofore, nor to avoid his sarcasm now, that he was chairman of that select committee of the old Congress, whose report first expressed the strong sense of that body, that the old confederation was not adequate to the exigencies of the country, and recommending to the States to send delegates to the convention which formed the present constitution.

An attempt has been made to transfer, from the north to the south the honor of this exclusion of slavery from the northwestern territory. The journal, without argument or comment, refutes such attempt. The cession by Virginia was made, March, 1784. On the 19th of April following, a committee, consisting of Messrs. Jefferson, Chase, and Howell, reported a plan for a temporary government of the territory, in which was this article: "that, after the year 1800, there shall be neither slavery, nor involuntary servitude in any of the said States, otherwise than in punishment of crimes, whereof the party shall have been convicted." Mr. Spaight, of North Carolina, moved to strike out this paragraph. The question was put according to the form then practised: "shall these words stand as part of the plan," &c. New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania—seven states voted in the affirmative. Maryland, Virginia, and South Carolina, in the negative. North Carolina was divided. As the consent of nine states was necessary, the words could not stand, and were struck out accordingly. Mr. Jefferson voted for the clause, but was overruled by his colleagues.

In March of the next year, (1785,) Mr. King, of Massachusetts, seconded by Mr. Ellery, of Rhode Island, proposed the formerly rejected article, with this addition: "And that this regulation shall be an article of compact, and remain a fundamental principle of the constitutions between the thirteen original States, and each of the States described in the resolve," &c. On this clause, which provided the adequate and thorough security, the eight northern States of that time voted affirmatively, and the four southern States negatively. The votes of nine States were not yet obtained, and thus the provision was again rejected by the southern

out, and two years afterwards the object was attained. It is no derogation from the credit, whatever that may be, of drawing the ordinance, that its principles had before been prepared and discussed, in the form of resolutions. If one should reason in that way, what would become of the distinguished honor of the author of the Declaration of Independence? There is not a sentiment in that paper which had not been voted and resolved in the assemblies, and other popular bodies in the country, over and over again.

But the honorable member has now found out that this gentleman (Mr. Dane) was a member of the Hartford Convention. However uninformed the honorable member may be of characters and occurrences at the north, it would seem that he has at his elbow, on this occasion, some high-minded and lofty spirit, some magnanimous and true-hearted monitor, possessing the means of local knowledge, and ready to supply the honorable member with every thing, down even to forgotten and moth-eaten twopenny pamphlets, which may be used to the disadvantage of his own country. But, as to the Hartford Convention, sir, allow me to say, that the proceedings of that body seem now to be less read and studied in New England than farther south. They appear to be looked to, not in New England, but elsewhere, for the purpose of seeing how far they may serve as a precedent. But they will not answer the purpose—they are quite too tame. The latitude in which they originated was too cold. Other conventions, of more recent existence, have gone a whole bar's length beyond it. The learned doctors of Colleton and Abbeville have pushed their commentaries on the Hartford collect so far that the original text writers are thrown entirely into the shade. I have nothing to do, sir, with the Hartford Convention. Its journal, which the gentleman has quoted, I never read. So far as the honorable member may discover in its proceedings a spirit, in any degree resembling that which was avowed and justified in those other conventions to which I have alluded, or so far as those proceedings can be shown to be disloyal to the constitution, or tending to disunion, so far I shall be as ready as any one to bestow on them reprehension and censure.

Having dwelt long on this convention, and other occurrences of that day, in the hope, probably (which will not be gratified) that I should leave the course of this debate to follow him, at length, in those excursions, the honorable member returned and attempted another object. He referred to a speech of mine in the other House, the same which I had occasion to allude to myself the other day; and has quoted a passage or two from it, with a bold, though uneasy and laboring air of confidence, as if he had detected in me an inconsistency. Judging from the gentleman's manner, a stranger to the course of the debate, and to the point in discus-

tone, that the honorable member was about to overwhelm me with a manifest contradiction. Any one who heard him, and who had not heard what I had, in fact, previously said, must have thought me routed and discomfited, as the gentleman had promised, Sir, a breath blows all this triumph away. There is not the slightest difference in the sentiments of my remarks on the two occasions. What I said here on Wednesday, is in exact accordance with the opinion expressed by me in the other House in 1825. Though the gentleman had the metaphysics of Hudibras—though he were able

"To sever and divide
A hair 'twixt north and northwest side,"

he yet could not insert his metaphysical scissors between the fair reading of my remarks in 1825, and what I said here last week. There is not only no contradiction, no difference, but, in truth, too exact a similarity, both in thought and language, to be entirely in just taste. I had myself quoted the same speech, had recurred to it, and spoke with it open before me, and much of what I said was little more than a repetition from it. In order to make finishing work with this alleged contradiction, permit me to recur to the origin of this debate, and review its course. This seems expedient, and may be done as well now as at any time.

Well, then, its history is this: The honorable member from Connecticut moved a resolution, which constitutes the first branch of that which is now before us; that is to say, a resolution, instructing the committee on public lands to inquire into the expediency of limiting, for a certain period, the sales of the public lands, to such as have heretofore been offered for sale; and whether sundry offices connected with the sales of the lands, might not be abolished, without detriment to the public service.

In the progress of the discussion which arose on this resolution, an honorable member from New Hampshire moved to amend the resolution, so as entirely to reverse its object; that is, to strike it all out, and insert a direction to the committee to inquire into the expediency of adopting measures to hasten the sales, and extend more rapidly the surveys of the lands.

The honorable member from Maine, Mr. Sprague, suggested that both those propositions might well enough go for consideration to the committee; and in this state of the question, the member from South Carolina addressed the Senate in his first speech. He rose, he said, to give us his own free thoughts on the public lands. I saw him rise with pleasure, and listened with expectation, though before he concluded, I was filled with surprise. Certainly, I *was never more surprised, than to find him fol*lowing up, to the extent he did, the sentiments and opinions which the gentleman from Missouri had put forth, and which it is known he

of the honorable gentleman's speech. When he said yesterday, that he did not attack the eastern States, he certainly must have forgotten, not only particular remarks, but the whole drift and tenor of his speech; unless he means, by not attacking, that he did not commence hostilities,—but that another had preceded him in the attack. He, in the first place, disapproved of the whole course of the government, for forty years, in regard to its dispositions of the public land; and then turning northward and eastward, and fancying he had found a cause for alleged narrowness and niggardliness in the "accursed policy" of the tariff, to which he represented the people of New England as wedded, he went on, for a full hour, with remarks, the whole scope of which was to exhibit the results of this policy, in feelings and in measures unfavorable to the west. I thought his opinions unfounded and erroneous, as to the general course of the government, and ventured to reply to them.

The gentleman had remarked on the analogy of other cases, and quoted the conduct of European governments towards their own subjects, settling on this continent, as in point, to show, that we had been harsh and rigid in selling, when we should have given the public lands to settlers, without price. I thought the honorable member had suffered his judgment to be betrayed by a false analogy; that he was struck with an appearance of resemblance, where there was no real similitude. I think so still. The first settlers of North America were enterprising spirits, engaged in private adventure, or fleeing from tyranny at home. When arrived here, they were forgotten by the mother country, or remembered only to be oppressed. Carried away again by the appearance of analogy, or struck with the eloquence of the passage, the honorable member yesterday observed, that the conduct of government towards the western emigrants, or my representation of it, brought to his mind a celebrated speech in the British Parliament. It was, sir, the speech of Col. Barre. On the question of the stamp act, or tea tax, I forget which, Col. Barre had heard a member on the treasury bench argue, that the people of the United States, being British colonists, planted by the maternal care, nourished by the indulgence, and protected by the arms of England, would not grudge their mite to relieve the mother country from the heavy burden under which she groaned. The language of Col. Barre, in reply to this, was—They planted by your care? Your oppression planted them in America. They fled from your tyranny, and grew by your neglect of them. So soon as you began to care for them, you showed your care by sending persons to spy out their liberties, *misrepresent their character, prey upon them* and eat out their substance.

And how does the honorable gentleman mean to maintain, that language like this is applicable

any representation given by me of that conduct? Were the settlers in the west driven thither by our oppression? Have they flourished only by our neglect of them? Has the government done nothing but to prey upon them, and eat out their substance? Sir, this fervid eloquence of the British speaker, just when and where it was uttered, and fit to remain an exercise for the schools, is not a little out of place when it is brought thence to be applied here, to the conduct of our own country towards her own citizens. From America to England, it may be true; from Americans to their own government it would be strange language. Let us leave it, to be recited and declaimed by our boys, against a foreign nation; not introduce it here, to recite and declaim ourselves against our own.

But I come to the point of the alleged contradiction. In my remarks on Wednesday, I contended that we could not give away gratuitously all the public lands; that we held them in trust; that the government had solemnly pledged itself to dispose of them as a common fund for the common benefit, and to sell and settle them as its discretion should dictate. Now, sir, what contradiction does the gentleman find to this sentiment, in the speech of 1825? He quotes me as having then said, that we ought not to hug these lands as a very great treasure. Very well, sir, supposing me to be accurately reported, in that expression, what is the contradiction? I have not now said, that we should hug these lands as a favorite source of pecuniary income. No such thing. It is not my view. What I have said, and what I do say, is, that they are a common fund—to be disposed of for the common benefit—to be sold at low prices for the accommodation of settlers, keeping the object of settling the lands as much in view, as that of raising money from them. This I say now, and this I have always said. Is this hugging them as a favorite treasure? Is there no difference between hugging and hoarding this fund, on the one hand, as a great treasure, and on the other, of disposing of it at low prices, placing the proceeds in the general treasury of the Union? My opinion is, that as much is to be made of the land, as fairly and reasonably may be, selling it all the while at such rates as to give the fullest effect to settlement. This is not giving it all away to the States, as the gentleman would propose; nor is it hugging the fund closely and tenaciously, as a favorite treasure; but it is, in my judgment, a just and wise policy, perfectly according with all the various duties which rest on government. So much for my contradiction. And what is it? Where is the ground of the gentleman's triumph? What inconsistency in word or doctrine, has he been able to detect? Sir, if this be a sample of that discomfiture, with which the honorable gentleman threatened me, commend me to the word discomfiture for the rest of my life.

debate; and I must now bring the gentleman back to what is the point.

The real question between me and him is, has the doctrine been advanced at the south or the east, that the population of the west should be retarded, or at least need not be hastened, on account of its effect to drain off the people from the Atlantic States? Is this doctrine, as has been alleged, of eastern origin? That is the question. Has the gentleman found any thing by which he can make good his accusation? I submit to the Senate, that he has entirely failed; and as far as this debate has shown, the only person who has advanced such sentiments, is a gentleman from South Carolina, and a friend to the honorable member himself. The honorable gentleman has given no answer to this; there is none which can be given. The simple fact, while it requires no comment to enforce it, defies all argument to refute it. I could refer to the speeches of another southern gentleman, in years before, of the same general character, and to the same effect, as that which has been quoted; but I will not consume the time of the Senate by the reading of them.

So then, sir, New England is guiltless of the policy of retarding western population, and of all envy and jealousy of the growth of the new States. Whatever there be of that policy in the country, no part of it is her's. If it has a local habitation, the honorable member has probably seen, by this time, where to look for it; and if it now has received a name, he has himself christened it.

We approach, at length, sir, to a more important part of the honorable gentleman's observations. Since it does not accord with my views of justice and policy to give away the public lands altogether, as mere matter of gratuity, I am asked by the honorable gentleman on what ground it is that I consent to vote them away in particular instances? How, he inquires, do I reconcile with these professed sentiments my support of measures appropriating portions of the lands to particular roads, particular canals, particular rivers, and particular institutions of education in the west? This leads, sir, to the real and wide difference, in political opinion, between the honorable gentleman and myself. On my part, I look upon all these objects as connected with the common good, fairly embraced in its object and its terms; he, on the contrary, deems them all, if good at all, only local good. This is our difference. The interrogatory which he proceeded to put, at once explains this difference. "What interest," asks he, "has South Carolina in a canal in Ohio?" Sir, this very question is full of significance. It developes the gentleman's whole political system; and its answer expounds mine. Here we differ. I look upon a road over the Alleghany, a canal round the falls of the Ohio, or a canal or railway from the Atlantic to the western waters, as being an object large and extensive enough to be fairly

tleman thinks otherwise, and this is the key to open his construction of the powers of the government. He may well ask what interest has South Carolina in a canal in Ohio? On his system, it is true, she has no interest. On that system, Ohio and Carolina are different governments, and different countries: connected here, it is true, by some slight and ill-defined bond of union, but, in all main respects, separate and diverse. On that system, Carolina has no more interest in a canal in Ohio than in Mexico. The gentleman, therefore, only follows out his own principles; he does no more than arrive at the natural conclusions of his own doctrines; he only announces the true results of that creed, which he has adopted himself, and would persuade others to adopt, when he thus declares that South Carolina has no interest in a public work in Ohio. Sir, we narrow-minded people of New England do not reason thus. Our notion of things is entirely different. We look upon the States not as separated, but as united. We love to dwell on that union, and on the mutual happiness which it has so much promoted, and the common renown which it has so greatly contributed to acquire. In our contemplation, Carolina and Ohio are parts of the same country; States, united under the same general government, having interests, common, associated, intermingled. In whatever is within the proper sphere of the constitutional power of this government, we look upon the States as one. We do not impose geographical limits to our patriotic feeling or regard; we do not follow rivers and mountains, and lines of latitude, to find boundaries, beyond which public improvements do not benefit us. We who come here, as agents and representatives of these narrow-minded and selfish men of New England, consider ourselves as bound to regard, with an equal eye, the good of the whole, in whatever is within our power of legislation. Sir, if a railroad or canal, beginning in South Carolina and ending in South Carolina, appeared to me to be of national importance and national magnitude, believing, as I do, that the power of government extends to the encouragement of works of that description, if I were to stand up here, and ask, what interest has Massachusetts in a railroad in South Carolina, I should not be willing to face my constituents. These same narrow-minded men would tell me that they had sent me to act for the whole country, and that one who possessed too little comprehension, either of intellect or feeling; one who was not large enough, both in mind and in heart, to embrace the whole, was not fit to be entrusted with the interest of any part. Sir, I do not desire to enlarge the powers of the government, by unjustifiable construction; nor to exercise any not within a fair interpretation. But when it is believed that a power does exist, then it is, in my judgment, to be exercised for the general benefit of the whole. So far as respects the exercise of such a power, the States are one. It was the very object of the constitution to create unity of interests to the extent of the powers of the general government. In war and peace we are one; in commerce, one; because the authority of the general government reaches to war and peace, and to the regulation of commerce. I have never seen any more difficulty in erecting light-houses on the lakes, than on the ocean; in improving the harbors of inland seas, than if they were within the ebb and flow of the tide; or of removing obstructions in the vast streams of the west, more than in any work to facilitate commerce on the Atlantic coast. If there be any power for one, there is power also for the other; and they are all and equally for the common good of the country.

There are other objects, apparently more local, or the benefit of which is less general, towards which, nevertheless, I have concurred with others, to give aid, by donations of land. It is proposed to construct a road, in or through one of the new States, in which this government possesses large quantities of land. Have the United States no right, or, as a great and untaxed proprietor, are they under no obligation to contribute to an object thus calculated to promote the common good of all the proprietors, themselves included? And even with respect to education, which is the extreme case, let the question be considered. In the first place, as we have seen, it was made matter of compact with these States, that they should do their part to promote education. In the next place, our whole system of land laws proceeds on the idea that education is for the common good; because, in every division, a certain portion is uniformly reserved and appropriated for the use of schools. And, finally, have not these new States singularly strong claims, founded on the ground already stated, that the government is a great untaxed proprietor, in the ownership of the soil? It is a consideration of great importance, that, probably, there is in no part of the country, or of the world, so great call for the means of education, as in those new States; owing to the vast numbers of persons within those ages in which education and instruction are usually received, if received at all. This is the natural consequence of recency of settlement and rapid increase. The census of these States show how great a proportion of the whole population occupies the classes between infancy and manhood. These are the wide fields, and here is the deep and quick soil for the seeds of knowledge and virtue; and this is the favored season, the very spring-time for sowing them. Let them be disseminated without stint. Let them be scattered with a bountiful broadcast. Whatever the government can fairly do towards these objects, in my opinion, ought to be done.

These, sir, are the grounds succinctly stated, on which my votes for grants of lands for particular objects rest; while I maintain, at the same time, that it is all a common fund, for the common benefit. And reasons like these, I presume, have influenced the votes of other

gentlemen from New England. Those who have a different view of the powers of the government, of course, come to different conclusions, on these as on other questions. I observed, when speaking on this subject before, that, if we looked to any measure, whether for a road, a canal, or any thing else, intended for the improvement of the west, it would be found that, if the New England ayes were struck out of the lists of votes, the Southern noes would always have rejected the measure. The truth of this has not been denied, and cannot be denied. In stating this, I thought it just to ascribe it to the constitutional scruples of the south, rather than to any other less favorable or less charitable cause. But no sooner had I done this, than the honorable gentleman asks if I reproach him and his friends with their constitutional scruples. Sir, I reproach nobody. I stated a fact, and gave the most respectful reason for it that occurred to me. The gentleman cannot deny the fact; he may, if he choose, disclaim the reason. It is not long since I had occasion, in presenting a petition from his own State, to account for its being entrusted to my hands, by saying, that the constitutional opinions of the gentleman and his worthy colleague prevented them from supporting it. Sir, did I state this as matter of reproach? Far from it. Did I attempt to find any other cause than an honest one, for these scruples? Sir, I did not. It did not become me to doubt or to insinuate that the gentleman had either changed his sentiments, or that he had made up a set of constitutional opinions, accommodated to any particular combination of political occurrences. Had I done so, I should have felt, that while I was entitled to little credit in thus questioning other people's motives, I justified the whole world in suspecting my own. But how has the gentleman returned this respect for others' opinions? His own candor and justice, how have they been exhibited towards the motives of others, while he has been at so much pains to maintain, what nobody has disputed, the purity of his own? Why, sir, he has asked when, and how, and why, New England votes were found going for measures favorable to the west? He has demanded to be informed whether all this did begin in 1825, and while the election of president was still pending? Sir, to these questions a retort would be justified; and it is both cogent, and at hand. Nevertheless, I will answer the inquiry, not by retort, but by facts. I will tell the gentleman when, and how, and why, New England has supported measures favorable to the west. I have already referred to the early history of the government—to the first acquisition of the lands—to the original laws for disposing of them, and for governing the territories where they lie; and have shown the influence of New England men and New England principles in all these leading measures. I should not be pardoned were I to go over that ground again. Coming to more recent times, and to measures of a less general character, I have endeavored to prove that every thing of this kind, designed for western improvement, has depended on the votes of New England; all this is true beyond the power of contradiction,

And now, sir, there are two measures to which I will refer, not so ancient as to belong to the early history of the public lands, and not so recent as to be on this side of the period when the gentleman charitably imagines a new direction may have been given to New England feeling and New England votes. These measures, and the New England votes in support of them, may be taken as samples and specimens of all the rest.

In 1820, (observe, Mr. President, in 1820,) the people of the west besought Congress for a reduction in the price of lands. In favor of that reduction, New England, with a delegation of forty members in the other House, gave thirty-three votes, and one only against it. The four southern States, with fifty members, gave thirty-two votes for it, and seven against it. Again, in 1821, (observe again, sir, the time,) the law passed for the relief of the purchasers of the public lands. This was a measure of vital importance to the west, and more especially to the southwest. It authorized the relinquishment of contracts for lands, which had been entered into at high prices, and a reduction in other cases of not less than $37\frac{1}{2}$ per cent. on the purchase money. Many millions of dollars—six or seven, I believe, at least, probably much more—were relinquished by this law. On this bill, New England, with her forty members, gave more affirmative votes than the four southern States, with their fifty-two or three members.

These two are far the most important general measures respecting the public lands, which have been adopted within the last twenty years. They took place in 1820 and 1821. That is the time "when." As to the manner "how," the gentleman already sees that, it was by voting, in solid column, for the required relief: and lastly, as to the cause "why," I tell the gentleman, it was because the members from New England thought the measures just and salutary; because they entertained towards the west neither envy, hatred, or malice; because they deemed it becoming them, as just and enlightened public men, to meet the exigency which had arisen in the west, with the appropropriate measure of relief; because they felt it due to their own characters, and the characters of their New England predecessors in this government, to act towards the new States in the spirit of a liberal, patronizing, magnanimous policy. So much, sir, for the cause "why;" and I hope that by this time, sir, the honorable gentleman is satisfied; if not, I do not know "when," or "how," or "why," he ever will be.

Having recurred to these two important measures, in answer to the gentleman's inquiries, I must now beg permission to go back to a period yet something earlier, for the purpose of

still further showing how much, or rather how little, reason there is for the gentleman's insinuation, that political hopes or fears, or party associations, were the grounds of these New England votes. And after what has been said, I hope it may be forgiven me, if I allude to some political opinions and votes of my own, of very little public importance, certainly, but which, from the time at which they were given and expressed, may pass for good witnesses on this occasion.

This Government, Mr. President, from its origin to the peace of 1815, had been too much engrossed with various other important concerns to be able to turn its thoughts inward, and look to the development of its vast internal resources. In the early part of President Washington's administration, it was fully occupied with completing its own organization, providing for the public debt, defending the frontiers, and maintaining domestic peace. Before the termination of that administration, the fires of the French revolution blazed forth, as from a new-opened volcano, and the whole breadth of the ocean did not secure us from its effects. The smoke and the cinders reached us, though not the burning lava. Difficult and agitating questions, embarrassing to government, and dividing public opinion, sprung out of the new state of our foreign relations, and were succeeded by others, and yet again by others, equally embarrassing, and equally exciting division and discord, through the long series of twenty years, till they finally issued in the war with England. Down to the close of that war, no distinct, marked, and deliberate attention had been given, or could have been given, to the internal condition of the country, its capacities of improvement, or the constitutional power of the government, in regard to objects connected with such improvement.

The peace, Mr. President, brought about an entirely new and a most interesting state of things: it opened to us other prospects, and suggested other duties. We ourselves were changed, and the whole world was changed. The pacification of Europe, after June, 1815, assumed a firm and permanent aspect. The nations evidently manifested that they were disposed for peace. Some agitation of the waves might be expected, even after the storm had subsided, but the tendency was, strongly and rapidly, towards settled repose.

It so happened, sir, that I was, at that time, a member of Congress, and, like others, naturally turned my attention to the contemplation of the newly-altered condition of the country, and of the world. It appeared plainly enough to me, as well as to wiser and more experienced men, that the policy of the government would naturally take a start in a new direction, because new directions would necessarily be given to the pursuits and occupations of the people. We had pushed our commerce far and fast, under the advantage of a neutral flag. But there were now no longer flags, either neutral or belligerent. The harvest of neutrality had been great, but we had gathered it all. With the peace of Europe, it was obvious there would spring up in her circle of nations, a revived and invigorated spirit of trade, and a new activity in all the business and objects of civilized life. Hereafter, our commercial gains were to be earned only by success, in a close and intense competition. Other nations would produce for themselves, and carry for themselves, and manufacture for themselves, to the full extent of their abilities. The crops of our plains would no longer sustain European armies, nor our ships longer supply those whom war had rendered unable to supply themselves. It was obvious, that, under these circumstances, the country would begin to survey itself, and to estimate its own capacity of improvement. And this improvement—how was it to be accomplished, and who was to accomplish it? We were ten or twelve millions of people, spread over almost half a world. We were more than twenty States, some stretching along the same sea-board, some along the same line of inland frontier, and others on opposite banks of the same vast rivers. Two considerations at once presented themselves, in looking at this state of things, with great force. One was, that that great branch of improvement, which consisted in furnishing new facilities of intercourse, necessarily ran into different States, in every leading instance, and would benefit the citizens of all such States. No one State, therefore, in such cases, would assume the whole expense, nor was the co-operation of several States to be expected. Take the instance of the Delaware breakwater. It will cost several millions of money. Would Pennsylvania alone ever have constructed it? Certainly never, while this Union lasts, because it is not for her sole benefit. Would Pennsylvania, New Jersey, and Delaware have united to accomplish it, at their joint expense? Certainly not, for the same reason. It could not be done, therefore, but by the general government. The same may be said of the large inland undertakings, except that, in them, government, instead of bearing the whole expense, co-operates with others who bear a part. The other consideration is, that the United States have the means. They enjoy the revenues derived from commerce, and the States have no abundant and easy sources of public income. The custom-houses fill the general treasury, while the States have scanty resources, except by resort to heavy direct taxes.

Under this view of things, I thought it necessary to settle, at least for myself, some definite notions with respect to the powers of the government, in regard to internal affairs. It may not savor too much of self commendation to remark, that, with this object, I considered the constitution, its judicial construction, its cotemporaneous exposition, and the whole history of the legislation of Congress under it; and I ar-

rived at the conclusion that government had power to accomplish sundry objects, or aid in their accomplishment, which are now commonly spoken of as internal improvements. That conclusion, sir, may have been right, or it may have been wrong. I am not about to argue the grounds of it at large. I say only, that it was adopted and acted on even so early as in 1816. Yes, Mr. President, I made up my opinion, and determined on my intended course of political conduct, on these subjects, in the fourteenth Congress, in 1816. And now, Mr. President, I have further to say, that I made up these opinions, and entered on this course of political conduct, "tenero duce." Yes, sir, I pursued in all this, a South Carolina track, on the doctrines of internal improvement. South Carolina, as she was then represented in the other House, set forth, in 1816, under a fresh and leading breeze, and I was among the followers. But if my leader sees new lights, and turns a sharp corner, unless I see new lights also, I keep straight on in the same path. I repeat, that leading gentlemen from South Carolina were first and foremost in behalf of the doctrines of internal improvements, when those doctrines came first to be considered and acted upon in Congress. The debate on the bank question, on the tariff of 1816, and on the direct tax, will show who was who, and what was what, at that time. The tariff of 1816, one of the plain cases of oppression and usurpation, from which, if the government does not recede, individual States may justly secede from the government, is, sir, in truth, a South Carolina Tariff, supported by South Carolina votes. But for those votes, it could not have passed in the form in which it did pass; whereas, if it had depended on Massachusetts votes, it would have been lost. Does not the honorable gentleman well know all this? There are certainly those who do, full well, know it all. I do not say this to reproach South Carolina. I only state the fact; and I think it will appear to be true, that among the earliest and boldest advocates of the tariff, as a measure of protection, and on the express ground of protection, were leading gentlemen of South Carolina in Congress. I did not then, and cannot now understand their language in any other sense. While this tariff of 1816 was under discussion in the House of Representatives, an honorable gentleman from Georgia, now of this House, Mr. Forsyth, moved to reduce the proposed duty on cotton. He failed, by four votes, South Carolina giving three votes, (enough to have turned the scale,) against his motion. The act, sir, then passed, and received on its passage the support of a majority of the representatives of South Carolina present and voting. This act is the first, in the order of those now denounced as plain usurpations. We see it daily, in the list, by the side of those of 1824 and 1828, as a case of manifest oppression, justifying disunion. I put it home, to the honorable member from South Carolina, that his own State was not only "art and part" in this measure, but the "causa causans." Without her aid, this seminal principle of mischief, this root of Upas, could not have been planted. I have already said, and it is true, that this act proceeded on the ground of profection. It interfered, directly, with existing interests of great value and amount. It cut up the Calcutta cotton trade by the roots, but it passed, nevertheless, and it passed on the principle of protecting manufactures, on the principle against free trade, on the principle opposed to that which lets us alone.

Such, Mr. President, were the opinions of important and leading gentlemen from South Carolina, on the subject of internal improvements in 1816. I went out of Congress the next year; and returning again in 1823—thought I found South Carolina where I had left her. I really supposed that all things remained as they were, and that the South Carolina doctrine of internal improvements would be defended by the same eloquent voices, and the same strong arms, as formerly. In the lapse of these six years, it is true, political associations had assumed a new aspect, and new divisions. A party had arisen in the South, hostile to the doctrine of internal improvements, and had vigorously attacked that doctrine. Anti-consolidation was the flag under which this party fought; and its supporters inveighed against internal improvements, much after the manner in which the honorable gentleman has now inveighed against them, as part and parcel of the system of consolidation. Whether this party arose in South Carolina herself, or in her neighborhood, is more than I know. I think the latter. However that may have been, there were those found in South Carolina ready to make war upon it, and who did make intrepid war upon it. Names being regarded as things, in such controversies, they bestowed on the anti-improvement gentlemen the appellation of radicals. Yes, sir, the appellation of radicals, as a term of distinction, applicable and applied to those who denied the liberal doctrines of internal improvements, originated, according to the best of my recollection, somewhere between North Carolina and Georgia. Well, sir, these mischievous radicals were to be put down, and the strong arm of South Carolina was stretched out to put them down. About this time, sir, I returned to Congress. The battle with the radicals had been fought, and our South Carolina champions of the doctrines of internal improvement had nobly maintained their ground, and were understood to have achieved a victory. We looked upon them as conquerors. They had driven back the enemy with discomfiture —a thing, by the way, sir, which is not always performed when it is promised. A gentleman, to whom I have already referred in this debate, had come into Congress, during my absence from it, from South Carolina, and had brought with him a high reputation for ability. He came from a school with which we had been acquainted, "et noscitur a sociis." I hold in my hand, sir, a printed speech of this distin-

guished gentleman, (Mr. McDuffie,) "on internal improvements," delivered about the period to which I now refer, and printed with a few introductory remarks upon consolidation; in which, sir, I think he quite consolidated the arguments of his opponents, the radicals, if to crush be to consolidate. I give you a short but substantive quotation from these remarks. He is speaking of a pamphlet, then recently published, entitled "Consolidation;" and having alluded to the question of renewing the charter of the former Bank of the United States, he says: "Moreover, in the early history of parties, and when Mr. Crawford advocated a renewal of the old charter, it was considered a federal measure; which internal improvements never was, as this author erroneously states. This latter measure originated in the administration of Mr. Jefferson, with the appropriation for the Cumberland road; and was first proposed, as a system, by Mr. Calhoun, and carried through the House of Representatives by a large majority of the republicans, including almost every one of the leading men who carried us through the late war."

So, then, internal improvement is not one of the federal heresies. One paragraph more, sir:

"The author in question, not content with denouncing as federalists, General Jackson, Mr. Adams, Mr. Calhoun, and the majority of the South Carolina delegation in Congress, modestly extends the denunciation to Mr. Monroe, and the whole republican party. Here are his words:—'During the administration of Mr. Monroe much has passed which the republican party would be glad to approve if they could!! But the principal feature, and that which has chiefly elicited these observations, is the renewal of the System of Internal Improvements.' Now this measure was adopted by a vote of 115 to 86, of a republican Congress, and sanctioned by a republican President. Who, then, is this author—who assumes the high prerogative of denouncing, in the name of the republican party, the republican administration of the country? A denunciation including within its sweep, Calhoun, Lowndes, and Cheves—men who will be regarded as the brightest ornaments of South Carolina, and the strongest pillars of the republican party, as long as the late war shall be remembered, and talents and patriotism shall be regarded as the proper objects of the admiration and gratitude of a free people!!"

Such are the opinions, sir, which were maintained by South Carolina gentlemen, in the House of Representatives, on the subject of internal improvements, when I took my seat there as a member from Massachusetts, in 1823. But this is not all. We had a bill before us, and passed it in that House, entitled "An act to procure the necessary surveys, plans, and estimates upon the subject of roads and canals." It authorized the President to cause surveys and estimates to be made of the routes of such roads and canals as he might deem of national importance, in a commercial or military point of view, or for the transportation of the mail, and appropriated thirty thousand dollars, out of the treasury, to defray the expense. This act, though preliminary in its nature, covered the whole ground. It took for granted the complete power of internal improvement, as far as any of its advocates had ever contended for it. Having passed the other House, the bill came up to the Senate, and was here considered and debated in April, 1824. The honorable member from South Carolina was a member of the Senate at that time. While the bill was under consideration here, a motion was made to add the following proviso:

"*Provided*, That nothing herein contained shall be construed to affirm or admit a power in Congress, on their own authority, to make roads or canals, within any of the States of the Union." The yeas and nays were taken on this proviso, and the honorable member voted in the negative!—The proviso failed.

A motion was then made to add this proviso, viz:

"*Provided*, That the faith of the United States is hereby pledged, that no money shall ever be expended for roads or canals, except it shall be among the several States, and in the same proportion as direct taxes are laid and assessed by the provisions of the constitution."

The honorable member voted against this proviso, also, and it failed. The bill was then put on its passage, and the honorable member voted for it, and it passed, and became a law.

Now, it strikes me, sir, that there is no maintaining these votes, but upon the power of internal improvement, in its broadest sense. In truth, these bills for surveys and estimates have always been considered as test questions—they show who is for and who against internal improvement. This law itself went the whole length, and assumed the full and complete power. The gentleman's votes sustained that power, in every form in which the various propositions to amend presented it. He went for the entire and unrestrained authority, without consulting the States, and without agreeing to any proportionate distribution. And now suffer me to remind you, Mr. President, that it is this very same power, thus sanctioned, in every form, by the gentleman's own opinion, that is so plain and manifest a usurpation, that the State of South Carolina is supposed to be justified in refusing submission to any laws carrying the power into effect. Truly, sir, is not this a little too hard? May we not crave some mercy, under favor and protection of the gentleman's own authority? Admitting that a road, or a canal, must be written down flat usurpation as was ever committed, may we find no mitigation in our respect for his place, and his vote, as one that knows the law?

The tariff, which South Carolina had an efficient hand in establishing, in 1816, and this asserted power of internal improvement, advanced by her in the same year, and, as we have seen, approved and sanctioned by her rep-

resentatives in 1824, these two measures are the great grounds on which she is now thought to be justified in breaking up the Union, if she sees fit to break it up!

I may now safely say, I think, that we have had the authority of leading and distinguished gentlemen from South Carolina, in support of the doctrine of internal improvement. I repeat, that, up to 1824, I for one, followed South Carolina; but, when that star, in its ascension, veered off, in an unexpected direction, I relied on its light no longer.

Here the Vice President* said: Does the chair understand the gentleman from Massachusetts to say that the person now occupying the chair of the Senate has changed his opinions on the subject of internal improvements?

From nothing ever said to me, sir, have I had reason to know of any change in the opinions of the person filling the chair of the Senate. If such change has taken place, I regret it. I speak generally of the State of South Carolina. Individuals, we know there are, who hold opinions favorable to the power. An application for its exercise, in behalf of a public work in South Carolina itself, is now pending, I believe, in the other House, presented by members from that State.

I have thus, sir, perhaps, not without some tediousness of detail, shown that if I am in error, on the subject of internal improvement, how, and in what company, I fell into that error. If I am wrong, it is apparent who misled me.

I go to other remarks of the honorable member: and I have to complain of an entire misapprehension of what I said on the subject of the national debt, though I can hardly perceive how any one could misunderstand me. What I said was, not that I wished to put off the payment of the debt, but, on the contrary, that I had always voted for every measure for its reduction, as uniformly as the gentleman himself. He seems to claim the exclusive merit of a disposition to reduce the public charge. I do not allow it to him. As a debt, I was, I am for paying it, because it is a charge on our finances, and on the industry of the country. But I observed that I thought I perceived a morbid fervor on that subject—an excessive anxiety to pay off the debt, not so much because it is a debt simply, as because, while it lasts, it furnishes one objection to disunion. It is a tie of common interest, while it continues. I did not impute such motives to the honorable member himself, but that there is such a feeling in existence, I have not a particle of doubt. The most I said was, that if one effect of the debt was to strengthen our Union, that effect itself was not regretted by me, however much others might regret it. The gentleman has not seen how to reply to this, otherwise than by supposing me to have advanced the doctrine that a national debt is a national blessing. Others, I must hope, will find much less difficulty in understanding me. I distinctly and pointedly cautioned the honorable member not to understand me as expressing an opinion favorable to the continuance of the debt. I repeated this caution, and repeated it more than once; but it was thrown away.

On yet another point, I was still more unaccountably misunderstood. The gentleman had harangued against "consolidation." I told him, in reply, that there was one kind of consolidation to which I was attached, and that was, the consolidation of our Union; and that this was precisely that consolidation to which I feared others were not attached. That such consolidation was the very end of the constitution—the leading object, as they had informed us themselves, which its framers had kept in view. I turned to their communication, and read their very words—"the consolidation of the Union"—and expressed my devotion to this sort of consolidation. I said in terms, that I wished not, in the slightest degree, to augment the powers of this government; that my object was to preserve, not to enlarge; and that by consolidating the Union, I understood no more than the strengthening of the Union, and perpetuating it. Having been thus explicit; having thus read from the printed book the precise words which I adopted, as expressing my own sentiments, it passes comprehension how any man could understand me as contending for an extension of the powers of the government, or for consolidation, in that odious sense, in which it means an accumulation, in the federal government, of the powers properly belonging to the States.

I repeat, sir, that in adopting the sentiment of the framers of the constitution, I read their language audibly, and word for word; and I pointed out the distinction, just as fully as I have now done, between the consolidation of the Union and that other obnoxious consolidation which I disclaimed. And yet the honorable member misunderstood me. The gentleman had said that he wished for no fixed revenue—not a shilling. If, by a word, he could convert the capitol into gold, he would not do it. Why all this fear of revenue? Why, sir, because, as the gentleman told us, it tends to consolidation. Now, this can mean neither more nor less than that a common revenue is a common interest, and that all common interests tend to hold the union of the States together. I confess I like that tendency; if the gentleman dislikes it, he is right in deprecating a shilling's fixed revenue. So much, sir, for consolidation.

As well as I recollect the course of his remarks, the honorable gentleman next recurred to the subject of the tariff. He did not doubt the word must be of unpleasant sound to me, and proceeded, with an effort, neither new, nor

my votes in inconsistency and contradiction. I am happy the honorable gentleman has furnished me an opportunity of a timely remark or two on that subject. I was glad he approached it, for it is a question I enter upon without fear from any body. The strenuous toil of the gentleman has been to raise an inconsistency, between my dissent to the tariff in 1824, and my vote in 1828. It is labor lost. He pays undeserved compliment to my speech in 1824; but this is to raise me high, that my fall, as he would have it, in 1828, may be more signal. Sir, there was no fall at all. Between the ground I stood on in 1824, and that I took in 1828, there was not only no precipice, but no declivity. It was a change of position, to meet new circumstances, but on the same level. A plain tale explains the whole matter. In 1816, I had not acquiesced in the tariff, then supported by South Carolina. To some parts of it, especially, I felt and expressed great repugnance. I held the same opinions in 1821, at the meeting in Faneuil Hall, to which the gentleman has alluded. I said then, and say now, that, as an original question, the authority of Congress to exercise the revenue power, with direct reference to the protection of manufactures, is a questionable authority, far more questionable, in my judgment, than the power of internal improvements. I must confess, sir, that, in one respect, some impression has been made on my opinions lately. Mr. Madison's publication has put the power in a very strong light. He has placed it, I must acknowledge, upon grounds of construction and argument, which seem impregnable. But even if the power were doubtful, on the face of the constitution itself, it had been assumed and asserted in the first revenue law ever passed under that same constitution; and, on this ground, as a matter settled by cotemporaneous practice, I had refrained from expressing the opinion that the tariff laws transcended constitutional limits, as the gentleman supposes. What I did say at Faneuil Hall, as far as I now remember, was, that this was originally matter of doubtful construction. The gentleman himself, I suppose, thinks there is no doubt about it, and that the laws are plainly against the constitution. Mr. Madison's letters, already referred to, contain, in my judgment, by far the most able exposition extant of this part of the constitution. He has satisfied me, so far as the practice of the government had left it an open question.

With a great majority of the Representatives of Massachusetts, I voted against the tariff of 1824. My reasons were then given, and I will not now repeat them. But, notwithstanding our dissent, the great States of New York, Pennsylvania, Ohio, and Kentucky, went for the bill, in almost unbroken column, and it passed. Congress and the President sanctioned it, and it became the law of the land. What, then, were we to do? Our only option was, either to fall in with this settled course of public policy, and accommodate ourselves to it as well as we could, or to embrace the South Carolina doctrine, and talk of nullifying the statute by State interference.

This last alternative did not suit our principles, and, of course, we adopted the former. In 1827, the subject came again before Congress, on a proposition favorable to wool and woollens. We looked upon the system of protection as being fixed and settled. The law of 1824 remained. It had gone into full operation, and, in regard to some objects intended by it, perhaps most of them, had produced all its expected effects. No man proposed to repeal it; no man attempted to renew the general contest on its principle. But, owing to subsequent and unforeseen occurrences, the benefit intended by it to wool and woollen fabrics had not been realized. Events, not known here when the law passed, had taken place, which defeated its object in that particular respect. A measure was accordingly brought forward to meet this precise deficiency; to remedy this particular defect. It was limited to wool and woollens. Was ever any thing more reasonable? If the policy of the tariff laws had become established in principle, as the permanent policy of the government, should they not be revised and amended, and made equal, like other laws, as exigencies should arise, or justice require? Because we had doubted about adopting the system, were we to refuse to cure its manifest defects, after it became adopted, and when no one attempted its repeal? And this, sir, is the inconsistency so much bruited. I had voted against the tariff of 1824—but it passed; and in 1827 and 1828, I voted to amend it, in a point essential to the interest of my constituents. Where is the inconsistency? Could I do otherwise? Sir, does political consistency consist in always giving negative votes? Does it require of a public man to refuse to concur in amending laws, because they passed against his consent? Having voted against the tariff originally; does consistency demand that I should do all in my power to maintain an unequal tariff, burdensome to my own constituents, in many respects, favorable in none? To consistency of that sort, I lay no claim. And there is another sort to which I lay as little—and that is, a kind of consistency by which persons feel themselves as much bound to oppose a proposition after it has become a law of the land, as before.

The bill of 1827, limited, as I have said, to the single object in which the tariff of 1824 had manifestly failed in its effect, passed the House of Representatives, but was lost here. We had then the Act of 1828. I need not recur to the history of a measure so recent. Its enemies spiced it with whatsoever they thought would render it distasteful; its friends took it, drugged as it was. Vast amounts of property, many millions, had been invested in manufactures, under the inducements of the Act of 1824. Events called loudly, as I thought, for further regulation to secure the degree of protection intended by that Act. I was disposed to vote

for such regulation, and desired nothing more; but certainly was not to be bantered out of my purpose by a threatened augmentation of duty on molasses, put into the bill for the avowed purpose of making it obnoxious. The vote may have been right or wrong, wise or unwise; but it is little less than absurd to allege against it an inconsistency with opposition to the former law.

Sir, as to the general subject of the tariff, I have little now to say. Another opportunity may be presented. I remarked the other day, that this policy did not begin with us in New England; and yet, sir, New England is charged, with vehemence, as being favorable, or charged with equal vehemence, as being unfavorable to the tariff policy, just as best suits the time, place, and occasion for making some charge against her. The credulity of the public has been put to its extreme capacity of false impression, relative to her conduct, in this particular. Through all the south, during the late contest, it was New England policy, and a New England administration, that was afflicting the country with a tariff beyond all endurance; while on the other side of the Alleghany, even the Act of 1828 itself, the very sublimated essence of oppression, according to southern opinions, was pronounced to be one of those blessings, for which the west was indebted to the "generous south."

With large investments in manufacturing establishments, and many and various interests connected with and dependent upon them, it is not to be expected that New England, any more than other portions of the country, will now consent to any measure, destructive or highly dangerous. The duty of the government, at the present moment, would seem to be to preserve, not to destroy; to maintain the position which it has assumed; and, for one, I shall feel it an indispensable obligation to hold it steady, as far as in my power, to that degree of protection which it has undertaken to bestow. No more of the tariff.

Professing to be provoked, by what he chose to consider a charge made by me against South Carolina, the honorable member, Mr. President, has taken up a new crusade against New England. Leaving altogether the subject of the public lands, in which his success, perhaps, had been neither distinguished or satisfactory, and letting go, also, of the topic of the tariff, he sallied forth, in a general assault, on the opinions, politics, and parties of New England, as they have been exhibited in the last thirty years. This is natural. The "narrow policy" of the public lands had proved a legal settlement in South Carolina, and was not to be removed. The "accursed policy" of the tariff, also, had established the fact of its birth and parentage, in the same State. No wonder, therefore, the gentleman wished to carry the war, as he expressed it, into the enemy's country. Prudently willing to quit these subjects, he was, doubtless, desirous of fastening on others, that which could not be transferred south of Mason and Dixon's line. The politics of New England became his theme; and it was in this part of his speech, I think, that he menaced me with such sore discomfiture. Discomfiture! Why, sir, when he attacks any thing which I maintain, and overthrows it; when he turns the right or left of any position which I take up; when he drives me from any ground I choose to occupy; he may then talk of discomfiture, but not till that distant day. What has he done? Has he maintained his own charges? Has he proved what he alleged? Has he sustained himself in his attack on the government, and on the history of the north, in the matter of the public lands? Has he disproved a fact, refuted a proposition, weakened an argument, maintained by me? Has he come within beat of drum of any position of mine? Oh, no; but he has "carried the war into the enemy's country?" Carried the war into the enemy's country! Yes, sir, and what sort of a war has he made of it? Why, sir, he has stretched a drag-net over the whole surface of perished pamphlets, indiscreet sermons, frothy paragraphs, and fuming popular addresses; over whatever the pulpit, in its moments of alarm, the press, in its heats, and parties in their extravagance, have severally thrown off in times of general excitement and violence. He has thus swept together a mass of such things as, but that they are now old and cold, the public health would have required him rather to leave in their state of dispersion. For a good long hour or two, we had the unbroken pleasure of listening to the honorable member, while he recited, with his usual grace and spirit, and with evident high gusto, speeches, pamphlets, addresses, and all the "et ceteras" of the political press, such as warm heads produce in warm times; and such as it would be "discomfiture" indeed, for any one, whose taste did not delight in that sort of reading, to be obliged to peruse. This is his war. This is to carry the war into the enemy's country. It is in an invasion of this sort, that he flatters himself with the expectation of gaining laurels fit to adorn a senator's brow!

Mr. President, I shall not, it will, I trust, not be expected that I should, either now, or at any time, separate this farrago into parts, and answer and examine its components. I shall hardly bestow upon it all, a general remark or two. In the run of forty years, sir, under this constitution, we have experienced sundry successive violent party contests. Party arose, indeed, with the constitution itself, and, in some form or other, has attended it through the greater part of its history. Whether any other constitution than the old articles of confederation, was desirable, was, itself, a question on which parties formed; if a new constitution were framed, what powers should be given to it, was another question; and when it had been formed, what was, in fact, the just extent of

Parties, as we know, existed under the first administration, as distinctly marked as those which have manifested themselves at any subsequent period. The contest immediately preceding the political change in 1801, and that, again, which existed at the commencement of the late war, are other instances of party excitement, of something more than usual strength and intensity. In all these conflicts there was, no doubt, much of violence on both and all sides. It would be impossible, if one had a fancy for such employment, to adjust the relative "quantum" of violence between these contending parties. There was enough in each, as must always be expected in popular governments. With a great deal of proper and decorous discussion, there was mingled a great deal, also, of declamation, virulence, crimination, and abuse. In regard to any party, probably, at one of the leading epochs in the history of parties, enough may be found to make out another equally inflamed exhibition as that with which the honorable member has edified us. For myself, sir, I shall not rake among the rubbish of by-gone times, to see what I can find, or whether I cannot find something, by which I can fix a blot on the escutcheon of any State, any party, or any part of the country. General Washington's administration was steadily and zealously maintained, as we all know, by New England. It was violently opposed elsewhere. We know in what quarter he had the most earnest, constant, and persevering support, in all his great and leading measures. We know where his private and personal character were held in the highest degree of attachment and veneration; and we know, too, where his measures were opposed, his services slighted, and his character vilified. We know, or we might know, if we turned to the journals, who expressed respect, gratitude, and regret when he retired from the chief magistracy; and who refused to express either respect, gratitude, or regret. I shall not open those journals. Publications more abusive or scurrilous never saw the light, than were sent forth against Washington and all his leading measures, from presses south of New England. But I shall not look them up. I employ no scavengers, no one is in attendance on me, tendering such means of retaliation; and, if there were, with an ass's load of them, with a bulk as huge as that which the gentleman himself has produced, I would not touch one of them. I see enough of the violence of our own times, to be no way anxious to rescue from forgetfulness the extravagances of times past. Besides, what is all this to the present purpose? It has nothing to do with the public lands, in regard to which the attack was begun; and it has nothing to do with those sentiments and opinions, which, I have thought, tend to disunion, and all of which the honorable member seems to have adopted himself, and undertaken to defend. New England has, at times, so argues the gentleman, held opinions as dangerous as those which he now holds. Suppose this were so, why should he, therefore, abuse New England? If he finds himself countenanced by acts of hers, how is it that, while he relies on these acts, he covers, or seeks to cover, their authors with reproach? But, sir, if, in the course of forty years, there have been undue effervescences of party in new England, has the same thing happened nowhere else? Party animosity and party outrage, not in New England, but elsewhere, denounced President Washington, not only as a Federalist, but as a Tory, a British agent, a man, who, in his high office, sanctioned corruption. But does the honorable member suppose, that, if I had a tender here, who should put such an effusion of wickedness and folly in my hand, that I would stand up and read it against the South? Parties ran into great heats again, in 1799 and 1800. What was said, sir, or rather what was not said, in those years, against John Adams, one of the signers of the Declaration of Independence, and its admitted ablest defender on the floor of Congress? If the gentleman wishes to increase his stores of party abuse and frothy violence; if he has a determined proclivity to such pursuits, there are treasures of that sort south of the Potomac, much to his taste, yet untouched—I shall not touch them.

The parties which divided the country at the commencement of the late war, were violent. But, then, there was violence on both sides, and violence in every State. Minorities and majorities were equally violent. There was no more violence against the war in New England than in other States; nor any more appearance of violence, except that, owing to a dense population, greater facility of assembling, and more presses, there may have been more in quantity spoken and printed there than in some other places. In the article of sermons, too, New England is somewhat more abundant than South Carolina; and for that reason, the chance of finding here and there an exceptionable one, may be greater. I hope, too, there are more good ones. Opposition may have been more formidable in New England, as it embraced a larger portion of the whole population; but it was no more unrestrained in its principle, or violent in manner. The minorities dealt quite as harshly with their own State governments, as the majorities dealt with the administration here. There were presses on both sides, popular meetings on both sides, ay, and pulpits on both sides, also. The gentleman's purveyors have only catered for him among the productions of one side. I certainly shall not supply the deficiency by furnishing samples of the other. I leave to him and to them the whole concern.

It is enough for me to say that if, in any part of this their grateful occupation; if in all their researches they find any thing in the history of Massachusetts, or New England, or in the proceedings of any legislative, or other public body, disloyal to the Union, speaking slightly of its value, proposing to break it up, or recommend-

ing non-intercourse with neighboring States, on account of difference of political opinion, then, sir, I give them all up to the honorable gentleman's unrestrained rebuke; expecting, however, that he will extend his buffetings in like manner to all similar proceedings, wherever else found.

The gentleman, sir, has spoken at large of former parties, now no longer in being, by their received appellations, and has undertaken to instruct us, not only in the knowledge of their principles, but of their respective pedigrees also. He has ascended to the origin and run out their genealogies. With most exemplary modesty, he speaks of the party to which he professes to have belonged himself, as the true pure, the only honest, patriotic party, derived by regular descent, from father to son from the time of the virtuous Romans! Spreading before us the family tree of political parties, he takes especial care to show himself, snugly perched on a popular bough! He is wakeful to the expediency of adopting such rules of descent as shall bring him in, in exclusion of others, as an heir to the inheritance of all public virtue and all true political principle. His party and his opinions are sure to be orthodox; heterodoxy is confined to his opponents. He spoke, sir, of the federalists, and I thought I saw some eyes begin to open and stare a little when he ventured on that ground. I expected he would draw his sketches rather lightly when he looked on the circle around him, and especially if he should cast his thoughts to the high places out of the Senate. Nevertheless, he went back to Rome, "ad annum urbe condita," and found the fathers of the federalists in the primeval aristocrats of that renowned empire! He traced the flow of federal blood down through successive ages and centuries till he brought it into the veins of the American tories, (of whom, by the way, there were twenty in the Carolinas for one in Massachusetts.) From the tories he followed it to the federalists; and as the federal party was broken up, and there was no possibility of transmitting it further on this side the Atlantic, he seems to have discovered that it has gone off, collaterally, though against all the canons of descent, into the Ultras of France, and finally become extinguished, like exploded gas, among the adherents of Don Miguel! This, sir, is an abstract of the gentleman's history of federalism. I am not about to controvert it. It is not at present worth the pains of refutation; because, sir, if at this day any one feels the sin of federalism lying heavily on his conscience he can easily procure remission. He may even obtain an indulgence, if he be desirous of repeating the same transgression. It is an affair of no difficulty to get into this same right line of patriotic descent. A man now-a-days is at liberty to choose his political parentage. He may elect his own father. Federalist or not, he may, if he choose, claim to belong to the favored stock, and his claim will be allowed. He may carry back his pretensions just as far as the honorable gentleman himself; nay, he may make himself out the honorable gentleman's cousin, and prove satisfactorily that he is descended from the same political great-grandfather. All this is allowable. We all know a process, sir, by which the whole Essex Junto could, in one hour, be all washed white from their ancient federalism, and come out, every one of them, an original democrat, dyed in the wool! Some of them have actually undergone the operation, and they say it is quite easy. The only inconvenience it occasions, as they tell us, is a slight tendency of the blood to the face, a soft suffusion, which, however, is very transient, since nothing is said by those whom they join calculated to deepen the red on the cheek, but a prudent silence observed in regard to all the past. Indeed, sir, some smiles of approbation have been bestowed, and some crumbs of comfort have fallen, not a thousand miles from the door of the Hartford Convention itself. And if the author of the ordinance of 1787 possessed the other requisite qualifications, there is no knowing, notwithstanding his federalism, to what heights of favor he might not yet attain.

Mr. President, in carrying his warfare, such as it was, into New England, the honorable gentleman all along professes to be acting on the defensive. He elects to consider me as having assailed South Carolina, and insists that he comes forth only as her champion, and in her defence. Sir, I do not admit that I made any attack whatever on South Carolina. Nothing like it. The honorable member in his first speech expressed opinions, in regard to revenue and some other topics, which I heard both with pain and with surprise. I told the gentleman I was aware that such sentiments were entertained out of the government, but had not expected to find them advanced in it; that I knew there were persons in the south who speak of our Union with indifference or doubt, taking pains to magnify its evils, and to say nothing of its benefits; that the honorable member himself, I was sure, could never be one of these; and I regretted the expression of such opinions as he had avowed, because I thought their obvious tendency was to encourage feelings of disrespect to the Union, and to weaken its connection. This, sir, is the sum and substance of all I said on the subject. And this constitutes the attack which called on the chivalry of the gentleman, in his own opinon, to harry us with such a foray, among the party pamphlets and party proceedings of Massachusetts! If he means that I spoke with dissatisfaction or disrespect of the ebullitions of individuals in South Carolina, it is true. But if he means that I had assailed the character of the State, her honor or patriotism; that I had reflected on her history or her conduct, he had not the slightest ground for any such assumption. I did not even refer, I think, in my observations to any collection of individuals. I said nothing of the recent conventions. I spoke in the most guarded and careful manner, and only expressed my regret for

the publication of opinions which I presumed the honorable member disapproved as much as myself. In this, it seems, I was mistaken. I do not remember that the gentleman has disclaimed any sentiment or any opinion, of a supposed anti-union tendency, which on all or any of the recent occasions has been expressed.—The whole drift of his speech has been rather to prove that, in divers times and manners, sentiments equally liable to my objection have been promulged in New England.—And one would suppose that his object, in this reference to Massachusetts, was to find a precedent to justify proceedings in the south, were it not for the reproach and contumely with which he labors all along to load these, his own chosen precedents. By way of defending South Carolina from what he chooses to think an attack on her, he first quotes the example of Massachusetts, and then denounces that example in good set terms. This two-fold purpose, not very consistent with itself, one would think, was exhibited more than once in the course of his speech. He referred, for instance, to the Hartford Convention. Did he do this for authority, or for a topic of reproach? Apparently for both: for he told us that he should find no fault with the mere fact of holding such a convention, and considering and discussing such questions as he supposes were then and there discussed; but what rendered it obnoxious was the time it was holden, and the circumstances of the country then existing. We were in a war, he said, and the country needed all our aid—the hand of government required to be strengthened, not weakened—and patriotism should have postponed such proceedings to another day. The thing itself, then, is a precedent, the time and manner of it, only, a subject of censure. Now, sir, I go much further on this point than the honorable member. Supposing, as the gentleman seems to, that the Hartford Convention assembled for any such purpose as breaking up the Union, because they thought unconstitutional laws had been passed, or to consult on that subject, or to calculate the value of the Union: supposing this to be their purpose, or any part of it, then, I say, the meeting itself was disloyal, and was obnoxious to censure, whether held in time of peace or time of war, or under whatever circumstances. The material question is the object. Is dissolution the object? If it be, external circumstances may make it a more or less aggravated case, but cannot affect the principle. I do not hold, therefore, sir, that the Hartford Convention was pardonable, even to the extent of the gentleman's admission, if its objects were really such as have been imputed to it. Sir, there never was a time, under any degree of excitement, in which the Hartford Convention, or any other convention, could maintain itself one moment in New England, if assembled for any such purpose as the gentleman says would have been an allowable pur-

statutes by votes in a convention! Sir, the Hartford Convention, I presume, would not desire that the honorable gentleman should be their defender or advocate, if he puts their case upon such untenable and extravagant grounds.

Then, sir, the gentleman has no fault to find with these recently promulgated South Carolina opinions. And, certainly, he need have none; for his own sentiments as now advanced, and advanced on reflection, as far as I have been able to comprehend them, go the full length of all these opinions. I propose, sir, to say something on these, and to consider how far they are just and constitutional. Before doing that, however, let me observe, that the eulogium pronounced on the character of the State of South Carolina, by the honorable gentleman, for her revolutionary and other merits, meets my hearty concurrence. I shall not acknowledge that the honorable member goes before in regard for whatever of distinguished talent, or distinguished character, South Carolina has produced. I claim part of the honor, I partake in the pride, of her great names. I claim them for countrymen, one and all. The Laurenses, the Rutledges, the Pinckneys, the Sumpters, the Marions—Americans, all—whose fame is no more to be hemmed in by State lines, than their talents and patriotism were capable of being circumscribed within the same narrow limits. In their day and generation, they served and honored the country, and the whole country; and their renown is of the treasures of the whole country. Him, whose honored name the gentleman himself bears—does he esteem me less capable of gratitude for his patriotism, or sympathy for his sufferings, than if his eyes had first opened upon the light of Massachusetts, instead of South Carolina? Sir, does he suppose it in his power to exhibit a Carolina name, so bright, as to produce envy in my bosom? No, sir, increased gratification and delight, rather. I thank God, that, if I am gifted with little of the spirit which is able to raise mortals to the skies, I have yet none, as I trust, of that other spirit, which would drag angels down. When I shall be found, sir, in my place here, in the Senate, or elsewhere, to sneer at public merit, because it happens to spring up beyond the little limits of my own State, or neighborhood; when I refuse, for any such cause, or for any cause, the homage due to American talent, to elevated patriotism, to sincere devotion to liberty, and the country; or, if I see an uncommon endowment of Heaven—if I see extraordinary capacity and virtue in any son of the South—and if, moved by local prejudice, or gangrened by State jealousy, I get up here to abate the tithe of a hair from his just character and just fame, may my tongue cleave to the roof of my mouth!

Sir, let me recur to pleasing recollections—let me indulge in refreshing remembrances of the past—let me remind you that in early times,

South Carolina. Would to God that harmony might again return! Shoulder to shoulder they went through the revolution—hand in hand they stood round the administration of Washington, *and felt his own great arm lean on them* for support. Unkind feeling, if it exist, alienation and distrust, are the growth, unnatural to such soils, of false principles since sown. They are weeds, the seeds of which that same great arm never scattered.

Mr. President, I shall enter on no encomium upon Massachusetts—she needs none. There she is—behold her, and judge for yourselves. There is her history: the world knows it by heart. The past, at least, is secure. There is Boston, and Concord, and Lexington, and Bunker Hill—and there they will remain for ever. The bones of her sons, falling in the great struggle for Independence, now lie mingled with the soil of every State, from New England to Georgia; and there they will lie forever. And, sir, where American Liberty raised its first voice; and where its youth was nurtured and sustained, there it still lives, in the strength of its manhood and full of its original spirit. If discord and disunion shall wound it—if party strife and blind ambition shall hawk at and tear it—if folly and madness—if uneasiness, under salutary and necessary restraint—shall succeed to separate it from that Union, by which alone its existence is made sure, it will stand, in the end, by the side of that cradle in which its infancy was rocked: it will stretch forth its arm with whatever of vigor it may still retain, over the friends who gather round it; and it will fall at last, if fall it must, amidst the proudest monuments of its own glory, and on the very spot of its origin.

There yet remains to be performed, Mr. President, by far the most grave and important duty, which I feel to be devolved on me, by this occasion. It is to state, and to defend, what I conceive to be the true principles of the constitution under which we are here assembled. I might well have desired that so weighty a task should have fallen into other and abler hands. I could have wished that it should have been executed by those, whose character and experience give weight and influence to their opinions, such as cannot possibly belong to mine. But, sir, I have met the occasion, not sought it: and I shall proceed to state my own sentiments, without challenging for them any particular regard, with studied plainness, and as much precision as possible.

I understand the honorable gentleman from South Carolina to maintain, that it is a right of the State legislatures to interfere, whenever, in their judgment, this government transcends its constitutional limits, and to arrest the operation of its laws.

I understand him to maintain this right; as a right existing under the constitution, not as a right to overthrow it, on the ground of extreme necessity, such as would justify violent revolution.

I understand him to maintain an authority, on the part of the States, thus to interfere, for the purpose of correcting the exercise of power by the general government, of checking it, and of compelling it to conform to their opinion of the extent of its powers.

I understand him to maintain, that the ultimate power of judging of the constitutional extent of its own authority, is not lodged exclusively in the general government, or any branch of it; but that, on the contrary, the States may lawfully decide for themselves, and each State for itself, whether, in a given case, the act of the general government transcends its power.

I understand him to insist, that if the exigency of the case, in the opinion of any State government, require it, such State government may, by its own sovereign authority, annul an act of the general government, which it deems plainly and palpably unconstitutional.

This is the sum of what I understand from him, to be the South Carolina doctrine; and the doctrine which he maintains. I propose to consider it, and compare it with the constitution. Allow me to say, as a preliminary remark, that I call this the South Carolina doctrine, only because the gentleman himself has so denominated it. I do not feel at liberty to say that South Carolina, as a State, has ever advanced these sentiments. I hope she has not, and never may. That a great majority of her people are opposed to the tariff laws, is doubtless true. That a majority, somewhat less than that just mentioned, conscientiously believe these laws unconstitutional, may probably also be true. But, that any majority holds to the right of direct State interference, at State discretion, the right of nullifying acts of Congress, by acts of State legislation, is more than I know, and what I shall be slow to believe.

That there are individuals, besides the honorable gentleman, who do maintain these opinions, is quite certain. I recollect the recent expression of a sentiment, which circumstances attending its utterance and publication justify us in supposing was not unpremeditated. "The sovereignty of the State—never to be controlled, construed, or decided on, but by her own feelings of honorable justice."

Mr. Hayne here rose, and said, that for the purpose of being clearly understood, he would state, that his proposition was in the words of the Virginia resolution, as follows:

"That this assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no farther valid than they are authorized by the grants enumerated in that compact; and that,

exercise of other powers, not granted by the said compact, the States who are parties thereto, have the right, and are in duty bound to interpose, for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them." Mr. Webster resumed:

I am quite aware, Mr. President, of the existence of the resolution which the gentleman read, and has now repeated, and that he relies on it as his authority. I know the source, too, from which it is understood to have proceeded. I need not say that I have much respect for the constitutional opinions of Mr. Madison; they would weigh greatly with me, always. But, before the authority of his opinion be vouched for the gentleman's proposition, it will be proper to consider what is the fair interpretation of that resolution, to which Mr. Madison is understood to have given his sanction. As the gentleman construes it, it is an authority for him. Possibly, he may not have adopted the right construction. That resolution declares, that, in the case of the dangerous exercise of powers not granted by the general government, the States may interpose to arrest the progress of the evil. But how interpose, and what does this declaration purport? Does it mean no more, than that there may be extreme cases, in which the people, in any mode of assembling, may resist usurpation, and relieve themselves from a tyrannical government? No one will deny this. Such resistance is not only acknowledged to be just in America, but in England also. Blackstone admits as much, in the theory, and practice, too, of the English constitution. We, sir, who oppose the Carolina doctrine, do not deny that the people may, if they choose, throw off any government, when it becomes oppressive and intolerable, and erect a better in its stead. We all know that civil institutions are established for the public benefit, and that when they cease to answer the ends of their existence, they may be changed. But I do not understand the doctrine now contended for to be that, which, for the sake of distinctness, we may call the right of revolution. I understand the gentleman to maintain, that, without revolution, without civil commotion, without rebellion, a remedy for supposed abuse and transgression of the powers of the general government lies in a direct appeal to the interference of the State governments.

Mr. Hayne here rose: he did not contend, he said, for the mere right of revolution, but for the right of constitutional resistance. What he maintained, was, that in case of a plain, palpable violation of the constitution, by the general government, a State may interpose; and that this interposition is constitutional. Mr. Web-

So, sir, I understood the gentleman, and am happy to find that I did not misunderstand him. What he contends for is, that it is constitutional to interrupt the administration of the constitution itself, in the hands of those who are chosen and sworn to administer it, by the direct interference, in form of law of the States, in virtue of their sovereign capacity. The inherent right in the people to reform their government I do not deny: and they have another right, and that is, to resist unconstitutional laws without overturning the government. It is no doctrine of mine, that unconstitutional laws bind the people. The great question is, whose prerogative is it to decide on the constitutionality, or unconstitutionality of the laws? On that, the main debate hinges. The proposition, that, in case of a supposed violation of the constitution by Congress, the States have a constitutional right to interfere, and annul the law of Congress, is the proposition of the gentleman: I do not admit it. If the gentleman had intended no more than to assert the right of revolution, for justifiable cause, he would have said only what all agree to. But I cannot conceive that there can be a middle course, between submission to the laws, when regularly pronounced constitutional, on the one hand, and open resistance, which is revolution, or rebellion, on the other. I say, the right of a State to annul a law of Congress, cannot be maintained, but on the ground of the unalienable right of man to resist oppression; that is to say, upon the ground of revolution. I admit that there is an ultimate violent remedy, above the constitution, and in defiance of the constitution, which may be resorted to, when a revolution is to be justified. But I do not admit that, under the constitution, and in conformity with it, there is any mode in which a State government, as a member of the Union, can interfere and stop the progress of the general government, by force of her own laws, under any circumstances whatever.

This leads us to inquire into the origin of this government, and the source of its power. Whose agent is it? Is it the creature of the State legislatures, or the creature of the people? If the government of the United States be the agent of the State governments, then they may control it, provided they can agree in the manner of controlling it; if it be the agent of the people, then the people alone can control it, restrain it, modify, or reform it. It is observable enough, that the doctrine for which the honorable gentleman contends, leads him to the necessity of maintaining, not only that this general government is the creature of the States, but that it is the creature of each of the States severally; so that each may assert the power, for itself, of determining whether it acts within the limits of its authority. It is the servant of four and twenty masters, of different wills and different purposes, and yet bound to obey all. This absurdity (for it seems no less) arises from a misconception as to the origin of this govern-

people's constitution, the people's government; made for the people; made by the people; and answerable to the people. The people of the United States have declared that this constitution shall be the supreme law. We must either admit the proposition, or dispute their authority. The States are, unquestionably, sovereign, so far as their sovereignty is not affected by this supreme law. But the State legislatures, as political bodies, however sovereign, are yet not sovereign over the people. So far as the people have given power to the general government, so far the grant is unquestionably good, and the government holds of the people, and not of the State governments. We are all agents of the same supreme power, the people. The general government and the State governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted and the other general and residuary. The national government possesses those powers which it can be shown the people have conferred on it, and no more. All the rest belongs to the State governments or to the people themselves. So far as the people have restrained State sovereignty, by the expression of their will, in the constitution of the United States, so far, it must be admitted, State soverignty is effectually controlled. I do not contend that it is, or ought to be controlled farther. The sentiment to which I have referred, propounds that State sovereignty is only to be controlled by its own "feeling of justice;" that is to say, it is not to be controlled at all; for one who is to follow his own feelings is under no legal control. Now, however men may think this ought to be, the fact is, that the people of the United States have chosen to impose control on State sovereignties. There are those, doubtless, who wish they had been left without restraint; but the constitution has ordered the matter differently. To make war, for instance, is an exercise of sovereignty; but the constitution declares that no State shall make war. To coin money is another exercise of sovereign power; but no State is at liberty to coin money. Again, the constitution says that no sovereign State shall be so sovereign as to make a treaty. These prohibitions, it must be confessed, are a control on the State sovereignty of South Carolina, as well as of the other States, which does not arise "from her own feelings of honorable justice." Such an opinion, therefore, is in defiance of the plainest provisions of the constitution.

There are other proceedings of public bodies which have already been alluded to, and to which I refer again for the purpose of ascertaining more fully what is the length and breadth of that doctrine, denominated the Carolina doctrine, which the honorable member has now stood up on this floor to maintain. In one of them I find it resolved that "the tariff of 1828, and every other tariff designed to promote one branch of industry at the expense of others, is contrary to the meaning and intention of the federal compact; and is such a dangerous, palpable and deliberate usurpation of power, by a determined majority, wielding the general government beyond the limits of its delegated powers, as calls upon the States which compose the suffering minority, in their sovereign capacity, to exercise the powers which, as sovereigns, necessarily devolve upon them when their compact is violated."

Observe, sir, that this resolution holds the tariff of 1828, and every other tariff, designed to promote one branch of industry at the expense of another, to be such a dangerous, palpable and deliberate usurpation of power, as calls upon the States, in their sovereign capacity, to interfere by their own authority. This denunciation, Mr. President, you will please to observe, includes our old tariff of 1816, as well as all others; because that was established to promote the interest of the manufactures of cotton, to the manifest and admitted injury of the Calcutta cotton trade. Observe, again, that all the qualifications are here rehearsed and charged upon the tariff, which are necessary to bring the case within the gentleman's proposition. The tariff is a usurpation; it is a dangerous usurpation; it is a palpable usurpation; it is a deliberate usurpation. It is such a usurpation, therefore, as calls upon the States to exercise their right of interference. Here is a case, then, within the gentleman's principles, and all his qualifications of his principles. It is a case for action. The constitution is plainly, dangerously, palpably and deliberately violated; and the States must interpose their own authority to arrest the law. Let us suppose the State of South Carolina to express this same opinion by the voice of her legislature. That would be very imposing; but what then? Is the voice of one State conclusive? It so happens that at the very moment when South Carolina resolves that the tariff laws are unconstitutional, Pennsylvania and Kentucky resolve exactly the reverse. They hold those laws to be both highly proper and strictly constitutional. And now, sir, how does the honorable member propose to deal with this case? How does he relieve us from this difficulty upon any principle of his? His construction gets us into it; how does he propose to get us out?

In Carolina the tariff is a palpable, deliberate usurpation; Carolina, therefore, may nullify it, and refuse to pay the duties. In Pennsylvania it is both clearly constitutional and highly expedient; and there the duties are to be paid. And yet we live under a government of uniform laws, and under a constitution, too, which contains an express provision, as it happens, that all duties shall be equal in all the States. Does not this approach absurdity?

If there be no power to settle such questions, independent of either of the States, is not the whole Union a rope of sand? Are we not thrown back again precisely upon the old confederation?

It is too plain to be argued. Four-and-twenty

interpreters of constitutional law, each with a power to decide for itself, and none with authority to bind anybody else, and this constitutional law the only bond of their union! What is such a state of things but a mere connection during pleasure, or, to use the phraseology of the times, during feeling? And that feeling, too, not the feeling of the people, who established the constitution, but the feeling of the State governments.

In another of the South Carolina addresses, having premised that the crisis requires "all the concentrated energy of passion," an attitude of open resistance to the laws of the Union is advised. Open resistance to the laws, then, is the constitutional remedy, the conservative power of the State, which the South Carolina doctrines teach for the redress of political evils, real or imaginary. And its authors further say that, appealing with confidence to the constitution itself to justify their opinions, they cannot consent to try their accuracy by the courts of justice. In one sense, indeed, sir, this is assuming an attitude of open resistance in favor of liberty. But what sort of liberty? The liberty of establishing their own opinions, in defiance of the opinions of all others; the liberty of judging and of deciding exclusively themselves, in a matter in which others have as much right to judge and decide as they; the liberty of placing their own opinions above the judgment of all others, above the laws, and above the constitution. This is their liberty, and this is the fair result of the proposition contended for by the honorable gentleman. Or it may be more properly said, it is identical with it, rather than a result from it.

In the same publication we find the following: "Previously to our revolution, when the arm of oppression was stretched over New England, where did our northern brethren meet with a braver sympathy than that which sprung from the bosoms of Carolinians? We had no extortion, no oppression, no collision with the king's ministers, no navigation interests springing up in envious rivalry of England."

This seems extraordinary language. South Carolina no collision with the king's ministers in 1775! No extortion! No oppression! But, sir, it is also most significant language. Does any man doubt the purpose for which it was penned? Can any one fail to see that it was designed to raise in the reader's mind the question, whether, at this time—that is to say, in 1828—South Carolina has any collision with the king's ministers, any oppression, or extortion to fear from England? Whether, in short, England is not as naturally the friend of South Carolina, as New England with her navigation interests springing up in envious rivalry of England?

Is it not strange, sir, that an intelligent man in South Carolina, in 1828, should thus labor to prove, that, in 1775, there was no hostility, no cause of war, between South Carolina and England? That she had no occasion, in reference to her own interest, or from a regard to her own welfare, to take up arms in the revolutionary contest? Can any one account for the expression of such strange sentiments, and their circulation through the State, otherwise than by supposing the object to be, what I have already intimated, to raise the question, if they had no "collision" (mark the expression) with the ministers of king George the Third, in 1775, what collision have they, in 1828, with the ministers of king George the Fourth? What is there now, in the existing state of things, to separate Carolina from Old, more, or rather, than from New England?

Resolutions, sir, have been recently passed by the legislature of South Carolina. I need not refer to them; they go no farther than the honorable gentleman himself has gone—and, I hope, not so far. I content myself, therefore, with debating the matter with him.

And now, sir, what I have first to say on this subject is, that, at no time, and under no circumstances, has New England, or any State in New England, or any respectable body of persons in New England, or any public man of standing in New England, put forth such a doctrine as this Carolina doctrine.

The gentleman has found no case, he can find none, to support his own opinions by New England authority. New England has studied the constitution in other schools, and under other teachers. She looks upon it with other regards, and deems more highly and reverently both of its just authority, and its utility and excellence. The history of her legislative proceedings may be traced—the ephemeral effusions of temporary bodies, called together by the excitement of the occasion, may be hunted up—they have been hunted up. The opinions and votes of her public men, in and out of Congress, may be explored—it will all be in vain. The Carolina doctrine can derive from her neither countenance nor support. She rejects it now; she always did reject it; and till she loses her senses, she always will reject it. The honorable member has referred to expressions, on the subject of the embargo law, made in this place, by an honorable and venerable gentleman, Mr. Hillhouse, now favoring us with his presence. He quotes that distinguished senator as saying, that, in his judgment, the embargo law was unconstitutional, and that, therefore, in his opinion, the people were not bound to obey it. That, sir, is perfectly constitutional language. An unconstitutional law is not binding; but then it does not rest with a resolution or a law of a State legislature to decide whether an act of Congress be, or be not constitutional. An unconstitutional act of Congress would not bind the people of this district, although they have no legislature to interfere in their behalf; and, on the other hand, a constitutional law of Congress does bind the citizens of every State, although all their legislatures should undertake to annul it by act or resolution. The venerable Connecticut senator is a constitutional lawyer, of sound principles, and enlarged knowledge; a statesman

practised and experienced, bred in the company of Washington, and holding just views upon the nature of our governments. He believed the embargo unconstitutional, and so did others; but what then? Who, did he suppose, was to decide that question? The State legislatures? Certainly not. No such sentiment ever escaped his lips. Let us follow up, sir, this New England opposition to the embargo laws; let us trace it till we discern the principle, which controlled and governed New England, throughout the whole course of that opposition. We shall then see what similarity there is between the New England school of constitutional opinions, and this modern Carolina school. The gentleman, I think, read a petition from some single individual, addressed to the legislature of Massachusetts, asserting the Carolina doctrine—that is, the right of State interference to arrest the laws of the Union. The fate of that petition shows the sentiment of the legislature. It met no favor. The opinions of Massachusetts were otherwise. They had been expressed, in 1798, in answer to the resolutions of Virginia, and she did not depart from them, nor bend them to the times. Misgoverned, wronged, oppressed as she felt herself to be, she still held fast her integrity to the Union. The gentleman may find in her proceedings much evidence of dissatisfaction with the measures of government, and great and deep dislike to the embargo; all this makes the case so much the stronger for her; for notwithstanding all this dissatisfaction and dislike, she claimed no right, still, to sever asunder the bonds of the Union. There was heat, and there was anger, in her political feeling—be it so—her heat or her anger did not, nevertheless, betray her into infidelity to the government. The gentleman labors to prove that she disliked the embargo, as much as South Carolina dislikes the tariff, and expressed her dislike as strongly. Be it so; but did she propose the Carolina remedy?—did she threaten to interfere, by State authority, to annul the laws of the Union? That is the question for the gentleman's consideration.

No doubt, sir, a great majority of the people of New England conscientiously believed the embargo law of 1807 unconstitutional; as conscientiously, certainly, as the people of South Carolina hold that opinion of the tariff. They reasoned thus: Congress has power to regulate commerce; but here is a law, they said, stopping all commerce, and stopping it indefinitely. The law is perpetual; that is, it is not limited in point of time, and must, of course, continue, until it shall be repealed by some other law. It is as perpetual therefore, as the law against treason or murder. Now, is this regulating commerce, or destroying it? Is it guiding, controlling, giving the rule to commerce, as a subsisting thing; or is it putting an end to it altogether? Nothing is more certain, than that a majority in New England deemed this law a violation of the constitution. The very case required by the gentleman, to justify State interference, had then arisen. Massachusetts believed this law to be "a deliberate, palpable, and dangerous exercise of a power, not granted by the constitution." Deliberate it was, for it was long continued; palpable, she thought it, as no words in the constitution gave the power, and only a construction, in her opinion most violent, raised it; dangerous it was, since it threatened utter ruin to her most important interests. Here, then, was a Carolina case. How did Massachusetts deal with it? It was, as she thought, a plain manifest, palpable violation of the constitution, and it brought ruin to her doors. Thousands of families, and hundreds of thousands of individuals, were beggared by it. While she saw and felt all this, she saw and felt, also, that, as a measure of national policy, it was perfectly futile; that the country was no way benefited by that which caused so much individual distress; that it was efficient only for the production of evil, and all that evil inflicted on ourselves. In such a case, under such circumstances, how did Massachusetts demean herself? Sir, she remonstrated, she memorialized, she addressed herself to the general government, not exactly "with the concentrated energy of passion," but with her own strong sense, and the energy of sober conviction. But she did not interpose the arm of her own power to arrest the law, and break the embargo. Far from it. Her principles bound her to two things; and she followed her principles, lead where they might. First, to submit to every constitutional law of Congress, and, secondly, if the constitutional validity of the law be doubted, to refer that question to the decision of the proper tribunals. The first principle is vain and ineffectual without the second. A majority of us in New England believed the embargo law unconstitutional; but the great question was, and always will be, in such cases, who is to decide this?—Who is to judge between the people and the government? And, sir, it is quite plain, that the constitution of the United States confers on the government itself, to be exercised by its appropriate department, and under its own responsibility to the people, this power of deciding ultimately and conclusively, upon the just extent of its own authority. If this had not been done we should not have advanced a single step beyond the old confederation.

Being fully of opinion that the embargo law was unconstitutional, the people of New England were yet equally clear in the opinion—it was a matter they did not doubt upon—that the question, after all, must be decided by the judicial tribunals of the United States. Before those tribunals, therefore, they brought the question. Under the provisions of the law, they had given bonds, to millions in amount, and which were alleged to be forfeited. They suffered the bonds to be sued, and thus raised the question. In the old-fashioned way of settling disputes, they went to law. The case came to hearing, and solemn argument; and he who espoused their

of the embargo act, was none other than that great man, of whom the gentleman has made honorable mention, Samuel Dexter. He was then, sir, in the fulness of his knowledge, and the maturity of his strength. He had retired from long and distinguished public service here, to the renewed pursuit of professional duties; carrying with him all that enlargement and expansion, all the new strength and force, which an acquaintance with the more general subjects discussed in the national councils, is capable of adding to professional attainment, in a mind of true greatness and comprehension. He was a lawyer, and he was also a statesman. He had studied the constitution, when he filled public station, that he might defend it; he had examined its principles that he might maintain them. More than all men, or at least as much as any man, he was attached to the general government and to the union of the States. His feelings and opinions all ran in that direction. A question of constitutional law, too, was of all subjects, that one which was best suited to his talents and learning. Aloof from technicality, and unfettered by artificial rule, such a question gave opportunity for that deep and clear analysis, that mighty grasp of principle, which so much distinguished his higher efforts. His very statement was argument; his inference seemed demonstration. The earnestness of his own conviction, wrought conviction in others. One was convinced, and believed, and assented, because it was gratifying, delightful, to think and feel, and believe, in unison with an intellect of such evident superiority.

Mr. Dexter, sir, such as I have described him, argued the New England cause. He put into his effort his whole heart, as well as all the powers of his understanding; for he had avowed, in the most public manner, his entire concurrence with his neighbors, on the point in dispute. He argued the cause, it was lost, and New England submitted. The established tribunals pronounced the law constitutional, and New England acquiesced. Now, sir, is not this the exact opposite of the doctrine of the gentleman from South Carolina? According to him, instead of referring to the judicial tribunals, we should have broken up the embargo by laws of our own; we should have repealed it, "quoad" New England; for we had a strong, palpable, and oppressive case. Sir, we believed the embargo unconstitutional; but still that was matter of opinion, and who was to decide it? We thought it a clear case; but, nevertheless, we did not take the law into our own hands, because we did not wish to bring about a revolution, nor to break up the Union: for I maintain, that, between submission to the decision of the constituted tribunals, and revolution, or disunion, there is no middle ground—there is no ambiguous condition, half allegiance, and half rebellion. And, sir, how futile, how very futile it is, to admit the right of State interference, and then attempt to save it from the character of

fication to the causes, and occasions, leaving all these qualifications, like the case itself, in the discretion of the State governments. It must be a clear case, it is said, a deliberate case; a palpable case; a dangerous case. But then the State is still left at liberty to decide for herself, what is clear, what is deliberate, what is palpable, what is dangerous. Do adjectives and epithets avail any thing? Sir, the human mind is so constituted, that the merits of both sides of a controversy appear very clear, and very palpable, to those who respectively espouse them; and both sides usually grow clearer as the controversy advances. South Carolina sees unconstitutionality in the tariff; she sees oppression, there, also; and she sees danger. Pennsylvania, with a vision not less sharp, looks at the same tariff, and sees no such thing in it—she sees it all constitutional, all useful, all safe. The faith of South Carolina is strengthened by opposition, and she now not only sees, but resolves that the tariff is palpably unconstitutional, oppressive and dangerous: but Pennsylvania, not to be behind her neighbors, and equally willing to strengthen her own faith by a confident asseveration, resolves, also, and gives to every warm affirmative of South Carolina, a plain, downright, Pennsylvania negative. South Carolina, to show the strength and unity of her opinion, brings her assembly to a unanimity, within seven voices; Pennsylvania, not to be outdone in this respect more than others, reduces her dissentient fraction to a single vote. Now, sir, again, I ask the gentleman what is to be done? Are these States both right? Is he bound to consider them both right? If not, which is in the wrong? or rather, which has the best right to decide? And if he, and if I are not to know what the constitution means, and what it is, till those two State legislatures, and the twenty-two others, shall agree in its construction, what have we sworn to, when we have sworn to maintain it? I was forcibly struck, sir, with one reflection, as the gentleman went on in his speech. He quoted Mr. Madison's resolutions, to prove that a State may interfere, in a case of deliberate, palpable, and dangerous exercise of a power not granted. The honorable member supposes the tariff law to be such an exercise of power; and that, consequently, a case has arisen in which the State may, if it see fit, interfere by its own law. Now it so happens, nevertheless, that Mr. Madison deems this same tariff law quite constitutional. Instead of a clear and palpable violation, it is, in his judgment, no violation at all. So that, while they use his authority for a hypothetical case, they reject it in the very case before them. All this, sir, shows the inherent——futility——I had almost used a stronger word—of conceding this power of interference to the States, and then attempting to secure it from abuse by imposing qualifications, of which the States themselves are to judge. One of two things is true; either the laws of the Union are beyond the discretion and

have no constitution of general government, and are thrust back again to the days of the confederacy.

Let me here say, sir, that if the gentleman's doctrine had been received and acted upon in New England, in the times of the embargo and non-intercourse, we should probably not now have been here. The government would very likely have gone to pieces, and crumbled into dust. No stronger case can ever arise than existed under those laws; no States can ever entertain a clearer conviction than the New England States then entertained; and if they had been under the influence of that heresy of opinion, as I must call it, which the honorable member espouses, this Union would, in all probability, have been scattered to the four winds. I ask the gentleman, therefore, to apply his principles to that case; I ask him to come forth and declare, whether, in his opinion, the New England States would have been justified in interfering to break up the embargo system under the conscientious opinions which they held upon it? Had they a right to annul that law? Does he admit, or deny? If that which is thought palpably unconstitutional in South Carolina justifies that State in arresting the progress of the law, tell me, whether that which was thought palpably unconstitutional also in Massachusetts, would have justified her in doing the same thing? Sir, I deny the whole doctrine. It has not a foot of ground in the constitution to stand on. No public man of reputation ever advanced it in Massachusetts, in the warmest times, or could maintain himself upon it there at any time.

I wish now, sir, to make a remark upon the Virginia resolutions of 1798. I cannot undertake to say how these resolutions were understood by those who passed them. Their language is not a little indefinite. In the case of the exercise by Congress, of a dangerous power, not granted to them, the resolutions assert the right, on the part of the State, to interfere, and arrest the progress of the evil. This is susceptible of more than one interpretation. It may mean no more than that the States may interfere by complaint and remonstance, or by proposing to the people an alteration of the Federal Constitution. This would all be quite unobjectionable; or, it may be, that no more is meant than to assert the general right of revolution, as against all governments, in cases of intolerable oppression. This no one doubts; and this, in my opinion, is all that he who framed the resolutions could have meant by it: for I shall not readily believe, that he was ever of opinion that a State, under the constitution, and in conformity with it, could, upon the ground of her own opinion of its unconstitutionality, however clear and palpable she might think the case, annul a law of Congress, so far as it should operate on herself, by her own legislative power.

I must now beg to ask, sir, whence is this supposed right of the States derived?—where do they find the power to interfere with the laws of the Union? Sir, the opinion which the honorable gentleman maintains is a notion, founded in a total misapprehension, in my judgment, of the origin of this government, and of the foundation on which it stands. I hold it to be a popular government, erected by the people; those who administer it, responsible to the people; and itself capable of being amended and modified, just as the people may choose it should be. It is as popular, just as truly emanating from the people, as the State governments. It is created for one purpose; the State governments for another. It has its own powers; they have theirs. There is no more authority with them to arrest the operation of a law of Congress, than with Congress to arrest the operation of their laws. We are here to administer a constitution emanating immediately from the people, and trusted by them to our administration. It is not the creature of the State governments. It is of no moment to the argument, that certain acts of the State legislatures are necessary to fill our seats in this body. That is not one of their original State powers, a part of the sovereignty of the State. It is a duty which the people, by the constitution itself, have imposed on the State legislatures; and which they might have left to be performed elsewhere, if they had seen fit. So they have left the choice of President with electors; but all this does not affect the proposition, that this whole government, President, Senate, and House of Representatives, is a popular government. It leaves it still all its popular character. The governor of a State (in some of the States) is chosen, not directly by the people, but by those who are chosen by the people, for the purpose of performing, among other duties, that of electing a governor. Is the government of the State, on that account, not a popular government? This government, sir, is the independent offspring of the popular will. It is not the creature of State legislatures; nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on State sovereignties. The States cannot now make war; they cannot contract alliances; they cannot make, each for itself, separate regulations of commerce; they cannot lay imposts; they cannot coin money. If this constitution, sir, be the creature of State legislatures, it must be admitted that it has obtained a strange control over the volitions of its creators.

The people, then, sir, erected this government. They gave it a constitution, and in that constitution they have enumerated the powers which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others, they declare, are reserved to the States, or the people. But, sir, they have not stopped

here. If they had, they would have accomplished but half their work. No definition can be so clear, as to avoid possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who, then, shall construe this grant of the people? Who shall interpret their will, where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the government? Sir, they have settled all this in the fullest manner. They have left it, with the government itself, in its appropriate branches. Sir, the very chief end, the main design, for which the whole constitution was framed and adopted, was to establish a government that should not be obliged to act through State agency, or depend on State opinion and State discretion. The people had had quite enough of that kind of government, under the confederacy. Under that system, the legal action —the application of law to individuals—belonged exclusively to the States. Congress could only recommend—their acts were not of binding force, till the States had adopted and sanctioned them. Are we in that condition still? Are we yet at the mercy of State discretion, and State construction? Sir, if we are, then vain will be our attempt to maintain the constitution under which we sit.

But, sir, the people have wisely provided, in the constitution itself, a proper, suitable mode and tribunal for settling questions of constitutional law. There are, in the constitution, grants of powers to Congress; and restrictions on these powers. There are, also, prohibitions on the States. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The constitution has itself pointed out, ordained, and established that authority. How has it accomplished this great and essential end? By declaring, sir, that "the constitution and the laws of the United States, made in pursuance thereof, shall be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding."

This, sir, was the first great step. By this the supremacy of the constitution and laws of the United States is declared. The people so will it. No State law is to be valid, which comes in conflict with the constitution, or any law of the United States passed in pursuance of it. But who shall decide this question of interference? To whom lies the last appeal? This, sir, the constitution itself decides, also, by declaring, "that the judicial power shall extend to all cases arising under the constitution and laws of the United States." These two provisions, sir, cover the whole ground. They are, in truth, the keystone of the arch. With these, it is a constitution; without them, it is a confederacy. In pursuance of these clear and express provisions, Congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the supreme court. It then, sir, became a government. It then had the means of self-protection; and, but for this, it would, in all probability, have been now among things which are past. Having constituted the government, and declared its powers, the people have further said, that since somebody must decide on the extent of these powers, the government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, sir, I repeat, how is it that a State legislature acquires any power to interfere? Who, or what, gives them the right to say to the people, "We, who are your agents and servants for one purpose, will undertake to decide that your other agents and servants, appointed by you for another purpose, have transcended the authority you gave them!" The reply would be, I think, not impertinent—"Who made you a judge over another's servants? To their own masters they stand or fall."

Sir, I deny this power of State legislatures altogether. It cannot stand the test of examination. Gentlemen may say, that in an extreme case, a State government might protect the people from intolerable oppression. Sir, in such a case, the people might protect themselves, without the aid of the State governments. Such a case warrants revolution. It must make, when it comes, a law for itself. A nullifying act of a State legislature cannot alter the case, nor make resistance any more lawful. In maintaining these sentiments, sir, I am but asserting the rights of the people. I state what they have declared, and insist on their right to declare it. They have chosen to repose this power in the general government, and I think it my duty to support it, like other constitutional powers.

For myself, sir, I do not admit the jurisdiction of South Carolina, or any other State, to prescribe my constitutional duty; or to settle, between me and the people, the validity of laws of Congress, for which I have voted. I decline her umpirage. I have not sworn to support the constitution according to her construction of its clauses. I have not stipulated, by my oath of office, or otherwise, to come under any responsibility, except to the people, and those whom they have appointed to pass upon the question, whether laws, supported by my votes, conform to the constitution of the country. And, sir, if we look to the general nature of the case, could any thing have been more preposterous, than to make a government for the whole Union, and yet leave its powers subject, not to one interpretation, but to thirteen, or twenty-four, interpretations? Instead of one tribunal, established by all, responsible to all, with power to decide for all—shall constitutional questions be left to four-and-twenty popular bodies, each at liberty to decide for itself, and none bound to respect the decisions of others; and each at liberty, too, to give a new construction on every new election of its own

members? Would any thing, with such a principle in it, or rather with such a destitution of all principle, be fit to be called a government? No, sir. It should not be denominated a constitution. It should be called, rather, a collection of topics, for everlasting controversy; heads of debate for a disputatious people. It would not be a government. It would not be adequate to any practical good, nor fit for any country to live under. To avoid all possibility of being misunderstood, allow me to repeat again, in the fullest manner, that I claim no powers for the government by forced or unfair construction. I admit that it is a government of strictly limited powers; of enumerated, specified, and particularized powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limit and extent may yet, in some cases, admit of doubt; and the general government would be good for nothing, it would be incapable of long existing, if some mode had not been provided, in which those doubts, as they should arise, might be peaceably, but authoritatively, solved.

And now, Mr. President, let me run the honorable gentleman's doctrine a little into its practical application. Let us look at his probable "modus operandi." If a thing can be done, an ingenious man can tell how it is to be done. Now, I wish to be informed, how this State interference is to be put in practice without violence, bloodshed, and rebellion. We will take the existing case of the tariff law. South Carolina is said to have made up her opinion upon it. If we do not repeal it, (as we probably shall not,) she will then apply to the case the remedy of her doctrine. She will, we must suppose, pass a law of her legislature, declaring the several acts of Congress, usually called the tariff laws, null and void, so far as they respect South Carolina, or the citizens thereof. So far, all is a paper transaction, and easy enough. But the collector at Charleston is collecting the duties imposed by these tariff laws—he therefore must be stopped. The collector will seize the goods if the tariff duties are not paid. The State authorities will undertake their rescue; the marshal, with his posse, will come to the collector's aid, and here the contest begins. The militia of the State will be called out to sustain the nullifying act. They will march, sir, under a very gallant leader: for I believe the honorable member himself commands the militia of that part of the State. He will raise the nullifying act on his standard, and spread it out as his banner! It will have a preamble, bearing, That the tariff laws are palpaple, deliberate, and dangerous violations of the constitution! He will proceed, with this banner flying, to the custom-house in Charleston:

> "All the while,
> Sonorous metal, blowing martial sounds."

Arrived at the custom-house, he will tell the collector that he must collect no more duties under any of the tariff laws. This, he will be somewhat puzzled to say, by the way, with a grave countenance, considering what hand South Carolina, herself, had in that of 1816. But, sir, the collector would, probably, not desist at his bidding. He would show him the law of Congress, the treasury instruction, and his own oath of office. He would say, he should perform his duty, come what might. Here would ensue a pause: for they say that a certain stillness precedes the tempest. The trumpeter would hold his breath awhile, and before all this military array should fall on the custom-house, collector, clerks, and all, it is very probable some of those composing it, would request of their gallant commander-in-chief, to be informed a little upon the point of law; for they have, doubtless, a just respect for his opinions as a lawyer, as well as for his bravery as a soldier. They know he has read Blackstone and the constitution, as well as Turrene and Vauban. They would ask him, therefore, something concerning their rights in this matter. They would inquire, whether it was not somewhat dangerous to resist a law of the United States. What would be the nature of their offence, they would wish to learn, if they, by military force and array, resisted the execution in Carolina of a law of the United States, and it should turn out, after all, that the law was constitutional? He would answer, of course, treason. No lawyer could give any other answer. John Fries, he would tell them, had learned that some years ago. How, then, they would ask, do you propose to defend us? We are not afraid of bullets, but treason has a way of taking people off, that we do not much relish. How do you propose to defend us? "Look at my floating banner," he would reply; "see there the nullifying law!" Is it your opinion, gallant commander, they would then say, that if we should be indicted for treason, that same floating banner of yours would make a good plea in bar? "South Carolina is a sovereign State," he would reply. That is true—but would the judge admit our plea? "These tariff laws," he would repeat, "are unconstitutional, palpably, deliberately, dangerously." That all may be so; but if the tribunal should not happen to be of that opinion, shall we swing for it? We are ready to die for our country, but it is rather an awkward business, this dying without touching the ground! After all, that is a sort of hemp tax, worse than any part of the tariff.

Mr. President, the honorable gentleman would be in a dilemma, like that of another great general. He would have a knot before him which he could not untie. He must cut it with his sword. He must say to his followers, defend yourselves with your bayonets; and this is war—civil war.

Direct collision, therefore, between force and force, is the unavoidable result of that remedy for the revision of unconstitutional laws which the gentleman contends for. It must happen in the

very first case to which it is applied. Is not this the plain result? To resist, by force, the execution of a law, generally, is treason. Can the courts of the United States take notice of the indulgence of a State to commit treason? The common saying, that a State cannot commit treason herself, is nothing to the purpose. Can she authorize others to do it? If John Fries had produced an act of Pennsylvania, annulling the law of Congress, would it have helped his case? Talk about it as we will, these doctrines go the length of revolution. They are incompatible with any peaceable administration of the government. They lead directly to disunion and civil commotion; and, therefore, it is, that at their commencement, when they are first found to be maintained by respectable men, and in a tangible form, I enter my public protest against them all.

The honorable gentleman argues, that if this government be the sole judge of the extent of its own powers, whether that right of judging be in Congress, or the Supreme Court, it equally subverts State sovereignty. This the gentleman sees, or thinks he sees, although he cannot perceive how the right of judging, in this matter, if left to the exercise of State legislatures, has any tendency to subvert the government of the Union. The gentleman's opinion may be, that the right ought not to have been lodged with the general government; he may like better such a constitution, as we should have under the right of State interference; but I ask him to meet me on the plain matter of fact; I ask him to meet me on the constitution itself; I ask him if the power is not found there—clearly and visibly found there?

But, sir, what is this danger, and what the grounds of it? Let it be remembered, that the Constitution of the United States is not unalterable. It is to continue in its present form no longer than the people who established it shall choose to continue it. If they shall become convinced that they have made an injudicious or inexpedient partition and distribution of power, between the State governments and the general government, they can alter that distribution at will.

If any thing be found in the national constitution, either by original provision, or subsequent interpretation, which ought not to be in it, the people know how to get rid of it. If any construction be established, unacceptable to them, so as to become, practically, a part of the constitution, they will amend it, at their own sovereign pleasure: but while the people choose to maintain it, as it is; while they are satisfied with it, and refuse to change it, who has given, or who can give, to the State legislatures a right to alter it, either by interference, construction, or otherwise? Gentlemen do not seem to recollect that the people have any power to do any thing for themselves; they imagine there is no safety for them, any longer than they are under the close guardianship of the State legislatures. Sir, the people have not trusted their safety, in regard to the general constitution, to these hands. They have required other security, and taken other bonds. They have chosen to trust themselves, first, to the plain words of the instrument, and to such construction as the government itself, in doubtful cases, should put on its own powers, under their oaths of office, and subject to their responsibility to them: just as the people of a State trust their own State governments with a similar power. Secondly, they have reposed their trust in the efficacy of frequent elections, and in their own power to remove their own servants and agents, whenever they see cause. Thirdly, they have reposed trust in the judicial power, which, in order that it might be trustworthy, they have made as respectable, as disinterested, and as independent as was practicable. Fourthly, they have seen fit to rely, in case of necessity, or high expediency, on their known and admitted power, to alter or amend the constitution, peaceably and quietly, whenever experience shall point out defects or imperfections. And, finally, the people of the United States have, at no time, in no way, directly or indirectly, authorized any State legislature to construe or interpret their high instrument of government; much less to interfere, by their own power, to arrest its course and operation.

If, sir, the people, in these respects, had done otherwise than they have done, their constitution could neither have been preserved, nor would it have been worth preserving. And, if its plain provisions shall now be disregarded, and these new doctrines interpolated in it, it will become as feeble and helpless a being, as its enemies, whether early or more recent, could possibly desire. It will exist in every State, but as a poor dependent on State permission. It must borrow leave to be; and will be, no longer than State pleasure, or State discretion, sees fit to grant the indulgence, and to prolong its poor existence.

But, sir, although there are fears, there are hopes also. The people have preserved this, their own chosen constitution, for forty years, and have seen their happiness, prosperity, and renown, grow with its growth, and strengthen with its strength. They are now, generally, strongly attached to it. Overthrown by direct assault, it cannot be; evaded, undermined, nullified, it will not be, if we, and those who shall succeed us here, as agents and representatives of the people, shall conscientiously and vigilantly discharge the two great branches of our public trust—faithfully to preserve, and wisely to administer it.

Mr. President, I have thus stated the reasons of my dissent to the doctrines which have been advanced and maintained. I am conscious of having detained you and the Senate much too long. I was drawn into the debate, with no previous deliberation such as is suited to the discussion of so grave and important a subject. But it is a subject of which my heart is full, and

I have not been willing to suppress the utterance of its spontaneous sentiments. I cannot, even now, persuade myself to relinquish it, without expressing, once more, my deep conviction, that, since it respects nothing less than the union of the States, it is of most vital and essential importance to the public happiness. I profess, sir, in my career, hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our federal Union. It is to that Union we owe our safety at home, and our consideration and dignity abroad. It is to that Union that we are chiefly indebted for whatever makes us most proud of our country. That Union we reached only by the discipline of our virtues in the severe school of adversity. It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit. Under its benign influences, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings; and, although our territory has stretched out wider and wider, and our population spread farther and farther, they have not outrun its protection or its benefits. It has been to us all a copious fountain of national, social, and personal happiness. I have not allowed myself, sir, to look beyond the Union, to see what might lie hidden in the dark recess behind. I have not coolly weighed the chances of preserving liberty when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counsellor in the affairs of this government, whose thoughts should be mainly bent on considering, not how the Union should be best preserved, but how tolerable might be the condition of the people when it shall be broken up and destroyed. While the Union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that I seek not to penetrate the veil. God grant that, in my day, at least, that curtain may not rise. God grant, that on my vision never may be opened what lies behind. When my eyes shall be turned to behold, for the last time, the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on States dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance, rather behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, nor a single star obscured—bearing for its motto, no such miserable interrogatory, as What is all this worth? Nor those other words of delusion and folly, Liberty first, and Union afterwards—but every where, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart—Liberty and Union, now and for ever, one and inseparable!

ARGUMENT IN KNAPP'S TRIAL.

The following argument was delivered by Mr. Webster, on the trial of John F. Knapp, for the murder of Joseph White, of Salem, in the county of Essex, Massachusetts; on the night of the sixth of April, 1830. *

I AM little accustomed, gentlemen, to the part which I am now attempting to perform. Hardly more than once or twice, has it happened to me to be concerned, on the side of the government, in any criminal prosecution whatever; and never, until the present occasion, in any case affecting life.

But I very much regret it should have been thought necessary to suggest to you, that I am

* Mr. White, a highly respectable and wealthy citizen of Salem, about eighty years of age, was found on the morning of the 7th of April, 1830, in his bed murdered, under such circumstances as to create a strong sensation in that town, and throughout the community.

Richard Crowninshield, George Crowninshield, Joseph J. Knapp, and John F. Knapp, were a few weeks after arrested on a charge of having perpetrated the murder, and committed for trial. Joseph J. Knapp, soon after, under the promise of favor from government, made a full confession of the crime, and the circumstances attending it. In a few days after this disclosure was made, Richard Crowninshield, who was supposed to have been the principal assassin, committed suicide.

the Legislature, for the trial of the prisoners at Salem, in July. At that time, John F. Knapp was indicted as principal in the murder, and George Crowninshield, and Joseph J. Knapp as accessories.

On account of the death of Chief Justice Parker, which occurred on the 26th of July, the Court adjourned to Tuesday, the 3d day of August, when it proceeded in the trial of John F. Knapp. Joseph J. Knapp, being called upon, refused to testify, and the pledge of the government was withdrawn.

At the request of the prosecuting officers of the government, Mr. Webster appeared as counsel and assisted in the trial.

Mr. Dexter addressed the jury on behalf of the prisoner.

brought here to "hurry you against the law, and beyond the evidence." I hope I have too much regard for justice, and too much respect for my own character, to attempt either; and were I to make such attempt, I am sure, that in this court, nothing can be carried against the law, and that gentlemen, intelligent and just as you are, are not, by any power, to be hurried beyond the evidence. Though I could well have wished to shun this occasion, I have not felt at liberty to withhold my professional assistance, when it is supposed that I might be in some degree useful, in investigating and discovering the truth, respecting this most extraordinary murder. It has seemed to be a duty, incumbent on me, as on every other citizen, to do my best, and my utmost, to bring to light the perpetrators of this crime. Against the prisoner at the bar, as an individual, I cannot have the slightest prejudice. I would not do him the smallest injury or injustice. But I do not affect to be indifferent to the discovery, and the punishment of this deep guilt. I cheerfully share in the opprobrium, how much soever it may be, which is cast on those who feel and manifest an anxious concern that all who had a part in planning, or a hand in executing this deed of midnight assassination, may be brought to answer for their enormous crime, at the bar of public justice. Gentlemen, it is a most extraordinary case. In some respects, it has hardly a precedent any where; certainly none in our New England history. This bloody drama exhibited no suddenly excited ungovernable rage. The actors in it were not surprised by any lion-like temptation springing upon their virtue, and overcoming it, before resistance could begin. Nor did they do the deed to glut savage vengeance, or satiate long settled and deadly hate. It was a cool, calculating, money-making murder. It was all "hire and salary, not revenge." It was the weighing of money against life; the counting out of so many pieces of silver, against so many ounces of blood.

An aged man, without an enemy in the world, in his own house, and in his own bed, is made the victim of a butcherly murder, for mere pay. Truly, here is a new lesson for painters and poets. Whoever shall hereafter draw the portrait of murder, if he will show it as it has been exhibited in an example, where such example was last to have been looked for, in the very bosom of our New England society, let him not give it the grim visage of Moloch, the brow knitted by revenge, the face black with settled hate, and the blood-shot eye emitting livid fires of malice. Let him draw, rather, a decorous, smoothfaced, bloodless demon; a picture in repose, rather than in action; not so much an example of human nature, in its depravity, and in its paroxysms of crime, as an infernal nature, a fiend, in the ordinary display and development of his character.

The deed was executed with a degree of self-possession and steadiness, equal to the wickedness with which it was planned. The circumstances, now clearly in evidence, spread out the whole scene before us. Deep sleep had fallen on the destined victim, and on all beneath his roof. A healthful old man, to whom sleep was sweet, the first sound slumbers of the night held him in their soft but strong embrace. The assassin enters, through the window already prepared, into an unoccupied apartment. With! noiseless foot he paces the lonely hall, half lighted by the moon; he winds up the ascent of the stairs, and reaches the door of the chamber. Of this, he moves the lock, by soft and continued pressure, till it turns on its hinges without noise; and he enters, and beholds his victim before him. The room was uncommonly open to the admission of light. The face of the innocent sleeper was turned from the murderer, and the beams of the moon, resting on the gray locks of his aged temple, showed him where to strike. The fatal blow is given! and the victim passes, without a struggle or a motion, from the repose of sleep to the repose of death! It is the assassin's purpose to make sure work; and he yet plies the dagger, though it was obvious that life had been destroyed by the blow of the bludgeon. He even raises the aged arm, that he may not fail in his aim at the heart, and replaces it again over the wounds of the poniard! To finish the picture, he explores the wrist for the pulse! He feels for it, and ascertains that it beats no longer! It is accomplished. The deed is done. He retreats, retraces his steps to the window, passes out through it as he came in, and escapes. He has done the murder—no eye has seen him, no ear has heard him. The secret is his own, and it is safe!

Ah! gentlemen, that was a dreadful mistake. Such a secret can be safe nowhere. The whole creation of God has neither nook nor corner, where the guilty can bestow it, and say it is safe. Not to speak of that eye which glances through all disguises, and beholds every thing, as in the splendor of noon,—such secrets of guilt are never safe from detection, even by men. True it is, generally speaking, that "murder will out." True it is, that Providence hath so ordained, and doth so govern things, that those who break the great law of heaven, by shedding man's blood, seldom succeed in avoiding discovery. Especially, in a case exciting so much attention as this, discovery must come, and will come, sooner or later. A thousand eyes turn at once to explore every man, every thing, every circumstance, connected with the time and place; a thousand ears catch every whisper; a thousand excited minds intensely dwell on the scene, shedding all their light, and ready to kindle the slightest circumstance into a blaze of discovery. Meantime, the guilty soul cannot keep its own secret. It is false to itself; or rather it feels an irresistible impulse of conscience to be true to itself. It labors under its guilty possession, and knows not what to do with it. The human heart was not made for the residence of such an inhabitant. It finds itself preyed on by a torment, which it dares

not acknowledge to God nor man. A vulture is devouring it, and it can ask no sympathy or assistance, either from heaven or earth. The secret which the murderer possesses soon comes to possess him; and, like the evil spirits of which we read, it overcomes him, and leads him whithersoever it will. He feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions, from without, begin to embarrass him, and the net of circumstance to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed, it will be confessed, there is no refuge from confession but suicide, and suicide is confession.

Much has been said, on this occasion, of the excitement which has existed, and still exists, and of the extraordinary measures taken to discover and punish the guilty. No doubt there has been, and is, much excitement, and strange indeed were it, had it been otherwise. Should not all the peaceable and well disposed naturally feel concerned, and naturally exert themselves to bring to punishment the authors of this secret assassination? Was it a thing to be slept upon or forgotten? Did you, gentlemen, sleep quite as quietly in your beds after this murder as before? Was it not a case for rewards, for meetings, for committees, for the united efforts of all the good, to find out a band of murderous conspirators, of midnight ruffians, and to bring them to the bar of justice and law? If this be excitement, is it an unnatural, or an improper excitement?

It seems to me, gentlemen, that there are appearances of another feeling, of a very different nature and character, not very extensive I would hope, but still there is too much evidence of its existence. Such is human nature, that some persons lose their a[b]horrence of crime, in their admiration of its magnificent exhibitions. Ordinary vice is reprobated by them, but extraordinary guilt, exquisite wickedness, the high flights and poetry of crime, seize on the imagination, and lead them to forget the depths of the guilt, in admiration of the excellence of the performance, or the unequalled [a]city of the purpose. There are those in our day, who have made great use of this infirmity of our nature; and by means of it done infinite injury to the cause of good morals. They have affected not only the taste, but I fear also the principles, of the young, the heedless, and the imaginative, by the exhibition of interesting and beautiful monsters. They render depravity attractive, sometimes by the polish of its manners, and sometimes by its very extravagance; and study to show off crime under all the advantages of cleverness and dexterity. Gentlemen, this is an extraordinary mur-

lose ourselves in wonder at its origin, or in gazing on its cool and skilful execution. We are to detect and to punish it; and, while we proceed with caution against the prisoner, and are to be sure that we do not visit on his head the offences of others, we are yet to consider that we are dealing with a case of most atrocious crime, which has not the slightest circumstance about it to soften its enormity. It is murder, deliberate, concerted, malicious murder.

Although the interest in this case may have diminished by the repeated investigation of the facts, still, the additional labor which it imposes upon all concerned is not to be regretted, if it should result in removing all doubts of the guilt of the prisoner.

The learned counsel for the prisoner has said truly that it is your individual duty to judge the prisoner,—that it is your individual duty to determine his guilt or innocence—and that you are to weigh the testimony with candor and fairness. But much at the same time has been said, which, although it would seem to have no distinct bearing on the trial, cannot be passed over without some notice.

A tone of complaint so peculiar has been indulged, as would almost lead us to doubt whether the prisoner at the bar or the managers of this prosecution are now on trial. Great pains have been taken to complain of the manner of the prosecution. We hear of getting up a case;—of setting in motion trains of machinery;—of foul testimony;—of combinations to overwhelm the prisoner;—of private prosecutors;—that the prisoner is hunted, persecuted, driven to his trial;—that every body is against him;—and various other complaints, as if those who would bring to punishment the authors of this murder were almost as bad as they who committed it.

In the course of my whole life, I have never heard before so much said about the particular counsel who happen to be employed; as if it were extraordinary that other counsel than the usual officers of the government should be assisting in the conducting of a case on the part of the government. In one of the last capital trials in this county, that of Jackman for "the Goodridge robbery" (so called), I remember that the learned head of the Suffolk bar, Mr. Prescott, came down in aid of the officers of the government. This was regarded as neither strange nor improper. The counsel for the prisoner in that case contented themselves with answering his arguments, as far as they were able, instead of carping at his presence.

Complaint is made that rewards were offered in this case, and temptations held out to obtain testimony. Are not rewards always offered when great and secret offences are committed? Rewards were offered in the case to which I have alluded, and every other means taken to discover the offenders, that ingenuity or the most persevering vigilance could suggest. The learned counsel have suffered their zeal to lead them into a strain of complaint at the manner

detected, almost indicating that they regard it as a positive injury to them to have found out their guilt. Since no man witnessed it, since they do not now confess it, attempts to discover it are half esteemed as officious intermeddling and impertinent inquiry.

It is said that here even a committee of vigilance was appointed. This is a subject of reiterated remark. This committee are pointed at, as though they had been officiously intermeddling with the administration of justice. They are said to have been "laboring for months" against the prisoner. Gentlemen, what must we do in such a case? Are people to be dumb and still, through fear of overdoing? Is it come to this, that an effort cannot be made, a hand cannot be lifted to discover the guilty, without its being said there is a combination to overwhelm innocence? Has the community lost all moral sense? Certainly a community that would not be roused to action upon an occasion such as this was, a community which should not deny sleep to their eyes, and slumber to their eyelids, till they had exhausted all the means of discovery and detection, must indeed be lost to all moral sense, and would scarcely deserve protection from the laws. The learned counsel have endeavored to persuade you that there exists a prejudice against the persons accused of this murder. They would have you understand that it is not confined to this vicinity alone;—but that even the legislature have caught this spirit. That through the procurement of the gentleman here styled private prosecutor, who is a member of the Senate, a special session of this court was appointed for the trial of these offenders. That the ordinary movements of the wheels of justice were too slow for the purposes devised. But does not every body see and know that it was matter of absolute necessity to have a special session of the court? When or how could the prisoners have been tried without a special session? In the ordinary arrangement of the courts, but one week in a year is allotted for the whole court to sit in this county. In the trial of all capital offences, a majority of the court at least are required to be present. In the trial of the present case alone, three weeks have already been taken up. Without such special session, then, three years would not have been sufficient for the purpose. It is answer sufficient to all complaints on this subject, to say that the law was drawn by the late chief justice himself, to enable the court to accomplish its duties, and to afford the persons accused an opportunity for trial without delay.

Again, it is said, that it was not thought of making Francis Knapp, the prisoner at the bar, a PRINCIPAL till after the death of Richard Crowinshield, jun.; that the present indictment is an afterthought—that "testimony was got up" for the occasion. It is not so. There is no authority for this suggestion. The case of the Knapps had not then been before the grand jury. The officers of the government did not them. They could not, therefore, have determined what course they should pursue. They intended to arraign all as principals, who should appear to have been principals; and all as accessories, who should appear to have been accessories. All this could be known only when the evidence should be produced.

But the learned counsel for the defendant take a somewhat loftier flight still. They are more concerned, they assure us, for the law itself, than even for their client. Your decision, in this case, they say, will stand as a precedent. Gentlemen, we hope it will. We hope it will be a precedent, both of candor and intelligence, of fairness and of firmness; a precedent of good sense and honest purpose, pursuing their investigation discreetly, rejecting loose generalities, exploring all the circumstances, weighing each, in search of truth, and embracing and declaring the truth, when found.

It is said, that "laws are made, not for the punishment of the guilty, but for the protection of the innocent." This is not quite accurate perhaps, but if so, we hope they will be so administered as to give that protection. But who are the innocent, whom the law would protect? Gentlemen, Joseph White was innocent. They are innocent who having lived in the fear of God, through the day, wish to sleep in his peace through the night, in their own beds. The law is established, that those who live quietly may sleep quietly; that they who do no harm, may feel none. The gentleman can think of none that are innocent, except the prisoner at the bar, not yet convicted. Is a proved conspirator to murder, innocent? Are the Crowninshields and the Knapps, innocent? What is innocence? How deep stained with blood,—how reckless in crime,—how deep in depravity, may it be, and yet remain innocence? The law is made, if we should speak with entire accuracy, to protect the innocent, by punishing the guilty. But there are those innocent, out of court as well as in;—innocent citizens not suspected of crime, as well as innocent prisoners at the bar.

The criminal law is not founded in a principle of vengeance. It does not punish that it may inflict suffering. The humanity of the law feels and regrets every pain it causes, every hour of restraint it imposes, and more deeply still, every life it forfeits. But it uses evil, as the means of preventing greater evil. It seeks to deter from crime, by the example of punishment. This is its true, and only true main object. It restrains the liberty of the few offenders, that the many who do not offend, may enjoy their own liberty. It forfeits the life of the murderer, that other murders may not be committed. The law might open the jails, and at once set free all persons accused of offences, and it ought to do so, if it could be made certain that no other offences would hereafter be committed. Because it punishes, not to satisfy any desire to inflict pain, but simply to prevent the repetition of crimes. When the guilty, therefore, are not punished,

safety of the innocent is, so far, endangered. Every unpunished murder takes away something from the security of every man's life. And whenever a jury, through whimsical and ill-founded scruples, suffer the guilty to escape, they make themselves answerable for the augmented danger of the innocent.

We wish nothing to be strained against this defendant. Why then all this alarm? Why all this complaint against the manner in which the crime is discovered? The prisoner's counsel catch at supposed flaws of evidence, or bad character of witnesses, without meeting the case. Do they mean to deny the conspiracy? Do they mean to deny that the two Crowninshields and the two Knapps were conspirators? Why do they rail against Palmer, while they do not disprove, and hardly dispute the truth of any one fact sworn to by him? Instead of this, it is made matter of sentimentality, that Palmer has been prevailed upon to betray his bosom companions, and to violate the sanctity of friendship: again, I ask, why do they not meet the case? If the fact is out, why not meet it? Do they mean to deny that Capt. White is dead? One should have almost supposed even that, from some remarks that have been made. Do they mean to deny the conspiracy? Or, admitting a conspiracy, do they mean to deny only, that Frank Knapp, the prisoner at the bar, was abetting in the murder, being present, and so deny that he was a principal? If a conspiracy is proved, it bears closely upon every subsequent subject of inquiry. Why don't they come to the fact? Here the defence is wholly indistinct. The counsel neither take the ground nor abandon it. They neither fly, nor light. They hover. But they must come to a closer mode of contest. They must meet the facts, and either deny or admit them. Had the prisoner at the bar, then, a knowledge of this conspiracy or not? This is the question. Instead of laying out their strength in complaining of the *manner* in which the deed is discovered,—of the extraordinary pains taken to bring the prisoner's guilt to light; would it not be better to show there was no guilt? Would it not be better to show his innocence? They say, and they complain, that the community feel a great desire that he should be punished for his crimes; —would it not be better to convince you that he has committed no crime?

Gentlemen, let us now come to the case. Your first inquiry, on the evidence, will be,—was Capt. White murdered in pursuance of a conspiracy, and was the defendant one of this conspiracy? If so, the second inquiry is, was he so connected with the murder itself as that he is liable to be convicted as a *principal?* The defendant is indicted as a *principal.* If not guilty *as such*, you cannot convict him. The indictment contains three distinct classes of counts. In the *first*, he is charged as having done the deed, with his own hand;—in the *second*, as an aider and abettor to Richard Crowninshield, jr., who did the deed;—in the *third*, as an aider and abettor to some person unknown. If you believe him guilty on either of these counts, or in either of these ways, you must convict him.

It may be proper to say, as a preliminary remark, that there are two extraordinary circumstances attending this trial. One is, that Richard Crowninshield, jr., the supposed immediate perpetrator of the murder, since his arrest, has committed suicide. He has gone to answer before a tribunal of perfect infallibility. The other is, that Joseph Knapp, the supposed origin and planner of the murder, having once made a full disclosure of the facts, under a promise of indemnity, is, nevertheless, not now a witness. Notwithstanding his disclosure, and his promise of indemnity, he now refuses to testify. He chooses to return to his original state, and now stands answerable himself, when the time shall come for his trial. These circumstances it is fit you should remember, in your investigation of the case.

Your decision may affect more than the life of this defendant. If he be not convicted as principal, no one can be. Nor can any one be convicted of a participation in the crime as accessory. The Knapps and George Crowninshield will be again on the community. This shows the importance of the duty you have to perform—and to remind you of the degree of care and wisdom necessary to be exercised in its performance. But certainly these considerations do not render the prisoner's guilt any clearer, nor enhance the weight of the evidence against him. No one desires you to regard consequences in that light. No one wishes any thing to be strained, or too far pressed against the prisoner. Still it is fit you should see the full importance of the duty devolved upon you. And now, gentlemen, in examining this evidence, let us begin at the beginning, and see first what we know independent of the disputed testimony. This is a case of circumstantial evidence. And these circumstances, we think, are full and satisfactory. The case mainly depends upon them, and it is common, that offences of this kind, must be proved in this way. Midnight assassins take no witnesses. The evidence of the facts relied on has been, somewhat sneeringly, denominated by the learned counsel, "circumstantial stuff," but, it is not such stuff as dreams are made of. Why does he not rend this stuff? Why does he not tear it away, with the crush of his hand? He dismisses it, a little too summarily. It shall be my business to examine this stuff, and try its cohesion.

The letter from Palmer at Belfast, is that no more than flimsy stuff?

The fabricated letters, from Knapp to the committee, and Mr. White, are they nothing but stuff?

The circumstance, that the housekeeper was away at the time the murder was committed, as it was agreed she would be, is that, too, a useless piece of the same stuff?

The facts that the key of the chamber door

was unbarred and unbolted; 'are these to be so slightly and so easily disposed of?

It is necessary, gentlemen, now to settle, at the commencement, the great question of a conspiracy. If there was none, or the defendant was not a party, then there is no evidence here to convict him. If there was a conspiracy, and he is proved to have been a party, then these two facts have a strong bearing on others, and all the great points of inquiry. The defendant's counsel take no distinct ground, as I have already said, on this point, neither to admit, nor to deny. They choose to confine themselves to a hypothetical mode of speech. They say, supposing there was a conspiracy, "non sequitur," that the prisoner is guilty, as principal. Be it so. But still, if there was a conspiracy, and if he was a conspirator, and helped to plan the murder, this may shed much light on the evidence, which goes to charge him with the execution of that plan.

We mean to make out the conspiracy; and that the defendant was a party to it; and then to draw all just inferences from these facts.

Let me ask your attention, then, in the first place, to those appearances on the morning after the murder, which have a tendency to show, that it was done in pursuance of a preconcerted plan of operation. What are they? A man was found murdered in his bed. No stranger had done the deed—no one unacquainted with the house had done it. It was apparent, that somebody from within had opened, and somebody from without had entered. There had been there, obviously and certainly, concert and co-operation. The inmates of the house were not alarmed when the murder was perpetrated. The assassin had entered, without any riot, or any violence. He had found the way prepared before him. The house had been previously opened. The window was unbarred, from within, and its fastening unscrewed. There was a lock on the door of the chamber, in which Mr. White slept, but the key was gone. It had been taken away, and secreted. The footsteps of the murderer were visible, out-doors, tending toward the window. The plank by which he entered the window, still remained. The road he pursued had been thus prepared for him. The victim was slain, and the murderer had escaped. Every thing indicated that somebody from within had co-operated with somebody from without. Every thing proclaimed that some of the inmates, or somebody having access to the house, had had a hand in the murder. On the face of the circumstances, it was apparent, therefore, that this was a premeditated, concerted, conspired murder. Who then were the conspirators? If not now found out, we are still groping in the dark, and the whole tragedy is still a mystery.

If the Knapps and the Crowninshields were not the conspirators in this murder, then there is a whole set of conspirators yet not discovered. Because, independent of the testimony of Palmer, we know, from uncontroverted facts, that this murder was, and must have been, the result of concert and co-operation between two or more. We know it was not done without plan and deliberation; we see that, whoever entered the house, to strike the blow, was favored and aided by some one, who had been previously in the house, without suspicion, and who had prepared the way. This is concert, this is co-operation, this is conspiracy. If the Knapps and the Crowninshields, then, were not the conspirators, who were? Joseph Knapp had a motive to desire the death of Mr. White, and that motive has been shown.

He was connected by marriage in the family of Mr. White. His wife was the daughter of Mrs. Beckford, who was the only child of a sister of the deceased. The deceased was more than eighty years old, and he had no children. His only heirs were nephews and nieces. He was supposed to be possessed of a very large fortune,—which would have descended by law, to his several nephews and nieces in equal shares, or, if there was a will, then according to the will. But as Capt. White had but two branches of heirs—the children of his brother Henry White, and of Mrs. Beckford—according to the common idea, each of these branches would have shared one half of Mr. White's property.

This popular idea is not legally correct. But it is common, and very probably was entertained by the parties. According to this, Mrs. Beckford, on Mr. White's death, without a will, would have been entitled to one half of Mr. White's ample fortune; and Joseph Knapp had married one of her three children. There was a will, and this will gave the bulk of the property to others; and we learn from Palmer that one part of the design was to destroy the will before the murder was committed. There had been a previous will, and that previous will was known or believed to have been more favorable than the other, to the Beckford family. So that by destroying the last will, and destroying the life of the testator at the same time, either the first and more favorable will would be set up, or the deceased would have no will, which would be, as was supposed, still more favorable. But the conspirators not having succeeded in obtaining and destroying the last will, though they accomplished the murder, but the last will being found in existence and safe, and that will bequeathing the mass of the property to others, it seemed, at the time, impossible for Joseph Knapp, as for any one else, indeed, but the principal devisee, to have any motive which should lead to the murder. The key which unlocks the whole mystery, is, the knowledge of the intention of the conspirators to steal the will. This is derived from Palmer, and explains all. It solves the whole marvel. It shows the motive actuating those against whom there is much evidence, but who, without the knowledge of this intention, were not seen to have

have said, by Palmer; and it is so congruous with all the rest of the case, it agrees so well with all facts and circumstances, that no man could well withhold his belief, though the facts were stated by a still less credible witness. If one, desirous of opening a lock, turns over and tries a bunch of keys till he finds one that will open it, he naturally supposes he has found the key of that lock. So in explaining circumstances of evidence, which are apparently irreconcilable or unaccountable, if a fact be suggested, which at once accounts for all, and reconciles all, by whomsoever it may be stated, it is still difficult not to believe that such fact is the true fact belonging to the case. In this respect, Palmer's testimony is singularly confirmed. If he were false, then his ingenuity could not furnish us such clear exposition of strange appearing circumstances. Some truth, not before known, can alone do that.

When we look back, then, to the state of things immediately on the discovery of the murder, we see that suspicion would naturally turn at once, not to the heirs at law, but to those principally benefited by the will. They, and they alone, would be supposed or seem to have a direct object, for wishing Mr. White's life to be terminated. And strange as it may seem, we find counsel now insisting, that if no apology, it is yet mitigation of the atrocity of the Knapps' conduct, in attempting to charge this foul murder on Mr. White, the nephew, and principal devisee, that public suspicion was already so directed! As if assassination of character were excusable, in proportion as circumstances may render it easy. Their endeavors, when they knew they were suspected themselves, to fix the charge on others, by foul means and by falsehood, are fair and strong proof of their own guilt. But more of that hereafter.

The counsel say that they might safely admit that Richard Crowninshield, jr. was the perpetrator of this murder.

But how could they safely admit that? If that were admitted, every thing else would follow. For why should Richard Crowninshield, jr. kill Mr. White? He was not his heir, nor his devisee; nor was he his enemy. What could be his motive? If Richard Crowninshield, jr. killed Mr. White, he did it at some one's procurement, who himself had a motive. And who, having any motive, is shown to have had any intercourse with Richard Crowninshield, jr. but Joseph Knapp, and this, principally through the agency of the prisoner at the bar? It is the infirmity, the distressing difficulty of the prisoner's case, that his counsel cannot and dare not admit what they yet cannot disprove, and what all must believe. He who believes, on this evidence, that Richard Crowninshield, jr. was the immediate murderer, cannot doubt that both the Knapps were conspirators in that murder. The counsel therefore are wrong, I think, in saying they might safely admit this. The admission of so important, and to contend further against the proof of the entire conspiracy, as we state it.

What, then, was this conspiracy? J. J. Knapp, jr., desirous of destroying the will, and of taking the life of the deceased, hired a ruffian, who, with the aid of other ruffians, were to enter the house, and murder him in his own bed.

As far back as January, this conspiracy began. Endicott testifies to a conversation with J. J. Knapp, at that time, in which Knapp told him that Capt. White had made a will, and given the principal part of his property to Stephen White. When asked how he knew, he said "black and white don't lie." When asked if the will was not locked up, he said "there is such a thing as two keys to the same lock." And speaking of the then late illness of Capt. White, he said that Stephen White would not have been sent for if he had been there.

Hence it appears that, as early as January, Knapp had a knowledge of the will, and that he had access to it, by means of false keys. This knowledge of the will, and an intent to destroy it, appear also from Palmer's testimony —a fact disclosed to him by the other conspirators. He says that he was informed of this by the Crowninshields on the 2d of April. But, then, it is said that Palmer is not to be credited; that by his own confession he is a felon; that he has been in the State prison in Maine; and, above all, that he was an inmate and associate with these conspirators themselves. Let us admit these facts. Let us admit him to be as bad as they would represent him to be; still, in law, he is a competent witness. How else are the secret designs of the wicked to be proved, but by their wicked companions, to whom they have disclosed them? The government does not select its witnesses. The conspirators themselves have chosen Palmer. He was the confidant of the prisoners. The fact, however, does not depend on his testimony alone. It is corroborated by other proof; and, taken in connection with the other circumstances, it has strong probability. In regard to the testimony of Palmer, generally, it may be said that it is less contradicted, in all parts of it, either by himself or others, than that of any other material witness, and that every thing he has told has been corroborated by other evidence, so far as it was susceptible of confirmation. An attempt has been made to impair his testimony as to his being at the half-way house on the night of the murder; you have seen with what success. Mr. Babb is called to contradict him: you have seen how little he knows, and even that not certainly; for he, himself, is proved to have been in an error, by supposing him to have been at the half-way house on the evening of the 9th of April. At that time, Palmer is proved to have been at Dustin's in Danvers. If, then, Palmer, bad as he is, has disclosed the secrets of the conspiracy, and has told the truth, there is no reason why it should not be believed. Truth is truth, come whence

The facts show that this murder had been long in agitation—that it was not a new proposition on the 2d of April; that it had been contemplated for five or six weeks before. R. Crowninshield was at Wenham in the latter part of March, as testified by Starrett. F. Knapp was at Danvers in the latter part of February, as testified by Allen. R. Crowninshield inquired whether Capt. Knapp was about home, when at Wenham. The probability is, that they would open the case to Palmer, as a new project. There are other circumstances that show it to have been some weeks in agitation. Palmer's testimony as to the transactions on the 2d of April is corroborated by Allen, and by Osborn's books. He says that F. Knapp came there in the afternoon, and again in the evening. So the book shows. He says that Capt. White had gone out to his farm on that day. So others prove. How could this fact, or these facts, have been known to Palmer, unless F. Knapp had brought the knowledge? and was it not the special object of this visit to give information of this fact, that they might meet him and execute their purpose on his return from his farm? The letter of Palmer, written at Belfast, has intrinsic evidence of genuineness. It was mailed at Belfast, May 13th. It states facts that he could not have known, unless his testimony be true. This letter was not an afterthought; it is a genuine narrative. In fact, it says, "I know the business your brother Frank was transacting on the 2d of April:" how could he have possibly known this, unless he had been there? The "$1000, that was to be paid;" where could he have obtained this knowledge? The testimony of Endicott, of Palmer, and these facts, are to be taken together; and they most clearly show that the death of Capt. White must have been caused by somebody interested in putting an end to his life.

As to the testimony of Leighton. As far as manner of testifying goes, he is a bad witness: but it does not follow from this that he is not to be believed. There are some strange things about him. It is strange that he should make up a story against Capt. Knapp, the person with whom he lived; that he never voluntarily told any thing: all that he has said is screwed out of him. The story could not have been invented by him; his character for truth is unimpeached; and he intimated to another witness, soon after the murder happened, that he knew something he should not tell. There is not the least contradiction in his testimony, though he gives a poor account of withholding it. He says that he was extremely bothered by those who questioned him. In the main story that he relates, he is universally consistent with himself. Some things are for him, and some against him. Examine the intrinsic probability of what he says. See if some allowance is not to be made for him, on account of his ignorance with things of this kind. It is said to be extraordinary that he should have heard just so much of the conversation and no more; that he should have heard just what was necessary to be proved, and nothing else. Admit that this is extraordinary; still, this does not prove it not true. It is extraordinary that you twelve gentlemen should be called upon, out of all the men in the country, to decide this case: no one could have foretold this three weeks since. It is extraordinary that the first clue to this conspiracy should have been derived from information given by the father of the prisoner at the bar. And in every case that comes to trial, there are many things extraordinary. The murder itself in this case is an extraordinary one; but still we do not doubt its reality.

It is argued that this conversation between Joseph and Frank could not have been, as Leighton has testified, because they had been together for several hours before—this subject must have been uppermost in their minds—whereas this appears to have been the commencement of their conversation upon it. Now, this depends altogether upon the tone and manner of the expression; upon the particular word in the sentence, which was emphatically spoken. If he had said, "When did you see Dick, Frank?" this would not seem to be the beginning of the conversation. With what emphasis it was uttered, it is not possible to learn; and therefore nothing can be made of this argument. If this boy's testimony stood alone, it should be received with caution. And the same may be said of the testimony of Palmer. But they do not stand alone. They furnish a clue to numerous other circumstances, which, when known, react in corroborating what would have been received with caution, until thus corroborated. How could Leighton have made up this conversation: "When did you see Dick?" "I saw him this morning." "When is he going to kill the old man?" "I don't know." "Tell him if he don't do it soon, I won't pay him." Here is a vast amount, in few words. Had he wit enough to invent this? There is nothing so powerful as truth; and often nothing so strange. It is not even suggested that the story was made for him. There is nothing so extraordinary in the whole matter, as it would have been for this country boy to have invented this story.

The acts of the parties themselves, furnish strong presumption of their guilt. What was done on the receipt of the letter from Maine? This letter was signed by Charles Grant, jr., a person not known to either of the Knapps,—nor was it known to them, that any other person, beside the Crowninshields, knew of the conspiracy. This letter, by the accidental omission of the word jr., fell into the hands of the father, when intended for the son. The father carried it to Wenham, where both the sons were. They both read it. Fix your eye steadily, on this part of the circumstantial "stuff," which is in the case; and see what can be made of it. This was shown to the two brothers

on Saturday, 15th of May. They, neither of them, knew Palmer. And if they had known him, they could not have known him to have been the writer of this letter. It was mysterious to them, how any one, at Belfast, could have had knowledge of this affair. Their conscious guilt prevented due circumspection. They did not see the bearing of its publication. They advised their father to carry it to the committee of vigilance, and it was so carried. On Sunday following, Joseph began to think there might be something in it. Perhaps, in the mean time, he had seen one of the Crowninshields. He was apprehensive, that they might be suspected; he was anxious to turn attention from their family. What course did he adopt to effect this? He addressed one letter, with a false name, to Mr. White, and another to the committee; and to complete the climax of his folly, he signed the letter addressed to the committee, "Grant"—the same name as that signed to the letter they then had from Belfast, addressed to Knapp. It was in the knowledge of the committee, that no person but the Knapps had seen this letter from Belfast; and that no other person knew its signature. It therefore must have been irresistibly plain, to them, that one of the Knapps must have been the writer of the letter they had received, charging the murder on Mr. White. Add to this, the fact of its having been dated at Lynn, and mailed at Salem, four days after it was dated, and who could doubt respecting it? Have you ever read, or known, of folly equal to this? Can you conceive of crime more odious and abominable? Merely to explain the apparent mysteries of the letter from Palmer, they excite the basest suspicions of a man, who, if they were innocent, they had no reason to believe guilty; and who, if they were guilty, they most certainly knew to be innocent. Could they have adopted a more direct method of exposing their own infamy? The letter to the committee has intrinsic marks of a knowledge of this transaction. It tells of the time, and the manner in which the murder was committed. Every line speaks the writer's condemnation. In attempting to divert attention from his family, and to charge the guilt upon another, he indelibly fixes it upon himself.

Joseph Knapp requested Allen to put these letters into the post office, because, said he, "I wish to nip this silly affair in the bud." If this were not the order of an overruling Providence, I should say that it was the silliest piece of folly that was ever practised. Mark the destiny of crime. It is ever obliged to resort to such subterfuges; it trembles in the broad light; it betrays itself, in seeking concealment. He alone walks safely, who walks uprightly. Who, for a moment, can read these letters and doubt of J. Knapp's guilt? The constitution of nature is made to inform against him. There is no corner dark enough to conceal him. There is no turnpike broad enough, or smooth enough, for a man so guilty to walk in without stumbling. Every step proclaims his secret to every passenger. His own acts come out, to fix his guilt. In attempting to charge another with his own crime, he writes his own confession. To do away the effect of Palmer's letter, signed Grant—he writes his own letter, and affixes to it the name of Grant. He writes in a disguised hand; but how could it happen, that the same Grant should be in Salem, that was at Belfast? This has brought the whole thing out. Evidently he did it, because he has adopted the same style. Evidently, he did it,—because he speaks of the price of blood, and of other circumstances connected with the murder, that no one but a conspirator could have known.

Palmer says he made a visit to the Crowninshields, on the 9th of April. George then asked him whether he had heard of the murder. Richard inquired, whether he had heard the music at Salem. They said that they were suspected, that a committee had been appointed to search houses; and that they had melted up the dagger, the day after the murder, because it would be a suspicious circumstance to have it found in their possession. Now this committee was not appointed, in fact, until Friday evening. But this proves nothing against Palmer, it does not prove that George did not tell him so; it only proves that he gave a false reason, for a fact. They had heard that they were suspected—how could they have heard this, unless it were from the whisperings of their own consciences? Surely this rumor was not then public.

About the 27th of April, another attempt is made by the Knapps to give a direction to public suspicion. They reported themselves to have been robbed, in passing from Salem to Wenham, near Wenham pond. They came to Salem, and stated the particulars of the adventure: they described persons,—their dress, size, and appearance, who had been suspected of the murder. They would have it understood, that the community was infested with a band of ruffians, and that they, themselves, were the particular objects of their vengeance. Now, this turns out to be all fictitious,—all false. Can you conceive of any thing more enormous, any wickedness greater, than the circulation of such reports?—than the allegation of crimes, if committed, capital? If no such thing—then it reacts, with double force upon themselves, and goes very far to show their guilt. How did they conduct on this occasion? did they make hue and cry? Did they give information that they had been assaulted, that night, at Wenham? No such thing. They rested quietly on that night; they waited to be called on for the particulars of their adventure; they made no attempt to arrest the offenders;—this was not their object. They were content to fill the thousand mouths of rumor,—to spread abroad false reports,—to divert the attention of the public from themselves; for they thought every man suspected them, because they knew they ought to be suspected.

The manner in which the compensation for this murder was paid, is a circumstance worthy of consideration. By examining the facts and dates, it will satisfactorily appear, that Joseph Knapp paid a sum of money to Richard Crowninshield in five franc pieces, on the 24th of April. On the 21st of April, Joseph Knapp received five hundred five franc pieces, as the proceeds of an adventure at sea. The remainder of this species of currency that came home in the vessel, was deposited in a bank at Salem. On Saturday, 24th of April, Frank and Richard rode to Wenham. They were there with Joseph an hour or more: appeared to be negotiating private business. Richard continued in the chaise: Joseph came to the chaise and conversed with him. These facts are proved by Hart, and Leighton, and by Osborn's books. On Saturday evening, about this time, Richard Crowninshield is proved to have been at Wenham, with another person whose appearance corresponds with Frank, by Lummus. Can any doubt this being the same evening? What had Richard Crowninshield to do at Wenham, with Joseph, unless it were this business? He was there before the murder; he was there after the murder; he was there clandestinely, unwilling to be seen. If it were not upon this business, let it be told what it was for. Joseph Knapp could explain it; Frank Knapp might explain it. But they don't explain it; and the inference is against them.

Immediately after this, Richard passes five franc pieces, on the same evening, one to Lummus, five to Palmer; and near this time, George passes three or four in Salem. Here are nine of these pieces passed by them in four days; this is extraordinary. It is an unusual currency: in ordinary business, few men would pass nine such pieces in the course of a year. If they were not received in this way, why not explain how they came by them? Money was not so flush in their pockets, that they could not tell whence it came, if it honestly came there. It is extremely important to them to explain whence this money came, and they would do it if they could. If, then, the price of blood was paid at this time, in the presence and with the knowledge of this defendant; does not this prove him to have been connected with this conspiracy?

Observe, also, the effect on the mind of Richard, of Palmer's being arrested, and committed to prison; the various efforts he makes to discover the fact; the lowering, through the crevices of the rock, the pencil and paper for him to write upon; the sending two lines of poetry, with the request that he would return the corresponding lines; the shrill and peculiar whistle —the inimitable exclamations of "Palmer! Palmer! Palmer!"—all these things prove how great was his alarm; they corroborate Palmer's story, and tend to establish the conspiracy.

Joseph Knapp had a part to act in this matter; he must have opened the window, and secreted the key—he had free access to every part of the house; he was accustomed to visit there; he went in and out at his pleasure—he could do this without being suspected. He is proved to have been there the Saturday preceding.

If all these things, taken in connection, do not prove that Capt. White was murdered in pursuance of a conspiracy—then the case is at an end.

Savary's testimony is wholly unexpected. He was called for a different purpose. When asked who the person was that he saw come out of Capt. White's yard between three and four o'clock in the morning,—he answered, Frank Knapp. I am not clear this is not true. There may be many circumstances of importance connected with this, though we believe the murder to have been committed between ten and eleven o'clock. The letter to Dr. Barstow states it to have been done about eleven o'clock—it states it to have been done with a blow on the head, from a weapon loaded with lead. Here is too great a correspondence with the reality, not to have some meaning to it. Dr. Pierson was always of the opinion that the two classes of wounds were made with different instruments, and by different hands. It is possible, that one class was inflicted at one time, and the other at another. It is possible, that on the last visit, the pulse might not have entirely ceased to beat; and then the finishing stroke was given. It is said, when the body was discovered, some of the wounds weeped, while the others did not. They may have been inflicted from mere wantonness. It was known that Capt. White was accustomed to keep specie by him in his chamber; this perhaps may explain the last visit. It is proved, that this defendant was in the habit of retiring to bed, and leaving it afterwards, without the knowledge of his family; perhaps he did so on this occasion. We see no reason to doubt the fact; and it does not shake our belief that the murder was committed early in the night.

What are the probabilities as to the time of the murder? Mr. White was an aged man; he usually retired to bed at about half past nine. He slept soundest, in the early part of the night; usually awoke in the middle and latter part; and his habits were perfectly well known. When would persons, with a knowledge of these facts, be most likely to approach him? most certainly, in the first hour of his sleep. This would be the safest time. If seen then, going to or from the house, the appearance would be least suspicious. The earlier hour would then have been most probably selected.

Gentlemen, I shall dwell no longer on the evidence which tends to prove that there was a conspiracy, and that the prisoner was a conspirator. All the circumstances concur to make out this point. Not only Palmer swears to it, in effect, and Leighton, but Allen mainly supports Palmer, and Osborn's books lend confirmation, so far as possible from such a source. Palmer is contradicted in nothing, either by any other witness, or any proved circumstance, or

occurrence. Whatever could be expected to support him, does support him. All the evidence clearly manifests, I think, that there was a conspiracy; that it originated with J. Knapp; that defendant became a party to it, and was one of its conductors, from first to last. One of the most powerful circumstances, is Palmer's letter from Belfast. The amount of this was a direct charge on the Knapps, of the authorship of this murder. How did they treat this charge; like honest men, or like guilty men? We have seen how it was treated. J. Knapp fabricated letters, charging another person, and caused them to be put into the post-office.

I shall now proceed on the supposition, that it is proved that there was a conspiracy to murder Mr. White, and that the prisoner was party to it.

The second, and the material inquiry is, was the prisoner present, at the murder, aiding and abetting therein?

This leads to the legal question in the case, what does the law mean when it says, to charge him as a principal, "he must be present, aiding and abetting in the murder."

In the language of the late chief justice, "it is not required that the abettor shall be actually upon the spot when the murder is committed, or even in sight of the more immediate perpetrator of the victim, to make him a principal. If he be at a distance, co-operating in the act, by watching to prevent relief, or to give an alarm, or to assist his confederate in escape, having knowledge of the purpose and object of the assassin,—this in the eye of the law is being present, aiding and abetting, so as to make him a principal in the murder."

"If he be at a distance co-operating"—this is not a distance to be measured by feet or rods; if the intent to lend aid, combine with a knowledge that the murder is to be committed, and the person so intending, be so situate that he can by any possibility lend this aid, in any manner, then he is present in legal contemplation. He need not lend any actual aid: to be ready to assist, is assisting.

There are two sorts of murder; the distinction between them, it is of essential importance to bear in mind.—1. Murder in an affray, or upon sudden or unexpected provocation:—2. Murder secretly, with a deliberate, predetermined intention to commit murder. Under the first class, the question usually is, whether the offence be murder or manslaughter, in the person who commits the deed. Under the second class, it is often a question whether others, than he who actually did the deed, were present aiding and assisting thereto. Offences of this kind ordinarily happen when there is nobody present except those who go on the same design. If a riot should happen in the court house, and one should kill another—this may be murder, or it may not, according to the intention with which it was done; which is always matter of

and determined on, there can be no doubt of the murderous intention;—there can be no doubt, if a person be present, knowing a murder is to be done, of his concurring in the act. His being there is a proof of his intent to aid and abet; else, why is he there?

It has been contended, that proof must be given that the person accused did actually afford aid, did lend a hand in the murder itself;—and without this proof, although he may be near by, he may be presumed to be there for an innocent purpose; he may have crept silently there to hear the news, or from mere curiosity to see what was going on. Preposterous—absurd! Such an idea shocks all common sense. A man is found to be a conspirator to do a murder; he has planned it; he has assisted in arranging the time, the place, and the means; and he is found in the place, and at the time, and yet it is suggested that he might have been there, not for co-operation and concurrence, but from curiosity! Such an argument deserves no answer. It would be difficult to give it one, in decorous terms. Is it not to be taken for granted, that a man seeks to accomplish his own purposes? When he has planned a murder, and is present at its execution, is he there to forward, or to thwart his own design? Is he there to assist, or there to prevent? But, "curiosity!" He may be there from mere "curiosity!" Curiosity, to witness the success of the execution of his own plan of murder! The very walls of a court house ought not to stand—the ploughshare should run through the ground it stands on, where such an argument could find toleration.

It is not necessary that the abettor should actually lend a hand—that he should take a part in the act itself; if he be present, ready to assist—that is assisting. Some of the doctrines advanced would acquit the defendant, though he had gone to the bedchamber of the deceased,—though he had been standing by, when the assassin gave the blow. This is the argument we have heard to-day.

The court here said, they did not so understand the argument of the counsel for defendant. Mr. Dexter said, "the intent and power alone must co-operate." Mr. Webster continued:

No doubt the law is, that being ready to assist is assisting, if he has the power to assist, in case of need. And it is so stated by Foster, who is a high authority. "If A. happeneth to be present at a murder, for instance, and taketh no part in it, nor endeavoreth to prevent it, nor apprehendeth the murderer, nor levyeth hue and cry after him, this strange behavior of his, though highly criminal, will not of itself render him either principal or accessory." "But if a fact amounting to murder should be committed in prosecution of some unlawful purpose, though

in order to give assistance, if need were, for carrying it into execution, this would have amounted to murder in him, and in every person present and joining with him." "If the fact was committed in prosecution of the original purpose which was unlawful, the whole party will be involved in the guilt of him who gave the blow. For in combinations of this kind, the mortal stroke, though given by one of the party, is considered in the eye of the law, and of sound reason too, as given by every individual present and abetting. The person actually giving the stroke is no more than the hand or instrument by which the others strike." The author in speaking of being present, means actual presence; not actual in opposition to constructive, for the law knows no such distinction. There is but one presence, and this is the situation from which aid, or supposed aid may be rendered. The law does not say where he is to go, or how near he is to go, but somewhere where he may give assistance, or where the perpetrator may suppose that he may be assisted by him. Suppose that he is acquainted with the design of the murderer, and has a knowledge of the time when it is to be carried into effect, and goes out with a view to render assistance, if need be; why, then, even though the murderer does not know of this, the person so going out will be an abettor in the murder. It is contended that the prisoner at the bar could not be a principal, he being in Brown street; because he could not there render assistance. And you are called upon to determine this case, according as you may be of opinion, whether Brown street was, or was not, a suitable, convenient, well chosen place, to aid in this murder. This is not the true question. The inquiry is, not whether you would have selected this place in preference to all others, or whether you would have selected it at all; if they chose it, why should we doubt about it? How do we know the use they intended to make of it, or the kind of aid that he was to afford by being there? The question for you to consider, is, did the defendant go into Brown street in aid of this murder? Did he go there by agreement, by appointment, with the perpetrator? If so, every thing else follows. The main thing, indeed the only thing, is to inquire whether he was in Brown street by appointment with Richard Crowninshield—it might be to keep general watch; to observe the lights, and advise as to time of access; to meet the prisoner on his return, to advise him as to his escape; to examine his clothes, to see if any marks of blood; to furnish exchange of clothes, or new disguise if necessary; to tell him through what streets he could safely retreat, or whether he could deposit the club in the place designed:—or it might be without any distinct object; but merely to afford that encouragement which would be afforded by Richard Crowninshield's consciousness that he was near. It is of no consequence whether, in your opinion, the place was well chosen or not, to afford aid:—if it was so chosen, if it was by appointment, that he was there, that is enough. Suppose Richard Crowninshield, when applied to to commit the murder, had said, "I won't do it unless there can be some one near by to favor my escape; I won't go unless you will stay in Brown street." Upon the gentleman's argument, he would not be an aider and abettor in the murder, because the place was not well chosen; though it is apparent, that the being in the place chosen, was a condition, without which, the murder would have never happened.

You are to consider the defendant as one in the league, in the combination to commit the murder. If he was there by appointment, with the perpetrator, he is an abettor. The concurrence of the perpetrator in his being there, is proved by the previous evidence of the conspiracy. If Richard Crowninshield, for any purpose whatsoever, made it a condition of the agreement, that Frank Knapp should stand as "backer," then Frank Knapp was an aider and abettor: no matter what the aid was, of what sort it was, or degree—be it never so little. Even if it were to judge of the hour, when it was best to go, or to see when the lights were extinguished, or to give an alarm if any one approached. Who better calculated to judge of these things than the murderer himself? and if he so determined them, that is sufficient.

"Now as to the facts:" Frank Knapp knew that the murder was that night to be committed; he was one of the conspirators, he knew the object, he knew the time. He had that day been to Wenham to see Joseph, and probably to Danvers to see Richard Crowninshield, for he kept his motions secret; he had that day hired a horse and chaise of Osborn, and attempted to conceal the purpose for which it was used—he had intentionally left the "place" and the "price" blank on Osborn's books. He went to Wenham by the way of Danvers: he had been told the week before to hasten Dick; he had seen the Crowninshields several times within a few days; he had a saddle horse the Saturday night before; he had seen Mrs. Beckford at Wenham, and knew she would not return that night. She had not been away before for six weeks, and probably would not soon be again. He had just come from there. Every day, for the week previous, he had visited one or other of these conspirators, save Sunday, and then probably he saw them in town. When he saw Joseph on the 6th, Joseph had prepared the house, and would naturally tell him of it; there were constant communications between them, daily and nightly visitation: too much knowledge of these parties and this transaction, to leave a particle of doubt on the mind of any one that Frank Knapp knew that the murder was to be done this night. The hour was come, and he knew it; if so, and he was in Brown street, without explaining why he was there, can the jury for a moment doubt whether he was there to countenance, aid, or support; or for

curiosity alone; or to learn how the wages of sin and death were earned by the perpetrator?

Here Mr. Webster read the law from Hawkins. 1. Hawk. 204. Lib. i. chap. 32, sec. 7.

The perpetrator would derive courage, and strength, and confidence, from the knowledge of the fact that one of his associates was near by. If he was in Brown street, he could have been there for no other purpose. If there for this purpose, then he was, in the language of the law, "present," aiding and abetting in the murder.

His interest lay in being somewhere else. If he had nothing to do with the murder, no part to act, why not stay at home? Why should he jeopard his own life, if it was not agreed that he should be there? He would not voluntarily go where the very place would probably cause him to swing if detected. He would not voluntarily assume the place of danger. His taking this place, proves that he went to give aid. His staying away would have made an alibi. If he had nothing to do with the murder, he would be at home, where he could prove his alibi. He knew he was in danger, because he was guilty of the conspiracy, and if he had nothing to do, would not expose himself to suspicion or detection.

Did the prisoner at the bar countenance this murder? Did he concur, or did he non-concur, in what the perpetrator was about to do? Would he have tried to shield him? Would he have furnished his cloak for protection? Would he have pointed out a safe way of retreat? As you would answer these questions, so you should answer the general question: Whether he was there "consenting to the murder," or whether he was there "a spectator only?"

One word more on this "presence," called "constructive presence." What aid is to be rendered? Where is the line to be drawn, between acting and omitting to act? Suppose he had been in in the house, suppose he had followed the perpetrator to the chamber, what could he have done? This was to be a murder by stealth; it was to be a secret assassination. It was not their purpose to have an open combat; they were to approach their victim unawares, and silently give the fatal blow. But if he had been in the chamber, no one can doubt that he would have been an abettor, because of his presence, and ability to render services if needed. What service could he have rendered, if there? Could he have helped him fly? Could he have aided the silence of his movements? Could he have facilitated his retreat, on the first alarm? Surely, this was a case where there was more of safety in going alone, than with another, where company would only embarrass. Richard Crowninshield would prefer to go alone. He knew his errand too well. His nerves needed no collateral support. He was not the man to take with him a trembling companion. He would prefer to have his aid at a distance. He would not wish to be embarrassed by his presence. He would prefer to have him out of the house. He would prefer that he should be in Brown street. But, whether in the chamber, in the house, in the garden, or in the street, whatsoever is aiding in "immediate presence," is aiding in "constructive presence"—any thing that is aid in one case is aid in the other.

Reads from Hawkins. 4. Hawk. 201. Lib. iv. chap. 29, sec. 8.

If then the aid be any where that emboldens the perpetrator, that affords him hope or confidence in the enterprise, it is the same as though he stood at his elbow with his sword drawn: his being there ready to act, with the power to act, that is what makes him an abettor.

Here Mr. Webster referred to Kelly's case, and Hyde's case, &c., cited by counsel for the defendant, and showed that they did not militate with the doctrine for which he contended. The difference is, in those cases there was open violence; this was a case of secret assassination. The aid must meet the occasion. Here no "acting" was necessary, but watching, concealment of escape, management.

What are the "facts" in relation to this presence? Frank Knapp is proved a conspirator, proved to have known that the deed was now to be done. Is it not probable that he was in Brown street to concur in the murder? There were four conspirators; it was natural that some one of them would go with the perpetrator. Richard Crowninshield was to be the perpetrator; he was to give the blow. No evidence of any casting of the parts for the others. The defendant would probably be the man to take the second part. He was fond of exploits, he was accustomed to the use of sword-canes and dirks. If any aid was required, he was the man to give it. At least there is no evidence to the contrary of this.

Aid could not have been received from Joseph Knapp, or from George Crowninshield. Joseph Knapp was at Wenham, and took good care to prove that he was there. George Crowninshield has proved satisfactorily where he was; that he was in other company, such as it was, until eleven o'clock. This narrows the inquiry. This demands of the prisoner to show that if he was not in this place, where he was? It calls on him loudly to show this, and to show it truly. If he could show it, he would do it. If he don't tell, and that truly, it is against him. The defence of an "alibi" is a double-edged sword. He knew that he was in a situation that he might be called upon to account for himself. If he had no particular appoint-

taken care to have been able so to have accounted. He would have been out of town, or in some good company. Has he accounted for himself on that night to your satisfaction?

The prisoner has attempted to prove an alibi, in two ways. In the first place, by four young men with whom he says he was in company on the evening of the murder, from seven o'clock, till near ten o'clock; this depends upon the "certainty of the night." In the second place, by his family, from ten o'clock afterwards; this depends upon the "certainty of the time of the night." These two classes of proof have no connection with each other. One may be true and the other false, or they may both be true, or both be false. I shall examine this testimony with some attention, because, on a former trial, it made more impression on the minds of the court than on my own mind. I think, when carefully sifted and compared, it will be found to have in it more of "plausibility" than "reality."

Mr. Page testifies, that on the evening of the 6th of April he was in company with Burchmore, Balch, and Forrester, and that he met the defendant about seven o'clock, near the Salem hotel; that he afterwards met him at Remond's, about nine o'clock, and that he was in company with him a considerable part of the evening. This young gentleman is a member of college, and says that he came in town the Saturday evening previous; that he is now able to say that it was the night of the murder, when he walked with Frank Knapp, from the recollection of the fact, that he called himself to an account on the morning after the murder, as was natural for men to do when an extraordinary occurrence happens. Gentlemen, this kind of evidence is not satisfactory; general impressions as to time are not to be relied on. If I were called upon to state the particular day on which any witness testified in this cause, I could not do it. Every man will notice the same thing in his own mind. There is no one of these young men that could give any account of himself for any "other" day in the month of April. They are made to remember the fact, and then they think they remember the time. He has no means of knowing it was Tuesday more than any other time. He did not know it at first, he could not know it afterwards. He says he called himself to an account; this has no more to do with the murder, than with the man in the moon. Such testimony is not worthy to be relied on, in any forty-shilling cause. What occasion had he to call himself to an account? Did he suppose that he should be suspected? Had he any intimation of this conspiracy?

Suppose, gentlemen, you were either of you asked, where you were, or what you were doing, on the 15th day of June, you could not answer this question without calling to mind some events to make it certain. Just as well may you remember on what you dined on each day of the year past. Time is identical. Its subdivisions are all alike. No man knows one day from another, or one hour from another, but by some fact connected with it. Days and hours are not visible to the senses, nor to be apprehended and distinguished by the understanding. The flow of time is known only by something which makes it; and he who speaks of the date of occurrences with nothing to guide his recollection, speaks at random, and is not to be relied on. This young gentleman remembers the facts and occurrences; he knows nothing why they should not have happened on the evening of the sixth; but he knows no more. All the rest is evidently conjecture or impression.

Mr. White informs you that he told him he could not tell what night it was. The first thoughts are all that are valuable in such case. They miss the mark by taking second aim.

Mr. Balch believes, but is not sure, that he was with Frank Knapp on the evening of the murder. He has given different accounts of the time. He has no means of making it certain. All he knows is, that it was some evening before Fast. But whether Monday, Tuesday, or Saturday, he cannot tell.

Mr. Burchmore says, to the best of his belief it was the evening of the murder. Afterwards he attempts to speak positively, from recollecting that he mentioned the circumstance to William Pierce, as he went to the Mineral Spring on Fast day. Last Monday morning he told Col. Putnam he could not fix the time. This witness stands in a much worse plight than either of the others. It is difficult to reconcile all he has said with any belief in the accuracy of his recollections.

Mr. Forrester does not speak with any certainty as to the night; and it is very certain that he told Mr. Loring and others that he did not know what night it was.

Now, what does the testimony of these four young men amount to? The only circumstance by which they approximate to an identifying of the night is, that three of them say it was cloudy; they think their walk was either on Monday or Tuesday evening, and it is admitted that Monday evening was clear, whence they draw the inference that it must have been Tuesday.

But, fortunately, there is one fact disclosed in their testimony that settles the question. Balch says, that on the evening, whenever it was, that he saw the prisoner, the prisoner told him he was going out of town on horseback, for a distance of about twenty minutes' ride, and that he was going to get a horse at Osborn's. This was about seven o'clock. At about nine, Balch says he saw the prisoner again, and was then told by him that he had had his ride and had returned. Now it appears by Osborn's books, that the prisoner had a saddle-horse from his stable, not on Tuesday evening, the night of the murder, but on the Saturday evening previous. This fixes the time about which these young men

of the attempted "alibi," on Tuesday evening.

I come now to speak of the testimony adduced by the defendant to explain where he was after ten o'clock on the night of the murder. This comes chiefly from members of the family; from his father and brothers.

It is agreed that the affidavit of the prisoner should be received as evidence of what his brother, Samuel H. Knapp, would testify, if present. S. H. Knapp says, that about ten minutes past ten o'clock, his brother, F. Knapp, on his way to bed, opened his chamber-door, made some remarks, closed the door, and went to his chamber; and that he did not hear him leave it afterwards. How is this witness able to fix the time at ten minutes past ten? There is no circumstance mentioned, by which he fixes it. He had been in bed, probably asleep, and was aroused from his sleep by the opening of the door. Was he in a situation to speak of time with precision? Could he know, under such circumstances, whether it was ten minutes past ten, or ten minutes before eleven, when his brother spoke to him? What would be the natural result, in such a case? But we are not left to conjecture this result. We have positive testimony on this point. Mr. Webb tells you that Samuel told him on the 8th of June, "that he did not know what time his brother Frank came home, and that he was not at home when he went to bed." You will consider this testimony of Mr. Webb as indorsed upon this affidavit; and with this indorsement upon it, you will give it its due weight. This statement was made to him after Frank was arrested.

I come to the testimony of the father. I find myself incapable of speaking of him or his testimony with severity. Unfortunate old man! Another Lear, in the conduct of his children; another Lear, I fear, in the effect of his distress upon his mind and understanding. He is brought here to testify, under circumstances that disarm severity, and call loudly for sympathy. Though it is impossible not to see that his story cannot be credited, yet I am not able to speak of him otherwise than in sorrow and grief. Unhappy father! he strives to remember, perhaps persuades himself that he does remember, that on the evening of the murder he was himself at home at ten o'clock. He thinks,—or seems to think, that his son came in at about five minutes past ten. He fancies that he remembers his conversation; he thinks he spoke of bolting the door; he thinks he asked the time of night; he seems to remember his then going to his bed. Alas! these are but the swimming fancies of an agitated and distressed mind. Alas! they are but the dreams of hope,—its uncertain lights, flickering on the thick darkness of parental distress. Alas! the miserable father knows nothing, in reality, of all these things.

Mr. Shepard says that the first conversation he had with Mr. Knapp was soon after the murder, and before the arrest of his sons. Mr. Knapp says it was after the arrest of his sons. His own fears led him to say to Mr. Shepard, that his "son Frank was at home that night; and so Phippen told him,—or as Phippen told him," Mr. Shepard says that he was struck with the remark at the time, that it made an unfavorable impression on his mind; he does not tell you what that impression was, but when you connect it with the previous inquiry he had made,—whether Frank had continued to associate with the Crowninshields?—and recollect that the Crowninshields were then known to be suspected of this crime, can you doubt what this impression was? can you doubt as to the fears he then had?

This poor old man tells you that he was greatly perplexed at the time, that he found himself in embarrassed circumstances; that on this very night he was engaged in making an assignment of his property to his friend Mr. Shepard. If ever charity should furnish a mantle for error, it should be here. Imagination cannot picture a more deplorable, distressed condition.

The same general remarks may be applied to his conversation with Mr. Treadwell as have been made upon that with Mr. Shepard. He told him that he believed Frank was at home about the usual time. In his conversations with either of these persons, he did not pretend to know, of his own knowledge, the time that he came home. He now tells you positively that he recollects the time, and that he so told Mr. Shepard. He is directly contradicted by both these witnesses, as respectable men as Salem affords.

This idea of alibi is of recent origin. Would Samuel Knapp have gone to sea if it were then thought of? His testimony, if true, was too important to be lost. If there be any truth in this part of the alibi, it is so near in point of time that it cannot be relied on. The mere variation of half an hour would avoid it.—The mere variations of different time-pieces would explain it.

Has the defendant proved where he was on that night? If you doubt about it—there is an end of it. The burden is upon him, to satisfy you beyond all reasonable doubt. Osborn's books, in connection with what the young men state, are conclusive, I think, on this point. He has not, then, accounted for himself—he has attempted it, and has failed. I pray you to remember, gentlemen, that this is a case in which the prisoner would, more than any other, be rationally able to account for himself on the night of the murder, if he could do so. He was in the conspiracy, he knew the murder was then to be committed; and if he himself was to have no hand in its actual execution, he would of course, as matter of safety and precaution, be somewhere else, and be able to prove afterwards that he had been somewhere else. Having this motive to prove himself elsewhere, and the power to do it, if he were elsewhere, his failing in such proof must necessarily leave a very strong inference against him.

But, gentlemen, let us now consider what is the evidence produced on the part of the government to prove that John Francis Knapp, the prisoner at the bar, was in Brown street on the night of the murder. This is a point of vital importance in this cause. Unless this be made out beyond reasonable doubt, the law of presence does not apply to the case. The government undertake to prove that he was present, aiding in the murder, by proving that he was in Brown street for this purpose. Now what are the undoubted facts? They are that two persons were seen in that street at several times, during that evening, under suspicious circumstances;—under such circumstances as induced those who saw them to watch their movements. Of this there can be no doubt. Mirick saw a man standing at the post opposite his store, from fifteen minutes before nine until twenty minutes after, dressed in a full frock-coat, glazed cap, &c., in size and general appearance answering to the prisoner at the bar. This person was waiting there; and whenever any one approached him, he moved to and from the corner, as though he would avoid being suspected or recognized. Afterwards two persons were seen by Webster, walking in Howard street, with a slow, deliberate movement, that attracted his attention. This was about half past nine. One of these he took to be the prisoner at the bar—the other he did not know.

About half past ten a person is seen sitting on the ropewalk steps, wrapped in a cloak. He drops his head when passed, to avoid being known. Shortly after two persons are seen to meet in this street, without ceremony or salutation, and in a hurried manner to converse for a short time; then to separate and run off with great speed. Now on this same night a gentleman is slain,—murdered in his bed,—his house being entered by stealth from without; and his house situated within 300 feet of this street. The windows of his chamber were in plain sight from this street;—a weapon of death is afterwards found in a place where these persons were seen to pass—in a retired place, around which they had been seen lingering. It is now known that this murder was committed by a conspiracy of four persons, conspiring together for this purpose. No account is given who these suspected persons thus seen in Brown street and its neighborhood were. Now I ask, gentlemen, whether you or any man can doubt that this murder was committed by the persons who were thus in and about Brown street? Can any person doubt that they were there for purposes connected with this murder? If not for this purpose, what were they there for? When there is a cause so near at hand, why wander into conjecture for an explanation? Common sense requires you to take the nearest adequate cause for a known effect. Who were these suspicious persons in Brown street? There was something extraordinary about them—something noticeable, and noticed at the time—something in their appearance that aroused suspicion. And a man is found the next morning murdered in the near vicinity,

Now, so long as no other account shall be given of those suspicious persons, so long the inference must remain irresistible that they were the murderers. Let it be remembered that it is already shown that this murder was the result of conspiracy and of concert; let it be remembered that the house, having been opened from within, was entered by stealth from without. Let it be remembered that Brown street, where these persons were repeatedly seen under such suspicious circumstances, was a place from which every occupied room in Mr. White's house was clearly seen; let it be remembered that the place, though thus very near to Mr. White's house, was a retired and lonely place; and let it be remembered that the instrument of death was afterwards found concealed very near the same spot.

Must not every man come to the conclusion that these persons, thus seen in Brown street, were the murderers? Every man's own judgment, I think, must satisfy him that this must be so. It is a plain deduction of common sense. It is a point on which each one of you may reason like a Hale or a Mansfield. The two occurrences explain each other. The murder shows why these persons were thus lurking at that hour in Brown street; and their lurking in Brown street shows who committed the murder.

If then the persons in and about Brown street were the plotters and executors of the murder of Capt. White, we know who they were, and you know that there is one of them.

This fearful concatenation of circumstances puts him to an account. He was a conspirator. He had entered into this plan of murder. The murder is committed, and he is known to have been within three minutes' walk of the place. He must account for himself. He has attempted this, and failed. Then, with all these general reasons to show he was actually in Brown street, and his failures in his alibi, let us see what is the direct proof of his being there. But first, let me ask, is it not very remarkable that there is no attempt to show where Richard Crowninshield, jr. was on that night? We hear nothing of him. He was seen in none of his usual haunts about the town. Yet, if he was the actual perpetrator of the murder, which nobody doubts, he was in the town somewhere. Can you, therefore, entertain a doubt that he was one of the persons seen in Brown street? And, as to the prisoner, you will recollect that, since the testimony of the young men has failed to show where he was that evening, the last we hear or know of him, on the day preceding the murder, is, that at four o'clock P. M. he was at his brother's, in Wenham. He had left home after dinner, in a manner doubtless designed to avoid observation, and had gone to Wenham, probably by way of Danvers. As we hear nothing of him after four o'clock, P. M. for the remainder of the day and evening; as he was

shield, jr. was another; as Richard Crowninshield, jr. was in town in the evening, and yet seen in no usual place of resort, the inference is very fair that Richard Crowninshield, jr. and the prisoner were together, acting in execution of their conspiracy. Of the four conspirators, J. J. Knapp, jr. was at Wenham, and George Crowninshield has been accounted for; so that, if the persons seen in Brown street were the murderers, one of them must have been Richard Crowninshield, jr., and the other must have been the prisoner at the bar. Now, as to the proof of his identity with one of the persons seen in Brown street.

Mr. Mirick, a cautious witness, examined the person he saw closely in a light night, and says that he thinks the prisoner at the bar is the same person; and that he should not hesitate at all, if he were seen in the same dress. His opinion is formed, partly from his own observation, and partly from the description of others. But this description turns out to be only in regard to the dress. It is said that he is now more confident than on the former trial. If he has varied in his testimony, make such allowance as you may think proper. I do not perceive any material variance. He thought him the same person, when he was first brought to court, and as he saw him get out of the chaise. This is one of the cases in which a witness is permitted to give an opinion. This witness is as honest as yourselves—neither willing nor swift; but he says he believes it was the man—"this is my opinion;" and this it is proper for him to give. If partly founded on what he has heard, then his opinion is not to be taken; but if on what he saw, then you can have no better evidence. I lay no stress on similarity of dress. No man will ever be hanged by my voice on such evidence. But then it is proper to notice, that no inferences drawn from any dissimilarity of dress, can be given in the prisoner's favor; because, in fact, the person seen by Mirick was dressed like the prisoner.

The description of the person seen by Mirick answers to that of the prisoner at the bar. In regard to the supposed discrepancy of statements, before and now, there would be no end to such minute inquiries. It would not be strange if witnesses should vary. I do not think much of slight shades of variation. If I believe the witness is honest, that is enough. If he has expressed himself more strongly now than then, this does not prove him false.

Peter E. Webster saw the prisoner at the bar, as he then thought, and still thinks, walking in Howard street at half past nine o'clock. He then thought it was Frank Knapp, and has not altered his opinion since. He knew him well; he had long known him. If he then thought it was he, this goes far to prove it. He observed him the more, as it was unusual to see gentlemen walk there at that hour. It was a retired, lonely street. Now, is there reasonable doubt that Mr. Webster did see him there that night? How can you have more proof than this? He judged by his walk, by his general appearance, by his deportment. We all judge in this manner. If you believe he is right, it goes a great way in this case. But then this person, it is said, had a cloak on, and that he could not, therefore, be the same person that Mirick saw. If we were treating of men that had no occasion to disguise themselves or their conduct, there might be something in this argument. But as it is, there is little in it. It may be presumed, that they would change their dress. This would help their disguise. What is easier than to throw off a cloak, and again put it on? Perhaps he was less fearful of being known when alone, than when with the perpetrator.

Mr. Southwick swears all that a man can swear. He has the best means of judging that could be had at the time. He tells you that he left his father's house at half past ten o'clock, and as he passed to his own house in Brown street, he saw a man sitting on the steps of the ropewalk, &c., &c.—that he passed him three times, and each time he held down his head, so that he did not see his face. That the man had on a cloak, which was not wrapped around him, and a glazed cap. That he took the man to be Frank Knapp at the time; that when he went into his house, he told his wife that he thought it was Frank Knapp; that he knew him well, having known him from a boy. And his wife swears that he did so tell her at the time. What could mislead this witness at the time? He was not then suspecting Frank Knapp of any thing. He could not then be influenced by any prejudice. If you believe that the witness saw Frank Knapp in this position, at this time, it proves the case. Whether you believe it or not, depends upon the credit of the witness. He swears it. If true, it is solid evidence. Mrs. Southwick supports her husband. Are they true? Are they worthy of belief? If he deserves the epithets applied to him, then he ought not to be believed. In this fact, they cannot be mistaken—they are right, or they are perjured. As to his not speaking to Frank Knapp, that depends upon their intimacy. But a very good reason is, Frank chose to disguise himself. This makes nothing against his credit. But it is said that he should not be believed. And why? Because, it is said, he himself now tells you that when he testified before the grand jury at Ipswich, he did not then say that he thought the person he saw in Brown street was Frank Knapp, but that "the person was about the size of Selman." The means of attacking him, therefore, come from himself. If he is a false man, why should he tell truths against himself? They rely on his veracity to prove that he is a liar. Before you can come to this conclusion, you will consider, whether all the circumstances are now known that should have a bearing on this point. Suppose that when he was before the grand jury, he was asked by the attorney this question: "Was the person you saw in Brown street about the size of Selman?" and he answered, yes. This was all true. Suppose

also, that he expected to be inquired of further, and no further questions were put to him! Would it not be extremely hard to impute to him perjury for this? It is not uncommon for witnesses to think that they have done all their duty, when they have answered the questions put to them. But suppose that we admit that he did not then tell all he knew; this does not affect the fact at all; because he did tell, at the time, in the hearing of others, that the person he saw was Frank Knapp. There is not the slightest suggestion against the veracity or accuracy of Mrs. Southwick. Now, she swears positively, that her husband came into the house and told her that he had seen a person on the ropewalk steps, and believed it was Frank Knapp.

It is said that Mr. Southwick is contradicted, also, by Mr. Shillaber. I do not so understand Mr. Shillaber's testimony. I think what they both testify is reconcilable, and consistent. My learned brother said, on a similar occasion, that there is more probability in such cases that the persons hearing should misunderstand, than that the person speaking should contradict himself. I think the same remarks applicable here.

You have all witnessed the uncertainty of testimony, when witnesses are called to testify what other witnesses said. Several respectable counsellors have been called on, on this occasion, to give testimony of that sort. They have, every one of them, given different versions. They all took minutes at the time, and without doubt intend to state the truth. But still they differ. Mr. Shillaber's version is different from every thing that Southwick has stated elsewhere. But little reliance is to be placed on slight variations in testimony, unless they are manifestly intentional. I think that Mr. Shillaber must be satisfied that he did not rightly understand Mr. Southwick. I confess I misunderstood Mr. Shillaber on the former trial, if I now rightly understand him. I therefore did not then recall Mr. Southwick to the stand. Mr. Southwick, as I read it, understood Mr. Shillaber as asking him about a person coming out of Newbury street, and whether, for aught he knew, it might not be Richard Crowninshield, jr. He answered that he could not tell. He did not understand Mr. Shillaber as questioning him as to the person whom he saw sitting on the steps of the ropewalk. Southwick, on this trial, having heard Mr. Shillaber, has been recalled to the stand, and states that Mr. Shillaber entirely misunderstood him. This is certainly most probable, because the controlling fact in the case is not controverted; that is, that Southwick did tell his wife, at the very moment he entered his house, that he had seen a person on the ropewalk steps, whom he believed to be Frank Knapp. Nothing can prove, with more certainty than this, that Southwick, at the time, thought the person whom he thus saw to be the prisoner at the bar.

intelligent witness. He was highly complimented by my brother, on the former trial, although he now charges him with varying his testimony. What could be his motive? You will be slow in imputing to him any design of this kind. I deny altogether that there is any contradiction. There may be differences, but not contradiction. These arise from the difference in the questions put; the difference between believing and knowing. On the first trial, he said he did not know the person, and now says the same. Then we did not do all we had a right to do. We did not ask him who he thought it was. Now, when so asked, he says he believes it was the prisoner at the bar. If he had then been asked this question, he would have given the same answer. That he has expressed himself stronger, I admit; but he has not contradicted himself. He is more confident now; and that is all. A man may not assert a thing, and still not have any doubt upon it. Cannot every man see this distinction to be consistent? I leave him in that attitude; that only is the difference. On questions of identity, opinion is evidence. We may ask the witness either if he knew who the person seen was, or who he thinks he was. And he may well answer, as Capt. Bray has answered, that he does not know who it was, but that he thinks it was the prisoner.

We have offered to produce witnesses to prove that, as soon as Bray saw the prisoner, he pronounced him the same person. We are not at liberty to call them to corroborate our own witness. How then could this fact of the prisoner's being in Brown street be better proved? If ten witnesses had testified to it, it would be no better. Two men, who knew him well, took it to be Frank Knapp, and one of them so said, when there was nothing to mislead them. Two others, that examined him closely, now swear to their opinion that he is the man.

Miss Jaqueth saw three persons pass by the ropewalk, several evenings before the murder. She saw one of them pointing towards Mr. White's house. She noticed that another had something which appeared to be like an instrument of music; that he put it behind him, and attempted to conceal it. Who were these persons? This was but a few steps from the place where this apparent instrument of music (of music such as Richard Crowninshield, jr. spoke of to Palmer) was afterwards found. These facts prove this a point of rendezvous for these parties. They show Brown street to have been the place for consultation and observation; and to this purpose it was well suited.

Mr. Burns's testimony is also important. What was the defendant's object in his private conversation with Burns? He knew that Burns was out that night; that he lived near Brown street, and that he had probably seen him; and he wished him to say nothing. He said to Burns, "if you saw any of your friends out that

and I are your friends." This is plain proof that he wished to say to him, if you saw me in Brown street that night, say nothing about it.

But it is said that Burns ought not to be believed, because he mistook the color of the dagger, and because he has varied in his description of it. These are slight circumstances, if his general character be good. To my mind they are of no importance. It is for you to make what deduction you may think proper, on this account, from the weight of his evidence. His conversation with Burns, if Burns is believed, shows two things: first, that he desired Burns not to mention it, if he had seen him on the night of the murder; second, that he wished to fix the charge of murder on Mr. Stephen White. Both of these prove his own guilt.

I think you will be of opinion, gentlemen, that Brown street was a probable place for the conspirators to assemble, and for an aid to be. If we knew their whole plan, and if we were skilled to judge in such a case, then we could perhaps determine on this point better. But it is a retired place, and still commands a full view of the house;—a lonely place, but still a place of observation. Not so lonely that a person would excite suspicion to be seen walking there in an ordinary manner;—not so public as to be noticed by many. It is near enough to the scene of action in point of law. It was their point of centrality. The club was found near the spot—in a place provided for it—in a place that had been previously hunted out—in a concerted place of concealment. Here was their point of rendezvous—Here might the lights be seen—Here might an aid be secreted—Here was he within call—Here might he be aroused by the sound of the whistle—Here might he carry the weapon—Here might he receive the murderer, after the murder.

Then, gentlemen, the general question occurs, is it satisfactorily proved, by all these facts and circumstances, that the defendant was in and about Brown street on the night of the murder? Considering that the murder was effected by a conspiracy;—considering that he was one of the four conspirators;—considering that two of the conspirators have accounted for themselves, on the night of the murder, and were not in Brown street;—considering that the prisoner does not account for himself, nor show where he was;—considering that Richard Crowninshield, the other conspirator, and the perpetrator, is not accounted for, nor shown to be elsewhere;—considering that it is now past all doubt that two persons were seen in and about Brown street, at different times, lurking, avoiding observation, and exciting so much suspicion that the neighbors actually watched them;—considering that if these persons, thus lurking in Brown street, at that hour, were not the murderers, it remains, to this day, wholly unknown who they were, or what their business was;—considering the testimony of Miss Jaqueth, and that the club was afterwards found near this place;—considering, finally, that Webster and Southwick saw these persons, and then took one of them for the defendant, and that Southwick then told his wife so, and that Bray and Mirick examined them closely, and now swear to their belief that the prisoner was one of them; it is for you to say, putting these considerations together, whether you believe the prisoner was actually in Brown street at the time of the murder.

By the counsel for the defendant, much stress has been laid upon the question, whether Brown street was a place in which aid could be given? a place in which actual assistance could be rendered in this transaction? This must be mainly decided by their own opinion who selected the place; by what they thought at the time, according to their plan of operation.

If it was agreed that the prisoner should be there to assist, it is enough. If they thought the place proper for their purpose, according to their plan, it is sufficient.

Suppose we could prove expressly, that they agreed that Frank should be there, and he was there; and you should think it not a well chosen place, for aiding and abetting, must he be acquitted? No!—it is not what I think, or you think, of the appropriateness of the place—it is what they thought at the time.

If the prisoner was in Brown street, by appointment and agreement with the perpetrator, for the purpose of giving assistance, if assistance should be needed, it may safely be presumed that the place was suited to such assistance as it was supposed by the parties might chance to become requisite.

If in Brown street, was he there by appointment? was he there to aid, if aid were necessary? was he there for, or against, the murderer? to concur, or to oppose? to favor, or to thwart? Did the perpetrator know he was there—there waiting? If so, then it follows, he was there by appointment. He was at the post, half an hour; he was waiting for somebody. This proves appointment—arrangement—previous agreement; then it follows, he was there to aid,—to encourage,—to embolden the perpetrator, and that is enough. If he were in such a situation as to afford aid, or that he was relied upon for aid,—then he was aiding and abetting. It is enough that the conspirator desired to have him there. Besides, it may be well said, that he could afford just as much aid there as if he had been in Essex street—as if he had been standing even at the gate, or at the window. It was not an act of power against power that was to be done,—it was a secret act, to be done by stealth. The aid was to be placed in a position secure from observation:—It was important to the security of both, that he should be in a lonely place. Now, it is obvious, that there are many purposes for which he might be in Brown street.

1. Richard Crowninshield might have been secreted in the garden, and waiting for a signal.

him as to the time of making his entry into the house.

8. Or to favor his escape.

4. Or to see if the street was clear when he came out.

5. Or to conceal the weapon or the clothes.

6. To be ready for any other unforeseen contingency.

Richard Crowninshield lived in Danvers—he would retire the most secret way. Brown street is that way; if you find him there, can you doubt why he was there?

If, gentlemen, the prisoner went into Brown street by appointment with the perpetrator, to render aid or encouragement, in any of these ways; he was present, in legal contemplation, aiding and abetting, in this murder. It is not necessary that he should have done any thing; it is enough that he was ready to act, and in a place to act. If his being in Brown street, by appointment, at the time of the murder, emboldened the purpose, and encouraged the heart of the murderer, by the hope of instant aid, if aid should become necessary, then, without doubt, he was present, aiding and abetting, and was a principal in the murder.

I now proceed, gentlemen, to the consideration of the testimony of Mr. Colman. Although this evidence bears on every material part of the cause, I have purposely avoided every comment on it till the present moment, when I have done with the other evidence in the case. As to the admission of this evidence, there has been a great struggle, and its importance demanded it. The general rule of law is, that confessions are to be received as evidence. They are entitled to great or to little consideration, according to the circumstances under which they are made. Voluntary, deliberate confessions are the most important and satisfactory evidence. But confessions hastily made, or improperly obtained, are entitled to little or no consideration. It is always to be inquired, whether they were purely voluntary, or were made under any undue influence of hope or fear; for, in general, if any influence were exerted on the mind of the person confessing, such confessions are not to be submitted to a jury.

Who is Mr. Colman? He is an intelligent, accurate and cautious witness. A gentleman of high and well known character; and of unquestionable veracity. As a clergyman, highly respectable; as a man, of fair name and fame.

Why was Mr. Colman with the prisoner? Joseph J. Knapp was his parishioner; he was the head of a family, and had been married by Mr. Colman. The interests of his family were dear to him. He felt for their afflictions, and was anxious to alleviate their sufferings. He went from the purest and best of motives to visit Joseph Knapp. He came to save, not to destroy; to rescue, not to take away life. In this family, he thought there might be a chance to save one. It is a misconstruction of Mr. Colman's motives, at once the most strange and

views of his conduct and intentions, the most unaccountable, to represent him as acting, on this occasion, in hostility to any one, or as desirous of injuring or endangering any one. He has stated his own motives, and his own conduct, in a manner to command universal belief and universal respect. For intelligence, for consistency, for accuracy, for caution, for candor, never did witness acquit himself better, or stand fairer. In all that he did, as a man, and all he has said, as a witness, he has shown himself worthy of entire regard.

Now, gentlemen, very important confessions made by the prisoner, are sworn to by Mr. Colman. They were made in the prisoner's cell, where Mr. Colman had gone with the prisoner's brother, N. P. Knapp. Whatever conversation took place, was in the presence of N. P. Knapp. Now, on the part of the prisoner, two things are asserted; first, that such inducements were suggested to the prisoner, in this interview, that any confessions by him ought not to be received. Second, that, in point of fact, he made no such confessions as Mr. Colman testifies to, nor, indeed, any confessions at all. These two propositions are attempted to be supported by the testimony of N. P. Knapp. These two witnesses, Mr. Colman and N. P. Knapp, differ entirely. There is no possibility of reconciling them. No charity can cover both. One or the other has sworn falsely. If N. P. Knapp be believed, Mr. Colman's testimony must be wholly disregarded. It is, then, a question of credit, a question of belief, between the two witnesses. As you decide between these, so you will decide on all this part of the case.

Mr. Colman has given you a plain narrative, a consistent account, and has uniformly stated the same things. He is not contradicted by any thing in the case, except Phippen Knapp. He is influenced as far as we can see by no bias or prejudice, any more than other men, except so far as his character is now at stake. He has feelings on this point, doubtless, and ought to have. If what he has stated be not true, I cannot see any ground for his escape. If he be a true man, he must have heard what he testifies. No treachery of memory brings to memory things that never took place. There is no reconciling his evidence with good intention, if the facts are not as he states them. He is on trial as to his veracity.

The relation in which the other witness stands, deserves your careful consideration. He is a member of the family. He has the lives of two brothers depending, as he may think, on the effect of his evidence;—depending on every word he speaks. I hope he has not another responsibility resting upon him. By the advice of a friend, and that friend Mr. Colman, J. Knapp made a full and free confession, and obtained a promise of pardon. He has since, as you know, probably by the advice of other friends, retracted that confession, and rejected

these friends and advisers advised him best, and befriended him most. In the mean time, if this brother, the witness, be one of these advisers, and advised the retraction, he has, most emphatically, the lives of his brothers resting upon his evidence, and upon his conduct. Compare the situation of these two witnesses. Do you not see mighty motive enough on the one side, and want of all motive on the other? I would gladly find an apology for that witness, in his agonized feelings,—in his distressed situation;—in the agitation of that hour, or of this. I would gladly impute it to error, or to want of recollection, to confusion of mind, or disturbance of feeling. I would gladly impute to any pardonable source, that which cannot be reconciled to facts and to truth; but, even in a case calling for so much sympathy, justice must yet prevail, and we must come to the conclusion, however reluctantly, which that demands from us.

It is said, Phippen Knapp was probably correct, because he knew he should be called as a witness. Witness—to what? When he says there was no confession, what could he expect to bear witness of? But I do not put it on the ground that he did not hear; I am compelled to put it on the other ground—that he did hear, and does not now truly tell what he heard.

If Mr. Colman were out of the case, there are other reasons why the story of Phippen Knapp should not be believed. It has in it inherent improbabilities. It is unnatural and inconsistent with the accompanying circumstances. He tells you that they went "to the cell of Frank, to see if he had any objection to taking a trial, and suffering his brother to accept the offer of pardon:" in other words, to obtain Frank's consent to Joseph's making a confession; and in case this consent was not obtained, that the pardon would be offered to Frank, &c. Did they bandy about the chance of life, between these two, in this way? Did Mr. Colman, after having given this pledge to Joseph, after having received a disclosure from Joseph, go to the cell of Frank for such a purpose as this? It is impossible; it cannot be so.

Again: We know that Mr. Colman found the club the next day; that he went directly to the place of deposit, and found it at the first attempt,—exactly where he says he had been informed it was. Now Phippen Knapp says, that Frank had stated nothing respecting the club, that it was not mentioned in that conversation. He says, also, that he was present in the cell of Joseph all the time that Mr. Colman was there, that he believes he heard all that was said in Joseph's cell; and that he did not himself know where the club was, and never had known where it was, until he heard it stated in court. Now, it is certain, that Mr. Colman says he did not learn the particular place of deposit of the club from Joseph; that he only learned from him that it was deposited under the steps of the Howard street meeting-house, certain, also, that he had more knowledge of the position of the club than this—else how could he have placed his hand on it so readily?—and where else could he have obtained this knowledge, except from Frank?

Here Mr. Dexter said that Mr. Colman had had other interviews with Joseph, and might have derived the information from him at previous visits. Mr. Webster replied, that Mr. Colman had testified that he learned nothing in relation to the club until this visit. Mr. Dexter denied there being any such testimony. Mr. Colman's evidence was then read from the notes of the judges, and several other persons, and Mr. Webster then proceeded:

My point is, to show that Phippen Knapp's story is not true, is not consistent with itself. That taking it for granted, as he says, that he heard all that was said to Mr. Colman in both cells, by Joseph, and by Frank; and that Joseph did not state particularly where the club was deposited; and that he knew as much about the place of deposit of the club, as Mr. Colman knew; why then, Mr. Colman must either have been miraculously informed respecting the club, or Phippen Knapp has not told you the whole truth. There is no reconciling this, without supposing Mr. Colman has misrepresented what took place in Joseph's cell, as well as what took place in Frank's cell.

Again: Phippen Knapp is directly contradicted by Mr. Wheatland. Mr. Wheatland tells the same story as coming from Phippen Knapp, as Mr. Colman now tells. Here there are two against one. Phippen Knapp says that Frank made no confessions, and that he said he had none to make. In this he is contradicted by Wheatland. He, Phippen Knapp, told Wheatland, that Mr. Colman did ask Frank some questions, and that Frank answered them. He told him also what these answers were. Wheatland does not recollect the questions or answers, but recollects his reply; which was, "Is not this premature? I think this answer is sufficient to make Frank a principal." Here Phippen Knapp opposes himself to Wheatland, as well as to Mr. Colman. Do you believe Phippen Knapp against these two respectable witnesses—or them against him?

Is not Mr. Colman's testimony credible, natural, and proper? To judge of this, you must go back to that scene.

The murder has been committed; the two Knapps were now arrested; four persons were already in jail supposed to be concerned in it—the Crowninshields and Selman and Chase. Another person at the eastward was supposed to be in the plot; it was important to learn the facts. To do this, some one of those suspected must be admitted to turn states' witness. The contest was, who should have this

to be offered to Palmer, then in Maine: there was no good reason why he should have the preference. Mr. Colman felt interested for the family of the Knapps, and particularly for Joseph. He was a young man who had hitherto sustained a fair standing in society; he was a husband. Mr. Colman was particularly intimate with his family. With these views he went to the prison. He believed that he might safely converse with the prisoner, because he thought confessions made to a clergyman were sacred, and that he could not be called upon to disclose them. He went the first time, in the morning, and was requested to come again. He went again at three o'clock; and was requested to call again at five o'clock. In the mean time he saw the father and Phippen, and they wished he would not go again, because it would be said the prisoners were making confession. He said he had engaged to go again at five o'clock; but would not, if Phippen would excuse him to Joseph. Phippen engaged to do this, and to meet him at his office at five o'clock. Mr. Colman went to the office at the time, and waited; but as Phippen was not there, he walked down the street and saw him coming from the jail. He met him, and while in conversation, near the church, he saw Mrs. Beckford and Mrs. Knapp, going in a chaise towards the jail. He hastened to meet them, as he thought it not proper for them to go in at that time. While conversing with them near the jail, he received two distinct messages from Joseph, that he wished to see him. He thought it proper to go: he then went to Joseph's cell, and while there it was that the disclosures were made. Before Joseph had finished his statement, Phippen came to the door; he was soon after admitted. A short interval ensued, and they went together to the cell of Frank. Mr. Colman went in by invitation of Phippen; he had come directly from the cell of Joseph, where he had for the first time learned the incidents of the tragedy. He was incredulous as to some of the facts which he had learned, they were so different from his previous impressions. He was desirous of knowing whether he could place confidence in what Joseph had told him—he therefore put the questions to Frank, as he has testified before you; in answer to which, Frank Knapp informed him,

1. "That the murder took place between ten and eleven o'clock."

2. "That Richard Crowninshield was alone in the house."

3. "That he, Frank Knapp, went home afterwards."

4. "That the club was deposited under the steps of the Howard street meeting-house, and under the part nearest the burying ground, in a rat hole, &c."

5. "That the dagger or daggers had been worked up at the factory."

It is said that these five answers just fit the case; that they are just what was wanted, and always congruous, and agrees with itself. Every truth in the universe agrees with every other truth in the universe; whereas falsehoods not only disagree with truths, but usually quarrel among themselves. Surely Mr. Colman is influenced by no bias—no prejudice; he has no feelings to warp him—except now, he is contradicted, he may feel an interest to be believed.

If you believe Mr. Colman, then the evidence is fairly in the case.

I shall now proceed on the ground that you do believe Mr. Colman.

When told that Joseph had determined to confess, the defendant said,—"It is hard, or unfair, that Joseph should have the benefit of confessing, since the thing was done for his benefit." What thing was done for his benefit? Does not this carry an implication of the guilt of the defendant? Does it not show that he had a knowledge of the object, and history of the murder?

The defendant said, "he told Joseph when he proposed it, that it was a silly business, and would get us into trouble." He knew, then, what this business was,; he knew that Joseph proposed it, and that he agreed to it, else he could not get us into trouble; he understood its bearing, and its consequences. Thus much was said under circumstances that make it clearly evidence against him, before there is any pretence of an inducement held out. And does not this prove him to have had a knowledge of the conspiracy?

He knew the daggers had been destroyed, and he knew who committed the murder. How could he have innocently known these facts? Why, if by Richard's story, this shows him guilty of a knowledge of the murder, and of the conspiracy. More than all, he knew when the deed was done, and that he went home afterwards. This shows his participation in that deed. "Went home afterwards"—home, from what scene?—home, from what fact?—home, from what transaction?—home, from what place? This confirms the supposition that the prisoner was in Brown street for the purposes ascribed to him. These questions were directly put, and directly answered. He does not intimate that he received the information from another. Now, if he knows the time, and went home afterwards, and does not excuse himself,—is not this an admission that he had a hand in this murder? Already proved to be a conspirator in the murder, he now confesses that he knew who did it—at what time it was done, was himself out of his own house at the time, and went home afterwards. Is not this conclusive, if not explained? Then comes the club. He told where it was. This is like possession of stolen goods. He is charged with the guilty knowledge of this concealment. He must show, not say, how he came by this knowledge. If a man be found with stolen goods, he must prove how he came by them. The

Joseph Knapp was an accessory, and accessory only; he knew only what was told him. But the prisoner knew the particular spot in which the club might be found. This shows his knowledge something more than that of an accessory.

This presumption must be rebutted by evidence, or it stands strong against him. He has too much knowledge of this transaction, to have come innocently by it. It must stand against him until he explains it.

This testimony of Mr. Colman is represented as new matter, and therefore an attempt has been made to excite a prejudice against it. It is not so. How little is there in it, after all, that did not appear from other sources? It is mainly confirmatory. Compare what you learn from this confession, with what you before knew:—

As to its being proposed by Joseph—was not that true?

As to Richard's being alone, &c., in the house—was not that true?

As to the daggers—was not that true?

As to the time of the murder—was not that true?

As to his being out that night—was not that true?

As to his returning afterwards—was not that true?

As to the club—was not that true?

So this information confirms what was known before, and fully confirms it.

One word, as to the interview between Mr. Colman and Phippen Knapp on the turnpike. It is said that Mr. Colman's conduct in this matter, is inconsistent with his testimony. There does not appear to me to be any inconsistency. He tells you that his object was to save Joseph, and to hurt no one; and least of all the prisoner at the bar. He had, probably, told Mr. White, the substance of what he heard at the prison. He had probably told him that Frank confirmed what Joseph had confessed. He was unwilling to be the instrument of harm to Frank. He therefore, at the request of Phippen Knapp, wrote a note to Mr. White, requesting him to consider Joseph as authority for the information he had received. He tells you that this is the only thing he has to regret; as it may seem to be an evasion,—as he doubts whether it was entirely correct. If it was an evasion, if it was a deviation, if it was an error, it was an error of mercy—an error of kindness; an error that proves he had no hostility to the prisoner at the bar. It does not in the least vary his testimony, or affect its correctness. Gentlemen, I look on the evidence of Mr. Colman as highly important; not as bringing into the cause new facts, but as confirming, in a very satisfactory manner, other evidence. It is incredible that he can be false, and that he is seeking the prisoner's life, through false swearing. If he is true, it is incredible that the prisoner can be innocent.

Gentlemen, I have gone through with the evidence in this case, and have endeavored to state it plainly and fairly, before you. I think there are conclusions to be drawn from it, which you cannot doubt. I think you cannot doubt that there was a conspiracy formed for the purpose of committing this murder, and who the conspirators were.

That you cannot doubt, that the Crowninshields and the Knapps, were the parties in this conspiracy.

That you cannot doubt, that the prisoner at the bar knew that the murder was to be done on the night of the 6th of April.

That you cannot doubt, that the murderers of Capt. White were the suspicious persons seen in and about Brown street on that night.

That you cannot doubt, that Richard Crowninshield was the perpetrator of that crime.

That you cannot doubt, that the prisoner at the bar was in Brown street on that night.

If there, then it must be by agreement—to countenance, to aid the perpetrator. And if so, then he is guilty as principal.

Gentlemen,—Your whole concern should be to do your duty, and leave consequences to take care of themselves. You will receive the law from the court. Your verdict, it is true, may endanger the prisoner's life; but then, it is to save other lives. If the prisoner's guilt has been shown and proved, beyond all reasonable doubt, you will convict him. If such reasonable doubts of guilt still remain, you will acquit him. You are the judges of the whole case. You owe a duty to the public, as well as to the prisoner at the bar. You cannot presume to be wiser than the law. Your duty is a plain, straightforward one. Doubtless, we would all judge him in mercy. Towards him, as an individual, the law inculcates no hostility; but towards him, if proved to be a murderer, the law, and the oaths you have taken, and public justice, demand that you do your duty.

With consciences satisfied with the discharge of duty, no consequences can harm you. There is no evil that we cannot either face or fly from, but the consciousness of duty disregarded.

A sense of duty pursues us ever. It is omnipresent, like the Deity. If we take to ourselves the wings of the morning and dwell in the utmost parts of the seas, duty performed, or duty violated, is still with us, for our happiness, or our misery. If we say the darkness shall cover us, in the darkness as in the light our obligations are yet with us. We cannot escape their power, nor fly from their presence. They are with us in this life, will be with us at its close; and in that scene of inconceivable solemnity, which lies yet farther onward—we shall still find ourselves surrounded by the consciousness of duty, to pain us wherever it has been violated, and to console us so far as God may have given us grace to perform it.

JOSEPH STORY.

Joseph Story was born at Marblehead, Massachusetts, on the eighteenth of September, 1779. He was educated at Harvard College, and upon leaving Cambridge returned to his native town, and commenced the study of law with Mr. Samuel Sewall, then an advocate of high rank, a member of Congress, and subsequently Chief Justice of the Supreme Court of Massachusetts. From some of his letters written about this time it is to be judged, that the profession which young Story had chosen was not entirely in accordance with his inclinations. "I have begun the study of law," he wrote to a friend, "and shall continue it with unremitting diligence; but a sigh of regret often accompanies my solitary moments,—a sigh expressive of my ardent love of literary fame, and the impossibility of devoting all my attention to the object of my wishes. I candidly confess, that the hope of 'immortality' alone buoys me up, and if this hope should be destroyed, even should I remain unaffected by the meanness of mankind, all pleasure will have flown, and this world will appear a 'dreary waste, a wild without a flower.'" But this feeling of regret was of short duration. He soon acquired a love for the intricacies and subtleties of the law, and applied himself closely to study, for many months devoting fourteen hours a day to the office and to his legal books. In the midst of these labors he indulged quite freely in general reading, and composition; and on the occasion of the death of General Washington, he delivered a eulogy at the request of the citizens of Marblehead. During the same period he composed a poem, entitled *The Power of Solitude.*

Mr. Story left the office of Mr. Sewall in January, 1801, and entered that of Mr. Samuel Putnam, at Salem, where six months after he opened an office and commenced practice. His business seems to have been not very extensive during the first few years of his professional life. At this time he became an active politician, and embraced the cause of the republican or Jeffersonian party. In 1803 the station of naval officer of the port of Salem was tendered him, but he declined the appointment, both from professional considerations and motives of utility. During the following year he re-wrote his poem on the *The Power of Solitude,* and published it, with several fugitive pieces in verse. On the fourth of July, 1804, he pronounced an oration commemorative of the independence of the United States, and soon after published a *Selection of Pleadings in Civil Actions.* At this time his practice was daily increasing; "his position at the bar was prominent," says his son, "and he was engaged in nearly all the cases of importance. His manner to the jury was earnest and spirited; he managed his causes with tact, was ready in attack or defence, and had great eloquence of expression. As an advocate, he showed the same sagacity of perception, which no intricacy of detail could blind and no suddenness of attack confuse, which afterwards so distinguished him as a judge. In the preparation of cases he was cautious and scrupulous, patiently mastering the law and the facts before the trial, and never relying on first views and general knowledge.*

In 1805, Mr. Story was elected to the Massachusetts legislature, and at once took a prominent position in that body. In all the debates he appeared with the greatest readiness, and scarcely a

committee of consequence was appointed during his term, of which he was not an active and principal member. After remaining in the legislature three sessions, he was elected to Congress, but served in that body for a few months only. On his return to Massachusetts, he was again chosen to the legislature, and continued in that position until January, 1812. During a portion of his legislative career, he occupied the speaker's chair. About this time he edited and published an edition of *Chitty on Bills of Exchange and Promissory Notes; Abbott on Shipping*, and *Lawes on Assumpsit*, in addition to the duties of his profession.

In November, 1811, he was appointed by President Madison an Associate Justice of the Supreme Court of the United States. At that time he was but thirty-two years of age, the youngest judge on the bench, and, with the single exception of Mr. Justice Buller, of the King's Bench, the youngest that ever had been elevated to a similar position. The spotless integrity of his character, the disinterestedness of his sentiments, and his acquirements as a lawyer, pre-eminently fitted him for the duties he was called upon to perform. Although many of his political opponents viewed his appointment with distrust and condemnation, their doubts were soon dissipated by the uprightness of his judicial course, and their condemnation turned to praise. After eighteen years of important and distinguished services on the bench, he added to the labors of his judgeship the equally onerous duties of a professor of law.

Through the munificence of Nathan Dane, the author of the *Abridgment of American Law*, a professorship of law was founded in Harvard College, with the express stipulation that Judge Story should be its first professor, and that the duties of the office should be so arranged, that they would not interfere with the performance of his labors as a member of the supreme bench. Judge Story assumed the professorship on the twenty-fifth of August, 1829, and soon after removed from Salem to Cambridge, where he established his permanent residence. From this period his time was spent at Washington during the sessions of the Supreme Court, on the first circuit of the New England States, and at Cambridge in the Law School. This latter institution became his favorite, and he always performed its duties with the greatest interest and zeal. His manner towards the students was affectionate and familiar. He was fond of designating them as "my boys," and without assuming any superiority, or exacting any formal respect, he participated so far as he was able in their success and failure, and extended beyond the narrow period of the school, far into active life, that interest in their behalf which he had contracted as their teacher. His lectures upon what are commonly considered the dry topics of the law, were delivered with enthusiasm, and illustrated with copious anecdotes from the storehouse of his memory and his experience, and filled with episodes which were suggested to his active mind at almost every step. His influence over the students was unbounded. His zeal was contagious, and awakened similar feelings in his auditors, and the enthusiasm of the speaker and audience acted and reacted upon each other. It is unnecessary, in this place, however, to enlarge upon the merits of his government, or to state the success with which his efforts were attended.

Judge Story's literary labors were very extensive. In addition to the numerous valuable legal works he perfected, which now form no inconsiderable portion of the standard text-books of the profession, he prepared many occasional essays and orations, eulogistic and general, which for conciseness, eloquence, and purity of diction, will always command the admiration of the scholar as well as that of the general reader. He also contributed many articles to the *American Jurist*, as well as to the *Encyclopædia Americana*, which was prepared by his friend Dr. Lieber. In the latter work the articles on *Common Law*, *Congress of the United States*, *Death Punishment*, *Evidence*, *Legislation*, *National Law*, and several others are from his pen, and are written with his characteristic ability, and in his usual comprehensive style.

In reviewing the life of Judge Story, the amount of labor he performed seems almost incredible. "Its mere recapitulation," says his son, "is sufficient to appal an ordinary mind. The judgments delivered by him on his circuits comprehend thirteen volumes. The reports of the Supreme Court during his judical life occupy thirty-five volumes, of which he wrote a full share. His various treatises on legal subjects, cover thirteen volumes, besides a volume of Pleadings. He edited and annotated three different treatises, with copious notes, and published a volume of poems. He delivered and published eight discources on literary and scientific subjects, before

different societies. He wrote biographical sketches of ten of his contemporaries; six elaborate reviews for the North American; three long and learned memorials to Congress. He delivered many elaborate speeches in the legislature of Massachusetts and the Congress of the United States. He also drew up many other papers of importance, among which are the argument before Harvard College, on the subject of the Fellows of the University; the Reports on Codification, and on the salaries of the Judiciary; several important Acts of Congress, such as the Crimes Act, the Judiciary Act, the Bankrupt Act, besides many other smaller matters. In quantity, all other authors in the English law, and judges must yield to him the palm. The labors of Coke, Eldon, and Mansfield, among judges, are not to be compared to his in amount. And no jurist in the common law, can be measured with him, in extent and variety of labor."

Judge Story was a constant and assiduous student from a very early period of his life until the time of his decease. His habits were extremely regular and systematic. He never rose earlier than seven, and always retired for the night at or about ten. If, on rising, his breakfast was not ready, "he went at once to his library and occupied the interval, whether it was five minutes or fifty, in writing. When the family assembled he was called, and breakfasted with them. After breakfast he sat in the drawing-room, and spent from a half to three quarters of an hour in reading the newspapers of the day. He then returned to his study, and wrote until the bell sounded for his lecture at the Law School. After lecturing for two, and sometimes three, hours, he returned to his study and worked until two o'clock, when he was called to dinner. To his dinner (which, on his part, was always simple) he gave an hour, and then again betook himself to his study, where, in the winter time he worked as long as the daylight lasted, unless called away by a visitor, or obliged to attend a moot-court. Then he came down and joined the family, and work for the day was over. Tea came in about seven o'clock; and how lively and gay was he then, chatting over the most familiar topics of the day, or entering into deeper currents of conversation with equal ease. All of his law he left up stairs in the library; he was here the domestic man in his home." His evenings were spent socially with his friends and family, or in reading the current literature of the day. Thus his life was passed, and thus it was prolonged. Retaining to the end the undisturbed possession of all his faculties, he died, after a short illness, on the tenth of September, 1845. A full and comprehensive account of his life and services, has been published since his death, from the facile pen of his son, Mr. W. W. Story. His Miscellaneous Works, edited by the same able hand, are now before the public.

CHARACTERISTICS OF THE AGE.

Judge Story pronounced the following discourse at Cambridge, before the Phi Beta Kappa Society of Harvard University, on the thirty-first of August, 1826:

GENTLEMEN: If I had consulted my own wishes, I should not have presumed to address you on the present occasion. The habits of professional employment rarely admit of leisure for the indulgence of literary taste. And in a science, whose mastery demands a whole life of laborious diligence, whose details are inexhaustible, and whose intricacies task the most acute intellects, it would be matter of surprise, if every hour withdrawn from its concerns did not somewhat put at hazard the success of its votary. Nor can it escape observation, how much the technical doctrines of a jurisprudence, drawn from remote antiquity, and expanding itself over the business of many ages, must have a tendency to chill that enthusiasm which lends encouragement to every enterprise, and to obscure those finer forms of thought which give to literature its lovelier, I may say, its inexpressible graces. The consciousness of difficulties of this sort may well be supposed to press upon every professional mind. They can be overlooked by those only whose youth has not been tried in the hard school of experience, or whose genius gives no credit to impossibilities.

I have not hesitated, however, to yield to your invitation, trusting to that indulgence which has not hitherto been withheld from well-meant efforts, and not unwilling to add the testimony of my own example, however humble, in favor of the claims of this society to the services of all its members.

marked by events, which will leave a durable impression upon the pages of history by their own intrinsic importance. But they will be read with far deeper emotions in their effects upon future ages; in their consequences upon the happiness of whole communities; in the direct or silent changes forced by them into the very structure of society; in the establishment of a new and mighty empire, the empire of public opinion; in the operation of what Lord Bacon has characterized almost as supreme power, the power of knowledge, working its way to universality, and interposing checks upon government and people by means gentle and decisive, which have never before been fully felt, and are even now, perhaps, incapable of being perfectly comprehended.

Other ages have been marked by brilliant feats in arms. Wars have been waged for the best and for the worst of purposes. The ambitious conqueror has trodden whole nations under his feet, to satisfy the lust of power; and the eagles of his victories have stood on either extreme of the civilized world. The barbarian has broken loose from his northern fastnesses, and overwhelmed in his progress temples and thrones, the adorers of the true God, and the worshippers of idols. Heroes and patriots have successfully resisted the invaders of their country, or perished in its defence; and in each way have given immortality to their exploits. Kingdoms have been rent asunder by intestine broils, or by struggles for freedom. Bigotry has traced out the march of its persecutions in footsteps of blood; and superstition employed its terrors to nerve the arm of the tyrant, or immolate his victims. There have been ancient leagues for the partition of empires, for the support of thrones, for the fencing out of human improvement, and for the consolidation of arbitrary power. There have, too, been bright spots on the earth, where the cheering light of liberty shone in peace; where learning unlocked its stores in various profusion; where the arts unfolded themselves in every form of beauty and grandeur; where literature loved to linger in academic shades, or enjoy the public sunshine; where song lent new inspiration to the temple; where eloquence alternately consecrated the hall of legislation, and astonished the forum with its appeals.

We may not assert that the present age can lay claim to the production of any one of the mightiest efforts of human genius. Homer and Virgil, and Shakspeare and Milton, were of other days, and yet stand unrivalled in song. Time has not inscribed upon the sepulchre of the dead any nobler names in eloquence, than Demosthenes and Cicero. Who has outdone the chisel of Phidias, or the pencil of Michael Angelo, and Raffaelle? Where are the monuments of our day, whose architecture dares to contend with the Doric, Ionic or Corinthian of Greece, or even with the Composite or Gothic of later times? History yet points to the proud ledges no finer models than those of antiquity. The stream of a century has swept by the works of Locke and Newton; yet they still stand alone in unapproached, in unapproachable majesty.

Nor may we pronounce that the present age, by its collective splendor in arts and arms, casts into shade all former epochs. The era of Pericles witnessed a combination of talents and acquirements, of celebrated deeds and celebrated works, which the lapse of twenty-two centuries has left unobscured. Augustus, surveying his mighty empire, could scarcely contemplate with more satisfaction the triumph of his arms, than the triumph of the philosophy and literature of Rome. France yet delights to dwell on the times of Louis the Fourteenth, as the proudest in her annals; and England, with far less propriety, looks back upon the reign of Queen Anne for the best models of her literary excellence.

But, though we may not arrogate to ourselves the possession of the first genius, or the first era in human history, let it not be imagined that we do not live in an extraordinary age. It is impossible to look around us without alternate emotions of exultation and astonishment. What shall we say of one revolution, which created a nation out of thirteen feeble colonies, and founded the empire of liberty upon the basis of the perfect equality in rights and representation of all its citizens; which commenced in a struggle by enlightened men for principles, and not for places, and in its progress and conclusion exhibited examples of heroism, patriotic sacrifices, and disinterested virtue, which have never been surpassed in the most favored regions? What shall we say of this nation, which has in fifty years quadrupled its population, and spread itself from the Atlantic to the Rocky mountains, not by the desolations of successful war, but by the triumphant march of industry and enterprise? What shall we say of another revolution, which shook Europe to its centre, overturned principalities and thrones, demolished oppressions, whose iron had for ages entered into the souls of their subjects, and after various fortunes of victory and defeat, of military despotism and popular commotion, ended at last in the planting of free institutions, free tenures, and representative government in the very soil of absolute monarchy? What shall we say of another revolution, or rather series of revolutions, which has restored to South America the independence torn from her three centuries ago, by the force or by the fraud of those nations whose present visitations bespeak a Providence, which superintends and measures out, at awful distances, its rewards and its retributions? She has risen, as it were, from the depths of the ocean, where she had been buried for ages. Her shores no longer murmur with the hoarse surges of her unnavigated waters, or echo the jealous footsteps of her armed oppressors. Her forests and her

comes to her ports the whitening sails of commerce. She feels that the treasures of her mines, the broad expanse of her rivers, the beauty of her lakes, the grandeur of her scenery, the products of her fertile and inexhaustible soil, are no longer the close domain of a distant sovereign, but the free inheritance of her own children. She sees that these are to bind her to other nations by ties, which outlive all compacts and all dynasties, by ties of mutual sympathy, mutual equality, and mutual interest.

But such events sink into nothing, compared with the great moral, political, and literary revolutions, by which they have been accompanied. Upon some of these topics I may not indulge myself even for a moment. They have been discussed here, and in other places, in a manner which forbids all hope of more comprehensive illustration. They may, indeed, be still followed out; but whoever dares the difficulties of such a task, will falter with unequal footsteps.

What I propose to myself on the present occasion, is of a far more limited and humble nature. It is to trace out some of the circumstances of our age, which connect themselves closely with the cause of science and letters; to sketch here and there a light and shadow of our days—to look somewhat at our own prospects and attainments—and thus to lay before you something for reflection, for encouragement, and for admonition.

One of the most striking characteristics of our age, and that, indeed, which has worked deepest in all the changes of its fortunes and pursuits, is the general diffusion of knowledge. This is emphatically the age of reading. In other times this was the privilege of the few; in ours, it is the possession of the many. Learning once constituted the accomplishment of those in the higher orders of society, who had no relish for active employment, and of those whose monastic lives and religious profession sought to escape from the weariness of their common duties. Its progress may be said to have been gradually downwards from the higher to the middle classes of society. It scarcely reached at all, in its joys or its sorrows, in its instructions or its fantasies, the home of the peasant and artisan. It now radiates in all directions; and exerts its central force more in the middle, than in any other class of society. The means of education were formerly within the reach of few. It required wealth to accumulate knowledge. The possession of a library was no ordinary achievement. The learned leisure of a fellowship in some university seemed almost indispensable for any successful studies; and the patronage of princes and courtiers was the narrow avenue to public favor. I speak of a period at little more than the distance of two centuries; not of particular instances, but of the general cast and complexion of life.

The principal cause of this change is to be found in the freedom of the press, or rather in press. It has been aided also by the system of free schools, wherever it has been established; by that liberal commerce, which connects by golden chains the interests of mankind; by that spirit of inquiry, which Protestantism awakened throughout Christian Europe; and above all by those necessities which have compelled even absolute monarchs to appeal to the patriotism and common sentiments of their subjects. Little more than a century has elapsed since the press in England was under the control of a licenser; and within our own days only has it ceased to be a contempt, punishable by imprisonment, to print the debates of Parliament. We all know how it still is on the continent of Europe. It either speaks in timid under tones, or echoes back the prescribed formularies of the government. The moment publicity is given to affairs of state, they excite everywhere an irresistible interest. If discussion be permitted, it will soon be necessary to enlist talents to defend, as well as talents to devise measures. The daily press first instructed men in their wants, and soon found, that the eagerness of curiosity outstripped the power of gratifying it. No man can now doubt the fact, that wherever the press is free, it will emancipate the people; wherever knowledge circulates unrestrained, it is no longer safe to oppress; wherever public opinion is enlightened, it nourishes an independent, masculine, and healthful spirit. If Faustus were now living, he might exclaim with all the enthusiasm of Archimedes, and with a far nearer approach to the truth, Give me where I may place a free press, and I will shake the world.

One interesting effect, which owes its origin to this universal love and power of reading, is felt in the altered condition of authors themselves. They no longer depend upon the smiles of a favored few. The patronage of the great is no longer submissively entreated, or exultingly proclaimed. Their patrons are the public; their readers are the civilized world. They address themselves, not to the present generation alone, but aspire to instruct posterity. No blushing dedications seek an easy passport to fame, or flatter the perilous condescension of pride. No illuminated letters flourish on the silky page, asking admission to the courtly drawing-room. Authors are no longer the humble companions or dependents of the nobility; but they constitute the chosen ornaments of society, and are welcomed to the gay circles of fashion and the palaces of princes. Theirs is no longer an unthrifty vocation, closely allied to penury; but an elevated profession, maintaining its thousands in lucrative pursuits. It is not with them as it was in the days of Milton, whose immortal "Paradise Lost" drew five sterling pounds, with a contingent of five more, from the reluctant bookseller.

My Lord Coke would hardly find good authority in our day for his provoking commentary on the memorable statute of the fourth Henry, which declares that "none henceforth

craft of multiplication," in which he gravely enumerates five classes of beggars, ending the catalogue in his own quaint phraseology with "poetasters," and repeating for the benefit of young apprentices of the law, the sad admonition,

"Sæpe pater dixit, Studium, quid inutile tentas?
Mæonidas nullas ipse reliquit opes."

There are certainly among us those who are within the penalty of this prohibition, if my Lord Coke's account of the matter is to be believed, for they are in possession of what he defines to be "a certain subtil and spiritual substance extracted out of things," whereby they transmute many things into gold. I am indeed afraid that the magician of Abbotsford is accustomed to "use the craft of multiplication;" and most of us know to our cost, that he has changed many strange substances into very gold and very silver. Yet even if he be an old offender in this way, as is shrewdly suspected, there is little danger of his conviction in this liberal age, since, though he gains by every thing he parts with, we are never willing to part with any thing we receive from him.

The rewards of authorship are now almost as sure and regular, as those of any other profession. There are, indeed, instances of wonderful success, and sad failure; of genius pining in neglect; of labor bringing nothing but sickness of the heart; of fruitless enterprise, baffled in every adventure; of learning waiting its appointed time to die in patient suffering. But this is the lot of some in all times. Disappointment crowds fast upon human footsteps in whatever paths they tread. Eminent good fortune is a prize rarely given even to the foremost in the race. And after all, he who has read human life most closely, knows that happiness is not the constant attendant of the highest public favor; and that it rather belongs to those who, if they seldom soar, seldom fall.

Scarcely is a work of real merit dry from the English press, before it wings its way to both the Indies and Americas. It is found in the most distant climates, and the most sequestered retreats. It charms the traveller, as he sails over rivers and oceans. It visits our lakes and our forests. It kindles the curiosity of the thick-breathing city, and cheers the log hut of the mountaineer. The Lake of the Woods resounds with the minstrelsy of our mother tongue, and the plains of Hindostan are tributary to its praise. Nay, more, what is the peculiar pride of our age, the Bible may now circulate its consolations and instructions among the poor and forlorn of every land, in their native dialect. Such is the triumph of letters; such is the triumph of Christian benevolence.

With such a demand for books, with such facilities of intercourse, it is no wonder that reading should cease to be a mere luxury, and should be classed among the necessaries of life. Authors may now, with a steady confidence, boast, that they possess a hold on the human mind, which grapples closer and mightier than all others. They may feel sure, that every just sentiment, every enlightened opinion, every earnest breathing after excellence will awaken kindred sympathies from the rising to the setting sun.

Nor should it be overlooked, what a beneficial impulse has been thus communicated to education among the female sex. If Christianity may be said to have given a permanent elevation to woman, as an intellectual and moral being, it is as true that the present age, above all others, has given play to her genius, and taught us to reverence its influence. It was the fashion of other times to treat the literary acquirements of the sex as starched pedantry, or vain pretensions; to stigmatize them as inconsistent with those domestic affections and virtues which constitute the charm of society. We had abundant homilies read upon their amiable weaknesses and sentimental delicacy, upon their timid gentleness and submissive dependence; as if to taste the fruit of knowledge were a deadly sin, and ignorance were the sole guardian of innocence. Their whole lives were "sicklied o'er with the pale cast of thought," and concealment of intellectual power was often resorted to, to escape the dangerous imputation of masculine strength. In the higher walks of life, the satirist was not without color for the suggestion, that it was

"A youth of folly, an old age of cards;"

and that elsewhere, "most women had no character at all," beyond that of purity and devotion to their families. Admirable as are these qualities, it seemed an abuse of the gifts of Providence to deny to mothers the power of instructing their children, to wives the privilege of sharing the intellectual pursuits of their husbands, to sisters and daughters the delight of ministering knowledge in the fireside circle, to youth and beauty the charm of refined sense, to age and infirmity the consolation of studies, which elevate the soul and gladden the listless hours of despondency.

These things have in a great measure passed away. The prejudices which dishonored the sex, have yielded to the influence of truth. By slow but sure advances, education has extended itself through all ranks of female society. There is no longer any dread, lest the culture of science should foster that masculine boldness or restless independence, which alarms by its sallies, or wounds by its inconsistencies. We have seen that here, as everywhere else, knowledge is favorable to human virtue and human happiness; that the refinement of literature adds lustre to the devotion of piety; that true learning, like true taste, is modest and unostentatious; that grace of manners receives a higher polish from the discipline of the schools; that cultivated genius sheds a cheering light over domestic duties, and its very sparkles, like those of the diamond, attest at once its power and its pu-

rity. There is not a rank of female society, however high, which does not now pay homage to literature, or that would not blush even at the suspicion of that ignorance, which a half century ago was neither uncommon nor discreditable. There is not a parent, whose pride may not glow at the thought, that his daughter's happiness is in a great measure within her own command, whether she keeps the cool sequestered vale of life, or visits the busy walks of fashion.

A new path is thus open for female exertion, to alleviate the pressure of misfortune, without any supposed sacrifice of dignity or modesty. Man no longer aspires to an exclusive dominion in authorship. He has rivals or allies in almost every department of knowledge; and they are to be found among those whose elegance of manners and blamelessness of life command his respect, as much as their talents excite his admiration. Who is there that does not contemplate with enthusiasm the precious fragments of Elizabeth Smith, the venerable learning of Elizabeth Carter, the elevated piety of Hannah More, the persuasive sense of Mrs. Barbauld, the elegant memoirs of her accomplished niece, the bewitching fictions of Madame D'Arblay, the vivid, picturesque, and terrific imagery of Mrs. Radcliffe, the glowing poetry of Mrs. Hemans, the matchless wit, the inexhaustible conversations, the fine character painting, the practical instructions of Miss Edgeworth, the great known, standing in her own department by the side of the great unknown?

Another circumstance, illustrative of the character of our age, is the bold and fearless spirit of its speculations. Nothing is more common in the history of mankind, than a servile adoption of received opinions, and a timid acquiescence in whatever is established. It matters not whether a doctrine or institution owes its existence to accident or design, to wisdom, or ignorance, or folly; there is a natural tendency to give it an undue value in proportion to its antiquity. What is obscure in its origin warms and gratifies the imagination. What in its progress has insinuated itself into the general habits and manners of a nation, becomes imbedded in the solid mass of society. It is only at distant intervals, from an aggregation of causes, that some stirring revolution breaks up the old foundations, or some mighty genius storms and overthrows the entrenchments of error. Who would believe, if history did not record the fact, that the metaphysics of Aristotle, or rather the misuse of his metaphysics, held the human mind in bondage for two thousand years? that Galileo was imprisoned for proclaiming the true theory of the solar system? that the magnificent discoveries of Sir Isaac Newton encountered strong opposition from philosophers? that Locke's Essay on the Human Understanding, found its way with infinite difficulty into the studies of the English Universities? that Lord Bacon's method of induction never reached its splendid triumphs

right of kings, and the absolute allegiance of subjects, constituted nearly the whole theory of government from the fall of the Roman Republic to the seventeenth century; that Christianity itself was overlaid and almost buried for many centuries, by the dreamy comments of monks, the superstitions of fanatics, and the traditions of the church? that it was an execrable sin throughout Christendom to read and circulate the Holy Scriptures in the vulgar tongue? Nay, that it is still a crime in some nations, of which the Inquisition would take no very indulgent notice, even if the Head of the Catholic Church should not feel that Bible societies deserve his denunciation? Even the great reformers of the Protestant Church left their work but half done, or rather came to it with notions far too limited for its successful accomplishment. They combated errors and abuses, and laid the broad foundations of a more rational faith. But they were themselves insensible to the just rights and obligations of religious inquiry. They thought all error intolerable; but they forgot in their zeal, that the question, what was truth, was open to all for discussion. They assumed to themselves the very infallibility, which they rebuked in the Romish Church; and as unrelentingly persecuted heresies of opinion, as those who had sat for ages in the judgment-seat of St. Peter. They allowed, indeed, that all men had a right to inquire; but they thought that all must, if honest, come to the same conclusion with themselves; that the full extent of Christian liberty was the liberty of adopting those opinions which they promulgated as true. The unrestrained right of private judgment, the glorious privilege of a free conscience, as now established in this favored land, was farther from their thoughts even than Popery itself. I would not be unjust to these great men. The fault was less theirs than that of the age in which they lived. They partook only of that spirit of infirmity which religion itself may not wholly extinguish in its sincere, but over zealous votaries. It is their glory to have laid the deep, and, I trust, the imperishable foundations of Protestantism. May it be ours to finish the work, as they would have done it, if they had been permitted to enjoy the blessed light of these latter times. But let not Protestants boast of their justice or their charity, while they continue to deny an equality of rights to the Catholics.

The progress of the spirit of free inquiry cannot escape the observation of the most superficial examiner of history. The press, by slow but firm steps, first felt its way, and began its attacks upon the outl[illegible] ceived opinions. One error afte[illegible] lently crumbled into the dust, un[illegible] seemed to justify the boldest e[illegible] Opinions in science, in physic, in ph[illegible] morals, in religion, in literature, [illegible] subjected to the severest scrutiny[illegible]

[illegible] advo-
[illegible] econo-
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[illegible] taunts
[illegible] now

of ages, have been quietly conveyed to their last home, with scarcely a solitary mourner to grace their obsequies. The contest, indeed, between old and new opinions has been, and continues to be, maintained with great obstinacy and ability on all sides, and has forced even the sluggish into the necessity of thinking for themselves. Scholars have been driven to arm themselves for attack, as well as for defence; and in a literary warfare, nearly universal, have been obliged to make their appeals to the living judgment of the public for protection, as well as for encouragement.

The effects of this animated and free discussion have, in general, been very salutary. There is not a single department of life which has not been invigorated by its influence, nor a single profession which had not partaken of its success.

In jurisprudence, which reluctantly admits any new adjunct, and counts in its train a thousand champions ready to rise in defence of its formularies and technical rules, the victory has been brilliant and decisive. The civil and the common law have yielded to the pressure of the times, and have adopted much which philosophy and experience have recommended, although it stood upon no text of the Pandects, and claimed no support from the feudal polity. Commercial law, at least so far as England and America are concerned, is the creation of the eighteenth century. It started into life with the genius of Lord Mansfield, and gathering in its course whatever was valuable in the earlier institutes of foreign countries, has reflected back upon them its own superior lights, so as to become the guide and oracle of the commercial world. If my own feelings do not mislead me, the profession itself has acquired a liberality of opinion, a comprehensiveness of argumentation, a sympathy with the other pursuits of life, and a lofty eloquence, which, if ever before, belonged to it in the best days of the best orators of antiquity. It was the bitter scoff of other times, approaching to the sententiousness of a proverb, that to be a good lawyer was to be an indifferent statesman. The profession has outlived the truth of the sarcasm. At the present moment, England may count lawyers among her most gifted statesman; and in America, I need but appeal to those who hear me, for the fact, our most eminent statesmen have been, nay, still are, the brightest ornaments of our bar.

The same improving spirit has infused itself into the body of legislation and political economy. I may not adventure upon this extensive topic. But I would for a moment advert to the [illegible]gnant character manifested in the [illegible]. Harsh and vindictive punish[illegible]ve been discountenanced or abolished. [illegible]nary codes, over which humanity [illegible]hilosophy shuddered, have felt the [illegible]gy of reform, and substituted for [illegible]error the gentle spirit of mercy. America has taken the lead in this glorious march of philanthropy, under the banners of that meek sect, which does good by stealth, and blushes to find it fame. There are not in the code of the Union, and probably not in that of any single State, more than ten crimes, to which the sober judgment of legislation now affixes the punishment of death. England, indeed, counts in her bloody catalogue more than one hundred and sixty capital offences; but the dawn of a brighter day is opening upon her. After years of doubtful struggle, the meliorations suggested by the lamented Sir Samuel Romilly, have forced their way through Parliament to the throne; and an enlightened ministry is redeeming her from this reproach upon her national character.

In medicine, throughout all its branches, more extraordinary changes have taken place. Here, indeed, inductive philosophy looks for some of its fairest trophies. In anatomy, in physiology, in pharmacy, in therapeutics, instructed skill, patient observation, and accurate deduction have been substituted for vague conjecture, and bold pretension. Instead of mystical compounds, and nostrums, and panaceas, science has introduced its powerful simples, and thus given energy and certainty to practice. We dream no longer over the favorite theories of the arts succeeding each other in endless progression. We are content to adopt a truer course; to read nature in her operations; to compel her to give up her secrets to the expostulations of her ministers, and to answer the persevering interrogatories of her worshippers. Chemistry, by its brilliant discoveries and careful analysis, has unfolded laws which surprise us by their simplicity, as well as by the extent of their operations. By its magic touch the very elements of things seem decomposed, and to stand in disembodied essences before us.

In theology a new era has commenced. From the days of Grotius almost to our own, a sluggish indifference to critical learning fastened upon most of those, who administered the high solemnities of religion. Here and there, indeed, a noble spirit was seen, like Old Mortality, wiping away the ancient dust and retracing the fading lines, and in his zeal for truth undergoing almost a moral martyrdom. But the mass of professed theologians slumbered over the received text in easy security, or poured the distillations of one commentary into another, giving little improvement to the flavor and none to the substance. They were at length roused by a spirit of another sort, which, by ridicule, or argument, or denunciation of abuses, was attempting to sap the very foundations of Christianity. It made its approaches in silence, until it had attained strength enough for an open assault; and at last, in a moment of political revolution, it erected the standard of infidelity in the very centre of Christendom. Fortunately, the critical studies of the scholars of the old world enabled them to meet the difficulties of the occasion. The immense collations of manu-

scripts and various readings by such men as Mill, and Wetstein, and Kennicott, prepared the way for a more profound investigation of the genuineness and authenticity of the Scriptures. And the sober sense and unwearied diligence of our age have given to the principles of interpretation an accuracy and authority, to biblical researches a dignity and certainty, to practical as well as doctrinal theology a logic and illustration, unparallelled in the annals of the Church. If Christianity has been assailed in our day with uncommon ability, it has never been defended with more various learning. If it has surrendered here and there an interpolated passage, it has placed almost beyond the reach of doubt the general integrity of the text. If it has ceased in some favored lands to claim the civil arm for its protection, it has established itself in the hearts of men by all which genius could bring to illumine, or eloquence to grace its sublime truths.

In pure mathematics and physical science there has been a correspondent advancement. The discoveries of Newton have been followed out and demonstrated by new methods and analyses to an extent which would surprise that great philosopher himself, if he were now living. I need but name such men as La Grange and La Place. By means of observatories, the heavens have been, if I may so say, circumnavigated, and every irregularity and perturbation of the motions of the heavenly bodies ascertained to depend upon the same eternal law of gravitation, and to result in the harmonious balance of forces. But it is in physical science, and especially in its adaptation to arts of life, that the present age may claim precedence of all others. I have already alluded to chemistry, which has enabled us to fix and discharge colors with equal certainty; now to imitate the whiteness of the driven snow, and now the loveliness of the Tyrian dyes. But who can measure the extent of the changes in agriculture, manufactures and commerce, produced by the steam-engine of Watt, by the cotton machinery of Arkwright, by the power-looms of a later period, by the cotton-gin of Whitney, and though last, not least, by the steam-boat of Fulton? When I name these, I select but a few among the inventions of our age, in which nature and art minister alternately to the wants and the triumphs of man.

If in metaphysics no brilliant discoveries have rewarded the industry of its votaries, it may nevertheless be said, that the laws of the mind have been investigated with no common success. They have been illustrated by a fuller display of the doctrine of association of Hartley, by the common sense of Reid, by the acute discrimination of Brown, and by the incomparable elegance of Dugald Stewart. If, indeed, in this direction any new discoveries are to be expected, it appears to me, with great deference, that they must be sought through more exact researches into that branch of physiology which respects the structure and functions of those organs, which are immediately connected with the operations of the mind.

I have but glanced at most of the preceding subjects, many of which are remote from the studies which have engaged my life, and to all of which I am conscious that I am unable to do even moderate justice.

But it is to the department of general and miscellaneous literature, and above all, of English literature, that we may look with pride and confidence. Here the genius of the age has displayed itself in innumerable varieties of form and beauty, from the humble page, which presumes to teach the infant mind the first lines of thought, to the lofty works which discourse of history, and philosophy, and ethics, and government; from the voyager, who collects his budget of wonders for the amusement of the idle, to the gallant adventurer to the Pole, and the scientific traveller on the Andes. Poetry, too, has dealt out its enchantments with profuse liberality, now startling us with its visionary horrors and superhuman pageants, now scorching us with its fierce and caustic satire, now lapping us in Elysium by the side of sunny shores, or lovely lakes, or haunted groves, or consecrated ruins. It is, indeed, no exaggeration of the truth to declare, that polite literature, from the light essay to the most profound disquisition, can enumerate more excellent works, as the production of the last fifty years, than of all former ages since the revival of letters.

Periodical literature has elevated itself from an amusement of cultivated minds, or a last resort of impoverished authors, to the first rank of composition, in which the proudest are not ashamed to labor, and the highest may gain fame and consequence. A half century ago a single magazine and a single review almost sufficed the whole reading public of England and America. At present a host crowd around us, from the gossamery repository which adorns the toilet, to the grave review which discusses the fate of empires, arraigns the counsels of statesmen, expounds all mysteries in policy and science, or, stooping from such pursuits, condescends, like other absolute powers, sometimes to crush an author to death, and sometimes to elevate him to a height where he faints from the mere sense of giddiness. We have our journals of science and journals of arts; the new monthly with the refreshing genius of Campbell, and the old monthly with the companionable qualities of a familiar friend. We have the quarterly reviewers, the loyal defenders of church and State, the "laudatores temporis acti," the champions, ay, and exemplars too, of classical learning, the admirers of ancient establishments and ancient opinions. We have on the other hand the Edinburgh, the bold advocates of reform, and still bolder political economists, hunting out public abuses, and alarming idle gentlemen pensioners with tales of misapplied charities; now deriding with bitter taunts the dull but busy gleaners in literature, now brightening their pages with the sunshine of

wit; and now paying homage to genius by expounding its labors in language of transcendent felicity. One might approach nearer home, and, if it were not dangerous to rouse the attention of critics, might tell of a certain North American, which has done as much to give a solid cast to our literature, and a national feeling to our authors, as any single event since the peace of 1783.

Another interesting accompaniment of the literature of the age is its superior moral purity over former productions. The obscene jests, the low ribaldry, and the coarse allusions, which shed a disastrous light on so many pages of misguided genius in former times, find no sympathy in ours. He who would now command respect, must write with pure sentiments and elevated feelings; he who would now please, must be chaste as well as witty, and moral as well as brilliant. Fiction itself is restrained to the decencies of life; and whether in the drama, or the novel, or the song, with a few melancholy exceptions, it seeks no longer to kindle fires, which would consume the youthful enthusiast, or to instil precepts, which would blast the loveliness of the innocent.

But let it not be imagined, that in the present state of things there is nothing for regret and nothing for admonition. The picture of the age, when truly drawn, is not wholly composed of lights. There are shades which disturb the beauty of the coloring, and points of reflection where there is no longer harmony in the proportions.

The unavoidable tendency of free speculation is to lead to occasional extravagances. When once the reverence for authority is shaken, there is apt to grow up in its stead a cold scepticism respecting established opinions. Their very antiquity under such circumstances betrays us into suspicion of their truth. The overthrow of error itself urges on a feverish excitement for discussion, and a restless desire for novelty, which blind, if they do not confound, the judgment. Thus, the human mind not unfrequently passes from one extreme to another; from one of implicit faith, to one of absolute incredulity.

There is not a remark deducible from the history of mankind more important than that advanced by Mr. Burke, that "to innovate is not to reform." That is, if I may venture to follow out the sense of this great man, that innovation is not necessarily improvement; that novelty is not necessarily excellence; that what was deemed wisdom in former times, is not necessarily folly in ours; that the course of the human mind has not been to present a multitude of truths in one great step of its glory, but to gather them up insensibly in its progress, and to place them at distances, sometimes at vast distances, as guides or warnings to succeeding ages. If Greece and Rome did not solve all the problems of civil government, or enunciate the admirable theorem of representative legislation, it should never be forgotten, that from them we in the worst of times have consoled the patriot for all his sufferings. If they cannot boast of the various attainments of our days, they may point out to us the lessons of wisdom, the noble discoveries and the imperishable labors of their mighty dead. It is not necessarily error to follow the footsteps of ancient philosophy, to reverence the precepts of ancient criticism, to meditate over the pages of ancient exploits, or to listen to the admonitions of ancient oratory.

We may even gather instruction from periods of another sort, in which there was a darkness, which might be felt as well as seen. Where is to be found a nobler institution than the trial by jury, that impregnable bulwark of civil liberty? Yet it belongs to ages of Gothic darkness or Saxon barbarism. Where is there a more enduring monument of political wisdom than the separation of the judicial from the legislative powers? Yet it was the slow production of ages, which are obscured by the mists of time. Where shall we point out an invention, whose effects have been more wide, or more splendid than those of the mariner's compass? Yet five centuries have rolled over the grave of its celebrated discoverer. Where shall we find the true logic of physical science so admirably stated as in the Novum Organum of him, who more than two centuries ago saw, as in vision, and foretold, as in prophecy, the sublime discoveries of these latter days?

This is a topic which may not wholly be passed over, since it presents some of the dangers to which we are exposed, and calls upon us to watch the progress of opinion, and guard against the seductive influence of novelties. The busy character of the age is perpetually pressing forward all sorts of objections to establish truths in politics, and morals, and literature. In order to escape from the imputation of triteness, some authors tax their ingenuity to surprise us with bold paradoxes, or run down with wit and ridicule the doctrines of common sense, appealing sometimes to the ignorance and sometimes to the pride of their readers. Their object is not so much to produce what is true, as what is striking; what is profound, as what is interesting; what will endure the test of future criticism as what will buoy itself up on the current of a shallow popularity. In the rage for originality, the old standards of taste are deserted, or treated with cold indifference; and thus false and glittering thoughts, and hurried and flippant fantasies, are substituted for exact and philosophical reasoning.

There is, too, a growing propensity to disparage the importance of classical learning. Many causes, especially in England and America, have conduced to this result. The signal success which has followed the enterprises in physical science, in mechanics, in chemistry, in civil engineering, and the ample rewards both of fortune and fame attendant upon that success, have had a very powerful influence upon the best talents of both countries. There is, too, in

every thing to a practical account, to deal less with learning and more with experiment; to seek the solid comforts of opulence, rather than the indulgence of mere intellectual luxury. On the other hand, from the increase of materials, as well as of critical skill, high scholarship is a prize of no easy attainment; and when attained it slowly receives public favor and still more slowly reaches the certainty of wealth. Indeed it is often combined with a contemplative shyness, and sense of personal independence, which yield little to policy, and with difficulty brook opposition. The honors of the world rarely cluster around it, and it cherishes with most enthusiasm those feelings which the active pursuits of life necessarily impair, if they do not wholly extinguish. The devotion to it, therefore, where it exists, often becomes our exclusive passion; and thus the gratification of it becomes the end, instead of the means of life. Instances of extraordinary success by mere scholarship are more rare than in other professions. It is not then to be wondered at, that the prudence of some minds and the ambition of others, should shrink from labors which demand days and nights of study, and hold out rewards which are distant, or pleasures which are for the most part purely intellectual.

Causes like these, in an age which scrutinizes and questions the pretensions of every department of literature, have contributed to bring into discussion the use and the value of classical learning. I do not stand up on this occasion to vindicate its claims, or extol its merits. That would be a fit theme for one of our most distinguished scholars, in a large discourse. But I may not withhold my willing testimony to its excellence, nor forget the fond regret with which I left its enticing studies for the discipline of more severe instructors.

The importance of classical learning to professional education is so obvious that the surprise is, that it could ever have become matter of disputation. I speak not of its power in refining the taste, in disciplining the judgment, in invigorating the understanding, or in warming the heart with elevated sentiments; but of its power of direct, positive, necessary instruction. Until the eighteenth century, the mass of science in its principal branches was deposited in the dead languages, and much of it still reposes there. To be ignorant of these languages is to shut out the lights of former times, or to examine them only through the glimmerings of inadequate translations. What should we say of the jurist who never aspired to learn the maxims of law and equity which adorn the Roman codes? What of the physician who could deliberately surrender all the knowledge heaped up for so many centuries in the latinity of continental Europe? What of the minister of religion who should choose not to study the Scriptures in the original tongue, and should be content to trust his faith and his hopes, for time and for eternity, to the dimness of translations, which may reflect the literal import, but rarely can reflect with unbroken force the beautiful spirit of the text? Shall he, whose vocation it is "to allure to brighter worlds and lead the way," be himself the blind leader of the blind? Shall he follow the commentaries of fallible man, instead of gathering the true sense from the gospels themselves? Shall he venture upon the exposition of divine truths, whose studies have never aimed at the first principles of interpretation? Shall he proclaim the doctrines of salvation who knows not and cares not whether he preaches an idle gloss or the genuine text of revelation? If a theologian may not pass his life in collating the various readings, he may, and ought to aspire to that criticism, which illustrates religion by all the resources of human learning; which studies the manners and institutions of the age and country in which Christianity was first promulgated; which kindles an enthusiasm for its precepts by familiarity with the persuasive language of Him who poured out his blessings on the Mount, and of him at whose impressive appeal Felix trembled.

I pass over all consideration of the written treasures of antiquity, which have survived the wreck of empires and dynasties, of monumental trophies and triumphal arches, of palaces of princes and temples of the gods. I pass over all consideration of those admired compositions in which wisdom speaks as with a voice from Heaven; of those sublime efforts of poetical genius, which still freshen, as they pass from age to age, in undying vigor: of those finished histories, which still enlighten and instruct governments in their duty and their destiny; of those matchless orations which roused nations to arms, and chained senates to the chariot wheels of all-conquering eloquence. These all may now be read in our vernacular tongue. Ay, as one remembers the face of a dead friend by gathering up the broken fragments of his image—as one listens to the tale of a dream twice told—as one catches the roar of the ocean in the ripple of a rivulet—as one sees the blaze of noon in the first glimmer of twilight.

There is one objection, however, on which I would for a moment dwell, because it has a commanding influence over many minds, and is clothed with a specious importance. It is often said that there have been eminent men and eminent writers, to whom the ancient languages were unknown; men who have risen by the force of their talents, and writers who have written with a purity and ease which hold them up as models for imitation. On the other hand it is as often said that scholars do not always compose either with elegance or chasteness; that their diction is sometimes loose and harsh, and sometimes ponderous and affected. Be it so. I am not disposed to call in question the accuracy of either statement. But I would nevertheless say that the presence of classical learning was not the cause of the faults of the one class, nor the absence of it the cause of the excellence of the other. And I would put this

fact as an answer to all such reasonings, that there is not a single language of modern Europe in which literature has made any considerable advances, which is not directly of Roman origin or has not incorporated into its very structure many, very many of the idioms and peculiarities of the ancient tongues. The English language affords a strong illustration of the truth of this remark. It abounds with words and meanings drawn from classical sources. Innumerable phrases retain the symmetry of their ancient dress. Innumerable expressions have received their vivid tints from the beautiful dyes of Roman and Grecian roots. If scholars therefore do not write our language with ease, or purity, or elegance, the cause must lie somewhat deeper than a conjectural ignorance of its true diction.

But I am prepared to yield still more to the force of the objection. I do not deny that a language may be built up without the aid of any foreign materials, and be at once flexible for speech and graceful for composition. That the literature of a nation may be splendid and instructive, full of interest and beauty in thought and diction, which has no kindred with classical learning; that in the vast stream of time it may run its own current unstained by the admixture of surrounding languages; that it may realize the ancient fable, "Doris amara suam non intermisceat undam;" that it may retain its own flavor, and its own bitter saltness too. But I do deny that such a national literature does in fact exist in modern Europe, in that community of nations of which we form a part, and to whose fortunes, and pursuits in literature and arts we are bound by all our habits, and feelings, and interests. There is not a single nation from the north to the south of Europe, from the bleak shores of the Baltic to the bright plains of immortal Italy, whose literature is not embedded in the very elements of classical learning. The literature of England is in an emphatic sense the production of her scholars; of men, who have cultivated letters in her universities, and colleges, and grammar schools; of men, who thought any life too short, chiefly, because it left some relic of antiquity unmastered, and any other fame humble, because it faded in the presence of Roman and Grecian genius. He who studies English literature without the lights of classical learning loses half the charms of its sentiments and style, of its force and feelings, of its delicate touches, of its delightful allusions, of its illustrative associations. Who that reads the poetry of Gray, does not feel that it is the refinement of classical taste, which gives such inexpressible vividness and transparency to his diction? Who that reads the concentrated sense and melodious versification of Dryden and Pope, does not perceive in them the disciples of the old school, whose genius was inflamed by the heroic verse, the terse satire, and the playful wit of antiquity? Who that meditates over the strains of Milton, does not feel that he drank deep

> ——At "Siloa's brook, that flow'd
> Fast by the oracle of God"—

that the fires of his magnificent mind were lighted by coals from ancient altars?

It is no exaggeration to declare, that he who proposes to abolish classical studies, proposes to render in a great measure inert and unedifying the mass of English literature for three centuries; to rob us of much of the glory of the past, and much of the instruction of future ages; to blind us to excellences which few may hope to equal, and none to surpass; to annihilate associations which are interwoven with our best sentiments, and give to distant times and countries a presence and reality as if they were in fact our own.

There are dangers of another sort which beset the literature of the age. The constant demand for new works and the impatience for fame, not only stimulate authors to an undue eagerness for strange incidents, singular opinions, and vain sentimentalities, but their style and diction are infected with the faults of extravagance and affectation. The old models of fine writing and good taste are departed from, not because they can be excelled, but because they are known, and want freshness; because, if they have a finished coloring, they have no strong contrasts to produce effect. The consequence is, that opposite extremes in the manner of composition prevail at the same moment, or succeed each other with a fearful rapidity. On one side are to be found authors, who profess to admire the easy flow and simplicity of the old style, the naturalness of familiar prose, and the tranquil dignity of higher compositions. But in their desire to be simple, they become extravagantly loose and inartificial; in their familiarity, feeble and drivelling; and in their more aspiring efforts, cold, abstract, and harsh. On the other side, there are those who have no love for polished perfection of style, for sustained and unimpassioned accuracy, for pursuasive, but equable diction. They require more hurried tones, more stirring spirit, more glowing and irregular sentences. There must be intensity of thought and intensity of phrase at every turn. There must be bold and abrupt transitions, strong relief, vivid coloring, forcible expression. If these are present, all other faults are forgiven, or forgotten. Excitement is produced, and taste may slumber.

Examples of each sort may be easily found in our miscellaneous literature among minds of no ordinary cast. Our poetry deals less than formerly with the sentiments and feelings belonging to ordinary life. It has almost ceased to be didactic, and in its scenery and descriptions reflects too much the peculiarities and morbid visions of eccentric minds. How little do we see of the simple beauty, the chaste painting, the unconscious moral grandeur of Crabbe and Cowper? We have, indeed, successfully dethroned the heathen deities. The Muses are no longer invoked by every unhappy inditer of verse. The Naiads no longer inhabit our foun-

tains, nor the Dryads our woods. The River Gods no longer rise, like old father Thames,

"And the hush'd waves glide softly to the shore."

In these respects our poetry is more true to nature, and more conformable to just taste. But it still insists too much on extravagant events, characters and passions, far removed from common life, and farther removed from general sympathy. It seeks to be wild, and fiery, and startling; and sometimes, in its caprices, low and childish. It portrays natural scenery, as if it were always in violent commotion. It describes human emotions, as if man were always in ecstacies or horrors. Whoever writes for future ages must found himself upon feelings and sentiments belonging to the mass of mankind. Whoever paints from nature will rarely depart from the general character of repose impressed upon her scenery, and will prefer truth to the ideal sketches of the imagination.

Our prose too has a tendency to become somewhat too ambitious and intense. Even in newspaper dicussions of the merits or misdeeds of rulers, there is a secret dread of neglect, unless the page gives out the sententious pungency or sarcastic scorn of Junius. Familiar, idiomatic prose seems less attractive than in former times. Yet one would suppose, that we might follow with safety the unaffected purity of Addison in criticism, and the graceful ease of Goldsmith in narrative. The neat and lively style of Swift loses nothing of its force by the simplicity with which it aims to put "proper words in proper places." The correspondence of Cowper is not less engaging, because it utters no cant phrases, no sparkling conceits, and no pointed repartees.

But these faults may be considered as temporary, and are far from universal. There is another, however, which is more serious and important in its character, and is the common accompaniment of success. It is the strong temptation of distinguished authors to premature publication of their labors, to hasty and unfinished sketches, to fervid but unequal efforts. He who writes for immortality must write slowly, and correct freely. It is not the applause of the present day, or the deep interest of a temporary topic, or the consciousness of great powers, or the striking off of a vigorous discourse, which will insure a favorable verdict from posterity. It was a beautiful remark of Sir Joshua Reynolds "that great works, which are to live and stand the criticism of posterity, are not performed at a heat." "I remember," said he, "when I was at Rome, looking at the fighting gladiator in company with an eminent sculptor, and I expressed my admiration of the skill with which the whole is composed, and the minute attention of the artist to the change of every muscle in that momentary exertion of strength. He was of opinion that a work so

ancholy reflection to those who deem the literary fame of the present age the best gift to posterity. How many of our proudest geniuses have written, and continue to write, with a swiftness which almost rivals the operations of the press. How many are urged on to the ruin of their immortal hopes, by that public favor which receives with acclamations every new offspring of their pen. If Milton had written thus, we should have found no scholar of our day, no "Christian Examiner," portraying the glory of his character with the enthusiasm of a kindred spirit. If Pope had written thus, we should have had no fierce contests respecting his genius and poetical attainments by our Byrons, and Bowleses, and Roscoes. If Virgil had written thus, he might have chanted his verses to the courtly Augustus; but Marcellus and his story would have perished. If Horace had written thus, he might have enchanted gay friends and social parties; but it would never have been said of his composition, "decies repetita placebit."

Such are some of the considerations which have appeared to me fit to be addressed to you on the present occasion. It may be that I have overrated their importance, and I am not unconscious of the imperfections of my own execution of the task.

To us, Americans, nothing indeed can, or ought to be, indifferent that respects the cause of science and literature. We have taken a stand among the nations of the earth, and have successfully asserted our claim to political equality. We possess an enviable elevation, so far as concerns the structure of our government, our political policy, and the moral energy of our institutions. If we are not without rivals in these respects, we are scarcely behind any, even in the general estimate of foreign nations themselves. But our claims are far more extensive. We assert an equality of voice and vote in the republic of letters, and assume for ourselves the right to decide on the merits of others, as well as to vindicate our own. These are lofty pretensions, which are never conceded without proofs, and are severely scrutinized, and slowly admitted by the grave judges in the tribunal of letters. We have not placed ourselves as humble aspirants, seeking our way to higher rewards under the guardianship of experienced guides. We ask admission into the temple of fame, as joint heirs of the inheritance, capable in the manhood of our strength of maintaining our title. We contend for prizes with nations, whose intellectual glory has received the homage of centuries. France, Italy, Germany, England, can point to the past for monuments of their genius and skill, and to the present with the undismayed confidence of veterans. It is not for us to retire from the ground which we have chosen to occupy, nor to shut our eyes against the difficulties of maintaining it. It is not by a few vain boasts, or vainer self-compla-

do as others have done before us. We must serve in the hard school of discipline; we must invigorate our powers by the studies of other times. We must guide our footsteps by those stars which have shone, and still continue to shine with inextinguishable light in the firmament of learning. Nor have we any reason for despondency. There is that in American character which has never yet been found unequal to its purpose. There is that in American enterprise which shrinks not, and faints not, and fails not in its labors. We may say with honest pride,

> "*Man* is the nobler growth our realms supply,
> And *souls* are ripen'd in our northern sky."

We may not then shrink from a rigorous examination of our own deficiencies in science and literature. If we have but a just sense of our wants, we have gained half the victory. If we but face our difficulties, they will fly before us. Let us not discredit our just honors by exaggerating little attainments. There are those in other countries who can keenly search out and boldly expose every false pretension. There are those in our own country who would scorn a reputation ill founded in fact, and ill sustained by examples. We have solid claims upon the affection and respect of mankind. Let us not jeopard them by a false shame or an ostentatious pride. The growth of two hundred years is healthy, lofty, expansive. The roots have shot deep and far; the branches are strong and broad. I trust that many, many centuries to come will witness the increase and vigor of the stock. Never, never may any of our posterity have just occasion to speak of our country in the expressiveness of Indian rhetoric, "It is an aged hemlock; it is dead at the top."

I repeat it, we have no reason to blush for what we have been or what we are. But we shall have much to blush for, if, when the highest attainments of the human intellect are within our reach, we surrender ourselves to an obstinate indifference, or shallow mediocrity; if, in our literary career, we are content to rank behind the meanest principality of Europe. Let us not waste our time in seeking for apologies for our ignorance where it exists, or in framing excuses to conceal it. Let our short reply to all such suggestions be, like the answer of a noble youth on another occasion, that we know the fact, and are every day getting the better of it.

What, then, may I be permitted to ask, are our attainments in science and literature, in comparison with those of other nations in our age? I do not ask if we have fine scholars, accomplished divines, and skilful physicians. I do not ask if we have lawyers who might excite a generous rivalry in Westminster Hall. I do not ask if we have statesmen who would stand side by side with those of the old world in foresight, in political wisdom, in effective de-

of Europe. I do not ask if we have historians who have told with fidelity and force the story of our deeds and our sufferings. I do not ask if we have critics, and poets, and philologists, whose compositions add lustre to the age. I know full well that there are such. But they stand as lighthouses on the coasts of our literature, shining with a cheering brightness, it is true, but too often at distressing distances.

In almost every department of knowledge the land of our ancestors annually pours forth from its press many volumes, the results of deep research, of refined taste, and of rich and various learning. The continent of Europe too burns with a generous zeal for science, even in countries where the free exercise of thought is prohibited, and a stinted poverty presses heavily on the soul of enterprise. Our own contributions to literature are useful and creditable; but it can rarely be said that they belong to the highest class of intellectual effort. We have but recently entered upon classical learning for the purpose of cultivating its most profound studies, while Europe may boast of thousands of scholars engaged in this pursuit. The universities of Cambridge and Oxford count more than eight thousand students trimming their classical lamps, while we have not a single university, whose studies profess to be extensive enough to educate a Heyne, a Bentley, a Porson, or a Parr. There is not, perhaps, a single library in America sufficiently copious to have enabled Gibbon to verify the authorities for his immortal History of the Decline and Fall of the Roman Empire. Our advances in divinity and law are probably as great as in any branch of knowledge. Yet, until a late period, we never aspired to a deep and critical exposition of the Scriptures. We borrowed from Germany and England nearly all our materials, and are just struggling for the higher rewards of biblical learning. And in law, where our eminence is least of all questionable, there are those among us who feel that sufficient of its learning, and argument, and philosophy, remains unmastered, to excite the ambition of the foremost advocates.

Let me not be misunderstood. I advert to these considerations, not to disparage our country, or its institutions, or its means of extensive, I had almost said, of universal education. But we should not deceive ourselves with the notion, that, because education is liberally provided for, the highest learning is within the scope of that education. Our schools neither aim at, nor accomplish such objects. There is not a more dangerous error than that which would soothe us into indolence, by encouraging the belief that our literature is all it can or ought to be; that all beyond is shadowy and unsubstantial, the vain theories of the scientific, or the reveries of mere scholars. The admonition which addresses itself to my countrymen respecting their deficiencies, ought to awaken

should hold nothing, which human genius or human enterprise has yet attained, as beyond their reach. The motto on their literary banner should be "Nec timeo nec sperno." I have no fears for the future. It may not be our lot to see our celebrity in letters rival that of our public polity and free institutions. But the time cannot be far distant. It is scarcely prophecy to declare, that our children must and will enjoy it. They will see not merely the breathing marble, and the speaking picture among their arts, but science and learning everywhere paying a voluntary homage to American genius.

There is, indeed, enough in our past history to flatter our pride, and encourage our exertions. We are of the lineage of the Saxons, the countrymen of Bacon, Locke, and Newton, as well as of Washington, Franklin, and Fulton. We have read the history of our forefathers. They were men full of piety, and zeal, and an unconquerable love of liberty. They also loved human learning, and deemed it second only to divine. Here, on this very spot, in the bosom of the wilderness, within ten short years after their voluntary exile, in the midst of cares, and privations, and sufferings, they found time to rear a little school, and dedicate it to God and the church. It has grown; it has flourished; it is the venerable university, to whose walls her grateful children annually come with more than filial affection. The sons of such ancestors can never dishonor their memories; the pupils of such schools can never be indifferent to the cause of letters.

There is yet more in our present circumstances to inspire us with a wholesome consciousness of our powers and our destiny. We have just passed the Jubilee of our Independence, and witnessed the prayers and gratitude of millions ascending to heaven for our public and private blessings. That independence was the achievement, not of faction and ignorance, but of hearts as pure, and minds as enlightened, and judgments as sound, as ever graced the annals of mankind. Among the leaders were statesmen and scholars, as well as heroes and patriots. We have followed many of them to the tomb, blest with the honors of their country. We have been privileged yet more; we have lived to witness an almost miraculous event in the departure of two great authors of our independence on that memorable and blessed day of Jubilee.

I may not in this place presume to pronounce the funeral panegyric of these extraordinary men. It has been already done by some of the master spirits of our country, by men worthy of the task, worthy as Pericles to pronounce the honors of the Athenian dead. It was the beautiful saying of the Grecian orator, that "This whole earth is the sepulchre of illustrious men. Nor is it the inscriptions on the columns in their native soil alone, that show their merit, but the memorial of them, better reposited more durably in universal remembrance, than on their own tomb."

Such is the lot of Adams and Jefferson. They have lived, not for themselves, but for their country; not for their country alone, but for the world. They belong to history, as furnishing some of the best examples of disinterested and successful patriotism. They belong to posterity, as the instructors of all future ages in the principles of rational liberty and the rights of the people. They belong to us of the present age by their glory, by their virtues, and by their achievements. These are memorials which can never perish. They will brighten with the lapse of time, and, as they loom on the ocean of eternity, will seem present to the most distant generations of men. That voice of more than Roman eloquence, which urged and sustained the Declaration of Independence, that voice, whose first and whose last accents were for his country, is indeed mute. It will never again rise in defence of the weak against popular excitement, and vindicate the majesty of law and justice. It will never again awaken a nation to arms to assert its liberties. It will never again instruct the public councils by its wisdom. It will never again utter its almost oracular thoughts in philosophical retirement. It will never again pour out its strains of parental affection, and in the domestic circle give new force and fervor to the consolations of religion. The hand, too, which inscribed the Declaration of Independence is indeed laid low. The weary head reposes on its mother earth. The mountain winds sweep by the narrow tomb, and all around has the loneliness of desolation. The stranger guest may no longer visit that hospitable home, and find him there, whose classical taste and various conversation lent a charm to every leisure hour; whose bland manners and social simplicity made every welcome doubly dear; whose expansive mind commanded the range of almost every art and science; whose political sagacity, like that of his illustrious coadjutor, read the fate and interests of nations, as with a second sight, and scented the first breath of tyranny in the passing gale; whose love of liberty, like his, was inflexible, universal, supreme; whose devotion to their common country, like his, never faltered in the worst, and never wearied in the best of times; whose public services ended but with life, carrying the long line of their illumination over sixty years; whose last thoughts exhibited the ruling passion of his heart, enthusiasm in the cause of education; whose last breathing committed his soul to God, and his offspring to his country.

Yes, Adams and Jefferson are gone from us forever—gone, as a sunbeam to revisit its native skies—gone, as this mortal to put on immortality. Of them, of each of them, every American may exclaim:

"Ne'er to the chambers, where the mighty rest,

Nor e'er was to the bowers of bliss convey'd
A fairer spirit, or more welcome shade."

We may not mourn over the departure of such men. We should rather hail it as a kind dispensation of Providence, to affect our hearts with new and livelier gratitude. They were not cut off in the blossom of their days, while yet the vigor of manhood flushed their cheeks, and the harvest of glory was ungathered. They fell not as martyrs fall, seeing only in dim perspective the salvation of their country. They lived to enjoy the blessings earned by their labors, and to realize all which their fondest hopes had desired. The infirmities of life stole slowly and silently upon them, leaving still behind a cheerful serenity of mind. In peace, in the bosom of domestic affection, in the hallowed reverence of their countrymen, in the full possession of their faculties, they wore out the last remains of life, without a fear to cloud, with scarcely a sorrow to disturb its close. The joyful day of our jubilee came over them with its refreshing influence. To them, indeed, it was "a great and good day." The morning sun shone with softened lustre on their closing eyes. Its evening beams played lightly on their brows, calm in all the dignity of death. Their spirits escaped from these frail tenements without a struggle or a groan. Their death was gentle as an infant's sleep. It was a long, lingering twilight, melting into the softest shade.

Fortunate men, so to have lived, and so to have died. Fortunate, to have gone hand in hand in the deeds of the Revolution. Fortunate, in the generous rivalry of middle life. Fortunate, in deserving and receiving the highest honors of their country. Fortunate in old age to have rekindled their ancient friendship with a holier flame. Fortunate, to have passed through the dark valley of the shadow of death together. Fortunate, to be indissolubly united in the memory and affections of their countrymen. Fortunate, above all, in an immortality of virtuous fame, on which history may with severe simplicity write the dying encomium of Pericles, "No citizen, through their means, ever put on mourning."

I may not dwell on this theme. It has come over my thoughts, and I could not wholly suppress the utterance of them. It was my principal intention to hold them up to my countrymen, not as statesmen and patriots, but as scholars, as lovers of literature, as eminent examples of the excellence of the union of ancient learning with modern philosophy. Their youth was disciplined in classical studies; their active life was instructed by the prescriptive wisdom of antiquity; their old age was cheered by its delightful reminiscences. To them belongs the fine panegyric of Cicero, "Erant in *eis* plurimæ litteræ, nec eæ vulgares, sed interiores quædam, et reconditæ; divina memoria, summa verborum et gravitas et elegantia; atque hæc omnia vitæ decorabat dignitas et integritas."

I will ask your indulgence only for a moment longer. Since our last anniversary, death has been annually busy in thinning our numbers. I may not look on the right, or the left, without missing some of those who stood by my side in my academic course, in the happy days spent within yonder venerable walls.

"These are counsellors, that feelingly persuade us what we are," and what we must be. Shaw and Salisbury are no more. The one, whose modest worth and ingenuous virtue adorned a spotless life; the other, whose social kindness and love of letters made him welcome in every circle. But, what shall I say of Haven, with whom died a thousand hopes, not of his friends and family alone, but of his country. Nature had given him a strong and brilliant genius; and it was chastened and invigorated by grave, as well as elegant studies. Whatever belonged to human manners and pursuits, to human interests and feelings, to government, or science, or literature, he endeavored to master with a scholar's diligence and taste. Few men have read so much or so well. Few have united such manly sense with such attractive modesty. His thoughts and his style, his writings and his actions, were governed by a judgment, in which energy was combined with candor, and benevolence with deep, unobtrusive, and fervid piety. His character may be summed up in a single line, for there

"was given
To Haven every virtue under Heaven."

He had just arrived at the point of his professional career, in which skill and learning begin to reap their proper reward. He was in possession of the principal blessings of life—of fortune, of domestic love, of universal respect. There are those who had fondly hoped, when they should have passed away, he might be found here to pay a humble tribute to their memory. To Providence it has seemed fit to order otherwise, that it might teach us "what shadows we are, and what shadows we pursue." We may not mourn over such a loss, as those who are without hope. That life is not too short which has accomplished its highest destiny; that spirit may not linger here, which is purified for immortality.

THE AMERICAN INDIANS.

There is, indeed, in the fate of these unfortunate beings, much to awaken our sympathy, and much to disturb the sobriety of our judgment; much, which may be urged to excuse their own atrocities; much in their characters, which betrays us into an involuntary admiration. What can be more melancholy than their history? By a law of their nature, they seem destined to a slow, but sure extinction. Everywhere, at the approach of the white man, they fade away. We hear the rustling of their footsteps, like that of the withered leaves of autumn, and they are gone for ever. They pass mournfully by us, and they return no more. Two centuries ago, the smoke of their wigwams and the fires of their councils rose in every valley, from Hudson's Bay to the farthest Florida, from the ocean to the Mississippi and the lakes. The shouts of victory and the war-dance rang through the mountains and the glades. The thick arrows and the deadly tomahawk whistled through the forests; and the hunter's trace and the dark encampment startled the wild beasts in their lairs. The warriors stood forth in their glory. The young listened to the songs of other days. The mothers played with their infants, and gazed on the scene with warm hopes of the future. The aged sat down; but they wept not. They should soon be at rest in fairer regions, where the Great Spirit dwelt, in a home prepared for the brave, beyond the western skies. Braver men never lived; truer men never drew the bow. They had courage, and fortitude, and sagacity, and perseverance, beyond most of the human race. They shrank from no dangers, and they feared no hardships. If they had the vices of savage life, they had the virtues also. They were true to their country, their friends, and their homes. If they forgave not injury, neither did they forget kindness. If their vengeance was terrible, their fidelity and generosity were unconquerable also. Their love, like their hate, stopped not on this side of the grave.

But where are they? Where are the villages, and warriors, and youth; the sachems and the tribes; the hunters and their families? They have perished. They are consumed. The wasting pestilence has not alone done the mighty work. No—nor famine, nor war. There has been a mightier power, a moral canker, which hath eaten into their heart-cores—a plague, which the touch of the white man communicated—a poison which betrayed them into a lingering ruin. The winds of the Atlantic fan not a single region which they may now call their own. Already the last feeble remnants of the race are preparing for their journey beyond the Mississippi. I see them leave their miserable homes, the aged, the helpless, the women and the warriors, "few and faint, yet fearless still." The ashes are cold on their native hearths. The smoke no longer curls round their lowly cabins. They move on with a slow, unsteady step. The white man is upon their heels, for terror or despatch; but they heed him not. They turn to take a last look of their deserted villages. They cast a last glance upon the graves of their fathers. They shed no tears; they utter no cries; they heave no groans. There is something in their hearts which passes speech. There is something in their looks, not of vengeance or submission, but of hard necessity, which stifles both; which chokes all utterance; which has no aim or method. It is courage absorbed in despair. They linger but for a moment. Their look is onward. They have passed the fatal stream. It shall never be repassed by them—no, never. Yet there lies not between us and them an impassable gulf. They know and feel that there is for them still one remove farther, not distant nor unseen. It is to the general burial-ground of their race.*

* From the Discourse pronounced at the request of the Essex Historical Society, in commemoration of the first settlement of Salem, Mass.

WILLIAM WIRT.

WILLIAM WIRT, one of the most celebrated advocates and accomplished writers of the nineteenth century, was of a humble but respectable parentage. His father was a Swiss by birth, his mother a German. Some time prior to the Revolution they settled at Bladensburg, in Maryland, where they accumulated a small property by keeping the village tavern. At that place their distinguished son, who was their sixth and youngest child, was born, on the eighth day of November, 1772. During his infancy his father died, and on the death of his mother, which occurred just as he was entering upon his ninth year, he passed into the family of his uncle, Jacob Wirt, under whose guardianship he spent his minority. At seven he was sent from home to a school in Georgetown, now of the District of Columbia, from whence, after spending nearly a year unsatisfactorily, he was removed to a classical school in Charles County, Maryland.

At this school he remained until the year 1782. Being naturally a lively boy and accustomed to say "smart things, and sing songs of humor very well," he became a great favorite among his schoolmates, as well as in the widow's family in which he resided, and was as happy as a child could be away from his home and the natural objects of his affections. In reverting to this period of his life, he says: "From the time I rose, until I went to bed, the live-long day, it was all enjoyment, save only with two drawbacks—the going to school, and the getting tasks on holidays—which last, by-the-bye, is a practical cruelty that ought to be abolished. With the exception of these same tasks and a slight repugnance to the daily school, Mrs. Love's was an elysium to me." From this school he was transferred to that of the Reverend James Hunt, a Presbyterian minister in Montgomery county, and there, during four years' tuition, he received his principal instruction in the classics and mathematics. The library of his preceptor afforded a fund of general reading, which he eagerly grasped and profited by. He read with avidity the old dramas, Josephus, Pope, Addison, Horne's Elements of Criticism, and Guy, the Earl of Warwick, "which last he obtained from a carpenter in the employ of Mr. Hunt," and further satiated his passion for reading by a fragment of Peregrine Pickle, which he probably obtained from the same source. About this time he turned his attention to composition, and although in most of his poetical productions, thought was sacrificed to rhythm, a circumstance which soon put an end to his muse, in his prose efforts he met with encouragement, and became a confirmed reader and author. Among numerous essays which he prepared, one fell into the hands of his teacher, and was read with unqualified praise. The history of it, as given by his friend and biographer, will be read with interest: "It was engendered by a school incident, and was a piece of revenge more legitimate than schoolboy invention is apt to inflict when sharpened by wrongs real or imaginary. There was an usher at the school, and this usher, who was more learned and methodical than even-tempered, was one morning delayed in the customary routine by the absence of his principal scholar, who was young Wirt himself. In his impatience, he went often to the door, and espying some boys clinging like a knot of bees to a cherry tree not far off, he concluded that the expected absentee was of the number, and nursed his wrath accordingly. The truth was, that the servant of a neighbor with whom Wirt was boarded at that time, had gone that morning to mill, and the indispensable breakfast had been delayed by his late return.

This apology, however, was urged in vain on the usher, who charged in corroboration the plunder of the cherry tree; and though this was as stoutly as truly rejoined to be the act of an *English* school hard by, the recitation of Master Wirt proceeded under very threatening prognostics of storm. The lesson was in Cicero, and at every hesitation of the reciter, the eloquent volume, brandished by the yet chafing tutor, descended within an inch of his head, without quailing his facetiousness however, for he said archly, 'take care, or you'll kill me!' We have heard better-timed jests since from the dextrous orator, for the next slip brought a blow in good earnest, which being as forcible as if Logic herself with her 'closed fist' had dealt it, felled our hero to the ground. 'I'll pay you for this, if I live,' said the fallen champion as he rose from the field. 'Pay me, will you?' said the usher, quite furious; 'you will never live to do that.' 'Yes, I will!' said the boy.

"Our youth was an author, be it remembered, and that is not a race to take an injury, much less an affront, calmly. The quill, too, was a fair weapon against an usher, and by way of vent to his indignation at this and other continued outrages, but with no view to what so seriously fell out from it in furtherance of his revenge, he indited some time afterward an ethical essay on anger. In this, after due exhibition of its unhappy effects, which, it may be, would have enlightened Seneca, though he has himself professed to treat the same subject, he reviewed those relations and functions of life most exposed to the assaults of this fury. A parent with an undutiful son, said our moralist, must often be very angry;—a master with his servant, an inn-keeper with his guests;—but it is an usher that must the oftenest be vexed by this bad passion, and, right or wrong, find himself in a terrible rage; and so he went on in a manner very edifying, and very descriptive of the case, character and manner of the expounder of Cicero. Well pleased with his work, our author found a most admiring reader in an elder boy, who, charmed with the mischief as much as the wit of the occasion, pronounced it a most excellent performance, and very fit for a Saturday morning's declamation. In vain did our wit object strenuously to the dangers of this mode of publication. The essay was 'got by heart,' and declaimed in the presence of the school and of the usher himself, who, enraged at the satire, demanded the writer, otherwise threatening the declaimer with the rod. His magnanimity was not proof against this, and he betrayed the *incognito* of our author, who happened the same evening to be in his garret when master usher, the obnoxious satire in hand, came into the apartment below to lay his complaint before his principal. Mr. Hunt's house was one of those one-story rustic mansions yet to be seen in Maryland, where the floor of the attic, without the intervention of ceiling, forms the roof of the apartment below, so that the culprit could easily be the hearer, and even the partial spectator, of the inquisition held on his case. 'Let us see this offensive libel,' said the preceptor, and awful were the first silent moments of its perusal, which were broken, first by a suppressed titter, and finally, to the mighty relief of the listener, by a loud burst of laughter. 'Pooh! pooh! Mr. ——, this is but the sally of a lively boy, and best say no more about it; besides that, *in foro conscientiæ*, we can hardly find him guilty of the 'publication.' This was a victory; and when Mr. Hunt left the room, the conqueror, tempted to sing his *Io Triumphe* in some song allusive to the country of the discomfited party, who was a foreigner, was put to flight by the latter's rushing furiously into the attic, and snatching from under his pillow some hickories, the fasces of his office, and inflicting some smart strokes on the flying satirist, who did not stay, like Voltaire, to write a receipt for them. The usher left the school in dudgeon not long afterward, like the worthy in the doggerel rhymes,—

'The hero who did 'sist upon't
He wouldn't be deputy to Mr. Hunt.'

Many years after the usher and his scholar met again. Age and poverty had overtaken the poor man, and his former pupil had the opportunity of showing him some kindnesses which were probably not lessened by the recollection of this unpremeditated revenge."*

Soon after Mr. Wirt reached his fifteenth year, the school, of which he had been so long a

member, was disbanded, and he returned to his home in Bladensburg. At this time he seems to have been in a position of great doubt and uncertainty as to his future course. The small inheritance he received from his father's estate was not sufficient either to support him at college or during the prosecution of a professional education, and the immediate circle of his native town afforded little that was calculated to strengthen or improve his mind. A circumstance, however, soon occurred which relieved him of all doubt, and ultimately led to his preferment. Ninian Edwards, one of his classmates at Mr. Hunt's school, on his return home, took with him some of Mr. Wirt's literary productions, which attracted the attention of his father, Mr. Benjamin Edwards, and caused him to interest himself in the young author's behalf. Learning that he was desirous of obtaining an education, and that the limited state of his finances rendered this desire unattainable, he proposed that young Wirt should become a tutor in his family, and at the same time continue his studies with the aid of his private library. This proposition met with a ready acceptance, and he remained with his benefactor about twenty months, enjoying an intercourse at once familiar and advantageous. Mr. Edwards, senior, was a man of strong mind and reflective disposition, fond of the young, and rendered particularly agreeable to them by the charm of his conversation. In his young protégé he always found a ready and eager listener, and upon him he bestowed the kindest advice, instruction and encouragement; predicting for him a high and honorable distinction.

In 1789, owing to the critical state of his health, Mr. Wirt, by the advice of his physician, visited Augusta, Georgia, where he remained until the spring of the following year. Soon after his return he commenced the study of law with Mr. William P. Hunt, the son of his former preceptor, and, after spending nearly a year under his guidance, he removed to the office of Mr. Thomas Swann, from whence he was admitted to practice, in the autumn of 1792. He commenced his professional career at Culpepper court-house in Virginia. His library at this time consisted of a copy of Blackstone, two volumes of Don Quixote, and a volume of Tristram Shandy.* After experiencing for some time the usual embarrassments incident to early practice—want of clients and a general acquaintance with people—he "encountered a young friend much in the same circumstances, but who had a single case, which he proposed to share with Mr. Wirt as the means of making a joint debut; and with this small stock in trade, they went to attend the first county court. Their case was one of joint assault and battery, with joint judgment against three, of whom two had been released subsequently to the judgment, and the third, who had been taken in execution, and imprisoned, claimed the benefit of that release as enuring to himself. Under these circumstances, the matter of discharge, having happened since the judgment, the old remedy was by the writ of *audita querela*. But, Mr. Wirt and his associate had learned from their Blackstone, that the indulgence of courts in modern times, in granting summary relief in such cases by motion had, in a great measure, superseded the use of the old writ; and accordingly presented their case in the form of a motion. The motion was opened by Mr. Wirt's friend, with all the alarm of a first essay. The bench was then in Virginia county courts composed of the ordinary justices of the peace; and the elder members of the bar, by a usage the more necessary from the constitution of the tribunal, frequently interposed as *amici curiæ*, or informers of the conscience of the court. It appears that upon the case being opened, some of these customary advisers denied that a release to one after judgment released the other, and they denied also the propriety of the form of proceeding. The ire of our beginner was kindled by this reception of his friend, and by this voluntary interference with their motion; and, when he came to reply, he forgot the natural alarms of the occasion, and maintained his point with recollection and firmness. This awaked the generosity of an elder member of the bar, a person of consideration in the neighborhood and a good lawyer. He stepped in as an auxiliary, remarking that he also was *amicus curiæ*, and perhaps as much entitled to act as others; in which capacity he would state his conviction of the propriety of the motion, and that the court was not at liberty to disregard it; adding, that its having come from a new quarter gave it but a stronger claim on the candor and urbanity of a Virginian bar. The two friends

* Memoirs of the Life of William Wirt, by John P. Kennedy. Vol. 1., p. 57.

carried their point in triumph, and the worthy ally told his brethren, in his plain phrase, that they had best make fair weather with one who promised to be 'a thorn in their side.' This advice was, we dare say, unnecessary. The bar of the county wanted neither talent nor courtesy; and the champion having vindicated his pretensions to enter the lists, was thenceforward engaged in many a courteous passage at arms."

From this time Mr. Wirt's practice began to increase. After a year or two he extended his circuit into the neighboring county of Albemarle, where he married in 1795, and established his residence. This removal brought him in daily intercourse with many of the most celebrated and worthy citizens of Virginia, among whom were to be numbered Mr. Jefferson, Mr. Monroe and Mr. Madison. The father of his wife was an intimate associate of these gentlemen, and was in the habit of visiting them at their estates and receiving them in return at his own house. The advantages of such associations were not lost upon Mr. Wirt, who, from the frankness of his disposition and strength of intellect soon became a favorite. In the library of his father-in-law, which was well supplied with the standard works of English and classical history, philosophy and the more general literature, he passed the time not devoted to the duties of his profession, and thus stored his mind with that fund of learning so well used in later life.

In 1799, after the death of his wife, he removed to Richmond, where, consenting at the earnest solicitation of his friends to become a candidate for the position of clerk of the House of Delegates, he was elected. This office he held two years, at the same time continuing his professional avocations. In 1800 he was counsel for the accused in the trial of Callender, a trial conspicuous in the political annals of the United States, and, on the fourth of July of the same year, he appeared as the orator of the democratic party to pronounce the customary address. On the division of the courts of chancery of Virginia, in 1802, being chosen, by the legislature, Chancellor of the Eastern chancery district, he removed to Williamsburg, where, during a short term, he discharged the duties of his station, with honor to himself and satisfaction to those who came before his court. His second marriage, in the fall of 1802, led to the resignation of his chancellorship, his removal to Norfolk, and to the revival of his general practice. Before he left Williamsburg, however, he wrote the celebrated letters under the title of *The British Spy;* a work so generally known among the intelligent public as to require but a mere notice here.

At Norfolk he continued, in the midst of an increasing and profitable practice, until 1806, at which time he removed to Richmond, the scene of his greatest triumph. The year following this change of residence, the trial of Aaron Burr took place at Richmond. Under the direction of President Jefferson, Mr. Wirt was retained to assist the United States Attorney in the prosecution, and in the course of the trial displayed a degree of learning and eloquence which drew forth the encomiums of the judges, the press and the people. This success established his reputation; his arguments were read with delight, and his name enrolled among the ablest men of the country.

In 1808, he was elected to the Virginia House of Delegates, to represent the city of Richmond, but, preferring another and more congenial pursuit, his profession, he soon withdrew. The same year he wrote the essays under the signature of *One of the People*, in which he advocated with his usual warmth and power the pretensions of Mr. Madison to the Presidency. From this time until 1817, he continued to practice law in the courts of Richmond and its vicinity, during the same period devoting his leisure to the cultivation of literature. The series of papers entitled *The Old Bachelor*, a large portion of which were written by him, appeared in 1812. In conjunction with these various labors, he prepared the *Life of Patrick Henry*, which was published in the fall of 1817. By many this production is considered the most finished piece of biographical writing that has appeared in any country. Mr. Jefferson says of it, "those who take up the book will find they cannot lay it down, and this will be its best criticism." Mr. Gallatin, in the later years of his life, often recurred to the pleasure he experienced in the perusal of it, saying that it was the "most masterly handling of the pen of biography" he ever had met with.

Mr. Wirt was appointed by Mr. Madison, in 1816, Attorney of the United States, for the district of Virginia, and, in the following year, by Mr. Monroe, Attorney-General of the United

States. On accepting the latter he removed to Washington, where he continued in the discharge of the duties of his office, through the administrations of Mr. Monroe and Mr. Adams. His services can best be understood by the consultation of his official opinions, which have been left behind him in three large volumes. "At the bar of the Supreme Court," says his biographer, "he found the highest forensic theatre in the country, and perhaps there never was one in any country that presented a more splendid array of learning and talent conjoined. In the causes too, which it is the official duty of the Attorney-General to prosecute or defend, the most conspicuous counsel of that bar are commonly combined against him. In how many conflicts he sustained these odds against him, with a vigor always adequate to the occasion, is very well known to those who are familiar with our judicial history."

In 1826, Mr. Wirt was, without his knowledge, unanimously elected by the Rectors and Visitors of Virginia a professor of law, and president of that institution. This honor he declined. In the fall of the same year he delivered, in the Hall of Representatives at Washington, an address commemorative of the lives and public services of John Adams and Thomas Jefferson, and soon after, at the close of John Quincy Adams' administration, removed to Baltimore, and commenced practice at the bar of that city, then numbering among its members many of the most eminent men of the country. His practice in the Supreme Court of the United States was continued with increasing reputation, and with that ability which so signally distinguished his attorney-generalship. Of his various celebrated forensic efforts at this time, that in the trial of Judge Peck, who was impeached by the House of Representatives, and that in the noted Cherokee case, excited peculiar commendation.

In January, 1834, he attended the Supreme Court at Washington, in the prosecution of his legal duties, and was present at its sittings until Saturday, the eighth of February, when he returned to his lodgings, "in playful spirits and sanguine of the success of an argument which he was going to make in court on Monday." On Sunday he attended church in the Representatives' Hall at the Capitol. In the evening of that day, he complained of illness, and from that time continued to fail, until his death, which occurred in the forenoon of Tuesday, the eighteenth of February, 1834. Since that period a full and authentic account of his life and services has been published by the Hon. John P. Kennedy, to which the editor expresses his obligations.

JEFFERSON AND ADAMS.

The following discourse on the lives and characters of Thomas Jefferson and John Adams, was delivered by Mr. Wirt, at the request of the citizens of Washington, in the Hall of Representatives of the United States, on the nineteenth of October, 1826.*

The scenes which have been lately passing in our country, and of which this meeting is a continuance, are full of moral instruction. They hold up to the world a lesson of wisdom by which all may profit, if heaven shall grant them the discretion to turn it to its use. The spectacle, in all its parts, has, indeed, been most solemn and impressive; and, though the first impulse be now past, the time has not yet come, and never will it come, when we can contemplate it without renewed emotion.

In the structure of their characters; in the course of their action; in the striking coincidences which marked their high career; in the lives and in the deaths of the illustrious men whose virtues and services we have met to commemorate—and in that voice of admiration and gratitude which has since burst, with one accord, from the twelve millions of freemen who people these States, there is a moral sublimity which overwhelms the mind, and hushes all its powers into silent amazement!

The European, who should have heard the sound without apprehending the cause, would be apt to inquire, "What is the meaning of all this? what had these men done to elicit this unanimous and splendid acclamation? Why has the whole American nation risen up, as one man, to do them honor, and offer to them this enthusiastic homage of the heart? Were they mighty warriors, and was the peal that we have heard the shout of victory? Were they great commanders, returning from their distant conquests, surrounded with the spoils of war, and

* See note at page 235, in the first volume of this work.

was this the sound of their triumphal procession? Were they covered with martial glory in any form, and was this 'the noisy wave of the multitude rolling back at their approach?'" Nothing of all this: No; they were peaceful and aged patriots, who, having served their country together, through their long and useful lives, had now sunk together to the tomb. They had not fought battles; but they had formed and moved the great machinery of which battles were only a small, and, comparatively, trivial consequence. They had not commanded armies; but they had commanded the master springs of the nation, on which all its great political, as well as military movements depended. By the wisdom and energy of their counsels, and by the potent mastery of their spirits, they had contributed pre-eminently to produce a mighty Revolution which has changed the aspect of the world. A revolution which, in one half of that world, has already restored man to his "long lost liberty," and government to its only legitimate object, the happiness of the people: and on the other hemisphere has thrown a light so strong that even the darkness of despotism is beginning to recede. Compared with the solid glory of an achievement like this, what are battles, and what the pomp of war, but the poor and fleeting pageants of a theatre? What were the selfish and petty strides of Alexander, to conquer a little section of a savage world, compared with this generous, this magnificent advance towards the emancipation of the entire world!

And this, be it remembered, has been the fruit of intellectual exertion! the triumph of mind! What a proud testimony does it bear to the character of our nation, that they are able to make a proper estimate of services like these! That while, in other countries, the senseless mob fall down, in stupid admiration, before the bloody wheels of the conqueror—even of the conqueror by accident—in this, our people rise, with one accord, to pay their homage to intellect and virtue! What a cheering pledge does it give of the stability of our institutions, that while abroad, the yet benighted multitude are prostrating themselves before the idols which their own hands have fashioned into kings, here, in this land of the free, our people are every where starting up, with one impulse, to follow with their acclamations the ascending spirits of the great fathers of the republic! This is a spectacle of which we may be permitted to be proud. It honors our country no less than the illustrious dead. And could those great patriots speak to us from the tomb, they would tell us that they have more pleasure in the testimony which these honors bear to the character of their country, than in that which they bear to their individual services. They now see as they were seen, while in the body, and know the nature of the feeling from which these honors flow. It is love for love. It is the gratitude of an enlightened nation to the noblest order of benefactors. It is the only glory worth the aspiration of a generous spirit. Who would not prefer this living tomb in the hearts of his countrymen, to the proudest mausoleum that the genius of sculpture could erect!

Man has been said to be the creature of accidental position. The cast of his character has been thought to depend, materially, on the age, the country, and the circumstances, in which he has lived. To a considerable extent, the remark is, no doubt, true. Cromwell, had he been born in a republic, might have been "guiltless of his country's blood;" and, but for those civil commotions which had wrought his great mind into tempest, even Milton might have rested "mute and inglorious." The occasion is, doubtless, necessary to develope the talent, whatsoever it may be; but the talent must exist, in embryo at least, or no occasion can quicken it into life. And it must exist, too, under the check of strong virtues; or the same occasion that quickens it into life, will be extremely apt to urge it on to crime. The hero who finished his career at St. Helena, extraordinary as he was, is a far more common character in the history of the world than he who sleeps in our neighborhood, embalmed in his country's tears—or than those whom we have now met to mourn and to honor.

Jefferson and Adams were great men by nature. Not great and eccentric minds "shot madly from their spheres" to affright the world and scatter pestilence in their course; but minds whose strong and steady light, restrained within their proper orbits by the happy poise of their characters, came to cheer and to gladden a world that had been buried for ages in political night. They were heaven-called avengers of degraded man. They came to lift him to the station for which God had formed him, and to put to flight those idiot superstitions with which tyrants had contrived to enthrall his reason and his liberty. And that Being who had sent them upon this mission, had fitted them, pre-eminently, for his glorious work. He filled their hearts with a love of country, which burned strong within them, even in death. He gave them a power of understanding which no sophistry could baffle, no art elude; and a moral heroism which no dangers could appal. Careless of themselves, reckless of all personal consequences, trampling under foot that petty ambition of office and honor which constitutes the master passion of little minds, they bent all their mighty powers to the task for which they had been delegated—the freedom of their beloved country, and the restoration of fallen man. They felt that they were apostles of human liberty; and well did they fulfil their high commission. They rested not until they had accomplished their work at home, and given such an impulse to the great ocean of mind, that they saw the waves rolling on to the farthest shore, before they were called to their reward. And then left the world, hand in hand, exulting, as they rose, in the success of their labors.

From this glance at the consummation of their lives, it falls within the purpose that has drawn us together, to look back at the incidents by which these great men were prepared and led on to their destiny. The field is wide and tempting; and, in this rich field, there is a double harvest to be gathered. But the occasion is limited in point of time. With all the brevity, therefore, compatible with the subject, let us proceed to recall the more prominent incidents, leaving to their biographers those which we must reluctantly omit. And let me hope that the recapitulation, however devoid of interest in itself, will be endured, if not enjoyed, for the sake of those to whom it relates. The review will unavoidably carry us back to scenes of no pleasant nature, which once occurred between our country and a foreign nation with which we now maintain the happiest relations of peace and amity; towards which, at this day, we cherish no other feelings than those of the sincerest respect and good will; and with whose national glory, indeed, as the land of our forefathers, we feel ourselves, in a great measure, identified. If, therefore, there should be any one within the sound of my voice, to whom the language of this retrospect might otherwise seem harsh,* I trust it will be borne in mind that we are Americans, assembled on a purely American occasion, and that we are speaking of things as they were, not as they are: for, in the language of one of our departed fathers, "though enemies in war, in peace we are friends."

The hand of Heaven was kindly manifested even in the place of birth assigned to our departed fathers. Their lots were cast in two distant States, forming links in the same extended chain of colonies. The one, to borrow the language of Isaiah, was called "from the North" and "the rising of the sun;" the other, from the South, where he shows his glory in the meridian. The colonies, though held together by their allegiance to a common crown, had separate local governments, separate local interests, and a strikingly contrasted cast of character. The intercourse between them had been rare; the sympathies consequently weak; and these sympathies still further weakened by certain rivalries, prejudices, and jealousies, the result of their mutual ignorance of each other, which were extremely unpropitious to that concerted action on which the success of the great work of independence rested. To effect this work, it was necessary that men should arise in the different quarters of the continent, with a reach of mind sufficiently extended to look over and beyond this field of prejudice, and mark the great point in which the interest of the whole united; and, with this reach of mind, that they should combine a moral power of sufficient force to make even the discordant materials around them harmoniously subservient to the great end to be accomplished. It pleased heaven to give us such men, and so to plant them on the theatre of action, as to ensure the concert that the occasion demanded. And in that constellation of the great and the good, rose the two stars of first magnitude to which our attention is now to be confined.

Adams and Jefferson were born, the first in Massachusetts, on the 19th of October, 1735; the last in Virginia, on the 2d of April, 1743. On the earliest opening of their characters, it was manifest that they were marked for distinction. They both displayed that thirst for knowledge, that restless spirit of inquiry, that fervid sensibility, and that bold, fearless independence of thought, which are among the surest prognostics of exalted talent; and, fortunately for them, as well as for their country and mankind, the universities in their respective neighborhoods opened to their use all the fountains of ancient and modern learning. With what appetite they drank at these fountains, we need no testimony of witnesses to inform us. The living streams which afterwards flowed from their own lips and pens, are the best witnesses that can be called, of their youthful studies. They were, indeed, of that gifted order of minds, to which early instruction is of little other use than to inform them of their own powers, and to indicate the objects of human knowledge. Education was not, with them, as with minor characters, an attempt to plant new talents and new qualities in a strange and reluctant soil. It was the development, merely, of those which already existed. Thus, the pure and disinterested patriotism of Aristides, the firmness of Cato, and the devotion of Curtius, only awakened the principles that were sleeping in their young hearts, and touched the responding chords with which Heaven had attuned them. The statesman-like vigor of Pericles, and the spirit-stirring energy of Demosthenes, only roused their own lion powers, and informed them of their strength. Aristotle, and Bacon, and Sidney, and Locke, could do little more than to disclose to them their native capacity for the profound investigation and ascertainment of truth; and Newton taught their power to range among the stars. In short, every model to which they looked, and every great master to whom they appealed, only moved into life the scarcely dormant energies with which Heaven had endued them; and they came forth from the discipline, not decorated for pomp, but armed for battle.

From this first coincidence in the character of their minds and studies, let us proceed to another. They both turned their attention to the same profession, the profession of the law; and they both took up the study of this profession on the same enlarged scale which was so conspicuous in all their other intellectual operations. They had been taught by Hooker to look with reverence upon the science of the law: for he had told them, that "her seat was the bosom of God, her voice the harmony of the

plan, and with the noble aim with which they pursued it, may it not be said, without the hazard of illiberal construction, that there was no profession in this country to which Heaven could have directed their choice, so well fitted to prepare them for the eventful struggle which was coming on.

Mr. Adams, we are told, commenced his legal studies, and passed through the initiatory course, under William Putnam, of Worcester: but the crown of preparation was placed on his head by Jeremiah Gridley.* Gridley was a man of first-rate learning and vigor, and as good a judge of character as he was of law. He had been the legal preceptor, also, some years before, of the celebrated James Otis; and, proud of his two pupils, he was wont to say of them at the bar, with playful affection, that "he had raised two young eagles who were one day or other to peck out his eyes."† The two young eagles were never known to treat their professional father with irreverence; but how well they fulfilled his prediction of their future eminence, has been already well told by the elegant biographer of one, and remains to furnish a rich theme for that of the other.

It was in the commencement of his legal studies, and when he was yet but a boy, that Mr. Adams wrote that letter from Worcester which has been recently given to the world. Considering the age of the writer, and the point of time at which it was written, that letter may be pronounced, without hyperbole, a mental phenomenon, and far better entitled to the character of a prophecy, than the celebrated passage from the Medea of Seneca, which Bacon has quoted as a prophecy of the discovery of America.

Before I call your attention more particularly to this letter, it is proper to remark that Mr. Adams lived at a time, and among men, well fitted to evoke his youthful powers. Massachusetts had been, from its earliest settlement, a theatre of almost constant political contention. The spirit of liberty, which had prompted the pilgrims to bid adieu to the land and tombs of their fathers, and to brave the horrors of an exile to the wilds of America, accompanied them to the forests which they came to subdue; and questions of political right and power, between the parent country and the colony, were continually arising, to call that spirit into action, and to keep it bright and strong. These were a peculiar people, a stern and hardy race, the children of the storm; inured from the cradle to the most frightful hardships, which they came to regard as their daily pastime, their minds, as well as their bodies, gathered new strength from the fearful elements that were warring around them, and whatever they dared to meditate a right, that they dared and never failed to accomplish. The robust character of the fathers descended upon their children, and with it, also, came the same invigorating contests. Violations of their charters, unconstitutional restraints upon their trade, and perpetual collisions with the royal governors sent over to bend or to break them, had converted that province into an arena, in which the strength of mind had been tried against mind, for a century before the tug of the Revolution came. And these were no puerile sports. They were the stern struggle of an intellectual force, for power on the one hand, and liberty on the other. And from that discipline there came forth such men as such a struggle only seems capable of generating; rough, and strong, and bold, and daring; meeting their adversaries, foot to foot, on the field of argument, and beating them off that field by the superior vigor of their blows.

> Præcipitemque Daren, ardens agit æquore toto:
> Nunc dextra ingeminans ictus, nunc ille sinistra,
> Nec mora, nec requies.

From this school issued those men so well formed for the sturdy business of life, and who shine so brightly in the annals of Massachusetts —Mayhew, and Hawley, and Thacher, and Otis, and Hancock, and a host of others, of the same strong stamp of character: men as stout of heart as of mind, and breathing around them an atmosphere of patriotic energy, which it was impossible to inhale without partaking of their spirit.

Such was the atmosphere which it was the fortune of John Adams to breathe, even from his infancy. Such were the high examples before him. From this proud eyry it was, that this young eagle first opened his eyes upon the sun and the ocean, and learned to plume his own wings for the daring flight.

His letter from Worcester bears date on the 12th of October, 1755. He was consequently then only in his twentieth year. At that time, remember, that no thought of a separation from the parent country had ever touched these shores. The conversations to which he alludes, were upon the topics of the day, and went no farther than to a discussion of the rights of the colony, considered as a colony of the British empire. These were the hints which set his young mind in motion, and this is the letter which they produced:

"*Worcester, October 12th*, 1755.

"Soon after the Reformation, a few people came over into this New World for conscience' sake. Perhaps this apparently trivial incident may transfer the great seat of empire into America. It looks likely to me, if we can remove the turbulent Gallicks, our people, according to the exactest computations, will, in another century, become more numerous than England herself. Should this be the case, since we have, I may say, all the naval stores of the nation in our hands, it will be easy to obtain

* Mr. Samuel L. Knapp's Address on the Death of Adams and Jefferson.

the mastery of the seas; and then the united force of all Europe will not be able to subdue us. [Here we see the first germ of the American Navy.] The only way to keep us from setting up for ourselves, is to disunite us. 'Divide et impera.' Keep us in distinct colonies, and then some great men in each colony, desiring the monarchy of the whole, they will destroy each other's influence, and keep the country 'in equilibrio.' Be not surprised that I am turned politician; the whole town is immersed in politics. The interests of nations, and all the 'dira' of war, make the subject of every conversation. I sit and hear, and, after having been led through a maze of sage observations, I sometimes retire, and, by laying things together, form some reflections pleasing to myself. The produce of one of these reveries you have read above."

Here we mark the political dawn of the mind of this great man. His country, her resources, her independence, her glory, were the first objects of his thoughts, as they were the last. Here, too, we see the earliest proof of that bold and adventurous turn for speculation, that sagacious flashing into futurity, and that sanguine anticipation, which became so conspicuous in his after life. He calls this letter a reverie; but, connecting it with his ardent character and his future career, there is reason to believe, that it was a reverie which produced in him all the effect of a prophetic vision, and opened to him a perspective which was never afterwards closed.

An incident soon occurred to give brighter tinting and stronger consistency to this dream of his youth; and this may be considered as among the most efficient of those means, devised by the wisdom of Providence, to shape the character and point the energies of this high-minded young man to the advancement of the great destiny that awaited his country. The famous question of writs of assistance was argued in his presence, in Boston, in February, 1761. These writs were a kind of general search-warrants, transferable by manual delivery from one low tool of power to another, and without any return; which put at the mercy of these vulgar wretches, for an indefinite period, the domestic privacy, the peace and comfort, of the most respectable inhabitants in the colony; and even the sanctuary of female delicacy and devotion. The authority of the British tribunals in the province, themselves the instruments of a tyrant's will, to issue such writs, was the precise question to be discussed. The champion in opposition to the power was the great Otis. Of the character of his argument, and its effect upon Mr. Adams, we are not left to conjecture: he has given it to us, himself, in his own burning phraseology. "Otis was a flame of fire! With a promptitude of classical allusion, a depth of research, a rapid summary of historical events and dates, a profusion of legal authorities, a prophetic glance of his eyes into futurity, and a rapid torrent of him. American Independence was then and there born." And he adds—"Every man of an immense crowded audience appeared to me to go away as I did, ready to take arms against writs of assistance."

The "immense crowded audience," it is probable, left the hall with no impressions beyond the particular subject of debate. They were ready to take arms against writs of assistance. Not so with Mr. Adams. In him the "splendid conflagration of Otis" had set fire to a mind whose action it was not easy to restrain within narrow limits; a mind already looking out on the wide expanse of the future, and apparently waiting only for the occasion to hold up to his countrymen the great revolving light of Independence, above the darkness of the coming storm. In him American Independence was then and there born; and, appealing to his own bosom, he was justified in saying, as he has done, on another occasion, in the most solemn terms, "that James Otis, then and there, first breathed into this nation the breath of life."

The flame thus given to his enthusiasm was never permitted to subside. The breach between the two countries grew wider and wider, until from being an excited spectator, he soon became a vigorous and most efficient actor. In his thirtieth year, he gave to his country that powerful work, "The Dissertation on the Canon and Feudal Law." It is but to read those extracts from this work which have been recently diffused among us from the north, to see that it was not limited in its purpose to the specific questions which had then arisen. The discussion travels far beyond these questions, and bears all the marks of a profound and comprehensive design, to prepare the country for a separation from Great Britain. It is a review of the whole system of the British institutions, and a most powerful assault upon those heresies, civil and religious, which constituted the outposts of that system. Besides the solid instruction which it conveys on the true theory of government, and the deep and impressive exhortation with which it urges the necessity of correct information to the people, it seems to have been the leading object of the work to disenchant his countrymen of that reverence for the institutions of the parent country which still lingered around their hearts, and to teach them to look upon these institutions, not only with indifference, but with aversion and contempt. Hence those burning sarcasms which he flings into every story of the citadel, until the whole edifice is wrapped in flames. It is, indeed, a work eminently fitted for the speedy regeneration of the country. The whole tone of the essay is so raised and bold, that it sounds like a trumpet-call to arms. And the haughty defiance which he hurls into the face of the oppressors of his country, is so brave and uncompromising, as to leave no doubt that, whatever might be the temper of the rest of the community, the author had already laid his hand upon the

All this fire, however, was tempered with judgment, and guided by the keenest and most discriminating sagacity; and if his character was marked by the stubborn firmness of the Pilgrim, it was because he was supported by the Pilgrims' conscious integrity. Another incident soon occurred to place these qualities in high relief. In the progress of the quarrel, Great Britain had quartered an army in Boston, to supply the place of argument, and enforce that submission which she could not command. The immediate consequence was collision and affray between the soldiery and the citizens; and, in one of those affrays, on the 5th of March, 1770, the British captain, Preston, gave the fatal order to fire! Several were killed, and many more were wounded. It is easy to imagine the storm that instantly arose. The infuriated populace were, with great difficulty, restrained by the leading men of the town, from sating their vengeance upon the spot. Disappointed of this, they were loud and even frantic, in their cry for the vengeance of law. Yet there was no murder in the case: for, in this instance it had happened that they were themselves the assailants. Preston was arrested for trial: and Mr. Adams, then standing in the van of the profession, as well as that of the patriots, was called upon to undertake his defence. How was he to act? It is easy to know how a little, time-serving politician, or even a man of ordinary firmness, would have acted: the one would have thrown himself on the popular current, and the other would have been swept along by it, and joined in the public cry for the victim. But Adams belonged to a higher order of character. He was formed not only to impel and guide the torrent, but to head that torrent too, when it had taken a wrong direction, and "to roll it back upon its source." He was determined that the world should distinguish between a petty commotion of angry spirits, and the noble stand made by an enlightened nation in a just and noble cause. He was resolved that that pure and elevated cause should not be soiled and debased by an act of individual injustice. He undertook the defence, supported by his younger, but distinguished associate, Josiah Quincy; and, far from flattering the angry passions around him, he called upon the jury, in their presence, "to be deaf, deaf as adders, to the clamors of the populace;" and they were so. To their honor, a jury drawn from the excited people of Boston, acquitted the prisoner: and to their equal honor, that very populace, instead of resenting the language and conduct of his advocate, loaded him immediately with additional proofs of their confidence. These were the people, who, according to some European notions, are incapable of any agency in their own government. By their systems, deliberately planned for the purpose, they first degrade and brutalize their people, and then descant on their unfitness for self-rule. The where the same, and requires only to be enlightened, to assert the native dignity of his character.

Mr. Adams was now among the most conspicuous champions of the colonial cause in Massachusetts. In the same year to which we have just adverted, 1770, he had been elected a member of the Provincial Legislature; and he thenceforth took a high and commanding part in every public measure; displaying on every occasion the same consistent character; the same sagacity to pierce the night of the future; the same bold and dauntless front; the same nerve of the Nemean lion.

The time had now come for concerted action among the Colonies; and, accordingly, on the 5th September, 1774, the first Continental Congress met at Philadelphia. With what emotions Mr. Adams witnessed this great movement of the nation, it is easy for those who know his ardent character to imagine. Nor are we left to our imaginations alone. He had been elected a member of that body; and immediately on his election an incident occurred which relieves us from the necessity of conjecturing the state of his feelings. His friend Sewall, the Attorney General, hearing of his election, sent for him, and he came: when Sewall, with all the solicitude and importunity of friendship, sought to divert him from his purpose from taking his seat in Congress; he represented to him that Great Britain was determined on her purpose; that her power was irresistible, and would be destructive to him and all who should persevere in opposition to her designs. "I know," replied the dauntless and high-souled patriot, "that Great Britain has determined on her system; and that very determination determines me on mine. You know that I have been constant and uniform in opposition to her designs. The die is now cast. I have passed the Rubicon. Sink or swim, live or die, survive or perish with my country, is my unalterable determination." He accordingly took his seat: and with what activity and effect he discharged its duties, the journals of the day sufficiently attest.

Of that august and venerable body, the old Continental Congress, what can be said that would not fall below the occasion? What that would not sound like a puerile and tumid effort, to exaggerate the praise of a body which was above all praise? Let me turn, from any attempt at description to your own hearts, where that body lies entombed with all you hold most sacred. To that Congress let future statesmen look, and learn what it is to be a patriot. There was no self. No petty intrigue for power. No despicable faction for individual honors. None of those feuds, the fruit of an unhallowed ambition, which converted the revolution of France into a mere contest for the command of the guillotine; and which have now nearly disarmed unhappy Greece in the sacred war she is

what was said of the Romans in their golden age; "With them the Republic was all in all; for that alone they consulted: the only faction they formed was against the common enemy: their minds, their bodies were exerted, sincerely, and greatly and nobly exerted, not for personal power, but for the liberties, the honor, the glory of their country." May the time never come, when an allusion to their virtues can give any other feelings than those of pleasure and pride to their descendants.

Having, in this imperfect manner, fellow-citizens, touched rather than traced the incidents by which Mr. Adams was prepared and conducted into the scenes of the Revolution, let us turn to the great luminary of the South.

Virginia, as you know, had been settled by other causes than those which had peopled Massachusetts; and the Colonists themselves were of a different character. The first attempts at settlement in that quarter of the world had been conducted, as you remember, under the auspices of the gallant Raleigh, that "man of wit and man of the sword," as Sir Edward Coke tauntingly called him, and certainly one of the brightest flowers in the Courts of Elizabeth and James. He did not live to make a permanent establishment in Virginia; but his genius seems, nevertheless, to have presided over the State, and to have stamped his own character on her distinguished sons. Virginia had experienced none of those early and long-continued conflicts which had contributed to form the robust character of the North; on the contrary, during the century that Massachusetts had been buffeting with the storm, Virginia, resting on a halcyon sea, had been cultivating the graces of science, and literature, and the genial elegancies of social life. But her moral and intellectual character was not less firm and vigorous than that of her northern sister: for the invader came, and Athens as well as Sparta was found ready to do her duty, and to do it too, bravely, ably, heroically.

At the time of Mr. Jefferson's appearance, the society of Virginia was much diversified, and reflected, pretty distinctly, an image of that of England. There was, first, the landed aristocracy, shadowing forth the order of English nobility: then the sturdy yeomanry, common to them both; and last, a "fœculum" of beings, as they were called by Mr. Jefferson, corresponding with the mass of the English plebeians.

Mr. Jefferson, by birth, belonged to the aristocracy; but the idle and voluptuous life which marked that order had no charms for a mind like his. He relished better the strong, unsophisticated and racy character of the yeomanry, and attached himself of choice to that body. Born to an inheritance then deemed immense, and with a decided taste for literature and science, it would not have been surprising if he had devoted himself exclusively to the luxury of his studies, and left the toils and the hazards of public action to others. But he was naturtoo, on a great scale; and so readily did he kindle the feelings that were playing around him, that he could no more have stood still while his country was agitated than the war-horse can sleep under the sound of the trumpet.

He was a republican and a philanthropist from the earliest dawn of his character. He read with a sort of poetic illusion, which identified him with every scene that his author spread before him. Enraptured with the brighter ages of republican Greece and Rome, he had followed, with an aching heart, the march of history which had told him of the desolation of those fairest portions of the earth; and had seen, with dismay and indignation, that swarm of monarchies, the progeny of the Scandinavian hive, under which genius and liberty were now every where crushed. He loved his own country with a passion not less intense, deep and holy, than that of his great compatriot; and with this love he combined an expanded philanthropy which encircled the globe. From the working of the strong energies within him, there arose an early vision, too, which cheered his youth and accompanied him through life—the vision of emancipated man throughout the world. Nor was this a dream of the morning, that passed away and was forgotten. On the contrary, like the heaven-descended banner of Constantine, he hailed it as an omen of certain victory, and girded his loins for the onset, with the omnipotence of truth.

On his early studies we have already touched. The study of the law he pursued under George Wythe; a man of Roman stamp, in Rome's best age. Here he acquired that unrivalled neatness, system, and method in business, which, through all his future life, and in every office that he filled, gave him, in effect, the hundred hands of Briareus; here, too, following the giant steps of his master, he travelled the whole round of the civil and common law. From the same example, he caught that untiring spirit of investigation which never left a subject till he had searched it to the bottom, and of which we have so noble a specimen in his correspondence with Mr. Hammond, on the subject of British debts. In short, Mr. Wythe performed for him, what Jeremiah Gridley had done for Mr. Adams; he placed on his head the crown of legal preparation; and well did it become him. Permit me, here, to correct an error which seems to have prevailed. It has been thought that Mr. Jefferson made no figure at the bar: but the case was far otherwise. There are still extant, in his own fair and neat hand, in the manner of his master, a number of arguments which were delivered by him at the bar, upon some of the most intricate questions of the law; which, if they shall ever see the light, will vindicate his claim to the first honors of the profession. It is true he was not distinguished in popular debate; why he was not so, has often been matter of surprise to those who have seen his eloquence on paper, and heard it in conversation. He had all the

soul, which are essential to eloquence of the highest order. The only defect was a physical one; he wanted volume and compass of voice for a large deliberative assembly; and his voice, from the excess of his sensibility, instead of rising with his feelings and conceptions, sunk under their pressure, and became guttural and inarticulate. The consciousness of this infirmity repressed any attempt in a large body, in which he knew he must fail. But his voice was all sufficient for the purposes of judicial debate; and there is no reason to doubt that, if the service of his country had not called him away so soon from his profession, his fame as a lawyer would now have stood upon the same distinguished ground which he confessedly occupies as a statesman, an author, and a scholar.

It was not until 1764, when the Parliament of Great Britain passed its resolutions preparatory to the stamp act, that Virginia seems to have been thoroughly startled from her repose. Her legislature was then in session; and her patriots, taking the alarm, remonstrated promptly and firmly against this assumed power. The remonstrance, however, was, as usual, disregarded, and the stamp act came. But it came to meet, on the floor of the House, an unlooked-for champion, whom Heaven had just raised up for the good of his country and of mankind. I speak of that untutored child of nature, Patrick Henry, who had now, for the first time, left his native forests to show the metal of which he was made, and "give the world assurance of a man."

The Assembly met in the city of Williamsburg, where Mr. Jefferson was still pursuing the study of the law. Mr. Henry's celebrated resolutions against the stamp act were introduced in May, 1765. How they were resisted, and how maintained, has been already stated to the world, in terms that have been pronounced extravagant by those who modestly consider themselves as furnishing a fair standard of Revolutionary excellence. The coldest glow-worm in the hedge, is about as fair a standard of the power of the sun. To the present purpose, it is only necessary to remark, that Mr. Jefferson was present at this debate, and has left us an account of it in his own words. He was then, he says, but a student, and stood in the door of communication between the House and the lobby, where he heard the whole of this magnificent debate. The opposition to the last resolution was most vehement; the debate upon it, to use his own strong language, "most bloody;" but, he adds, torrents of sublime eloquence from Henry, backed by the solid reasoning of Johnson, prevailed; and the resolution was carried by a single vote. I well remember, he continues, the cry of "treason," by the Speaker, echoed from every part of the House, against Mr. Henry: I well remember his pause, and the admirable address with which he recovered himself, and baffled the charge thus vociferated.

He here alludes, as you must perceive, to that scene almost too familiar for quotation: "Cæsar had his Brutus, Charles the First his Cromwell, and George the Third—('Treason!' cried the Speaker. 'Treason! treason!' echoed the House;) may profit by their example. If this be treason, make the most of it."

While I am presenting to you this picture of Mr. Jefferson in his youth, listening to the almost superhuman eloquence of Henry on the great subject which formed the hinge of the American Revolution, are you not forcibly reminded of the parallel scene which had passed only four years before, in the Hall of Justice in Boston: Mr. Adams catching from Otis, "the breath of life?" How close the parallel, and how interesting the incident! Who can think of these two young men, destined themselves to make so great a figure in the future history of their country, thus lighting the fires of their own genius at the altars of Henry and of Otis, without being reminded of another picture, which has been exhibited to us by a historian of Rome: the younger Scipio Africanus, then in his military noviciate, standing a youthful spectator on a hill near Carthage, and looking down upon the battle-field on which those veteran Generals, Hamilcar and Massanissa, were driving with so much glory, the car of war! Whether Otis or Henry first breathed into this nation the breath of life, (a question merely for curious and friendly speculation,) it is very certain that they breathed into their two young hearers, that breath which has made them both immortal.

From this day forth, Mr. Jefferson, young as he was, stood forward as a champion for his country. It was now, in the fire of his youth, that he adopted those mottos for his seals, so well remembered in Virginia: "Ab eo libertas, a quo spiritus," and "Resistance to tyrants is obedience to God." He joined the band of the brave who were for the boldest measures; and by the light, the contagious spirit and vigor of his conversation, as well as by his enchanting and powerful pen, he contributed eminently to lift Virginia to that height which placed her by the side of her northern sister. It is a historical fact well known to us all, that these two great States, then by far the most populous and powerful in the Union, led off, as it was natural and fit that they should do, all the strong measures that ended in the Declaration of Independence. Together, and stroke for stroke they breasted the angry surge, and threw it aside "with hearts of controversy," until they reached that shore from which we now look back with so much pride and triumph.

It was in his thirtieth year, as you remember, that Mr. Adams gave to the world his first great work, the Dissertation on the Canon and Feudal Law; and it was about the same period of his life, that Mr. Jefferson produced his first great political work, "A Summary View of the Rights of British America." The history of this work is somewhat curious and interesting.

Jefferson himself. He had been selected a member of that State Convention of Virginia which, in August, 1774, appointed the first Delegates to the Continental Congress. Arrested by sickness on his way to Williamsburg, he sent forward, to be laid on the table, a draught of instructions to the Delegates whom Virginia should send. This was read by the members, and they published it, under the title of "A Summary View of the Rights of British America." A copy of this work having found its way to England, it received from the pen of the celebrated Burke such alterations as adapted it to the purposes of the opposition there, and it there reappeared in a new edition; an honor which, as Mr. Jefferson afterwards learned, occasioned the insertion of his name in a bill of attainder, which, however, never saw the light. So far Mr. Jefferson. Let me add, that the old inhabitants of Williamsburg, a few years back, well remembered the effect of that work on Lord Dunmore, then the royal governor of the State. His fury broke out in the most indecent and unmitigated language. Mr. Jefferson's name was marked high on his list of proscription, and the victim was only reprieved until the rebellion should be crushed; but that rebellion became revolution, and the high priest of the meditated sacrifice was sent to howl his disappointment to the hills and winds of his native Scotland.

In the next year, 1775, Mr. Jefferson, young as he was, was singled out by the Virginia legislature, to answer Lord North's famous "conciliatory proposition," called, in the language of the day, his "olive branch." But it was an olive branch that hid the guileful serpent, or, in the language of Mr. Adams, "it was an asp in a basket of flowers." The answer stands upon the records of the country. Cool, calm, close, full of compressed energy and keen sagacity; while, at the same time it preserves the most perfect decorum, it is one of the most nervous and manly productions even of that age of men.

The second Congress met on the 10th of May, 1775. Mr. Adams was, of course, again a member. Mr. Jefferson having been deputed, contingently, (to supply the place of Peyton Randolph,) did not take his seat at the commencement of the session. Of the political works of this Congress, as well as of the preceding, their petitions, memorials, remonstrances, to the throne, to the parliament, to the people of England, of Ireland, and of Canada, I have forborne to speak, because they are familiar to you all. Let it suffice to say, that, in the estimation of so great a judge as Lord Chatham, they were such as had never been surpassed even in the master States of the world, in ancient Greece and Rome; and although they produced no good effect on the unhappy monarch of Britain; though Pharaoh's heart was hardened so that they moved not him, they moved all heaven and all earth besides, and opened a passage for our fathers

The plot of the awful drama now began to thicken. The sword had been drawn. The battles of Lexington and Concord had been fought; and Warren, the rose of American chivalry, had been cut down, in his bloom, on that hill which his death has hallowed. The blood which had been shed in Massachusetts cried from the ground, in every quarter of the Union. Congress heard that cry, and resolved on war. Troops were ordered to be raised. A Commander-in-Chief came to be appointed, and General Ward, of Massachusetts, was put in nomination. Here we have an incident in the life of Mr. Adams most strikingly characteristic of the man. Giving to the winds all local prepossessions, and looking only to the cause that filled his soul, the cause of his country, he prompted and sustained the nomination of that patriot hero whom the Almighty, in his goodness, had formed for the occasion. Washington was elected, and the choice was ratified in heaven. He accepted his commission on the very day on which the soul of Warren winged its flight from Bunker Hill, and well did he avenge the death of that youthful hero.

Five days after General Washington's appointment, Mr. Jefferson, for the first time, took his seat as a member of Congress; and here, for the first time, met the two illustrious men whom we are endeavoring to commemorate. They met, and at once became friends—to part no more, but for a short season, and then to be re-united, both for time and eternity.

There was now open war between Great Britain and her colonies. Yet the latter looked no farther than resistance to the specific power of the parent country to tax them at pleasure. A dissolution of the union had not yet been contemplated, either by Congress or the nation; and many of those who had voted for the war, would have voted, and did afterwards vote, against that dissolution.

Such was the state of things under which the Congress of 1776 assembled, when Adams and Jefferson again met. It was, as you know, in this Congress, that the question of American Independence came, for the first time, to be discussed; and never, certainly, has a more momentous question been discussed, in any age or in any country: for it was fraught, not only with the destinies of this wide extended continent, but, as the event has shown, and is still showing, with the destinies of man all over the world.

How fearful that question then was, no one can tell but those who, forgetting all that has since past, can transport themselves back to the time, and plant their feet on the ground which those patriots then occupied. "Shadows, clouds, and darkness" then covered all the future, and the present was full only of danger and terror. A more unequal contest never was proposed. It was, indeed, as it was then said to be, the shepherd boy of Israel going forth to battle against the giant of Gath; and there

they heard that giant say, "Come to me, and I will give thy flesh to the fowls of the air and the beasts of the field." But, there were those who never trembled—who knew that there was a God in Israel, and who were willing to commit their cause "to his even-handed justice," and his almighty power. That their great trust was in Him, is manifest from the remarks that were continually breaking from the lips of the patriots. Thus, the patriot Hawley, when pressed upon the inequality of the contest, could only answer, "We must put to sea—Providence will bring us into port;" and Patrick Henry, when urged upon the same topic, exclaimed, "True, true; but there is a God above, who rules and overrules the destinies of nations."

Amid this appalling array that surrounded them, the first to enter the breach, sword in hand, was John Adams—the vision of his youth at his heart, and his country in every nerve. On the sixth of May, he offered, in committee of the whole, the significant resolution, that the colonies should form governments independent of the crown. This was the harbinger of more important measures, and seems to have been put forward to feel the pulse of the House. The resolution, after a bloody struggle, was adopted on the 15th day of May following. On the 7th of June, by previous concert, Richard Henry Lee moved the great resolution of Independence, and was seconded by John Adams; and "then came the tug of war." The debate upon it was continued from the 7th to the 10th, when the further consideration of it was postponed to the 1st of July, and at the same time a committee of five was appointed to prepare, provisionally, a draught of a Declaration of Independence. At the head of this important committee, which was then appointed by vote of the House, although he was probably the youngest member, and one of the youngest men in the House, (for he had served only part of the former session, and was but thirty-two years of age,) stands the name of Thomas Jefferson—Mr. Adams stands next. And these two gentlemen having been deputed a sub-committee to prepare the draught, that draught, at Mr. Adams' earnest importunity, was prepared by his more youthful friend. Of this transaction Mr. Adams is himself the historian, and the authorship of the Declaration, though once disputed, is thus placed for ever beyond the reach of question.

The final debate on the resolution was postponed, as we have seen, for nearly a month. In the mean time, all who are conversant with the course of action of all deliberative bodies, know how much is done by conversation among the members. It is not often, indeed, that proselytes are made on great questions by public debate. On such questions, opinions are far more frequently formed in private, and so formed that debate is seldom known to change them. stated are candidly, calmly, and mildly discussed; where neither pride, nor shame, nor anger take part in the discussion, nor stand in the way of a correct conclusion; but where every thing being conducted frankly, delicately, respectfully, and kindly, the better cause and the better reasoner are almost always sure of success. In this kind of service, as well as in all that depended on the power of composition, Mr. Jefferson was as much a master-magician as his eloquent friend Adams was in debate. They were, in truth, hemispheres of the same golden globe, and required only to be brought and put together, to prove that they were parts of the same heaven-formed whole.

On the present occasion, however, much still remained to be effected by debate. The first of July came, and the great debate on the resolution for independence was resumed, with fresh spirit. The discussion was again protracted for two days, which, in addition to the former three, were sufficient, in that age, to call out all the speaking talent of the House. Botta, the Italian historian of our Revolution, has made Mr. Dickinson and Mr. Lee the principal speakers on the opposite sides of this question; and availing himself of that dramatic license of ancient historians, which the fidelity of modern history has exploded, he has drawn, from his own fancy, two orations, which he has put into the mouths of those distinguished men. With no disposition to touch, with a hostile hand, one leaf of the well-earned laurels of Mr. Lee, (which every American would feel far more pleasure in contributing to brighten and to cherish,) and with no feelings but those of reverence and gratitude for the memory of the other great patriots who assisted in that debate, may we not say, and are we not bound in justice to say, that Botta is mistaken in the relative prominency of one, at least, of his prolocutors? Mr. Jefferson has told us that "the Colossus of that Congress—the great pillar of support to the Declaration of Independence, and its ablest advocate and champion on the floor of the House, was John Adams." How he supported it, can now be only matter of imagination: for, the debate was conducted with closed doors, and there was no reporter on the floor to catch the strains living as they rose. I will not attempt what Mr. Adams himself, if he were alive, could not accomplish. He might recall the topics of argument; but with regard to those flashes of inspiration, those bursts of passion, which grew out of the awful feelings of the moment, they are gone for ever, with the reality of the occasion; and the happiest effort of fancy to supply their place, (by me, at least,) would bear no better resemblance to the original, than the petty crepitations of an artificial volcano to the sublime explosions of thundering Ætna. Waiving, therefore, the example of Botta, let it suffice for us to know, that in that moment of darkness, of terror, and of consternation, when

and defeat, subjugation and death on the other, the courage of Adams, in the true spirit of heroism, rose in proportion to the dangers that pressed around him; and that he poured forth that only genuine eloquence, the eloquence of the soul, which, in the language of Mr. Jefferson, "moved his hearers from their seats." The objections of his adversaries were seen no longer but in a state of wreck; floating, in broken fragments, on the billows of the storm; and over rocks, over breakers, and amid ingulfing whirlpools, that every where surrounded him, he brought the gallant ship of the nation safe into port.

It was on the evening of the day on which this great victory was achieved, (before which, in moral grandeur, the trophies of Marengo and the Nile fade away,) and while his mind was yet rolling with the agitation of the recent tempest, that he wrote that letter to the venerable partner of his bosom, which has now become matter of history; in which, after announcing the adoption of the resolution, he foretells the future glories of his country, and the honors with which the returning anniversary of her Declaration of Independence would be hailed, till time should be no more. That which strikes us on the first perusal of this letter, is, the prophetic character with which it is stamped, and the exactness with which its predictions have been fulfilled. But, his biographer will remark in it another character: the deep political calculation of results, through which the mind of the writer, according to its habit, had flashed; and the firm and undoubting confidence with which, in spite of those appearances that alarmed and misled weaker minds, he looked to the triumphant close of the struggle.

The resolution having been carried, the draught of the declaration came to be examined in detail; and, so faultless had it issued from the hands of its author, that it was adopted as he had prepared it, pruned only of a few of its brightest inherent beauties, through a prudent deference to some of the States. It was adopted about noon of the fourth, and proclaimed to an exulting nation, on the evening of the same day.

That brave and animated band who signed it—where are they now? What heart does not sink at the question? One only survives: Charles Carroll, of Carrollton—a noble specimen of the age that has gone by, and now the single object of that age, on whom the veneration and prayers of his country are concentrated. The rest have bequeathed to us the immortal record of their virtue and patriotism, and have ascended to a brighter reward than man can confer.

Of that instrument to which you listen with reverence on every returning anniversary of its adoption, "which forms the ornament of our halls, and the first political lesson of our children," it is needless to speak. You know that in its origin and object, it was a statement of separate themselves from Great Britain, and to declare these States free and independent. It was the voice of the American nation addressing herself to the other nations of the earth; and the address is, in all respects, worthy of this noble personification. It is the great argument of America in vindication of her course: and as Mr. Adams had been the Colossus of the cause on the floor of Congress, his illustrious friend, the author of this instrument, may well be pronounced to have been its Colossus on the theatre of the world.

The decisive step, which fixed the destiny of the nation, had now been taken: and that step was irrevocable. "The die was now indeed cast. The Rubicon had been crossed," effectually, finally, for ever. There was no return but to chains, slavery and death. No such backward step was meditated by the firm hearts that led on the march of the nation: but, confiding in the justice of Heaven, and the final triumph of truth, they moved forward in solid phalanx, and with martial step, regardless of the tempest that was breaking around them.

Their confidence in the favor and protection of Heaven, however, strong and unshaken as it was, did not dispose them to relax their own exertions, nor to neglect the earthly means of securing their triumph. They were not of the number of those who call upon Hercules, and put not their own shoulders to the wheel. Our adversary was one of the most powerful nations on earth. Our whole strength consisted of a few stout hearts and a good cause. But we were wofully deficient in all the sinews of war: we wanted men, we wanted arms, we wanted money; and these could be procured only from abroad. But the intervening ocean was covered with the fleets of the enemy; and the patriot Laurens, one of their captives, was already a prisoner in the Tower of London. Who was there to undertake this perilous service? He who was ever ready to peril any service in the cause of his country: John Adams. Congress knew their man, and did not hesitate on the choice. Appointed a minister to France, he promptly obeyed the sacred call, and, with a brave and fearless heart, he ran the gauntlet through the hostile fleet, and arrived in safety. Passing from court to court, he pleaded the cause of his country with all the resistless energy of truth; and, availing himself adroitly of the selfish passions and interests of those courts, he ceased not to ply his efforts, with matchless dexterity, until the objects of his mission were completely attained. With the exception of one short interval of a return home, in 1779, when he aided in giving form to the constitution of his native State, he remained abroad, in France, in Holland—wherever he could be most useful—in the strenuous, faithful and successful service of his country, receiving repeated votes of thanks from Congress, till the storm was over, and peace and liberty came to crown his felicity, and realize the cherished

Mr. Jefferson, meanwhile, was not less strenuously and successfully engaged at home, in forwarding and confirming the great objects of the Revolution, and making it a revolution of mind, as well as of government. Marking, with that sagacity which distinguished him, the series of inventions by which tyranny had contrived to tutor the mind to subjection, and educate it in habits of servile subordination, he proceeded in Virginia, with the aid of Pendleton and Wythe, to break off the manacles, one by one, and deliver the imprisoned intellect from this debasing sorcery. The law of entails, that feudal contrivance to foster and nourish a vicious aristocracy at the expense of the community, had at a previous period been broken up, on their suggestion; and property was left to circulate freely, and impart health and vigor to the operations of society. The law of primogeniture, that other feudal contrivance to create and keep up an artificial inequality among men whom their Creator had made equal, was now repealed, and the parent and his children were restored to their natural religion. And, above all, that daring usurpation on the rights of the Creator, as well as the creature, which presumes to dictate to man what he shall believe, and in what form he shall offer the worship of his heart, and this, too, for the vile purpose of strengthening the hands of a temporal tyrant, by feeding and pampering the tools of his power, was indignantly demolished, and the soul was restored to its free communion with the God who gave it.

The preamble to the bill establishing religious freedom in Virginia, is one of the most morally sublime of human productions. By its great author it was always esteemed as one of his happiest efforts, and the measure itself one of his best services, as the short and modest epitaph left by him attests. Higher praise cannot and need not be given to it than to say, it is in in all respects worthy of the pen which wrote the Declaration of Independence; that it breathes the same lofty and noble spirit, and is a fit companion for that immortal instrument.

The legislative enactments that have been mentioned, form a small part only of an entire revision of the laws of Virginia. The collection of bills passed by these great men (one hundred and twenty-six in number), presents a system of jurisprudence, so comprehensive, profound and beautiful, so perfectly, so happily adapted to the new state of things, that, if its authors had never done any thing else, impartial history would have assigned them a place by the side of Solon and Lycurgus.

In 1779, Mr. Jefferson was called to assume the helm of government in Virginia, in succession to Patrick Henry. He took that helm at the moment when war, for the first time, had entered the limits of the commonwealth. With what strength, fidelity, and ability he held it, under the most trying circumstances, the highest testimonials now stand on the journals of Congress, as well as those of Virginia. It is true that a poor attempt was made in after-times to wound the honor of his administration. But he bore a charmed character; and this, like every other blow that has ever been aimed at it, only recoiled to crush his accuser, and to leave him the brighter and stronger for the assault.

In 1781, his alert and active mind, which watched the rising character of his new-born country with all the jealous vigilance of an anxious father, found a new occasion to call him into the intellectual field. Our country was yet but imperfectly known in Europe. Its face, its soil, its physical capacities, its animals, and even the men who inhabited it, were so little known, as to have furnished to philosophers abroad a theme of unfounded and degrading speculation. Those visionaries, dreaming over theories which they wanted the means or the inclination to confront with facts, had advanced, among others, the fantastic notion, that even man degenerated by transplantation to America. To refute this insolent position, and to place his country before Europe and the world on the elevated ground she was entitled to hold, the Notes on Virginia were prepared and published. He there pointed to Washington, to Franklin, and to Rittenhouse, as being alone sufficient to exterminate this heresy; and we may now point to Jefferson and to Adams, as sufficient to annihilate it. This pure and proud offering on the altar of his country, "The Notes on Virginia," honored its author abroad not less than at home; and when, shortly afterwards, the public service called him to Europe, it gave him a prompt and distinguished passport into the highest circles of science and literature.

Thus actively and usefully employed in guarding the fame, and advancing the honor and happiness of his country, the war of the Revolution came to its close; and on the 19th of October, 1781, of which this day is the anniversary, Great Britain bowed to the ascendency of our cause. Her last effective army struck her standard on the heights of York, and peace and independence came to bless our land.

Mr. Adams was still abroad when this great consummation of his early hopes took place; and, although the war was over, a difficult task still remained to be performed. The terms of peace were yet to be arranged, and to be arranged under circumstances of the most complicated embarrassment. That the acknowledgment of our independence was to be its first and indispensable condition was well understood; and Mr. Adams, then at the Hague, with that decision which always marked his character, refused to leave his post and take part in the negotiation at Paris, until the powers of the British commissioner should be so enlarged as to authorize him to make that acknowledgment unequivocally. I will not detain you by a rehearsal of what you so well know, the difficulties and intricacies by which this negotiation was protracted. Suffice it to say, that the firm-

ness and skill of the American commissioners triumphed on every point. The treaty of peace was executed, and the last seal was thus put to the independence of these States.

Thus closed the great drama of the American Revolution. And here for a moment let us pause. If the services of our departed fathers had closed at this point, as it did with many of their compatriots—with too many, if the wishes and prayers of their country could have averted it—what obligations, what honors, should we not owe to their memories! What would not the world owe to them! But, as if they had not already done enough, as if, indeed, they had done nothing while any thing yet remained to be done, they were ready, with renovated youth and elastic step, to take a new start in the career of their emancipated country.

The Federal Constitution was adopted, and a new leaf was turned in the history of man. With what characters the page should be inscribed—whether it should open a great era of permanent good to the human family, or pass away like a portent of direful evil, was now to depend on the wisdom and virtue of America. At this time our two great patriots were both abroad in the public service: Mr. Adams in England, where, in 1787, he refuted, by his great work, "The Defence of the American Constitutions," the wild theories of Turgot, De Mably, and Price; and Mr. Jefferson in France, where he was presenting in his own person a living and splendid refutation of the notion of degeneracy in the American man. On the adoption of the Federal Constitution, they were both called home, to lend the weight of their character and talents to this new and momentous experiment on the capacity of man for self-government. Mr. Adams was called to fill the second office under the new government, the first having been justly conferred by the rule "detur fortiori:" and Mr. Jefferson, to take the direction of the highest Executive Department. The office of Vice President afforded, as you are aware, no scope for the public display of talent. But the leisure which it allowed, enabled Mr. Adams to pour out from his full fraught mind, another great political work, his Discourses on Davila; and, while he presided over the Senate with unexceptionable dignity and propriety, President Washington always found in him an able and honest adviser, in whom his confidence was implicit and unbounded.

Mr. Jefferson had a theatre that called for action. The Department of State was now, for the first time, to be organized. Its operations were all to be moulded into system, and an intellectual character was to be given to it, as well as the government to which it belonged, before this nation and before the world. The frequent calls made by Congress for reports on the most abstruse questions of science connected with government, and on those vast and novel and multifarious subjects of political economy, peculiar to this wide-extended and diversified continent: discussions with the ministers of foreign governments, more especially with those of France and England and Spain, on those great and agitating questions of international law, which were then continually arising; and instructions to our own ministers abroad, resident at the courts of the great belligerent powers, and who had consequently the most delicate and discordant interests to manage; presented a series of labors for the mind, which few, very few men in this or any other country could have sustained with reputation. How Mr. Jefferson acquitted himself, you all know. It is one of the peculiarities of his character to have discharged the duties of every office to which he was called, with such exact, appropriate, and felicitous ability, that he seemed, for the time, to have been born for that alone. As an evidence of the unanimous admiration of the matchless skill and talent with which he discharged the duties of this office, I hope it may be mentioned, without awaking any asperity of feeling, that when, at a subsequent period, he was put in a nomination by his friends for the office of President, his adversaries publicly objected—"that nature had made him only for a Secretary of State."

President Washington having set the great example, which has ingrafted on the constitution as firmly as if it had formed one of its express provisions, the principle of retiring from the office of President at the end of eight years, Mr. Adams succeeded him, and Mr. Jefferson followed Mr. Adams in the office of Vice President.

Mr. Adams came into the office of President at a time of great commotion, produced chiefly by the progress of the revolution in France, and those strong sympathies which it naturally generated here. The spirit of party was high, and in the feverish excitement of the day much was said and done, on both sides, which the voice of impartial history, if it shall descend to such details, will unquestionably condemn, and which the candid and the good on both sides lived, themselves, to regret. One incident I will mention, because it is equally honorable to both the great men whom we are uniting in these obsequies. In Virginia where the opposition ran high, the younger politicians of the day, taking their tone from the public journals, have, on more occasions than one, in the presence of Mr. Jefferson, imputed to Mr. Adams a concealed design to sap the foundations of the republic, and, to supply its place with a monarchy, on the British model. The uniform answer of Mr. Jefferson to this charge will never be forgotten by those who have heard it, and of whom (as I have recently had occasion to prove) there are many still living, besides the humble individual who is now addressing you. It was this: "Gentlemen, you do not know that man: there is not upon this earth a more perfectly honest man than John Adams. Concealment is no part of his character; of that he is utterly incapable: it is not in his nature

to meditate any thing that that he would not publish to the world. The measures of the general government are a fair subject for difference of opinion. But do not found your opinions on the notion, that there is the smallest spice of dishonesty, moral or political, in the character of John Adams; for I know him well, and I repeat it, that a man more perfectly honest never issued from the hands of his Creator." And such is now, and has long been, the unanimous opinion of his countrymen.

Of the measures adopted during his administration you do not expect me to speak. I should offend against your own sense of propriety were I to attempt it. We are here to mingle together over the grave of the departed patriot, our feelings of reverence and gratitude for services whose merit we all acknowledge: and cold must be the heart which does not see and feel, in his life, enough to admire and to love, without striking one string that could produce one unhallowed note. History and biography will do ample justice to every part of his character, public and private; and impartial posterity will correct whatever errors of opinion may have been committed to his prejudice by his cotemporaries. Let it suffice for us, at this time, to know, that he administered the government with a pure, and honest, and upright heart; and that whatever he advised, flowed from the master passion of his breast, a holy and all-absorbing love for the happiness and honor of his country.

Mr. Jefferson, holding the Vice Presidency, did not leave even that negative office, as, indeed, he never left any other, without marking his occupancy with some useful and permanent vestige. For it was during this term that he digested and compiled that able manual which now gives the law of proceeding, not only to the two Houses of Congress, but to all the legislatures of the States throughout the Union.

On Mr. Adams's retirement, pursuing the destiny which seems to have tied them together, Mr. Jefferson again followed him in the office which he had vacated, the Presidency of the United States; and he had the good fortune to find, or to make a smoother sea. The violence of the party storm gradually abated, and he was soon able to pursue his peaceful course without any material interruption. Having forborne, for the obvious reasons which have been suggested, to touch the particulars of Mr. Adams's administration, the same forbearance, for the same reasons, must be exercised with regard to Mr. Jefferson. But, forbearing details, it will be no departure from this rule to state in general the facts, that Mr. Jefferson continued at the helm for eight years, the term which the example of Washington had consecrated; that he so administered the government as to meet the admiration and applause of a great majority of his countrymen, as the overwhelming suffrage at his second election attests; that by that majority he was thought lican administration, on the true basis, and in the true spirit of the constitution; and that by them the measures of all the succeeding administrations have been continually brought to the standard of Mr. Jefferson's, as to an established and unquestionable test, and approved or condemned in proportion to their accordance with that standard. These are facts which are known to you all. Another fact I will mention, because it redounds so highly to the honor of his magnanimous and patriotic rival. It is this: that that part of Mr. Jefferson's administration, and of his successor treading in his steps, which was most violently opposed, the policy pursued towards the British Government subsequent to 1806, received the open, public, and powerful support of the pen, as well as the tongue, of the great sage of Quincy. The banished Aristides never gave a nobler proof of pure and disinterested patriotism. It was a genuine emanation from the altar of the Revolution, and in perfect accordance with the whole tenor of the life of our illustrious patriot sage.

Waiving all comment on Mr. Jefferson's public measures, there is yet a minor subject, which, standing where we do, seems to be a peculiar propriety in noticing; for, small as it is, it is strikingly characteristic of the man, and we have an immediate interest in the subject. It is this: the great objects of national concern, and the great measures which he was continually projecting and executing for the public good, on a new and vast scheme of policy wholly his own, and stamped with all the vigor and grandeur of his Olympic mind, although they were such as would not only have engrossed but overwhelmed almost any other man, did not even give full employment to him; but with that versatile and restless activity which was prone to busy itself usefully and efficaciously with all around him, he found time to amuse himself and to gratify his natural taste for the beautiful, by directing and overlooking in person, (as many of you can witness,) the improvements and ornaments of this city of the nation: and it is to his taste and industry that we owe, among other things which it were needless to enumerate, this beautiful avenue,* which he left in such order as to excite the admiration of all who approached us.

Having closed his administration, he was followed by the applause, the gratitude, and blessings of his country, into that retirement which no man was ever better fitted to grace and enjoy. And from this retirement, together with his precursor, the venerable patriarch of Quincy could enjoy that supreme of all earthly happiness, the retrospect of a life well and greatly spent in the service of his country and mankind. The successful warrior, who has desolated whole empires for his own aggrandizement, the successful usurper of his country's rights and liberties, may have their hours of

swelling pride, in which they may look back with a barbarous joy upon the triumph of their talents, and feast upon the adulation of the sycophants that surround them: but night and silence come; and conscience takes her turn. The bloody field rises upon the startled imagination. The shades of the slaughtered innocent stalk, in terrific procession, before the couch. The agonizing cry of countless widows and orphans invades the ear. The bloody dagger of the assassin plays in airy terror before the vision. Violated liberty lifts her avenging lance: and a down-trodden nation rises before them in all the majesty of its wrath. What, what are the hours of a splendid wretch like this, compared with those that shed their poppies and their roses upon the pillows of our peaceful and virtuous patriots! Every night bringing to them the balm and health of repose, and every morning offering to them "their history in a nation's eyes!" This, this it is to be greatly virtuous: and be this the only ambition that shall ever touch an American bosom!

Still unexhausted by such a life of service in the cause of his country, Mr. Jefferson found yet another and most appropriate employment for his old age; the erection of a seat of science in his native State. The University of Virginia is his work. His, the first conception; his, the whole impulse and direction; his, the varied and beautiful architecture, and the entire superintendence of its erection: the whole scheme of its studies, its organization, and government, are his. He is, therefore, indeed the father of the University of Virginia. That it may fulfil, to the full extent, the great and patriotic purposes and hopes of its founder, cannot fail to be the wish of every American bosom. This was the last and crowning labor of Mr. Jefferson's life: a crown so poetically appropriate, that fancy might well suppose it to have been wreathed and placed on his brow by the hand of the epic muse herself.

It is the remark of one of the most elegant writers of antiquity, in the beautiful essay which he has left us "on Old Age," that "to those who have not within themselves the resources of living well and happily, every age is oppressive; but that to those who have, nothing is an evil which the necessity of nature brings along with it." How rich our two patriots were in these internal resources, you all know. How lightly they bore the burden of increasing years was apparent from the cheerfulness and vigor with which, after having survived the age to which they properly belonged, they continued to live among their posterity. How happy they were in their domestic relations, how beloved by their neighbors and friends, how revered and honored by their country and by the friends of liberty in every quarter of the world, is a matter of open and public notoriety. Their houses were the constant and thronged resort of the votaries of virtue, and science, and genius, and confessing that his highest expectations had been realized, and even surpassed in the interview.

Of "the chief of the Argonauts," as Mr. Jefferson so classically and so happily styled his illustrious friend of the north, it is my misfortune to be able to speak only by report. But every representation concurs in drawing the same pleasing and affecting picture of the Roman simplicity in which that Father of his Country lived; of the frank, warm, cordial, and elegant reception that he gave to all who approached him; of the interesting kindness with which he disbursed the golden treasures of his experience, and shed around him the rays of his descending sun. His conversation was rich in anecdote and characters of the times that were past; rich in political and moral instruction; full of that best of wisdom which is learnt from real life, and flowing from his heart with that warm and honest frankness, that fervor of feeling and force of diction, which so strikingly distinguished him in the meridian of his life. Many of us heard that simple and touching account given of a parting scene with him, by one of our eloquent divines: When he rose up from that little couch behind the door, on which he was wont to rest his aged and weary limbs, and with his silver locks hanging on each side of his honest face, stretched forth that pure hand, which was never soiled even by suspicion, and gave his kind and parting benediction. Such was the blissful and honored retirement of the sage of Quincy. Happy the life, which, verging upon a century, had met with but one serious political disappointment! and even for that, he had lived to receive a golden atonement, "even in that quarter in which he had garnered up his heart."

Let us now turn for a moment to the patriot of the south. The Roman moralist, in that great work which he has left for the government of man in all the offices of life, has descended even to prescribe the kind of habitation in which an honored and distinguished man should dwell. It should not, he says, be small, and mean, and sordid: nor, on the other hand, extended with profuse and wanton extravagance. It should be large enough to receive and accommodate the visitors which such a man never fails to attract, and suited in its ornaments, as well as its dimensions, to the character and fortune of the individual. Monticello has now lost its great charm. Those of you who have not already visited it, will not be very apt to visit it, hereafter; and, from the feelings which you cherish for its departed owner, I persuade myself, that you will not be displeased with a brief and rapid sketch of that abode of domestic bliss, that temple of science. Nor is it, indeed, foreign to the express purpose of this meeting, which, in looking to "his life and character," naturally embraces his home and his domestic habits. Can any thing be in-

the hundreds and thousands that were continually resorting to it, as to an object of pious pilgrimage?

The mansion house at Monticello, was built and furnished in the days of his prosperity. In its dimensions, its architecture, its arrangements, and ornaments, it is such a one as became the character and fortune of the man. It stands upon an elliptic plain, formed by cutting down the apex of a mountain; and, on the west, stretching away to the north and the south, it commands a view of the Blue Ridge for a hundred and fifty miles, and brings under the eye one of the boldest and most beautiful horizons in the world: while, on the east, it presents an extent of prospect, bounded only by the spherical form of the earth, in which nature seems to sleep in eternal repose, as if to form one of her finest contrasts with the rude and rolling grandeur on the west. In the wide prospect, and scattered to the north and south, are several detached mountains, which contribute to animate and diversify this enchanting landscape; and among them, to the south Williss' Mountain, which is so interestingly depicted in his Notes. From this summit, the Philosopher was wont to enjoy that spectacle, among the sublimest of nature's operations, the looming of the distant mountains; and to watch the motions of the planets, and the greater revolution of the celestial sphere. From this summit, too, the Patriot could look down, with uninterrupted vision, upon the wide expanse of the world around, for which he considered himself born; and upward, to the open and vaulted heavens which he seemed to approach, as if to keep him continually in mind of his high responsibility. It is indeed a prospect in which you see and feel, at once, that nothing mean or little could live. It is a scene fit to nourish those great and high-souled principles which formed the elements of his character, and was a most noble and appropriate post for such a sentinel over the rights and liberties of man.

Approaching the house on the east, the visitor instinctively paused, to cast around one thrilling glance at this magnificent panorama: and then passed to the vestibule, where, if he had not been previously informed, he would immediately perceive that he was entering the house of no common man. In the spacious and lofty hall which opens before him, he marks no tawdry and unmeaning ornaments; but before, on the right, on the left, all around, the eye is struck and gratified with objects of science and taste, so classed and arranged as to produce their finest effect. On one side, specimens of sculpture set out, in such order, as to exhibit at a *coup d'œil* the historical progress of that art; from the first rude attempts of the aborigines of our country, up to that exquisite and finished bust of the great patriot himself, from the master hand of Caracci. On the other side, the visitor sees displayed a vast collection of specimens of Indian art, their paintings, weapons, array of the fossil productions of our country, mineral and animal; the polished remains of those colossal monsters that once trod our forests, and are no more; and a variegated display of the branching honors of those "monarchs of the waste," that still people the wilds of the American Continent.

From this hall he was ushered into a noble saloon, from which the glorious landscape of the west again bursts upon his view; and which, within, is hung thick around with the finest productions of the pencil—historical paintings of the most striking subjects from all countries, and all ages; the portraits of distinguished men and patriots, both of Europe and America, and medallions and engravings in endless profusion.

While the visitor was yet lost in the contemplation of these treasures of the arts and sciences, he was startled by the approach of a strong and sprightly step, and turning with instinctive reverence to the door of entrance, he was met by the tall, and animated, and stately figure of the patriot himself—his countenance beaming with intelligence and benignity, and his outstretched hand with its strong and cordial pressure, confirming the courteous welcome of his lips. And then came that charm of manner and conversation that passes all description—so cheerful—so unassuming—so free, and easy, and frank, and kind, and gay—that even the young and overawed, and embarrassed visitor at once forgot his fears, and felt himself by the side of an old and familiar friend. There was no effort, no ambition in the conversation of the philosopher. It was as simple and unpretending as nature itself. And while in this easy manner he was pouring out instruction, like light from an inexhaustible solar fountain, he seemed continually to be asking, instead of giving information. The visitor felt himself lifted, by the contact, into a new and nobler region of thought, and became surprised at his own buoyancy and vigor. He could not, indeed, help being astounded, now and then, at those transcendent leaps of the mind, which he saw made without the slightest exertion, and the ease with which this wonderful man played with subjects which he had been in the habit of considering among the *argumenta crucis* of the intellect. And then there seemed to be no end to his knowledge. He was a thorough master of every subject that was touched. From the details of the humblest mechanic art, up to the highest summit of science, he was perfectly at his ease, and every where at home. There seemed to be no longer any *terra incognita* of the human understanding: for, what the visitor had thought so, he now found reduced to a familiar garden walk; and all this carried off so lightly, so playfully, so gracefully, so engagingly, that he won every heart that approached him, as certainly as he astonished every mind.

Mr. Jefferson was wont to remark, that he never left the conversation of Dr. Franklin

new and useful. How often, and how truly, has the same remark been made of him. Nor is this wonderful, when we reflect, that that mind of matchless vigor and versatility had been, all its life, intensely engaged in conversing with the illustrious dead, or following the march of science in every land, or soaring away, on its own steady and powerful wing, into new and unexplored regions of thought.

Shall I follow him to the table of his elegant hospitality, and show him to you in the bosom of his enchanting family? Alas! those attic days are gone; that sparkling eye is quenched; that voice of pure and delicate affection, which ran with such brilliancy and effect through the whole compass of colloquial music, now bright with wit, now melting with tenderness, is hushed for ever in the grave! But let me leave a theme on which friendship and gratitude have, I fear, already been tempted to linger too long.

There was one solace of the declining years of both these great men, which must not be passed. It is that correspondence which arose between them, after their retirement from public life. That correspondence, it is to be hoped, will be given to the world. If it ever shall, I speak from knowledge when I say it will be found to be one of the most interesting and affecting that the world has ever seen. That "cold cloud" which had hung for a time over their friendship, passed away with the conflict out of which it had grown, and the attachment of their early life returned in all its force. They had both now bid adieu, a final adieu, to all public employments, and were done with all the agitating passions of life. They were dead to the ambitious world; and this correspondence resembles, more than any thing else, one of those conversations in the Elysium of the ancients, which the shades of the departed great were supposed by them to hold, with regard to the affairs of the world they had left. There are the same playful allusions to the points of difference that had divided their parties; the same mutual, and light, and unimpassioned raillery on their own past misconceptions and mistakes; the same mutual and just admiration and respect for their many virtues and services to mankind. That correspondence was, to them both, one of the most genial employments of their old age; and it reads a lesson of wisdom on the bitterness of party spirit, by which the wise and the good will not fail to profit.

Besides this affectionate intercourse between them, you are aware of the extensive correspondence which they maintained with others, and of which some idea may be formed by those letters which, since their death, have already broken upon us through the press, from quarters so entirely unexpected. They were considered as the living historians of the Revolution, and of the past age, as well as oracles of wisdom to all who consulted them. Their habit in this particular seems to have been the same; never to omit answering any respectful individual, or how insignificant the subject. With Mr. Jefferson this was a sacred law, and as he always wrote at a polygraphic desk, copies have been preserved of every letter. His correspondence travelled far beyond his own country, and embraced within its circle many of the most distinguished men of his age in Europe. What a feast for the mind may we not expect from the published letters of these excellent men! They were both masters in this way, though somewhat contrasted. Mr. Adams, plain, nervous, and emphatic, the thought couched in the fewest and strongest words, and striking with a kind of epigrammatic force. Mr. Jefferson, flowing with easy and careless melody, the language at the same time pruned of every redundant word, and giving the thought with the happiest precision, the aptest words dropping unbidden and unsought into their places, as if they had fallen from the skies; and so beautiful, so felicitous, as to fill the mind with a succession of delightful surprises, while the judgment is, at the same time, made captive by the closely compacted energy of the argument. Mr. Jefferson's style is so easy and harmonious, as to have led superficial readers to remark that he was deficient in strength; as if ruggedness and abruptness were essential to strength. Mr. Jefferson's strength was inherent in the thoughts and conceptions, though hidden by the light and graceful vestments which he threw over them. The internal divinity existed and was felt, though concealed under the finely harmonized form of a man; and if he did not exhibit himself in his compositions with the insignia of Hercules, the shaggy lion's skin and the knotted club; he bore the full quiver and the silver bow of Apollo; and every polished shaft that he loosened from the string told with unerring and fatal precision:

Δεινη δε κλαγγη γενετ' αργυρεοιο βιοιο.

These two great men, so eminently distinguished among the patriots of the Revolution, and so illustrious by their subsequent services, became still more so, by having so long survived all that were most highly conspicuous among their coevals. All the stars of first magnitude, in the equatorial and tropical regions, had long since gone down, and still they remained. Still they stood full in view, like those two resplendent constellations near the opposite poles, which never set to the inhabitants of the neighboring zones.

But they, too, were doomed at length to set; and such was their setting as no American bosom can ever forget!

In the midst of their fast decaying strength, and when it was seen that the approach of death was certain, their country and its glory still occupied their thoughts, and circulated with the last blood that was ebbing to their hearts. Those who surrounded the death-bed of Mr. Jefferson report, that in the few short

manifestly relapsed to the age of the Revolution. He talked, in broken sentences, of the committees of safety, and the rest of that great machinery, which he imagined to be still in action. One of his exclamations was, "Warn the committee to be on their guard;" and he instantly rose in his bed, with the help of his attendants, and went through the act of writing a hurried note. But these intervals were few and short. His reason was almost constantly upon her throne, and the only aspiration he was heard to breathe, was the prayer, that he might live to see the fourth of July. When that day came, all that he was heard to whisper was the repeated ejaculation—"Nunc Domine dimittas"—Now, Lord, let thy servant depart in peace! And the prayer of the patriot was heard and answered.

The patriarch of Quincy, too, with the same certainty of death before him, prayed only for the protraction of his life to the same day. His prayer was also heard: and when a messenger from the neighboring festivities, unapprised of his danger, was deputed to ask him for the honor of a toast, he showed the object on which his dying eyes were fixed, and exclaimed with energy, "Independence for ever!" His country first, his country last, his country always!

"O save my country—Heaven! he said—and died!"

Hitherto, fellow-citizens, the fourth of July had been celebrated among us, only as the anniversary of our independence, and its votaries had been merely human beings. But at its last recurrence—the great jubilee of the nation—the anniversary, it may well be termed, of the liberty of man—Heaven, itself, mingled visibly in the celebration, and hallowed the day anew by a double apotheosis. Is there one among us to whom this language seems too strong? Let him recall his own feelings, and the objection will vanish. When the report first reached us, of the death of the great man whose residence was nearest, who among us was not struck with the circumstance that he should have been removed on the day of his own highest glory? And who, after the first shock of the intelligence had passed, did not feel a thrill of mournful delight at the characteristic beauty of the close of such a life. But while our bosoms were yet swelling with admiration at this singularly beautiful coincidence, when the second report immediately followed, of the death of the great sage of Quincy, on the same day—I appeal to yourselves—is there a voice that was not hushed, is there a heart that did not quail, at this close manifestation of the hand of Heaven in our affairs! Philosophy, recovered of her surprise, may affect to treat the coincidence as fortuitous. But philosophy herself was mute, at the moment, under the pressure of the feeling that these illustrious men had rather been translated, than had died. It is in vain to tell us that men die by thousands every day in the year, all over the world. The wonder is, not that two men have died on the same day, but that two such men, after having performed so many and such splendid services in the cause of liberty—after the multitude of other coincidences which seem to have linked their destinies together—after having lived so long together, the objects of their country's joint veneration—after having been spared to witness the great triumph of their toils at home—and looked together from Pisgah's top, on the sublime effect of that grand impulse which they had given to the same glorious cause throughout the world, should, on this fiftieth anniversary of the day on which they had ushered that cause into light, be both caught up to Heaven, together, in the midst of their raptures! Is there a being, of heart so obdurate and sceptical, as not to feel the hand and hear the voice of Heaven in this wonderful dispensation! And may we not, with reverence, interpret its language? Is it not this? "These are my beloved servants, in whom I am well pleased. They have finished the work for which I sent them into the world; and are now called to their reward. Go ye, and do likewise!"

One circumstance, alone, remains to be noticed. In a private memorandum found among some other obituary papers and relics of Mr. Jefferson, is a suggestion, in case a memorial over him should ever be thought of, that a granite obelisk, of small dimensions, should be erected, with the following inscription:

HERE LIES BURIED
THOMAS JEFFERSON,
Author of the Declaration of Independence,
Of the Statutes of Virginia, for Religious Freedom,
And Father of the University of Virginia.

All the long catalogue of his great, and splendid, and glorious services, reduced to this brief and modest summary!

Thus lived and thus died our sainted Patriots! May their spirits still continue to hover over their countrymen, inspire all their counsels, and guide them in the same virtuous and noble path? And may that God, in whose hands are the issues of all things, confirm and perpetuate to us the inestimable boon, which through their agency he has bestowed; and make our Columbia the bright exemplar for all the struggling sons of liberty around the globe!

SPEECH IN THE TRIAL OF AARON BURR.

In May, 1807, Aaron Burr was arraigned in the Circuit Court of the United States, held at Richmond, Virginia, for treason, in preparing the means of a military expedition against the possessions of the King of Spain, with whom the United States were at peace.* Under the direction of President Jefferson, Mr. Wirt was retained, to assist the United States Attorney in the prosecution, and in the course of the trial, he spoke as follows:

MAY IT PLEASE YOUR HONORS: It is my duty to proceed, on the part of the United States, in opposing this motion. But I should not deem it my duty to oppose it, if it were founded on correct principles. I stand here with the same independence of action, which belongs to the Attorney of the United States; and as he would certainly relinquish the prosecution the moment he became convinced of its injustice, so also most certainly would I. The humanity and justice of this nation would revolt at the idea of a prosecution, pushed on against a life which stood protected by the laws; but whether they would or not, I would not plant a thorn, to rankle for life in my heart, by opening my lips in support of a prosecution which I felt and believed to be unjust. But believing, as I do, that this motion is not founded in justice, that it is a mere manœuvre to obstruct the inquiry, to turn it from the proper course, to wrest the trial of the facts from the proper tribunal, the jury, and embarrass the court with a responsibility which it ought not to feel, I hold it my duty to proceed—for the sake of the court, for the sake of vindicating the trial by jury, now sought to be violated, for the sake of full and ample justice in this particular case, for the sake of the future peace, union, and independence of these States, I feel it my bounden duty to proceed. In doing which, I beg that the prisoner and his counsel will recollect the extreme difficulty of clothing my argument in terms which may be congenial with their feelings. The gentlemen appear to me to feel a very extraordinary and unreasonable degree of sensibility on this occasion. They seem to forget the nature of the charge, and that we are the prosecutors. We do not stand here to pronounce a panegyric on the prisoner, but to urge on him the crime of treason against his country. When we speak of treason, we must call it treason. When we speak of a traitor, we must call him a traitor. When we speak of a plot to dismember the Union, to undermine the liberties of a great portion of the people of this country, and subject them to a usurper and a despot, we are obliged to use the terms which convey those ideas. Why then are gentlemen so sensitive? Why on these occasions, so necessary, so unavoidable, do they shrink back with so much agony of nerve, as if, instead of a hall of justice, we were in a drawing-room with Colonel Burr, and were barbarously violating towards him every principle of decorum and humanity?

Mr. Wickham has, indeed, invited us to consider the subject abstractedly; and we have been told that it is expected to be so considered; but sir, if this were practicable, would there be no danger in it? Would there be no danger, while we were mooting points, pursuing ingenious hypotheses, chasing elementary principles over the wide extended plains and Alpine heights of abstracted law, that we should lose sight of the great question before the court? This may suit the purposes of the counsel for the prisoner; but it does not, therefore, necessarily suit the purposes of truth and justice. It will be proper, when we have derived a principle from law or argument, that we should bring it to the case before the court, in order to test its application and its practical truth. In doing which, we are driven into the nature of the case, and must speak of it as we find it. But, besides, the gentlemen have themselves rendered this totally abstracted argument completely impossible; for one of their positions is, that there is no overt act proven at all. Now, that an overt act consists of fact and intention, has been so often repeated here, that it has a fair title to Justice Vaughan's epithet of a "decantatum." In speaking then of this overt act, we are compelled to inquire, not merely into the fact of the assemblage, but the intention of it; in doing which, we must examine and develope the whole project of the prisoner. It is obvious, therefore, that an abstract examination of this point cannot be made; and since the gentlemen drive us into the examination, they cannot complain, if, without any softening of lights or deepening of shades, we exhibit the picture in its true and natural state.

This motion is a bold and original stroke in the noble science of defence. It marks the genius and hand of a master. For it gives to the prisoner every possible advantage, while it gives him the full benefit of his legal defence—the sole defence which he would be able to make to the jury, if the evidence were all introduced before them. It cuts off from the prosecution all that evidence which goes to connect the prisoner with the assemblage on the island, to explain the destination and objects of the assemblage, and to stamp beyond

* A full report of this extraordinary trial was taken in short hand by Mr. T. Carpenter, and published in three volumes, 1807. See note at page 174, in the first volume of

the other day, to compel us to begin with the proof of the overt act, in which, from their zeal, gentlemen were equally sanguine, and observe what would have been the effect of success in both motions. We should have been reduced to the single fact, the individual fact, of the assemblage on the island, without any of the evidence which explains the intention and object of that assemblage. Thus gentlemen would have cut off all the evidence, which carries up the plot almost to its conception, which, at all events, describes the first motion which quickened it into life, and follows its progress until it attained such strength and maturity as to throw the whole western country into consternation. Thus, of the world of evidence which we have, we should have been reduced to the speck, the atom which relates to Blannerhassett's Island. General Eaton's deposition, (hitherto so much and so justly revered as to its subject,) standing by itself would have been without the powerful fortification derived from the corroborative evidence of Commodore Truxton, and the still stronger and most extraordinary coincidence of the Morgans. Standing alone, gentlemen would have still proceeded to speak of that affidavit, as they have heretofore done; not declaring that what General Eaton had sworn was not the truth, but that it was a most marvellous story! a most wonderful tale! and thus would they have continued to seek, in the bold and wild extravagance of the project itself, an argument against its existence and a refuge from public indignation. But that refuge is taken away. General Eaton's narration stands confirmed beyond the possibility of rational doubt. But I ask what inference is to be drawn from these repeated attempts to stifle the prosecution and smother the evidence? If the views of the prisoner were, as they have been so often represented by one of his counsel, highly honorable to himself and glorious to his country, why not permit the evidence to disclose these views? Accused as he is of high treason, he would certainly stand acquitted, not only in reason and justice, but by the maxims of the most squeamish modesty, in showing us by evidence all this honor and this glory which his scheme contained. No, sir, it is not squeamish modesty; it is not fastidious delicacy that prompts these repeated efforts to keep back the evidence; it is apprehension; it is alarm; it is fear; or rather it is the certainty that the evidence, whenever it shall come forward, will fix the charge; and if such shall appear to the court to be the motive of this motion, your Honors, I well know, will not be disposed to sacrifice public justice, committed to your charge, by aiding this stratagem to elude the sentence of the law; you will yield to the motion no further than the rigor of legal rules shall imperiously constrain you.

I shall proceed now to examine the merits

opened it. I will treat that gentleman with candor. If I misrepresent him, it will not be intentionally. I will not follow the example, which he has set me, on a very recent occasion. I will not complain of flowers and graces, where none exist. I will not, like him, in reply to an argument as naked as a sleeping Venus, but certainly not half so beautiful, complain of the painful necessity I am under, in the weakness and decrepitude of logical vigor, of lifting first this flounce, and then than furbelow, before I can reach the wished for point of attack. I keep no flounces or furbelows ready manufactured and hung up for use in the millinery of my fancy, and if I did, I think I should not be so indiscreetly impatient to get rid of my wares, as to put them off on improper occasions. I cannot promise to interest you by any classical and elegant allusions to the pure pages of Tristram Shandy. I cannot give you a squib or a rocket in every period. For my own part, I have always thought these flashes of wit, (if they deserve that name,) I have always thought these meteors of the brain, which spring up with such exuberant abundance in the speeches of that gentleman, which play on each side of the path of reason, or sporting across it with fantastic motion, decoy the mind from the true point in debate, no better evidence of the soundness of the argument with which they are connected, nor, give me leave to add, the vigor of the brain from which they spring, than those vapors which start from our marshes and blaze with a momentary combustion, and which, floating on the undulations of the atmosphere, beguile the traveller into bogs and brambles, are evidences of the firmness and solidity of the earth from which they proceed. I will endeavor to meet the gentleman's propositions in their full force, and to answer them fairly. I will not, as I am advancing towards them with my mind's eye, measure the height, breadth and power of the proposition; if I find it beyond my strength, halve it; if still beyond my strength, quarter it; if still necessary, subdivide it into eighths; and when, by this process I have reduced it to the proper standard, take one of these sections and toss it, with an air of elephantine strength and superiority. If I find myself capable of conducting, by a fair course of reasoning, any one of his propositions to an absurd conclusion, I will not begin by stating that absurd conclusion as the proposition itself which I am going to encounter. I will not, in commenting on the gentleman's authorities, thank the gentleman, with sarcastic politeness, for introducing them, declare that they conclude directly against him, read just so much of the authority as serves the purpose of that declaration, omitting that which contains the true point of the case which makes against me; nor, if forced by a direct call to read that part also, will I content myself by running over it as rapidly and inarticulately as I can, throw

as I had not said. I know that, by adopting these arts, I might raise a laugh at the gentleman's expense; but I should be very little pleased with myself, if I were capable of enjoying a laugh procured by such means. I know, too, that by adopting such arts, there will always be those standing around us, who have not comprehended the whole merits of the legal discussion, with whom I might shake the character of the gentleman's science and judgment as a lawyer. I hope I shall never be capable of such a wish, and I had hoped that the gentleman himself felt so strongly that proud, that high, aspiring and ennobling magnanimity, which I had been told conscious talents rarely fail to inspire, that he would have disdained a poor and fleeting triumph, gained by means like these.

I proceed now to answer the several points of his argument, so far as they could be collected from the general course of his speech. I say, so far as they could be collected; for the gentleman, although requested before he began, refused to reduce his motion to writing. It suited better his partisan style of warfare to be perfectly at large; to change his ground as often as he pleased; on the plains of Monmouth to-day, at the Eutaw Springs to-morrow. He will not censure me, therefore, if I have not been correct in gathering his points from a desultory discourse of four or five hours' length, as it would not have been wonderful if I had misunderstood him. I trust, therefore, that I have been correct; it was my intention to be so; for I can neither see pleasure nor interest in misrepresenting any gentleman; and I now beg the court, and the gentleman, if he will vouchsafe it, to set me right if I have misconceived him.

I understood him, then, sir, to resist the introduction of further evidence, under this indictment, by making four propositions.

First. Because Aaron Burr, not being on the island, at the time of the assemblage, cannot be a principal in the treason, according to the constitutional definition or the laws of England.

Second. Because the indictment must be proved as laid; and as the indictment charges the prisoner with levying war, with an assemblage on the island, no evidence to charge him with that act, by relation, is relevant to this indictment.

Third. Because, if he be a principal in the treason at all, he is a principal in the second degree; and his guilt being of that kind which is termed derivative, no parol evidence can be let in to charge him, until we shall show a record of the conviction of the principals in the first degree.

Fourth. Because no evidence is relevant to connect the prisoner with others, and thus to make him a traitor by relation, until we shall previously show an act of treason in these others; and the assemblage on the island was not an act of treason.

succession, and to give them those answers which to my mind are satisfactory. Let us examine the first: it is because Aaron Burr, not being present on the island at the time of the assemblage, cannot be a principal in the treason, within the constitutional definition or the laws of England.

In many of the gentleman's general propositions, I perfectly accord with him: as that the constitution was intended to guard against the calamities to which Montesquieu refers, when he speaks of the victims of treason; that the constitution intended to guard against arbitrary and constructive treasons; that the principles of sound reason and liberty require their exclusion; and that the constitution is to be interpreted by the rules of reason and moral right. I fear, however, that I shall find it difficult to accommodate both the gentlemen who have spoken in support of the motion, and to reconcile some of the positions of Mr. Randolph to the rules of Mr. Wickham; for, while the one tells us to interpret the constitution by sound reason, the other exclaims, "save us from the deductions of common sense." What rule then shall I adopt? A kind of reason which is not common sense might indeed please both the gentlemen; but, as that is a species of reason of which I have no very distinct conception, I hope the gentlemen will excuse me for not employing it. Let us return to Mr. Wickham.

Having read to us the constitutional definition of treason, and given us the rule by which it was to be interpreted, it was natural to expect that he would have proceeded directly to apply that rule to the definition, and give us the result. But while we were expecting this, even while we have our eyes on the gentleman, he vanishes like a spirit from American ground, and we see him no more until we see him in England, resurging by a kind of intellectual magic in the middle of the sixteenth century, complaining most dolefully of my lord Coke's bowels. Before we follow him in this excursion, it may be well to inquire what it was that induced him to leave the regular track of his argument. I will tell you what it was. It was, sir, the decision of the Supreme Court in the case of Bollman and Swartwout. It was the judicial exposition of the constitution by the highest court in the nation, upon the very point which the gentleman was considering, which made him take this flight to England; because it stared him in the face and contradicted his position. Sir, if the gentleman had believed this decision to be favorable to him, we should have heard of it in the beginning of his argument; for the path of inquiry in which he was led him directly to it. Interpreting the American constitution, he would have preferred no authority to that of the Supreme Court of the country. Yes, sir, he would have immediately seized this decision with avidity. He would have set it before you in every possible light. He would have illustrated it. He would

action of his genius appear with all the varying grandeur of our mountains in the morning sun. He would not have relinquished it for the common law, nor have deserted a rock so broad and solid, to walk upon the waves of the Atlantic. But he knew that this decision closed against him completely the very point which he was laboring. Hence it was that the decision was kept so sedulously out of view, until from the exploded materials of the common law he thought he had reared a Gothic edifice so huge and so dark, as quite to overshadow and eclipse it. Let us bring it from this obscurity into the face of day. We who are seeking truth and not victory, whether right or wrong, have no reason to turn our eyes from any source of light which presents itself, and least of all from a source so high and so respectable as the decision of the Supreme Court of the United States. The inquiry is, whether presence at the overt act be necessary to make a man a traitor? The gentlemen say that it is necessary; that he cannot be a principal in the treason without actual presence. What says the Supreme Court in the case of Bollman and Swartwout? "It is not the intention of the court to say that no individual can be guilty of this crime, who has not appeared in arms against his country; on the contrary, if war be actually levied, that is, if a body of men be assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors."

Here then we find the court so far from requiring presence, that it expressly declares that, however remote the accused may have been from the scene of the treasonable assemblage, he is still involved in the guilt of that assemblage, his being leagued in the general conspiracy was sufficient to make the act his own. The Supreme Court, being of that opinion, proceeded to an elaborate examination of the evidence, to ascertain whether there had been a treasonable assemblage. It looked to the depositions of General Eaton and General Wilkinson, the ciphered letter, the declaration of Swartwout that Burr was levying an armed body of seven thousand men; and it looked to these parts of the evidence expressly for the purpose of discovering, whether it were probable that Burr had actually brought these men together; not whether Bollman and Swartwout were present at any such assemblage. It knew that, if any such assemblage had taken place, Bollman and Swartwout must have been at that time at the city of Orleans, or on their way thither; indeed the whole reasoning of the court proceeded on the fact, as admitted, of the prisoner's absence. Why, then, the laborious investigation which the court makes as to the probability of Burr having brought his men or any part of them together, unless the guilt of that assemblage were to be imputed to Bollman and Swartwout because them, that fact was admitted, and the inquiry would have been a very short one. But, the court having previously decided that the fact of presence or absence was unimportant, that it made no odds how far distant the accused might be from the treasonable assemblage, it became the unavoidable duty of the court to proceed to the inquiry, whether any such assemblage had taken place; and if the evidence had manifested that fact to its satisfaction, it is clear that, in the opinion of that court, the prisoners would have been as deeply involved in the guilt of that assemblage as any of those who actually composed it.

The counsel knew that their first point was met directly by the counter authority of the Supreme Court. They have impliedly, if not expressly, admitted it; hence they have been reduced to the necessity of taking the bold and difficult ground, that the passage which I have read is extrajudicial, a mere "obiter dictum." They have said this, but they have not attempted to show it.

Give me leave to show that they are mistaken; that it is not an "obiter dictum;" that it is not extrajudicial; but that it is a direct adjudication of a point immediately before the court. What were the questions before the court? The court made no formal division of this subject, but these questions are necessarily and irresistibly involved in it. It must first be observed, that the arrest of Bollman and Swartwout at New Orleans, and the fact that they had not been present at any assemblage of the traitors in arms, were notorious and admitted. The case then presented to the court three distinct questions. First. Has Aaron Burr committed treason, or has he been engaged or leagued in any treasonable conspiracy? Second. Were Bollman and Swartwout connected with him? Third. Could they be guilty of treason without being actually present? Now, if the court had been satisfied that there had been an overt act, and that these men were leagued in the conspiracy which produced it, still it would have remained a distinct and substantive question, whether their absence from the overt act, and their having no immediate hand in it, did not discharge them from the constitutional guilt of levying war; for, though leagued in the conspiracy, and although there might have been an overt act, these men would have been innocent, if presence at the overt act were necessary to make them guilty. The question then, of presence or absence, was a question really presented by the case of Bollman and Swartwout. It was one important to the decision of the case, and the court, thinking it so, did consider and decide it in direct opposition to the principle contended for on the other side. A plain man would imagine that, when the Supreme Court had taken up and decided the case, its decision would form a precedent on the subject; and, having that authority on my side, I should suppose, that I might

Mr. Randolph seems to think it very doubtful whether you ought to be bound by that authority, and that you must be very much embarrassed to have to decide it, even admitting it to be a regular judicial determination of this question; for he made a very pathetic and affecting apostrophe to the situation in which you would be placed, if you differed from this opinion of the Supreme Court.

I see no difficulty in the case, if our laws are to be uniform. How can the inferior court control the decisions of the superior court? You are but a branch of the Supreme Court. If you, sir, sitting as a circuit court, have a right to disregard the rule decided by the Supreme Court, and adopt a different rule, every other inferior court has an equal right to do the same, so that there will be as many various rules as to treason as there are courts; and the result might be, and certainly would be, that what would be treason in one circuit would not be treason in another; and a man might be hung in Pennsylvania for an act against the United States, in which he would be held perfectly innocent in Virginia. Thus treason against the United States would still be unsettled and fluctuating, and the object of the constitution, in defining it, would be disappointed and defeated; whereas a principle of law, solemnly adjudged by the Supreme Court, becomes, I apprehend, the law of the land; and all the inferior courts are compulsorily bound by it. To say that they are not, is to disorganize the whole judiciary system, to confound the distinctions and grades of the courts, to banish all certainty and stability from the law, and to destroy all uniformity of decision. I trust that we are not prepared to rush into this wild disorder and confusion, but that we shall temperately and regularly conform to the decrees of that parent court, of which this is a mere branch, until those decrees shall be changed by the same high authority which created them.

But for a moment, let us relinquish that decision, and, putting it aside, let us indulge the gentleman with the inquiry, whether that decision be in conformity with the constitution of the United States, and the laws of England. In interpreting the constitution, let us apply to it the gentleman's own principles: the rules of reason and moral right. The question to be thus determined is, whether a man, who is absent, may not be guilty as if he were actually present.

That a law should be so construed as to advance the remedy and repress the mischief, is not more a rule of common law, than a principle of reason; it applies to penal as well as to remedial laws. So also the maxim of the common law, that a law as well as a covenant should be so construed that its object may rather prevail than perish, is one of the plainest dictates of common sense. Apply these principles to the constitution. Gentlemen have said, that its object was to prevent the people from being But its object, I presume, was not to declare that there was no such crime. It certainly did not mean to encourage treason. It meant to recognize the existence of the crime and provide for its punishment. The liberties of the people, which required that the offence should be defined, circumscribed and limited, required also that it should be certainly and adequately punished. The framers of the constitution, informed by the examples of Greece and Rome, and foreseeing that the liberties of this republic might one day or other be seized by the daring ambition of some domestic usurper, have given peculiar importance and solemnity to the crime, by ingrafting it upon the constitution. But they have done this in vain, if the construction, contended for on the other side, is to prevail. If it require actual presence at the scene of the assemblage to involve a man in the guilt of treason, how easy will it be for the principal traitor to avoid this guilt and escape punishment for ever! He may go into distant States, from one State to another. He may secretly wander, like a demon of darkness, from one end of the continent to the other.

He may enter into the confidence of the simple and unsuspecting. He may pour his poison into the minds of those who were before innocent. He may seduce them into a love of his person, offer them advantages, pretend that his measures are honorable and beneficial, connect them in his plot and attach them to his glory. He may prepare the whole mechanism of the stupendous and destructive engine and put it in motion. Let the rest be done by his agents. He may then go a hundred miles from the scene of action. Let him keep himself only from the scene of the assemblage and the immediate spot of battle, and he is innocent in law, while those whom he has deluded are to suffer the death of traitors! Who is the most guilty of this treason, the poor, weak, deluded instruments, or the artful and ambitious man who corrupted and misled them? There is no comparison between his guilt and theirs; and yet you secure impunity to him, while they are to suffer death! Is this according to the rules of reason? Is this moral right? Is this a means of preventing treason? Or rather, is it not in truth a direct invitation to it? Sir, it is obvious, that neither reason nor moral rights require actual presence at the overt act to constitute the crime of treason. Put this case to any common man, whether the absence of a corruptor should exempt him from punishment for the crime which he has excited his deluded agents to commit; and he will instantly tell you that he deserves infinitely more severe punishment than his misguided instruments. There is a moral sense much more unerring in questions of this sort, than the frigid deductions of jurists or philosophers; and no man of a sound mind and heart, can doubt for a moment between the comparative guilt of Aaron Burr, (the prime mover of the whole mischief), and

called themselves Burr's men. In the case of murder, who is the most guilty, the ignorant, deluded perpetrator, or the abominable instigator? The decision of the Supreme Court, sir, is so far from being impracticable on the ground of reason and moral right, that it is supported by their most obvious and palpable dictates. Give to the constitution the construction contended for on the other side, and you might as well expunge the crime from your criminal code; nay, you had better do it, for by this construction you hold out the lure of impunity to the most dangerous men in the community, men of ambition and talents, while you loose the vengeance of the law on the comparatively innocent. If treason ought to be repressed, I ask you who is the most dangerous and the most likely to commit it—the mere instrument who applies the force, or the daring, aspiring, elevated genius who devises the whole plot, but acts behind the scenes?*

I come now, sir, to the gentleman's third point, in which he says he cannot possibly fail. It is this: "because if the prisoner be a principal in the treason at all, he is a principal in the second degree; and his guilt being of that kind which is termed derivative, no further parol evidence can be let in to charge him, until we show a record of the conviction of the principals, in the first degree."

By this, I understand the gentleman to advance, in other terms, the common law doctrine, that when a man is rendered a principal in treason, by acts which would make him an accessory in felony, he cannot be tried before the principal in the first degree.

I understand this to be the doctrine of the common law, as established by all the authorities; but when I concede this point, I insist, that it can have no effect in favor of the accused, for two reasons: first, because it is the mere creature of the common law; secondly, because, if the common law of England be our law, this position assumes what is denied, that the conduct of the prisoner, in this case, is of an accessorial nature, or such as would make him an accessory in felony.

First. Because this position is the mere creature of the common law. If it be so, no consequence can be deduced from it. It is sufficient, on this branch of the subject, to take his own declaration, that the common law does not exist in this country. If we examine the constitution and the act of Congress, we shall find that this idea of a distinction between principals in the first and second degree, depends entirely upon the common law. Neither the constitution nor the act of Congress knows any such distinction. All who levy war against the United States, whether present or absent—all who are leagued in the conspiracy, whether on the spot of the assemblage or performing some minute and inconsiderable part in it, a thousand miles from the scene of action, incur equally the sentence of the law; they are all equally traitors. This scale, therefore, which graduates the guilt of the offenders and establishes the order of their respective trials, if it ever existed here, is completely abrogated by the highest authorities in this country. The convention which formed the constitution and defined treason, Congress which legislated on that subject, and the supreme judiciary of the country expounding the constitution and the law, have united in its abrogation. But let us for a moment put the convention, Congress and judiciary aside, and examine how the case will stand. Still this scale of moral guilt, which Mr. Wickham has given us, is the creature of the common law, which, as already observed, he himself in another branch of his argument, has emphatically told us does not exist in this country. He has stated that the creature presupposes the creator, and that where the creator does not exist, the creature cannot. The common law, then, being the creator of the rule which Mr. Wickham has given us, and that common law not existing in this country, neither can the rule, which is the mere creature of it, exist in this country. So that the gentleman has himself furnished the argument which refutes this infallible point of his, on which he has so much relied. But to try this position to its utmost extent, let us not only put aside the constitution and act of Congress, and decision of the Supreme Court, but let us admit that the common law does exist here. Still, before the principle could apply, it would remain to be proven, that the conduct of the prisoner, in this case, has been accessorial; or, in other words, that his acts in relation to this treason, are of such a nature as would make him an accessory in felony.

But is this the case? It is a mere "petitio principii." It is denied that his acts are such as would make him an accessory in felony. I have already, in another branch of this subject, endeavored to show, on the grounds of authority and reason, that a man might be involved in the guilt of treason as a principal, by being legally though not actually present; that treason occupied a much wider space than felony; that the scale of proximity between the accessory and principal must be extended in proportion to the extent of the theatre of the treason; and that as the prisoner must be considered as legally present, he could not be an accessory but a principal. If I have succeeded in this, I have in fact proved that his conduct cannot be deemed accessorial. But an error has taken place from considering the scene of the overt act as the theatre of the treason, from mistaking the overt act of the treason itself, and consequently from referring the conduct of the prisoner to the acts on the island. The conduct of Aaron Burr has been considered in relation to the overt act on Blannerhassett's island only; whereas it ought to be considered in connection with the grand design, the deep plot of seizing Orleans, separat-

empire in the west, of which the prisoner was to be the chief. It ought to be recollected that these were his objects, and that the whole western country, from Beaver to Orleans, was the theatre of his treasonable operations. It is by this first reasoning that you are to consider whether he be a principal or an accessory, and not by limiting your inquiries to the circumscribed and narrow spot in the island where the acts charged happened to be performed. Having shown, I think, on the ground of law, that the prisoner cannot be considered as an accessory, let me press the inquiry, whether on the ground of reason he be a principal or accessory; and remember that his project was to seize New Orleans, separate the Union, and erect an independent empire in the west, of which he was to be the chief. This was the destination of the plot and the conclusion of the drama. Will any man say that Blannerhassett was the principal, and Burr but an accessory? Who will believe that Burr, the author and projector of the plot, who raised the forces, who enlisted the men, and who procured the funds for carrying it into execution, was made a cat's-paw of? Will any man believe that Burr, who is a soldier, bold, ardent, restless and aspiring, the great actor whose brain conceived, and whose hand brought the plot into operation, that he should sink down into an accessory, and that Blannerhassett should be elevated into a principal? He would startle at once at the thought. Aaron Burr, the contriver of the whole conspiracy, to every body concerned in it was as the sun to the planets which surround him. Did he not bind them in their respective orbits and give them their light, their heat and their motion? Yet he is to be considered an accessory, and Blannerhassett is to be the principal!

Let us put the case between Burr and Blannerhassett. Let us compare the two men and settle this question of precedence between them. It may save a good deal of troublesome ceremony hereafter.

Who Aaron Burr is, we have seen in part already. I will add, that beginning his operations in New York, he associates with him men whose wealth is to supply the necessary funds. Possessed of the mainspring, his personal labor contrives all the machinery. Pervading the continent from New York to New Orleans, he draws into his plan, by every allurement which he can contrive, men of all ranks and descriptions. To youthful ardor he presents danger and glory; to ambition, rank and titles and honors; to avarice the mines of Mexico. To each person whom he addresses he presents the object adapted to his taste. His recruiting officers are appointed. Men are engaged throughout the continent. Civil life is indeed quiet upon its surface, but in its bosom this man has contrived to deposit the materials which, with the slightest touch of his match, produce an explosion to shake the continent. All this his tumn of 1806 he goes forth for the last time to apply this match. On this occasion he meets with Blannerhassett.

Who is Blannerhassett? A native of Ireland, a man of letters, who fled from the storms of his own country to find quiet in ours. His history shows that war is not the natural element of his mind. If it had been, he never would have exchanged Ireland for America. So far is an army from furnishing the society natural and proper to Mr. Blannerhassett's character, that on his arrival in America, he retired even from the population of the Atlantic States, and sought quiet and solitude in the bosom of our western forests. But he carried with him taste and science and wealth; and lo, the desert smiled! Possessing himself of a beautiful island in the Ohio, he rears upon it a palace, and decorates it with every romantic embellishment of fancy. A shrubbery that Shenstone might have envied, blooms around him. Music that might have charmed Calypso and her nymphs is his. An extensive library spreads its treasures before him. A philosophical apparatus offers to him all the secrets and mysteries of nature. Peace, tranquillity and innocence shed their mingled delights around him. And to crown the enchantment of the scene, a wife, who is said to be lovely even beyond her sex, and graced with every accomplishment that can render it irresistible, had blessed him with her love, and made him the father of several children. The evidence would convince you that this is but a faint picture of the real life. In the midst of all this peace, this innocent simplicity and this tranquillity, this feast of the mind, this pure banquet of the heart, the destroyer comes; he comes to change this paradise into a hell. Yet the flowers do not wither at his approach. No monitory shuddering through the bosom of their unfortunate possessor warns him of the ruin that is coming upon him. A stranger presents himself. Introduced to their civilities by the high rank which he had lately held in his country, he soon finds his way to their hearts by the dignity and elegance of his demeanor, the light and beauty of his conversation, and the seductive and fascinating power of his address. The conquest was not difficult. Innocence is ever simple and credulous. Conscious of no design itself, it suspects none in others. It wears no guard before its breast. Every door, and portal, and avenue of the heart is thrown open, and all who choose it enter. Such was the state of Eden when the serpent entered its bowers. The prisoner, in a more engaging form, winding himself into the open and unpractised heart of the unfortunate Blannerhassett, found but little difficulty in changing the native character of that heart and the objects of its affection. By degrees he infuses into it the poison of his own ambition. He breathes into it the fire of his own courage; a daring and desperate thirst

of life. In a short time the whole man is changed, and every object of his former delight is relinquished. No more he enjoys the tranquil scene; it has become flat and insipid to his taste. His books are abandoned. His retort and crucible are thrown aside. His shrubbery blooms and breathes its fragrance upon the air in vain; he likes it not. His ear no longer drinks the rich melody of music; it longs for the trumpet's clangor and the cannon's roar. Even the prattle of his babes, once so sweet, no longer affects him; and the angel smile of his wife, which hitherto touched his bosom with ecstasy so unspeakable, is now unseen and unfelt. Greater objects have taken possession of his soul. His imagination has been dazzled by visions of diadems, of stars, and garters, and titles of nobility. He has been taught to burn with restless emulation at the names of great heroes and conquerors. His enchanted island is destined soon to relapse into a wilderness; and in a few months we find the beautiful and tender partner of his bosom, whom he lately "permitted not the winds of" summer "to visit too roughly," we find her shivering at midnight, on the wintry banks of the Ohio, and mingling her tears with the torrents that froze as they fell. Yet this unfortunate man, thus deluded from his interest and his happiness, thus seduced from the paths of innocence and peace, thus confounded in the toils that were deliberately spread for him, and overwhelmed by the mastering spirit and genius of another—this man, thus ruined and undone, and made to play a subordinate part in this grand drama of guilt and treason, this man is to be called the principal offender, while he, by whom he was thus plunged in misery, is comparatively innocent, a mere accessory! Is this reason? Is it law? Is it humanity? Sir, neither the human heart nor the human understanding will bear a perversion so monstrous and absurd! so shocking to the soul! so revolting to reason! Let Aaron Burr, then, not shrink from the high destination which he has courted, and having already ruined Blannerhassett in fortune, character and happiness, for ever, let him not attempt to finish the tragedy by thrusting that ill-fated man between himself and punishment.

Upon the whole, sir, reason declares Aaron Burr the principal in this crime, and confirms herein the sentence of the law; and the gentleman, in saying that his offence is of a derivative and accessorial nature, begs the question, and draws his conclusions from what, instead of being conceded, is denied. It is clear from what has been said, that Burr did not derive his guilt from the men on the island, but imparted his own guilt to them; that he is not an accessory, but a principal; and, therefore, that there is nothing in the objection which demands a record of their conviction before we shall go on with our proof against him.

But suppose you should think otherwise, suppose you should think that the evidence of the overt act does not support the charge of treason, and that Aaron Burr is only an accessory, still you will not stop the evidence. You will not, because you think him an accessory, refuse to hear the proof of his guilt.

in the annals of jurisprudence. Have the counsel, on either side, a right to call on the other side, to state all their evidence, before it be introduced, and then to address the court without hearing it, if they think they have a better chance before the court than the jury? Has either party a right to substitute the court for the jury, or the jury for the court, at pleasure; to address the court on facts, or the jury on points of law? Such an attempt would not be a greater encroachment on the right of the proper tribunal, than the present motion is on the rights of the jury.*

THE CHEROKEE CASE.

The following is an extract from Mr. Wirt's argument before the Supreme Court of the United States, on a motion for an injunction to prevent the execution of certain acts of the legislature of Georgia, in the territory of the Cherokee nation of Indians, on behalf of the Cherokee nation.*

Sir, I have presented to you all the views that have occurred to me as bearing materially on this question. I have endeavored to satisfy you that, according to the supreme law of the land, you have before you proper parties and a proper case to found your original jurisdiction: that the case is one which warrants and most imperiously demands an injunction; and unless its aspect be altered by an answer and evidence, —which I confidently believe it cannot be—that if ever there was a case which called for a decree of perpetual peace, this is the case.

It is with no ordinary feelings that I am about to take leave of this cause. The existence of this remnant of a once great and mighty nation is at stake; and it is for your honors to say whether they shall be blotted out from the creation, in utter disregard of all our treaties. They are here in the last extremity, and with them must perish for ever the honor of the American name. The faith of our nation is fatally linked with their existence, and the blow which destroys them quenches for ever our own glory: for what glory can there be, of which a patriot can be proud, after the good name of his country shall have departed? We may gather laurels on the field and trophies on the ocean, but they will never hide this foul blot upon our escutcheon. "Remember the Cherokee nation," will be answer enough to the proudest boasts that we can ever make—answer enough to cover with confusion the face and the heart of every man among us, in whose bosom the last spark of grace has not been extinguished. Such, it is possible, there may be who are willing to glory in their own shame, and to triumph in the disgrace which they are permitted to heap upon this nation. But, thank Heaven! they are comparatively few. The great majority of the American people see this subject in its true light. They have hearts of flesh in their bosoms, instead of hearts of stone; and every rising and setting sun witnesses the smoke of the incense from the thousands and tens of thousands of domestic altars, ascending to the throne of grace to invoke its guidance and blessing on your councils. The most undoubting confidence is reposed in this tribunal.

We know that whatever can be properly done for this unfortunate people will be done by this honorable court. Their cause is one that must come to every honest and feeling heart. They have been true and faithful to us, and have a right to expect a corresponding fidelity on our part. Through a long course of years, they have followed our counsel with the docility of children. Our wish has been their law. We asked them to become civilized, and they became so. They assumed our dress, copied our names, pursued our course of education, adopted our form of government, embraced our religion, and have been proud to imitate us in every thing in their power. They have watched the progress of our prosperity with the strongest interest, and have marked the rising grandeur of our nation with as much interest as if they had belonged to us. They have even adopted our resentments, and in our war with the Seminole tribes they voluntarily joined our arms, and gave effectual aid in driving back those barbarians from the very State that now oppresses them. They threw upon the field in that war a body of men, who proved, by their martial bearing, their descent from the noble race that were once the lords of these extensive forests—men worthy to associate with the "lion" who, in their own language, "walks upon the mountain-tops."† They fought, side by side, with our present Chief Magistrate, and received his repeated thanks for their gallantry and conduct.

May it please your honors, they have refused to us no gratification which it has been in their power to grant. We asked them for a portion of their lands, and they ceded it. We asked

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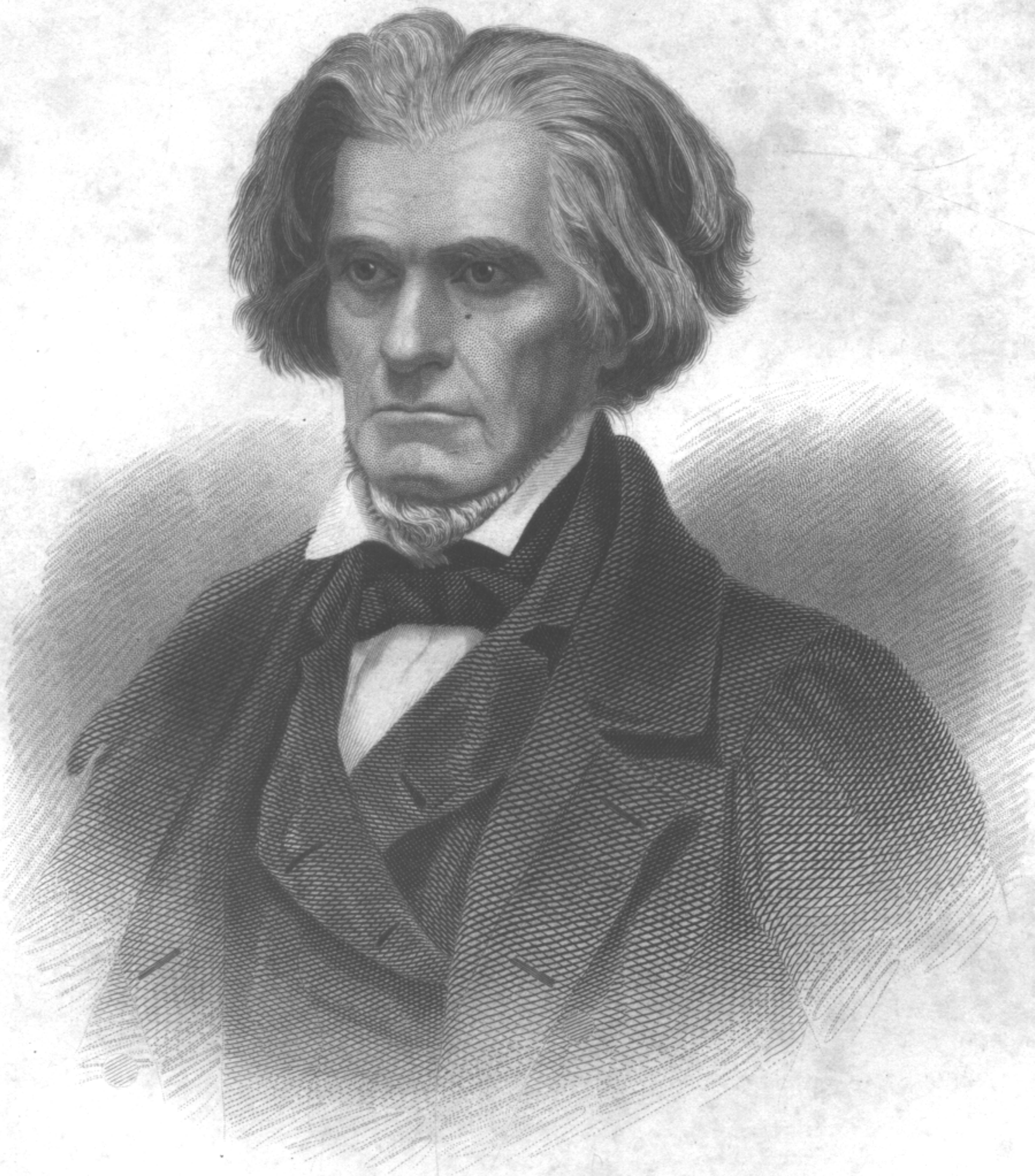
* See the Memoirs of the Life of William Wirt, Attorney-

* The remainder of Mr. Wirt's speech, in which he replied to Mr. Wickham's fourth objection to the admission of fur-

again and again, and they continued to cede, until they have now reduced themselves within the narrowest compass that their own subsistence will permit. What return are we about to make to them for all this kindness? We have pledged for their protection, and for the guaranty of the remainder of their lands, the faith and honor of the nation; a faith and honor never sullied, nor even drawn into question till now. We promised them, and they trusted us. They have trusted us: Shall they be deceived? They would as soon expect to see their rivers run upwards on their sources, or the sun roll back in his career, as that the United States would prove false to them, and false to the word so solemnly pledged by their Washington, and renewed and perpetuated by his illustrious successors.

Is this the high mark to which the American nation has been so strenuously and successfully pressing forward? Shall we sell the mighty meed of our high honors at so worthless a price, and, in two short years, cancel all the glory which we have been gaining before the world for the last half century? Forbid it, Heaven!

I will hope for better things. There is a spirit that will yet save us. I trust that we shall find it here, in this sacred court, where no foul and malignant demon of party enters to darken the understanding or to deaden the heart, but where all is clear, calm, pure, vital and firm. I cannot believe that this honorable court, possessing the power of preservation, will stand by and see these people stripped of their property and extirpated from the earth, while they are holding up to us their treaties and claiming the fulfilment of our engagements. If truth, and faith, and honor, and justice have fled from every other part of our country, we shall find them here. If not—our sun has gone down in treachery, blood and crime, in the face of the world; and, instead of being proud of our country, as heretofore, we may well call upon the rocks and mountains to hide our shame from earth and heaven.



J. C. Calhoun

NEW YORK D. APPLETON & CO.

JOHN CALDWELL CALHOUN.

JOHN C. CALHOUN, occupies a position first in rank among the orators and statesmen of America. He was of Irish extraction, and was born in Abbeville District, South Carolina, on the eighteenth of March, 1782. His grandfather, James Calhoun, the first of his family who emigrated to America, left Ireland in 1733, and settled in Pennsylvania, from whence he removed to western Virginia. His new home being broken up on the defeat of the unfortunate Braddock, he was again obliged to remove; and he established himself in South Carolina, in a district which was afterwards known as the *Calhoun Settlement*. In this place he experienced the savage hostilities of the Cherokee Indians, and after a desperate struggle with them, in which his wife, his eldest son, and several other members of the family were massacred, he abandoned the settlement, and did not return to it until after the establishment of peace. Patrick Calhoun, a son of the foregoing, and the father of the subject of this sketch, displayed the most indomitable perseverance and courage, in the struggle with the Cherokees, and for his services was appointed to the command of a body of provincial rangers, raised for the defence of the frontier. He was a man of the most resolute and active character, and not only served with credit and renown against the incursions of the savages, but, later in life, during the war of the Revolution, rendered signal service in the cause of freedom and colonial rights. For many years he followed the profession of a surveyor with skill and success. Although his life was spent in the midst of the turmoil and hardships of border life, he devoted much of his time to study, and became well versed in English literature. During the Revolution he was a member of the South Carolina provincial legislature, and after the termination of the contest, continued in the State legislature for many years. He opposed the Federal Constitution on the ground that it took away the sovereignty of the States. "We have heard his son say," it is recorded in a recent sketch, * "that among his earliest recollections was one of a conversation when he was nine years of age, in which his father maintained that government to be the best which allowed the largest amount of individual liberty compatible with social order and tranquillity, and insisted that the improvements in political science would be found to consist in throwing off many of the retraints then imposed by law, and deemed necessary to an organized society." It may well be supposed that his son John was an attentive and eager auditor, and that such lessons encouraged that spirit of free inquiry for which he was so distinguished during his subsequent career.

The mother of John C. Calhoun, Martha Caldwell, a native of Virginia, was the sister of John Caldwell, who was cruelly killed by the tories during the Revolution, and a niece of the Rev. James Caldwell, a popular preacher, prominent in the history of the revolutionary war, for the zeal and activity he manifested in the defence of the patriot cause. For some time he was a chaplain in the American army, and wielded a great influence over the troops, by whom he was greatly beloved and respected. This circumstance rendered him exceedingly obnoxious to the ministerialists, and many attempts were made to take him prisoner. Unsuccessful in this, the royalists burnt his church, deliberately shot his wife, afterwards burnt his house, and at a

* Sketch of the life of John C. Calhoun, by Parke Godwin, in Homes of American Statesmen; page 399.

later period instigated a sentinel to shoot him, which was done, not fatally, however, while he was on his way to New York under the protection of a flag of truce.*

John C. Calhoun's early instruction was imparted to him at home. At the age of thirteen he was placed under the care of the Rev. Dr. Waddell, his brother-in-law, where he remained, with the exception of a short time, until his entrance upon his college life. During his course with Dr. Waddell, his attention to his studies was so ardent and unremitting, that his health became impaired, and, at one period, his mother, alarmed at his situation, decided to take his books away from him and direct his energies to agricultural pursuits. But this mode of life continued only until he regained his physical vigor: he then continued his studies, and, in the autumn of 1802, entered the junior class at Yale College. In college he was distinguished for the originality of his propositions, the brilliancy of his imagination, the correctness of his tastes and judgment, and the depth of his intellect. His rare acquirements attracted the attention of President Dwight, with whom he held many friendly disputations, and who, on more than one occasion, predicted the future eminence of his eloquent and strong reasoning pupil. He received the honors of a large class, but was prevented from delivering his graduating oration, by a severe illness. On leaving college he commenced the study of law, in the office of Mr. H. W. Desaussure, an eminent practitioner of South Carolina, but soon after returned to Connecticut, and entered the Litchfield Law School, whence he graduated in 1806.

In 1807 he entered upon practice in the neighborhood of his birthplace, and took a position, "from the very outset, with the most eminent lawyers in his circuit." At this time he commenced his political life. An effort he made at a meeting in his native place, which had been convened to consider the affair of the Chesapeake, gained him the confidence of his fellow-citizens, and he was elected to the State legislature. Here he remained until 1811, in the fall of which year he took his seat in the lower House of the United States Congress, and at once became prominent and active in its deliberations. Soon after he appeared in Congress he was placed on the committee of foreign affairs, and in the support of a report that was made by that committee, recommending an immediate appeal to arms, to settle the difficulties then pending between the United States and Great Britain, he made his first speech, which, for the patriotism of his sentiment and eloquent beauties, won him universal applause. He was compared to "one of the old sages of the old Congress, with the graces of youth," and the "young Carolinian" was hailed as "one of the master spirits, who stamp their name upon the age in which they live." From this time he occupied the front rank of the war party in Congress, and, during the continuance of hostilities, made powerful efforts in defence of the war policy. It is not the present purpose to enter into any detail of his services during the war. Such a recital would require the space of a volume. Of his speeches delivered at this time, many were undoubtedly lost, through the want of able and careful reporters; but those which are now before the public evince the highest order of statesmanship and eloquence, and will be read with interest, "until patriotism ceases to be a virtue." Mr. Calhoun remained in the House of Representatives until December, 1817, when he was appointed Secretary of War by President Monroe. His speeches during the latter part of his representative career: that on the United States Bank, Internal Improvement, and the Tariff, are particularly distinguished for power and constitutional learning.

As Secretary of War, Mr. Calhoun rendered signal service to the country. He found the department, in all its branches, in confusion, and, at the end of his seven years' administration, left it in complete order. He found upwards of forty millions of dollars of unsettled accounts, says his biographer, which he reduced to less than three millions, and he completely prevented all further accumulation by the unexampled exactness of accountability which he introduced into every branch of the disbursements, and in consequence of which he was enabled to report to Congress in 1823, that "of the entire amount of money drawn from the treasury in 1822, for the military service, including pensions, amounting to four millions five hundred and seventy-one thousand nine hundred and sixty-one dollars and ninety-four cents, although it passed through the hands of two hundred and ninety-one disbursing agents, there had not been a single defalca-

tion, nor the loss of one cent to the government; and that he had reduced the expense of the army from four hundred and fifty-one dollars per man, to two hundred and eighty-seven dollars, and thereby saved to the country annually more than one million three hundred thousand dollars." This system and order was perfected at the same time he was engaged in those arduous and able public documents and reports which distinguished his secretaryship.

In 1825, Mr. Calhoun was elevated to the Vice Presidency of the United States, and continued in that station until 1831, when he resigned, and was elected to the United States Senate, to fill the vacancy occasioned by the retirement of R. Y. Hayne, who had been elected to the gubernatorial chair of South Carolina. At the expiration of his senatorial term he retired to private life. Of the numerous able speeches he made in this portion of his public life, no one attracted more general attention than that upon the *Revenue Collection (Force) Bill.* In this his views of State sovereignty are set forth in the usual clear, honest, and straightforward manner, which was so characteristic of both his private and public life.

After the accession of John Tyler to the Presidency, Mr. Calhoun was appointed Secretary of State, and, in 1845, returned again to the Senate, in which body he remained until his death. He died of a pulmonary complaint, at Washington, on the thirty-first of March, 1850. His loss to the nation was deeply felt and sincerely mourned. For a period of forty years he had represented the interests of his native State with fidelity, honor, and ability; his course had been distinguished by constant exertions for the welfare of his constituents, and they never found him indifferent or regardless of their interests. He was never the slave of party, never guilty of the low arts or petty cunning of the mere politician; always fearless in the discharge of his duties, and though ambitious, ever sacrificing his ambition to his clearly discerned and openly expressed principles.

Of the numerous affectionate tributes to the genius, statesmanship, and private character of Mr. Calhoun, the following offered by Mr. Webster, in the Senate of the United States, will be read with interest:—"We are of the same age," said he: "I made my first entrance into the House of Representatives in May, 1813, and there found Mr. Calhoun. He had already been in that body for two or three years. I found him then an active and efficient member of the assembly to which he belonged, taking a decided part, and exercising a decided influence, in all its deliberations.

"From that day to the day of his death, amidst all the strifes of party and politics, there has subsisted between us, always and without interruption, a great degree of personal kindness.

"Differing widely on many great questions respecting the institutions and government of the country, those differences never interrupted our personal and social intercourse. I have been present at most of the distinguished instances of the exhibition of his talents in debate. I have always heard him with pleasure, often with much instruction, not unfrequently with the highest degree of admiration.

"Mr. Calhoun was calculated to be a leader in whatsoever association of political friends he was thrown. He was a man of undoubted genius, and of commanding talent. All the country and all the world admit that. His mind was both perceptive and vigorous. It was clear, quick, and strong.

"Sir, the eloquence of Mr. Calhoun, or the manner of his exhibition of his sentiments in public bodies, was part of his intellectual character. It grew out of the qualities of his mind. It was plain, strong, terse, condensed, concise; sometimes impassioned—still always severe. Rejecting ornament, not often seeking far for illustration, his power consisted in the plainness of his propositions, in the closeness of his logic, and in the earnestness and energy of his manner. These are the qualities, as I think, which have enabled him through such a long course of years to speak often, and yet always command attention. His demeanor as a Senator is known to us all—is appreciated, venerated by us all. No man was more respectful to others; no man carried himself with greater decorum, no man with superior dignity. I think there is not one of us but felt when he last addressed us from his seat in the Senate, his form still erect, with a voice by no means indicating such a degree of physical weakness as did, in fact, possess him, with clear tones,

and an impressive, and I may say, an imposing manner, who did not feel that he might imagine that we saw before us a Senator of Rome, when Rome survived.

"Sir, I have not in public nor in private life known a more assiduous person in the discharge of his appropriate duties. I have known no man who wasted less of life in what is called recreation, or employed less of it in any pursuits not connected with the immediate discharge of his duty. He seemed to have no recreation but the pleasure of conversation with his friends. Out of the chambers of Congress, he was either devoting himself to the acquisition of knowledge, pertaining to the immediate subject of the duty before him, or else he was indulging in those social interviews in which he so much delighted.

"My honorable friend from Kentucky has spoken in just terms of his colloquial talents. They certainly were singular and eminent. There was a charm in his conversation not often found. He delighted, especially, in conversation and intercourse with young men. I suppose that there has been no man among us who had more winning manners, and such an intercourse and conversation, with men comparatively young, than Mr. Calhoun. I believe one great power of his character, in general, was his conversational talent. I believe it is that, as well as a consciousness of his high integrity, and the greatest reverence for his intellect and ability, that has made him so endeared an object to the people of the State to which he belonged.

"Mr. President, he had the basis, the indispensable basis, of all high character; and that was unspotted integrity—unimpeached honor and character. If he had aspirations, they were high, *and honorable, and noble. There was nothing groveling, or low, or meanly selfish, that came* near the head or the heart of Mr. Calhoun. Firm in his purpose, perfectly patriotic and honest, as I am sure he was, in the principles that he espoused, and in the measures that he defended, aside from that large regard for that species of distinction that conducted him to eminent stations for the benefit of the Republic, I do not believe he had a selfish motive, or selfish feeling.

"However, sir, he may have differed from others of us in his political opinions or his political principles, those principles and those opinions will now descend to posterity, under the sanction of a great name. He has lived long enough, he has done enough, and he has done it so well, so successfully, so honorably, as to connect himself for all time with the records of his country. He is now a historical character. Those of us who have known him here, will find that he has left upon our minds and our hearts a strong and lasting impression of his person, his character, and his public performances, which, while we live, will never be obliterated. We shall hereafter, I am sure, indulge in it as a grateful recollection, that we have lived in his age; that we have been his contemporaries, that we have seen him, and heard him, and known him. We shall delight to speak of him to those who are rising up to fill our places. And, when the time shall come when we ourselves shall go, one after another, in succession to our graves, we shall carry with us a deep sense of his genius and character, his honor and integrity, his amiable deportment in private life, and the purity of his exalted patriotism."

To the duties of his public life, Mr. Calhoun added those of an author. His *Disquisition on Government*, and the *Discourse on the Constitution and Government of the United States*, which form the first volume of his published works, evince the great and varied powers of his intellect, the purity of his patriotism, and the uprightness of his intentions. The chief part of his forensic and literary productions have been published since his death. No complete account of his life and services has yet appeared: such a work, however, has been contemplated, and probably will ere long be given to the world.

In personal appearance Mr. Calhoun was tall, slender, and sinewy. His countenance was strongly marked with all the features of intellect and firmness; but in the latter portion of his life wore an expression of care and anxiety, probably produced by the disease which terminated his life. His eyes were dark, brilliant, and expressive, and were deeply indented. His manners were frank, affable, and courteous; accessible to all, and instructive and agreeable in his conversation. His manner of speaking was rapid, forcible, and very earnest.*

* Homes of American Statesmen: National Intelligencer, March, 1850: Nat. Portrait Gallery, Vol. 2: Annals of Congress.

INCREASE OF THE ARMY.

Mr. Calhoun delivered this speech in the House of Representatives of the United States, on the twelfth of December, 1811, on the second resolution reported by the Committee of Foreign Relations: *

Mr. Speaker:—I understood the opinion of the Committee on Foreign Relations, differently from what the gentleman from Virginia (Mr. Randolph) has stated to be his impression. I certainly understood that the committee recommended the measures now before the House, as a preparation for war; and such, in fact, was its express resolve, agreed to, I believe, by every member, except that gentleman. I do not attribute any wilful misstatement to him, but consider it the effect of inadvertency or mistake. Indeed, the Report could mean nothing but war or empty menace. I hope no member of this House is in favor of the latter. A bullying, menacing system, has every thing to condemn and nothing to recommend it. In expense, it almost rivals war. It excites contempt abroad, and destroys confidence at home. Menaces are serious things; and ought to be resorted to with as much caution and seriousness, as war itself; and should, if not successful, be invariably followed by it. It was not the gentleman from Tennessee (Mr. Grundy) who made this a war question. The resolve contemplates an additional regular force; a measure confessedly improper but as a preparation for war, but undoubtedly necessary in that event.

Sir, I am not insensible to the weighty importance of the proposition, for the first time submitted to this House, to compel a redress of our long list of complaints against one of the belligerents. According to my mode of thinking, the more serious the question, the stronger and more unalterable ought to be our convictions before we give it our support. War, in our country, ought never to be resorted to but when it is clearly justifiable and necessary; so much so, as not to require the aid of logic to convince our understandings, nor the ardor of eloquence to inflame our passions. There are many reasons why this country should never resort to war but for causes the most urgent and necessary. It is sufficient that, under a government like ours, none but such will justify it in the eyes of the people; and were I not satisfied that such is the present case, I certainly would be no advocate of the proposition now before the House.

Sir, I might prove the war, should it ensue, justifiable, by the express admission of the gentleman from Virginia;—and necessary, by facts undoubted, and universally admitted; such as he did not pretend to controvert. The extent, duration, and character of the injuries received; the failure of those peaceful means heretofore resorted to for the redress of our wrongs, are my proofs that it is necessary. Why should I mention the impressment of our seamen; depredations on every branch of our commerce, including the direct export trade, continued for years, and made under laws which professedly undertake to regulate our trade with other nations; negotiation resorted to, again and again, till it is become hopeless; the restrictive system persisted in to avoid war, and in the vain expectation of returning justice? The evil still grows, and, in each succeeding year, swells in extent and pretension beyond the preceding. The question, even in the opinion and by the admission of our opponents, is reduced to this single point—Which shall we do, abandon or defend our own commercial and maritime rights, and the personal liberty of our citizens employed in exercising them? These rights are vitally attacked, and war is the only means of redress. The gentleman from Virginia has suggested none, unless we consider the whole of his speech as recommending patient and resigned submission as the best remedy. Sir, which alternative this House will embrace, it is not for me to say. I hope the decision is made already, by a higher authority than the voice of any man. It is not for the human tongue to instil the sense of independence and honor. This is the work of nature; a generous nature that disdains tame submission to wrongs.

This part of the subject is so imposing as to enforce silence even on the gentleman from Virginia. He dared not deny his country's wrongs, or vindicate the conduct of her enemy. Only one part of his argument had any, the most remote relation to this point. He would not say, we had not a good cause for war; but insisted, that it was our duty to define that cause. If he means that this House ought, at this stage of its proceedings, or any other, to specify any particular violation of our rights to the exclusion of all others, he prescribes a course, which neither good sense nor the usage

* Near the end of November, 1811, the Committee on Foreign Relations submitted a report, which after an able examination of the causes of war with Great Britain, concluded by recommending to the House the adoption of a series of resolutions, among which was the following:—

2. *Resolved*, That an additional force of ten thousand regular troops, ought to be immediately raised to serve for three years: and that a bounty in lands ought to be given to encourage enlistments."

This resolution having been amended in Committee of the Whole, by omitting the word *ten*, was reported to the House. An animated debate ensued: a majority of the committee avowed their object to be a preparation for war. The principal speaker in the opposition, was John Randolph, to whom Mr. Calhoun seems to have confined his reply:—See the Speech of Mr. Randolph at page 181 ante:—The resolution

contend for all our rights; the doubtful and the certain; the unimportant and essential. It is as easy to struggle, or even more so, for the whole as for a part. At the termination of the contest, secure all that our wisdom and valor and the fortune of the war will permit. This is the dictate of common sense; such also is the usage of nations. The single instance alluded to, the endeavor of Mr. Fox to compel Mr. Pitt to define the object of the war against France, will not support the gentleman from Virginia in his position. That was an extraordinary war for an extraordinary purpose, and was not governed by the usual rules. It was not for conquest, or for redress of injury, but to impose a government on France, which she refused to receive; an object so detestable that an avowal dared not be made.

Sir, I might here rest the question. The affirmative of the proposition is established. I cannot but advert, however, to the complaint of the gentleman from Virginia when he was first up on this question. He said he found himself reduced to the necessity of supporting the negative side of the question, before the affirmative was established. Let me tell the gentleman that there is no hardship in his case. It is not every affirmative that ought to be proved. Were I to affirm, that the House is now in session, would it be reasonable to ask for proof? He who would deny its truth, on him would be the proof of so extraordinary a negative. How then could the gentleman, after his admissions, with the facts before him and the country, complain? The causes are such as to warrant, or rather make it indispensable, in any nation not absolutely dependent, to defend its rights by force. Let him, then, show the reasons why we ought not so to defend ourselves. On him lies the burden of proof. This he has attempted; he has endeavored to support his negative. Before I proceed to answer him particularly, let me call the attention of the House to one circumstance; that is,—that almost the whole of his arguments consisted of an enumeration of evils always incident to war, however just and necessary; and which, if they have any force, are calculated to produce unqualified submission to every species of insult and injury. I do not feel myself bound to answer arguments of this description; and if I should touch on them, it will be only incidentally, and not for the purpose of serious refutation.

The first argument of the gentleman, which I shall notice, is the unprepared state of the country. Whatever weight this argument might have in a question of immediate war, it surely has little in that of preparation for it. If our country is unprepared, let us remedy the evil as soon as possible. Let the gentleman submit his plan, and, if a reasonable one, I doubt not it will be supported by the House. But, sir, let us admit the fact and the whole force of the argument. I ask, whose is the fault? Who has been a member for many country even near home, under his own eyes, without a single endeavor to remedy so serious an evil? Let him not say, "I have acted in a minority." It is no less the duty of the minority than a majority to endeavor to defend the country. For that purpose we are sent here, and not for that of opposition.

We are next told of the expenses of the war; and that the people will not pay taxes. Why not? Is it from want of means? What, with 1,000,000 tons of shipping; a commerce of $100,000,000 annually; manufactures yielding a yearly product of $150,000,000; and agriculture of thrice that amount, shall we be told the country wants capacity to raise and support ten thousand or fifteen thousand additional regulars? No; it has the ability; that is admitted; and will it not have the disposition? Is not the cause a just and necessary one? Shall we then utter this libel on the people? Where will proof be found of a fact so disgraceful? It is answered: in the history of the country twelve or fifteen years ago. The case is not parallel. The ability of the country is greatly increased since. The whiskey-tax was unpopular. But on this, as well as my memory serves me, the objection was not to the tax or its amount, but the mode of collection. The people were startled by the number of officers; their love of liberty shocked by the multiplicity of regulations. We, in the spirit of imitation, copied from the most oppressive part of European laws on the subject of taxes, and imposed on a young and virtuous people all the severe provisions made necessary by corruption and long-practised evasions. If taxes should become necessary, I do not hesitate to say the people will pay cheerfully. It is for their government and their cause, and it would be their interest and their duty to pay. But it may be, and I believe was said, that the people will not pay taxes, because the rights violated are not worth defending; or that the defence will cost more than the gain. Sir, I here enter my solemn protest against this low and "calculating avarice" entering this hall of legislation. It is only fit for shops and counting-houses; and ought not to disgrace the seat of power by its squalid aspect. Whenever it touches sovereign power, the nation is ruined. It is too short-sighted to defend itself. It is a compromising spirit, always ready to yield a part to save the residue. It is too timid to have in itself the laws of self-preservation. It is never safe but under the shield of honor. There is, sir, one principle necessary to make us a great people —to produce not the form, but real spirit of union; and that is, to protect every citizen in the lawful pursuit of his business. He will then feel that he is backed by the government, that its arm is his arm; and will rejoice in its increased strength and prosperity. Protection and patriotism are reciprocal. This is the way which has led nations to greatness. Sir, I am

cents the value of national independence. I cannot measure in shillings and pence the misery, the stripes, and the slavery of our impressed seamen; nor even the value of our shipping, commercial and agricultural losses, under the orders in council, and the British system of blockade. In thus expressing myself I do not intend to condemn any prudent estimate of the means of a country, before it enters on a war. This is wisdom—the other folly. The gentleman from Virginia has not failed to touch on the calamity of war, that fruitful source of declamation by which humanity is made the advocate of submission. If he desires to repress the gallant ardor of our countrymen by such topics, let me inform him, that true courage regards only the cause, that it is just and necessary, and that it contemns the sufferings and dangers of war. If he really wishes to promote the cause of humanity, let his eloquence be addressed to Lord Wellesley or Mr. Percival, and not the American Congress. Tell them if they persist in such daring insult and injury to a neutral nation, that, however inclined to peace, it will be bound in honor and safety to resist; that their patience and endurance, however great, will be exhausted; that the calamity of war will ensue, and that they, in the opinion of the world, will be answerable for all its devastation and misery. Let a regard to the interests of humanity stay the hand of injustice, and my life on it, the gentleman will not find it difficult to dissuade his country from rushing into the bloody scenes of war.

We are next told of the dangers of war. I believe we are all ready to acknowledge its hazards and misfortunes; but I cannot think we have any extraordinary danger to apprehend, at least none to warrant an acquiescence in the injuries we have received. On the contrary, I believe no war can be less dangerous to the internal peace, or safety of the country. But we are told of the black population of the Southern States. As far as the gentleman from Virginia speaks of his own personal knowledge, I shall not question the correctness of his statement. I only regret that such is the state of apprehension in his particular part of the country. Of the southern section, I too have some personal knowledge; and can say, that in South Carolina no such fears in any part are felt. But, sir, admit the gentleman's statement; will a war with Great Britain increase the danger? Will the country be less able to suppress insurrection? Had we any thing to fear from that quarter (which I do not believe), in my opinion the period of the greatest safety is during a war; unless, indeed, the enemy should make a lodgment in the country. Then the country is most on its guard; our militia the best prepared; and our standing army the greatest. Even in our Revolution no attempts at insurrection were made by that portion of our population; and however the gentleman may alarm have felt much of their baneful influence. I dare say more than one-half of them never heard of the French Revolution.

But as great as he regards the danger from our slaves, the gentleman's fears end not there—the standing army is not less terrible to him. Sir, I think a regular force raised for a period of actual hostilities cannot properly be called a standing army. There is a just distinction between such a force, and one raised as a permanent peace establishment. Whatever would be the composition of the latter, I hope the former will consist of some of the best materials of the country. The ardent patriotism of our young men, and the reasonable bounty in land which is proposed to be given, will impel them to join their country's standard and to fight her battles; they will not forget the citizen in the soldier, and in obeying their officers, learn to contemn their government and constitution. In our officers and soldiers we will find patriotism no less pure and ardent than in the private citizen; but if they should be depraved as represented, what have we to fear from twenty-five thousand or thirty thousand regulars? Where will be the boasted militia of the gentleman? Can one million of militia be overpowered by thirty thousand regulars? If so, how can we rely on them against a foe invading our country? Sir, I have no such contemptuous idea of our militia—their untaught bravery is sufficient to crush all foreign and internal attempts on their country's liberties.

But we have not yet come to the end of the chapter of dangers. The gentleman's imagination, so fruitful on this subject, conceives that our constitution is not calculated for war, and that it cannot stand its rude shock. This is rather extraordinary. If true, we must then depend upon the commiseration or contempt of other nations for our existence. The constitution, then, it seems, has failed in an essential object, "to provide for the common defence." No, says the gentleman from Virginia, it is competent for a defensive, but not for an offensive war. It is not necessary for me to expose the error of this opinion. Why make the distinction in this instance? Will he pretend to say that this is an offensive war; a war of conquest? Yes, the gentleman has dared to make this assertion; and for reasons no less extraordinary than the assertion itself. He says our rights are violated on the ocean, and that these violations affect our shipping and commercial rights, to which the Canadas have no relation. The doctrine of retaliation has been much abused of late by an unreasonable extension; we have now to witness a new abuse. The gentleman from Virginia has limited it down to a point. By his rule if you receive a blow on the breast, you dare not return it on the head; you are obliged to measure and return it on the precise point on which it was received. If you do not proceed with this mathematical accu-

In speaking of Canada the gentleman from Virginia introduced the name of Montgomery with much feeling and interest. Sir, there is danger in that name to the gentleman's argument. It is sacred to heroism. It is indignant of submission! It calls our memory back to the time of our Revolution, to the Congress of '74 and '75. Suppose a member of that day had risen and urged all the arguments which we have heard on this subject; had told that Congress,—your contest is about the right of laying a tax; and that the attempt on Canada had nothing to do with it; that the war would be expensive; that danger and devastation would overspread our country, and that the power of Great Britain was irresistible. With what sentiment, think you, would such doctrines have been then received? Happy for us, they had no force at that period of our country's glory. Had such been then acted on, this hall would never have witnessed a great people convened to deliberate for the general good; a mighty empire, with prouder prospects than any nation the sun ever shone on, would not have risen in the west. No; we would have been base subjected colonies; governed by that imperious rod which Britain holds over her distant provinces.

The gentleman from Virginia attributes the preparation for war to every thing but its true cause. He endeavored to find it in the probable rise in the price of hemp. He represents the people of the Western States as willing to plunge our country into war from such interested and base motives. I will not reason on this point. I see the cause of their ardor, not in such unworthy motives, but in their known patriotism and disinterestedness.

No less mercenary is the reason which he attributes to the Southern States. He says that the Non-Importation act has reduced cotton to nothing, which has produced a feverish impatience. Sir, I acknowledge the cotton of our plantations is worth but little; but not for the cause assigned by the gentleman from Virginia. The people of that section do not reason as he does; they do not attribute it to the efforts of their government to maintain the peace and independence of their country. They see, in the low price of their produce, the hand of foreign injustice; they know well without the market to the continent, the deep and steady current of supply will glut that of Great Britain; they are not prepared for the colonial state to which again that power is endeavoring to reduce us, and the manly spirit of that section of our country will not submit to be regulated by any foreign power.

The love of France and the hatred of England have also been assigned as the cause of the present measures. France has not done us justice, says the gentleman from Virginia, and how can we, without partiality, resist the aggressions of England? I know, sir, we have still causes of complaint against France; but against England. She professes now to respect our rights, and there cannot be a reasonable doubt but that the most objectionable parts of her decrees, as far as they respect us, are repealed. We have already formally acknowledged this to be a fact. But I protest against the principle from which his conclusion is drawn. It is a novel doctrine, and nowhere avowed out of this House, that you cannot select your antagonist without being guilty of partiality. Sir, when two invade your rights, you may resist both or either at your pleasure. It is regulated by prudence and not by right. The stale imputation of partiality for France is better calculated for the columns of a newspaper, than for the walls of this House.

The gentleman from Virginia is at a loss to account for what he calls our hatred to England. He asks how can we hate the country of Locke, of Newton, Hampden, and Chatham; a country having the same language and customs with ourselves, and descending from a common ancestry. Sir, the laws of human affections are steady and uniform. If we have so much to attach us to that country, potent indeed must be the cause which has overpowered it. Yes, there is a cause strong enough; not in that occult courtly affection which he has supposed to be entertained for France; but it is to be found in continued and unprovoked insult and injury—a cause so manifest, that the gentleman from Virginia had to exert much ingenuity to overlook it. But, the gentleman, in his eager admiration of that country, has not been sufficiently guarded in his argument. Has he reflected on the cause of that admiration? Has he examined the reasons of our high regard for her Chatham? It is his ardent patriotism, the heroic courage of his mind, that could not brook the least insult or injury offered to his country, but thought that her interest and honor ought to be vindicated at every hazard and expense. I hope, when we are called upon to admire, we shall also be asked to imitate. I hope the gentleman does not wish a monopoly of those great virtues for England.

The balance of power has also been introduced, as an argument for submission. England is said to be a barrier against the military despotism of France. There is, sir, one great error in our legislation. We are ready, it would seem from this argument, to watch over the interests of foreign nations, while we grossly neglect our own immediate concerns. This argument of the balance of power is well calculated for the British Parliament, but not at all suited to the American Congress. Tell the former that they have to contend with a mighty power, and that if they persist in insult and injury to the American people, they will compel them to throw their whole weight into the scale of their enemy. Paint the danger to them, and if they will desist from injuring us, we, I answer for it, will not disturb the balance

duct, smile with contempt at what they regard our simple, good-natured vanity. If, however, in the contest, it should be found that they underrate us—which I hope and believe—and that we can affect the balance of power, it will not be difficult for us to obtain such terms as our rights demand.

I, sir, will now conclude by adverting to an argument of the gentleman from Virginia, used in debate on a preceding day. He asked, why not declare war immediately? The answer is obvious: because we are not yet prepared. But, says the gentleman, such language as is here held, will provoke Great Britain to commence hostilities. I have no such fears. She knows well that such a course would unite all parties here—a thing which, above all others, she most dreads. Besides, such has been our past conduct, that she will still calculate on our patience and submission, until war is actually commenced

INTERNAL IMPROVEMENT.

The following speech on a bill proposing to set apart and pledge, as a permanent fund for the construction of roads and canals, the bonus of the National Bank, and the United States' share of its dividends,* was delivered by Mr. Calhoun, in the House of Representatives of the United States, on the fourth of February, 1817.

Mr. Chairman,—It seems to be the fate of some measures to be praised, but not adopted. Such, I fear, will be the fate of this on which we are now deliberating. From the indisposition manifested by the House to go into committee on the bill, there is not much prospect of its success; yet it seems to me, when I reflect how favorable is the present moment, and how confessedly important a good system of roads and canals is to our country, I may be reasonably very sanguine of success. At peace with all the world; abounding in pecuniary means; and, what is of the most importance, and at which I rejoice, as most favorable to the country, party and sectional feelings merged in a liberal and enlightened regard to the general concerns of the country. Such are the favorable circumstances under which we are now deliberating. Thus situated, to what can we direct our resources and attention more important than internal improvements? What can add more to the wealth, the strength, and the political prosperity of our country? The manner in which facility and cheapness of intercourse contribute to the wealth of a nation, has been so often and ably discussed by writers on political economy, that I presume the House to be perfectly acquainted with the subject. It is sufficient to observe, that every branch of natural industry—agricultural, manufacturing, and commercial—is greatly stimulated by it, and rendered more productive. The result is, that it tends to diffuse universal opulence. It gives to the interior the advantages possessed by the parts most eligibly situated for trade. It makes the country price, whether in the sale of the raw product, or in the purchase of articles for consumption, approximate to that of the commercial towns. In fact, if we look into the nature of wealth, we will find that nothing can be more favorable to its growth than good roads and canals. An article, to command a price, must not only be useful, but must be the subject of demand; and the better the means of commercial intercourse, the larger is the sphere of demand. The truth of these positions is obvious, and has been tested by all countries where the experiment has been made. It has, particularly, been strikingly exemplified in England; and if the result there, in a country so limited, and so similar in its products, has been to produce a most uncommon state of opulence, what may we not expect from the same cause in our country, abounding, as it does, in the greatest variety of products, and presenting the greatest facility for improvement? Let it not be said that internal improvements may be wholly left to the enterprise of the States and of individuals. I know that much may justly be expected to be done by them; but in a country so new and so extensive as ours, there is room enough for all the General and State governments, and individuals, in which to exert their resources. But many of the improvements contemplated are on too great a scale for the resources of the States or individuals; and many of such a nature as the rival jealousy of the States, if left alone, would prevent. They require the resources and the general superintendence of this government to effect and complete them.

But there are higher and more powerful considerations why Congress ought to take charge of this subject. If we were only to consider the pecuniary advantages of a good system of

* The bill was reported by the special committee, to whom the subject had been referred, on December 28, 1816; and on the 4th of February following, discussed at some length in Committee of the Whole when it was amended in several particulars. On the 7th of February the debate was renewed in the House, on the motion of Mr. King to postpone it indefinitely, and continued, with much animation,

some doubt whether they ought not to be left wholly to individual exertions; but, when we come to consider how intimately the strength and political prosperity of the republic are connected with this subject, we find the most urgent reasons why we should apply our resources to them. In many respects, no country, of equal population and wealth, possesses equal materials of power with ours. The people, in muscular power, in hardy and enterprising habits, and in lofty and gallant courage, are surpassed by none. In one respect, and, in my opinion, in one only, are we materially weak. We occupy a surface prodigiously great in proportion to our numbers. The common strength is brought to bear with great difficulty on the point that may be menaced by an enemy. It is our duty, then, as far as in the nature of things it can be effected, to counteract this weakness. Good roads and canals, judiciously laid out, are the proper remedy. In the recent war, how much did we suffer for the want of them! Besides the tardiness and the consequential inefficacy of our military movements, to what an increased expense was the country put for the article of transportation alone! In the event of another war, the saving, in this particular, would go far towards indemnifying us for the expense of constructing the means of transportation.

It is not, however, in this respect only, that roads and canals add to the strength of the country. Our power of raising revenue, in war particularly, depends mainly on them. In peace, our revenue, depends principally on the imports: in war, this source, in a great measure, fails, and internal taxes, to a great amount, become necessary. Unless the means of commercial intercourse are rendered much more perfect than they now are, we shall never be able, in war, to raise the necessary supplies. If taxes were collected in kind; if, for instance, the farmer and mechanic paid in their surplus produce, then the difficulty would not exist: as, in no country on earth is there so great a surplus, in proportion to its population, as in ours. But such a system of taxes is impossible. They must be paid in money; and, by the constitution, must be laid uniformly. What, then, is the effect? The taxes are raised in every part of this extensive country uniformly; but the expenditure must, in its nature, be principally confined to the scene of military operations. This drains the circulating medium from one part, and accumulates it in another, and, perhaps, a very distant one. The result is obvious. Unless it can return through the operation of trade, the part from which the constant drain takes place, must ultimately be impoverished. Commercial intercourse is the true remedy for this weakness; and the means by which this is to be effected, are roads, canals, and the coasting trade. On these, combined with domestic manufactures, does the moneyed capacity of this country, in war, depend raise the necessary supplies, but the currency of the country must necessarily fall into the greatest disorder, such as we lately experienced.

But, on this subject of national power, what can be more important than a perfect unity in every part, in feelings and sentiments? And what can tend more powerfully to produce it than overcoming the effects of distance? No State, enjoying freedom, ever occupied any thing like as great an extent of country as this republic. One hundred years ago, the most profound philosophers did not believe it to be even possible. They did not suppose it possible that a pure republic could exist on as great a scale even as the island of Great Britain! What then was considered as chimerical we now have the felicity to enjoy; and, what is more remarkable, such is the happy mould of our government—so wisely are the State and general powers arranged—that much of our political happiness derives its origin from the extent of our republic. It has exempted us from most of the causes which distracted the small republics of antiquity. Let it not, however, be forgotten; let it be for ever kept in mind, that it exposes us to the greatest of all calamities—next to the loss of liberty—and even to that in its consequence—disunion. We are great, and rapidly—I was about to say fearfully—growing. This is our pride and our danger; our weakness and our strength. Little does he deserve to be intrusted with the liberties of this people, who does not raise his mind to these truths. We are under the most imperious obligation to counteract every tendency to disunion. The strongest of all cements is, undoubtedly, the wisdom, justice, and above all, the moderation of this House; yet the great subject on which we are now deliberating, in this respect deserves the most serious consideration. Whatever impedes the intercourse of the extremes with this, the centre of the republic, weakens the union. The more enlarged the sphere of commercial circulation—the more extended that of social intercourse—the more strongly are we bound together—the more inseparable are our destinies. Those who understand the human heart best know how powerfully distance tends to break the sympathies of our nature. Nothing—not even dissimilarity of language—tends more to estrange man from man. Let us, then, bind the republic together with a perfect system of roads and canals. Let us conquer space. It is thus the most distant parts of the republic will be brought within a few days' travel of the centre; it is thus that a citizen west will read the news of Boston still moist from the press. The mail and the press are the nerves of the body politic. By them, the slightest impression made on the most remote parts, is communicated to the whole system; and the more perfect the means of transportation, the more rapid and true the vibration. To aid us in this great work—to main-

tages. Belted around, as it is, by lakes and oceans—intersected in every direction by bays and rivers, the hand of industry and art is tempted to improvement. So situated, blessed with a form of government at once combining liberty and strength, we may reasonably raise our eyes to a most splendid future, if we only act in a manner worthy of our advantages. If, however, neglecting them, we permit a low, sordid, selfish and sectional spirit to take possession of this House, this happy scene will vanish. We will divide; and in its consequences will follow, misery and despotism.

To legislate for our country, requires not only the most enlarged views, but a species of self-devotion not exacted in any other. In a country so extensive, and so various in its interests, what is necessary for the common good may apparently be opposed to the interest of particular sections. It must be submitted to as the condition of our greatness. But were we a small republic; were we confined to the ten miles square, the selfish instincts of our nature might, in most cases, be relied on in the management of public affairs.

Such, then, being the obvious advantages of internal improvements, why should the House hesitate to commence the system? I understand there are, with some members, constitutional objections. The power of Congress is objected to: first, that there is none to cut a road or canal through a State, without its consent; and next, that the public moneys can only be appropriated to effect the particular powers enumerated in the constitution. The first of these objections, it is plain, does not apply to this bill. No particular road or canal is proposed to be cut through any State. The bill simply appropriates money to the general purpose of improving the means of intercommunication. When a bill is introduced to apply the money to a particular object in any State, then, and not till then, will the question be fairly before us. I express no opinion on this point. In fact, I scarcely think it worth the discussion, since the good sense of the States may be relied on. They will, in all cases, readily yield their assent. The fear is in a different direction: in too great a solicitude to obtain an undue share to be expended within their respective limits. In fact, as I understand it, this is not the objection insisted on. It is mainly urged, that the Congress can only apply the public money in execution of the enumerated powers. I am no advocate for refined arguments on the constitution. The instrument was not intended as a thesis for the logician to exercise his ingenuity on. It ought to be construed with plain, good sense; and what can be more express than the constitution on this very point? The first power delegated to Congress is comprised in these words: "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;" form throughout the United States." First, the power is given to lay taxes; next, the objects are enumerated to which the money accruing from the exercise of this power, may be applied —viz.: to pay the debts, provide for the defence, and promote the general welfare; and last, the rule for laying the taxes is prescribed—to wit, that all duties, imposts, and excises, shall be uniform. If the framers had intended to limit the use of the money to the powers afterwards enumerated and defined, nothing could have been more easy than to have expressed it plainly. I know it is the opinion of some, that the words "to pay the debts, and provide for the common defence and general welfare," which I have just cited, were not intended to be referred to the power of laying taxes, contained in the first part of the section, but that they are to be understood as distinct and independent powers, granted in general terms; and are qualified by a more detailed enumeration of the powers in the subsequent part of the constitution. If such were, in fact, the meaning intended, surely nothing can be conceived more bungling and awkward than the manner in which the framers have communicated their intention. If it were their intention to make a summary of the powers of Congress in general terms, which were afterwards to be particularly defined and enumerated, they should have told us so plainly and distinctly; and if the words "to pay the debts, and provide for the common defence and general welfare" were intended for this summary, they should have headed the list of our powers, and it should have been stated that, to effect these general objects, the following specific powers were granted. I ask members to read the section with attention; and it will, I conceive, plainly appear that such could not have been the intention. The whole section seemed to me to be about taxes. It plainly commences with and ends with it; and nothing could be more strained than to suppose the intermediate words "to pay the debts, and provide for the common defence and general welfare," were to be taken as independent and distinct powers. Forced, however, as such a construction was, I might admit it, and urge that the words do constitute a part of the enumerated powers. The constitution gives to Congress the power to establish post offices and post roads. I know the interpretation usually given to these words, confines our powers to that of designating only the post roads; but it seems to me that the word "establish" comprehends something more. But suppose the constitution to be silent, why should we be confined in the application of moneys to the enumerated powers? There is nothing in the reason of the thing, that I can perceive, why it should be so restricted; and the habitual and uniform practice of the government coincides with my opinion. Our laws are full of instances of money appropriated without any

$50,000 to the distressed inhabitants of Caraccas, and a very large sum, at two different times, to the St. Domingo refugees. If we are restricted in the use of our money to the enumerated powers, on what principle can the purchase of Louisiana be justified? To pass over many other instances, the identical power, which is now the subject of discussion, has, in several instances, been exercised. To look no further back—at the last session a considerable sum was granted to complete the Cumberland Road. In reply to this uniform course of legislation, I expect it will be said, that our constitution is founded on positive and written principles, and not on precedents. I do not deny the position; but I have introduced these instances to prove the uniform sense of Congress, and the country (for they have not been objected to) as to our powers; and surely they furnish better evidence of the true interpretation of the constitution than the most refined and subtle arguments.

Let it not be argued, that the construction for which I contend gives a dangerous extent to the powers of Congress. In this point of view, I conceive it to be more safe than the opposite. By giving a reasonable extent to the money power, it exempts us from the necessity of giving a strained and forced construction to the other enumerated powers. For instance, if the public money could be applied to the purchase of Louisiana, as I contend it may be, then there was no constitutional difficulty in that purchase; but if it could not, then are we compelled either to deny that we had the power to purchase, or to strain some of the enumerated powers, to prove our right. It has, for instance, been said that we had the right to purchase, under the power to admit new States; a construction, I venture to say, far more forced than the one for which I contend. Such are my views as to our power to pass this bill.

I believe that the passage of the bill would not be much endangered by a doubt of the power; for I conceive, on that point, there are not many who were opposed. The mode is principally objected to. A system, it is contended, ought to be presented before the money is appropriated. *I think differently.* To set apart the fund, appears to me to be, naturally, the first act; at least I take it to be the only practicable course. A bill filled with details would have but a faint prospect of passing. The enemies to any possible system in detail, and those who are opposed in principle, would unite and defeat it. Though I am unwilling to incorporate details in the bill, yet I am not averse to presenting my views on that point. The first great object is to perfect the communication from Maine to Louisiana. This may be fairly considered as the principal artery of the whole system. The next is the connection of the lakes with the Hudson river. In a political, commercial, and military point of view, few objects can be more important. The next object of chief importance is, to connect all the great commercial points on the Atlantic,—Philadelphia, Baltimore, Washington, Richmond, Charleston, and Savannah,—with the western States; and finally, to perfect the intercourse between the west and New Orleans. These seem to me to be the great objects. There are others, no doubt, of great importance, which would receive the aid of government. The fund proposed to be set apart in this bill is about $650,000 a year, which is, doubtless, too small to effect such great objects of itself; but it will be a good beginning; and I have no doubt, when it is once begun, the great work will be completed. If the bill succeed, at the next session the details may be arranged and the system commenced. I cannot regard those who object merely to the mode, as being very heartily in favor of the system. Every member must know that, in all great measures, it is necessary to concede something; as it is impossible to make all think alike on the minutiæ of the measure, who are agreed in principle. A deep conviction of the importance of the thing itself is almost sure to be accompanied with a liberal spirit of concession. The committee who introduced this bill gave it the shape, in their opinion, the most proper in itself, and the most likely to succeed. If it cannot pass in its present form, and under the present circumstances, it is certainly very doubtful whether it ever will. I feel a deep solicitude in relation to it. I am anxious that this Congress shall have the reputation of it; and I am the more so on account of the feelings which have been created against it. No body of men, in my opinion, ever better merited, than this Congress, the confidence of the country. For wisdom, firmness, and industry, it has never been excelled. To its acts, I appeal for the truth of my assertions. The country already begins to experience the benefits of its foresight and firmness. The diseased state of the currency, which many thought incurable, *and most thought could not be healed* in so short a time, begins to exhibit symptoms of speedy health. Uninfluenced by any other considerations than love of country and duty, let us add this to the many useful measures already adopted. The money cannot be appropriated to a more exalted use. Every portion of the community—the farmer, mechanic, and merchant—will feel its good effects; and, what is of the greatest importance, the strength of the community will be augmented, and its political prosperity rendered more secure.

SPEECH ON THE FORCE BILL.

The following speech on the Revenue Collection Bill, commonly called the Force Bill, in reference to the ordinance of the South Carolina convention, was delivered in the Senate of the United States, on the fifteenth and sixteenth days of February, 1833:

MR. PRESIDENT: I know not which is most objectionable, the provisions of the bill, or the temper in which its adoption has been urged. If the extraordinary powers with which the bill proposes to clothe the Executive, to the utter prostration of the constitution and the rights of the States, be calculated to impress our minds with alarm at the rapid progress of despotism in our country; the zeal with which every circumstance calculated to misrepresent or exaggerate the conduct of Carolina in the controversy, is seized on with a view to excite hostility against her, but too plainly indicates the deep decay of that brotherly feeling which once existed between these States, and to which we are indebted for our beautiful federal system, and by the continuance of which alone it can be preserved. It is not my intention to advert to all these misrepresentations; but there are some so well calculated to mislead the mind as to the real character of the controversy, and to hold up the State in a light so odious, that I do not feel myself justified in permitting them to pass unnoticed.

Among them, one of the most prominent is, the false statement that the object of South Carolina is to exempt herself from her share of the public burdens, while she participates in the advantages of the government. If the charge were true—if the State were capable of being actuated by such low and unworthy motives, mother as I consider her, I would not stand up on this floor to vindicate her conduct. Among her faults,—and faults I will not deny she has,—no one has ever yet charged her with that low and most sordid of vices—avarice. Her conduct, on all occasions, has been marked with the very opposite quality. From the commencement of the Revolution—from its first breaking out at Boston till this hour, no State has been more profuse of its blood in the cause of the country; nor has any contributed so largely to the common treasury in proportion to wealth and population. She has, in that proportion, contributed more to the exports of the Union,—on the exchange of which with the rest of the world the greater portion of the public burden has been levied,—than any other State. No: the controversy is not such as has been stated; the State does not seek to participate in the advantages of the government without contributing her full share to the public constitutional question lies at the bottom of the controversy. The real question at issue is: has this government a right to impose burdens on the capital and industry of one portion of the country, not with a view to revenue, but to benefit another? And I must be permitted to say that, after the long and deep agitation of this controversy, it is with surprise that I perceive so strong a disposition to misrepresent its real character. To correct the impression which those misrepresentations are calculated to make, I will dwell on the point under consideration for a few moments longer.

The federal government has, by an express provision of the constitution, the right to lay on imposts. The State has never denied or resisted this right, nor even thought of so doing. The government has, however, not been contented with exercising this power as she had a right to do, but has gone a step beyond it, by laying imposts, not for revenue, but protection. This the State considers as an unconstitutional exercise of power—highly injurious and oppressive to her and the other staple States, and has, accordingly, met it with the most determined resistance. I do not intend to enter, at this time, into the argument as to the unconstitutionality of the protective system. It is not necessary. It is sufficient that the power is nowhere granted; and that, from the journals of the convention which formed the constitution, it would seem that it was refused. In support of the journals, I might cite the statement of Luther Martin, which has already been referred to, to show that the convention, so far from conferring the power on the federal government, left to the State the right to impose duties on imports, with the express view of enabling the several States to protect their own manufactures. Notwithstanding this, Congress has assumed, without any warrant from the constitution, the right of exercising this most important power; and has so exercised it as to impose a ruinous burden on the labor and capital of the State, by which her resources are exhausted—the enjoyments of her citizens curtailed—the means of education contracted—and all her interests essentially and injuriously affected. We have been sneeringly told that she is a small State; that her population does not much exceed half a million of souls; and that more than one-half are not of the European race. The facts are so. I know she never can be a great State, and that the only distinction to which she can aspire must be based on the moral and intellectual acquirements of her sons. To the development of these much of her attention has been directed; but this restrictive system which has so unjustly exacted the proceeds of her labor, to be bestowed on other sections, has so impaired her resources, that, if not speedily

and with it deprive her of the only source through which she can aspire to distinction.

There is another misstatement, as to the nature of the controversy, so frequently made in debate, and so well calculated to mislead, that I feel bound to notice it. It has been said that South Carolina claims the right to annul the constitution and laws of the United States; and, to rebut this supposed claim, the gentleman from Virginia (Mr. Rives) has gravely quoted the constitution, to prove that the constitution, and the laws made in pursuance thereof, are the supreme laws of the land—as if the State claimed the right to act contrary to this provision of the constitution. Nothing can be more erroneous: her object is not to resist laws made in pursuance of the constitution, but those made without its authority, and which encroached on her reserved powers. She claims not even the right of judging of the delegated powers, but of those that are reserved; and to resist the former when they encroach upon the latter. I will pause to illustrate this important point.

All must admit that there are delegated and reserved powers, and that the powers reserved are reserved to the States respectively. The powers, then, of the system are divided between the general and the State governments; and the point immediately under consideration is, whether a State has any right to judge as to the extent of its reserved powers, and to defend them against the encroachments of the general government. Without going deeply into this point at this stage of the argument, or looking into the nature and origin of the government, there is a simple view of the subject which I consider as conclusive. The very idea of a divided power implies the right on the part of the State for which I contend. The expression is metaphorical when applied to power. Every one readily understands that the division of matter consists in the separation of the parts. But in this sense it is not applicable to power. What then is meant by a division of power? I cannot conceive of a division, without giving an equal right to each to judge of the extent of the power allotted to each. Such right I hold to be essential to the existence of a division; and that, to give to either party the conclusive right of judging, not only of the share allotted to it, but of that allotted to the other, is to annul the division, and to confer the whole power on the party vested with such right.

But it is contended that the constitution has conferred on the Supreme Court the right of judging between the States and the general government. Those who make this objection overlook, I conceive, an important provision of the constitution. By turning to the 10th amended article, it will be seen that the reservation of power to the States is not only against the powers delegated to Congress, but the other departments of the government. The article provides that all powers not delegated to the United States, or prohibited by it to the States, are reserved to the States respectively, or to the people. This presents the inquiry, What powers are delegated to the United States? They may be classed under four divisions: first, those that are delegated by the States to each other, by virtue of which the constitution may be altered or amended by three-fourths of the States, when, without which, it would have required the unanimous vote of all; next, the powers conferred on Congress; then those on the President; and finally, those on the judicial department—all of which are particularly enumerated in the parts of the constitution which organize the respective departments. The reservation of powers to the States is, as I have said, against the whole; and is as full against the judicial as it is against the executive and legislative departments of the government. It cannot be claimed for the one without claiming it for the whole, and without, in fact, annulling this important provision of the constitution.

Against this, as it appears to me, conclusive view of the subject, it has been urged that this power is expressly conferred on the Supreme Court by that portion of the constitution which provides that the judicial power shall extend to all cases in law and equity arising under the constitution, the laws of the United States, and treaties made under their authority. I believe the assertion to be utterly destitute of any foundation. It obviously is the intention of the constitution simply to make the judicial power commensurate with the law-making and treaty-making powers; and to vest it with the right of applying the constitution, the laws, and the treaties, to the cases which might arise under them; and not to make it the judge of the constitution, the laws, and the treaties themselves. In fact, the power of applying the laws to the facts of the case, and deciding upon such application, constitutes, in truth, the judicial power. The distinction between such power and that of judging of the laws, will be perfectly apparent, when we advert to what is the acknowledged power of the court in reference to treaties or compacts between sovereigns. It is perfectly established, that the courts have no right to judge of the violation of treaties; and that in reference to them, their power is limited to the right of judging simply of the violation of rights under them; and that the right of judging of infractions belongs exclusively to the parties themselves, and not to the courts: of which we have an example in the French treaty, which was declared by Congress null and void, in consequence of its violation by the government of France. Without such declaration, had a French citizen sued a citizen of this country under the treaty, the court could have taken no cogni-

proof going to show that the treaty had not been violated.

The declaration, of itself, is conclusive on the court. But it will be asked how the court obtained the power to pronounce a law or treaty unconstitutional, when it comes in conflict with that instrument. I do not deny that it possesses the right; but I can by no means concede that it was derived from the constitution. It had its origin in the necessity of the case. Where there are two or more rules established, one from a higher, the other from a lower authority, which may come into conflict in applying them to a particular case, the judge cannot avoid pronouncing in favor of the superior against the inferior. It is from this necessity, and this alone, that the power which is now set up to overrule the rights of the States against an express provision of the constitution was derived. It had no other origin. That I have traced it to its true source will be manifest from the fact, that it is a power which, so far from being conferred exclusively on the Supreme Court, as is insisted, belongs to every court—inferior and superior—State and general—and even to foreign courts.

But the senator from Delaware (Mr. Clayton) relies on the journals of the convention to prove that it was the intention of that body to confer on the Supreme Court the right of deciding, in the last resort between a State and the General Government. I will not follow him through the journals, as I do not deem that to be necessary to refute his argument. It is sufficient for this purpose, to state, that Mr. Rutledge reported a resolution, providing expressly that the United States and the States might be parties before the Supreme Court. If this proposition had been adopted, I would ask the senator whether this very controversy between the United States and South Carolina might not have been brought before the court? I would also ask him whether it can be brought before the court as the constitution now stands? If he answers the former in the affirmative, and the latter in the negative, as he must, then it is clear, his elaborate argument to the contrary notwithstanding, that the report of Mr. Rutledge was not, in substance, adopted as he contended; and that the journals, so far from supporting, are in direct opposition to the position which he attempts to maintain. I might push the argument much farther against the power of the court, but I do not deem it necessary, at least in this stage of the discussion. If the views which have already been presented be correct, and I do not see how they can be resisted, the conclusion is inevitable, that the reserved powers were reserved equally against every department of the Government, and as strongly against the judicial as against the other departments, and, of course, were left under the exclusive will of the States.

There still remains another misrepresentation of the conduct of the State which has been alluded to the charge, that South Carolina supported the tariff of 1816, and is, therefore, responsible for the protective system. To determine the truth of this charge, it becomes necessary to ascertain the real character of that law—whether it was a tariff for revenue or for protection—and, as involved in this, to inquire, What was the condition of the country at the period? The late war with Great Britain had just terminated, which, with the restrictive system that preceded it, had diverted a large amount of capital and industry from commerce to manufactures, particularly to the cotton and woollen branches. There was a debt at the same time, of one hundred and thirty millions of dollars hanging over the country, and the heavy war duties were still in existence. Under these circumstances, the question was presented, as to what point the duties ought to be reduced? This question involved another—at what time the debt ought to be paid? which was a question of policy, involving in its consideration all the circumstances connected with the then condition of the country. Among the most prominent arguments in favor of an early discharge of the debt was, that the high duties which it would require to effect it would have, at the same time, the effect of sustaining the infant manufactures, which had been forced up under the circumstances to which I have adverted. This view of the subject had a decided influence in determining in favor of an early payment of the debt. The sinking fund was, accordingly, raised from seven to ten millions of dollars, with the provision to apply the surplus which might remain in the treasury as a contingent appropriation to that fund; and the duties were graduated to meet this increased expenditure. It was thus that the policy and justice of protecting the large amount of capital and industry which had been diverted by the measures of the government into new channels, as I have stated, was combined with the fiscal action of the government, and which while it secured a prompt payment of the debt, prevented the immense losses to the manufacturers which would have followed a sudden and great reduction. Still, revenue was the main object, and protection but the incidental. The bill to reduce the duties was reported by the Committee of Ways and Means, and not of Manufactures, and it proposed a heavy reduction on the then existing rate of duties. But what of itself without other evidence, is decisive as to the character of the bill, is the fact that it fixed a much higher rate of duties on the unprotected than on the protected articles. I will enumerate a few leading articles only. Woollen and cotton above the value of 25 cents on the square yard, though they were the leading objects of protection, were subject to a permanent duty of only 20 per cent. Iron, another leading article among the protected, had a protection of not more than 9 per cent. as fixed by the act, and of but fifteen as reported in the bill.

unprotected, and even the free articles. I have entered into some calculation, in order to ascertain the average rate of duties under the act. There is some uncertainty in the data, but I feel assured that it is not less than thirty per cent. *ad valorem:* showing an excess of the average duties above that imposed on the protected articles enumerated of more than 10 per cent., and thus clearly establishing the character of the measure—that it was for revenue and not protection.

Looking back, even at this distant period, with all our experience, I perceive but two errors in the act: the one in reference to iron, and the other the minimum duty on coarse cottons. As to the former, I conceive that the bill, as reported, proposed a duty relatively too low, which was still farther reduced in its passage through Congress. The duty, at first, was fixed at seventy-five cents the hundred weight; but, in the last stage of its passage, it was reduced, by a sort of caprice, occasioned by an unfortunate motion, to forty-five cents. This injustice was severely felt in Pennsylvania, the State, above all others, most productive of iron; and was the principal cause of that great reaction which has since thrown her so decidedly on the side of the protective policy. The other error was that as to coarse cottons, on which the duty was as much too high as that on iron was too low. It introduced, besides, the obnoxious minimum principle, which has since been so mischievously extended; and to that extent, I am constrained in candor to acknowledge, as I wish to disguise nothing, the protective principle was recognized by the act of 1816. How this was overlooked at the time, it is not in my power to say. It escaped my observation, which I can account for only on the ground that the principle was then new, and that my attention was engaged by another important subject—the question of the currency, then so urgent, and with which, as chairman of the committee, I was particularly charged. With these exceptions, I again repeat, I see nothing in the bill to condemn; yet it is on the ground that the members from the State voted for the bill, that the attempt is now made to hold up Carolina as responsible for the whole system of protection which has since followed, though she has resisted its progress in every stage. Was there ever greater injustice? And how is it to be accounted for, but as forming a part of that systematic misrepresentation and calumny which has been directed for so many years, without interruption, against that gallant and generous State? And why has she thus been assailed? Merely because she abstained from taking any part in the Presidential canvass—believing that it had degenerated into a mere system of imposition on the people—controlled, almost exclusively, by those whose object it is to obtain the patronage of the government, and that without regard to principle or policy. Standing apart from what she considered a contest unparalleled; but which, pursuing the course which she believed liberty and duty required, she has met with a firmness equal to the fierceness of the assault. In the midst of this attack, I have not escaped. With a view of inflicting a wound on the State through me, I have been held up as the author of the protective system, and one of its most strenuous advocates. It is with pain that I allude to myself on so deep and grave a subject as that now under discussion, and which, I sincerely believe, involves the liberty of the country. I now regret that, under the sense of injustice which the remarks of a senator from Pennsylvania (Mr. Wilkins) excited for the moment, I hastily gave my pledge to defend myself against the charge which has been made in reference to my course in 1816: not that there will be any difficulty in repelling the charge, but because I feel a deep reluctance in turning the discussion, in any degree, from a subject of so much magnitude to one of so little importance as the consistency or inconsistency of myself, or any other individual, particularly in connection with an event so long since passed. But for this hasty pledge, I would have remained silent as to my own course on this occasion, and would have borne with patience and calmness this, with the many other misrepresentations with which I have been so incessantly assailed for so many years.

The charge that I was the author of the protective system, has no other foundation but that I, in common with the almost entire south, gave my support to the tariff of 1816. It is true that I advocated that measure, for which I may rest my defence, without taking any other, on the ground that it was a tariff for revenue, and not for protection, which I have established beyond the power of controversy. But my speech on the occasion, has been brought in judgment against me by the senator from Pennsylvania. I have since cast my eyes over the speech; and I will surprise, I have no doubt, the senator, by telling him that, with the exception of some hasty and unguarded expressions, I retract nothing I uttered on that occasion. I only ask that I may be judged, in reference to it, in that spirit of fairness and justice which is due to the occasion; taking into consideration the circumstances under which it was delivered, and bearing in mind that the subject was a tariff for revenue, and not for protection; for reducing, and not raising the duties. But, before I explain the then condition of the country, from which my main arguments in favor of the measure were drawn, it is nothing but an act of justice to myself that I should state a fact in connection with my speech, that is necessary to explain what I have called hasty and unguarded expressions. My speech was an *impromptu;* and, as such, I apologized to the House, as appears from the speech as printed, for offering my sentiments on the question without having

viously the least intention of addressing the House. I allude to Samuel D. Ingham, then and now, as I am proud to say, a personal and political friend—a man of talents and integrity —with a clear head, and firm and patriotic heart; then among the leading members of the House; in the palmy state of his political glory, though now for a moment depressed;—depressed, did I say? no! it is his State which is depressed — Pennsylvania, and not Samuel D. Ingham! Pennsylvania, which has deserted him under circumstances which, instead of depressing, ought to have elevated him in her estimation. He came to me, when sitting at my desk writing, and said that the House was falling into some confusion, accompanying it with a remark, that I knew how difficult it was to rally so large a body when once broken on a tax bill, as had been experienced during the late war. Having a higher opinion of my influence than it deserved, he requested me to say something to prevent the confusion. I replied that I was at a loss what to say; that I had been busily engaged on the currency, which was then in great confusion, and which, as I have stated, had been placed particularly under my charge, as the chairman of the committee on that subject. He repeated his request, and the speech which the senator from Pennsylvania has complimented so highly, was the result.

I will ask whether the facts stated ought not, in justice, to be borne in mind by those who would hold me accountable, not only for the general scope of the speech, but for every word and sentence which it contains? But, in asking this question, it is not my intention to repudiate the speech. All I ask is, that I may be judged by the rules which, in justice, belong to the case. Let it be recollected that the bill was a revenue bill, and, of course, that it was constitutional. I need not remind the Senate that, when the measure is constitutional, all arguments calculated to show its beneficial operation may be legitimately pressed into service, without taking into consideration whether the subject to which the arguments refer be within the sphere of the constitution or not. If, for instance, a question were before this body to lay a duty on Bibles, and a motion were made to reduce the duty, or admit Bibles duty free, who could doubt that the argument in favor of the motion—that the increased circulation of the Bible would be in favor of the morality and religion of the country, would be strictly proper? But who would suppose that he who adduced it had committed himself on the constitutionality of taking the religion or morals of the country under the charge of the Federal Government? Again: suppose the question to be, to raise the duty on silk, or any other article of luxury; and that it should be supported on the ground that it was an article mainly consumed by the rich and extravagant—could it be fairly inferred that in the opinion of the

applied to my argument on the tariff of 1816. They turn almost entirely on the benefits which manufactures conferred on the country in time of war, and which no one could doubt. The country had recently passed through such a state. The world was at that time deeply agitated by the effects of the great conflict which had so long raged in Europe, and which no one could tell how soon again might return. Bonaparte had but recently been overthrown; the whole southern part of this continent was in a state of revolution, and threatened with the interference of the Holy Alliance, which, had it occurred, must almost necessarily have involved this country in a most dangerous conflict. It was under these circumstances that I delivered the speech, in which I urged the House that, in the adjustment of the tariff, reference ought to be had to a state of war as well as peace, and that its provisions ought to be fixed on the compound views of the two periods—making some sacrifice in peace, in order that less might be made in war. Was this principle false? and, in urging it, did I commit myself to that system of oppression since grown up, and which has for its object the enriching of one portion of the country at the expense of the other?

The plain rule in all such cases is, that when a measure is proposed, the first thing is to ascertain its constitutionality; and, that being ascertained, the next is its expediency; which last opens the whole field of argument for and against. Every topic may be urged calculated to prove it wise or unwise: so in a bill to raise imposts. It must first be ascertained that the bill is based on the principles of revenue, and that the money raised is necessary for the wants of the country. These being ascertained, every argument, direct and indirect, may be fairly offered, which may go to show that, under all the circumstances, the provisions of the bill are proper or improper. Had this plain and simple rule been adhered to, we should never have heard of the complaint of Carolina. Her objection is not against the improper modification of a bill acknowledged to be for revenue, but that, under the name of imposts, a power essentially different from the taxing power is exercised—partaking much more of the character of a penalty than a tax. Nothing is more common than that things closely resembling in appearance should widely and essentially differ in their character. Arsenic, for instance, resembles flour, yet one is a deadly poison, and the other that which constitutes the staff of life. So duties imposed, whether for revenue or protection, may be called imposts; though nominally and apparently the same, yet they differ essentially in their real character.

I shall now return to my speech on the tariff of 1816. To determine what my opinions really were on the subject of protection at that time, it will be proper to advert to my sentiments before and after that period. My senti-

a devoted friend and supporter of the then administration; yet one of my first efforts was to brave the administration, by opposing its favorite measure, the restrictive system—embargo, non-intercourse, and all—and that upon the principle of free trade. The system remained in fashion for a time; but, after the overthrow of Bonaparte, I reported a bill from the Committee on Foreign Relations, to repeal the whole system of restrictive measures. While the bill was under consideration, a worthy man, then a member of the House (Mr. M'Kim of Baltimore), moved to except the non-importation act, which he supported on the ground of encouragement to manufactures. I resisted the motion on the very grounds on which Mr. M'Kim supported it. I maintained that the manufacturers were then receiving too much protection, and warned its friends that the withdrawal of the protection which the war and the high duties then afforded, would cause great embarrassment; and that the true policy, in the mean time, was to admit foreign goods as freely as possible, in order to diminish the anticipated embarrassment on the return of peace; intimating, at the same time, my desire to see the tariff revised, with a view of affording a moderate and permanent protection.

Such was my conduct before 1816. Shortly after that period I left Congress, and had no opportunity of making known my sentiments in reference to the protective system, which shortly after began to be agitated. But I have the most conclusive evidence that I considered the arrangement of the revenue, in 1816, as growing out of the necessity of the case, and due to the consideration of justice. But, even at that early period, I was not without my fears that even that arrangement would lead to abuse and future difficulties. I regret that I have been compelled to dwell so long on myself; but trust that, whatever censure may be incurred, will not be directed against me, but against those who have drawn my conduct into the controversy; and who may hope, by assailing my motives, to wound the cause with which I am proud to be identified.

I may add, that all the southern States voted with South Carolina in support of the bill: not that they had any interest in manufactures, but on the ground that they had supported the war, and, of course, felt a corresponding obligation to sustain those establishments which had grown up under the encouragement it had incidentally afforded; whilst most of the New England members were opposed to the measure, principally, as I believe, on opposite principles.

I have now, I trust, satisfactorily repelled the charge against the State, and myself personally, in reference to the tariff of 1816. Whatever support the State has given the bill, originated in the most disinterested motives. There was not within the limits of the State, so far as my agriculture, and the cultivation of two great staples, rice and cotton. Her obvious policy was to keep open the market of the world, unchecked and unrestricted;—to buy cheap and to sell high: but from a feeling of kindness, combined with a sense of justice, she added her support to the bill. We had been told by the agents of the manufacturers that the protection which the measure afforded would be sufficient; to which we the more readily conceded, as it was considered a final adjustment of the question.

Let us now turn our eyes forward, and see what has been the conduct of the parties to this arrangement. Have Carolina and the south disturbed this adjustment? No; they have never raised their voice in a single instance against it, even though this measure, moderate, comparatively, as it is, was felt with no inconsiderable pressure on their interests. Was this example imitated on the opposite side? Far otherwise. Scarcely had the President signed his name, before application was made for an increase of duties, which was repeated, with demands continually growing, till the passage of the act of 1828. What course now, I would ask, did it become Carolina to pursue in reference to these demands? Instead of acquiescing in them, because she had acted generously in adjusting the tariff of 1816, she saw, in her generosity on that occasion, additional motives for that firm and decided resistance which she has since made against the system of protection. She accordingly commenced a systematic opposition to all further encroachments, which continued from 1818 till 1828; by discussions and by resolutions, by remonstrances and by protests through her legislature. These all proved insufficient to stem the current of encroachment: but, notwithstanding the heavy pressure on her industry, she never despaired of relief till the passage of the act of 1828—that bill of abominations—engendered by avarice and political intrigue. Its adoption opened the eyes of the State, and gave a new character to the controversy. Till then, the question had been, whether the protective system was constitutional and expedient; but, after that, she no longer considered the question whether the right of regulating the industry of the States was a reserved or delegated power, but what right a State possesses to defend her reserved powers against the encroachments of the Federal Government: a question on the decision of which the value of all the reserved powers depends. The passage of the act of 1828, with all its objectionable features, and under the circumstances connected with it, almost, if not entirely, closed the door of hope through the General Government. It afforded conclusive evidence that no reasonable prospect of relief from Congress could be entertained; yet, the near approach of the period of the payment of the public debt, and the elevation of General

the State from turning her eyes for final relief to her reserved powers.

Under these circumstances commenced that *inquiry into the nature and extent of the reserved* powers of a State, and the means which they afford of resistance against the encroachments of the General Government, which has been pursued with so much zeal and energy, and, I may add, intelligence. Never was there a political discussion carried on with greater activity, and which appealed more directly to the intelligence of a community. Throughout the whole, no address has been made to the low and vulgar passions; but, on the contrary, the discussion has turned upon the higher principles of political economy, connected with the operations of the tariff system, calculated to show its real bearing on the interests of the State, and on the structure of our political system; and to show the true character of the relations between the State and the General Government, and the means which the States possess of defending those powers which they reserved in forming the Federal Government.

In this great canvass, men of the most commanding talents and acquirements have engaged with the greatest ardor; and the people have been addressed through every channel—by essays in the public press, and by speeches in their public assemblies—until they have become thoroughly instructed on the nature of the oppression, and on the rights which they possess, under the constitution, to throw it off.

If gentlemen suppose that the stand taken by the people of Carolina rests on passion and delusion, they are wholly mistaken. The case is far otherwise. No community, from the legislator to the plowman, were ever better instructed in their rights; and the resistance on which the State has resolved, is the result of mature reflection, accompanied with a deep conviction that their rights have been violated, and that the means of redress which they have adopted are consistent with the principles of the constitution.

But while this active canvass was carried on, which looked to the reserved powers as the final means of redress if all others failed, the State at the same time cherished a hope, as I have already stated, that the election of General Jackson to the Presidency would prevent the necessity of a resort to extremities. He was identified with the interests of the staple States; and, having the same interest, it was believed that his great popularity—a popularity of the strongest character, as it rested on military services—would enable him, as they hoped, gradually to bring down the system of protection, without shock or injury to any interest. Under these views, the canvass in favor of General Jackson's election to the Presidency was carried on with great zeal, in conjunction with that active inquiry into the reserved powers of the States on which final reliance was placed. But little did the people of Carolina dream that the to the highest seat of power would prove so utterly false to all their hopes. Man is, indeed, ignorant of the future; nor was there ever a *stronger illustration of the observation than is* afforded by the result of that election! The very event on which they had built their hopes has been turned against them; and the very individual to whom they looked as a deliverer, and whom, under that impression, they strove for so many years to elevate to power, is now the most powerful instrument in the hands of his and their bitterest opponents to put down them and their cause!

Scarcely had he been elected, when it became apparent, from the organization of his cabinet and other indications, that all their hopes of relief through him were blasted. The admission of a single individual into the cabinet, under the circumstances which accompanied that admission, threw all into confusion. The mischievous influence over the President, through which this individual was admitted into the cabinet, soon became apparent. Instead of turning his eyes forward to the period of the payment of the public debt, which was then near at hand, and to the present dangerous political crisis, which was inevitable unless averted by a timely and wise system of measures, the attention of the President was absorbed by mere party arrangements, and circumstances too disreputable to be mentioned here, except by the most distant allusion.

Here I must pause for a moment to repel a charge which has been so often made, and which even the President has reiterated in his proclamation—the charge that I have been actuated, in the part which I have taken, by feelings of disappointed ambition. I again repeat that I deeply regret the necessity of noticing myself in so important a discussion; and that nothing can induce me to advert to my own course but the conviction that it is due to the cause, at which a blow is aimed through me. It is only in this view that I notice it.

It illy became the chief magistrate to make this charge. The course which the State took, and which led to the present controversy between her and the general government, was taken as far back as 1828—in the very midst of that severe canvass which placed him in power—and in that very canvass Carolina openly avowed and zealously maintained those very principles which he, the chief magistrate, now officially pronounces to be treason and rebellion. That was the period at which he ought to have spoken. Having remained silent then, and having, under his approval, implied by that silence, received the support and the vote of the State, I, if a sense of decorum did not prevent it, might recriminate with the double charge of deception and ingratitude. My object, however, is not to assail the President, but to defend myself against a most unfounded charge. The time alone when that course was taken, on which this charge of disappointed

the eye of every unprejudiced and honest man. The doctrine which I now sustain, under the present difficulties, I openly avowed and maintained immediately after the act of 1828, that "bill of abominations," as it has been so often and properly termed. Was I, at that period, disappointed in any views of ambition which I might be supposed to entertain? I was Vice-President of the United States, elected by an overwhelming majority. I was a candidate for re-election on the ticket with General Jackson himself, with a certain prospect of the triumphant success of that ticket, and with a fair prospect of the highest office to which an American citizen can aspire. What was my course under these prospects? Did I look to my own advancement, or to an honest and faithful discharge of my duty? Let facts speak for themselves. When the bill to which I have referred came from the other House to the Senate, the almost universal impression was, that its fate would depend upon my casting vote. It was known that, as the bill then stood, the Senate was nearly equally divided; and as it was a combined measure, originating with the politicians and manufacturers, and intended as much to bear upon the Presidential election as to protect manufactures, it was believed that, as a stroke of political policy, its fate would be made to depend on my vote, in order to defeat General Jackson's election, as well as my own. The friends of General Jackson were alarmed, and I was earnestly entreated to leave the chair in order to avoid the responsibility, under the plausible argument that, if the Senate should be equally divided, the bill would be lost without the aid of my casting vote. The reply to this entreaty was, that no consideration personal to myself could induce me to take such a course; that I considered the measure as of the most dangerous character, and calculated to produce the most fearful crisis; that the payment of the public debt was just at hand; and that the great increase of revenue which it would pour into the treasury would accelerate the approach of that period, and that the country would be placed in the most trying of situations—with an immense revenue without the means of absorption upon any legitimate or constitutional object of appropriation, and compelled to submit to all the corrupting consequences of a large surplus, or to make a sudden reduction of the rates of duties, which would prove ruinous to the very interests which were then forcing the passage of the bill. Under these views I determined to remain in the chair, and if the bill came to me, to give my casting vote against it, and in doing so, to give my reasons at large; but at the same time I informed my friends that I would retire from the ticket, so that the election of General Jackson might not be embarrassed by any act of mine. Sir, I was amazed at the folly and infatuation of that period. So completely absorbed was Congress in the game of ambition and the manufacturers and politicians—that none but a few appeared to anticipate the present crisis, at which all are now alarmed, but which is the inevitable result of what was then done. As to myself, I clearly foresaw what has since followed. The road of ambition lay open before me—I had but to follow the corrupt tendency of the times—but I chose to tread the rugged path of duty.

It was thus that the reasonable hope of relief through the election of General Jackson was blasted; but still one other hope remained, that the final discharge of the public debt—an event near at hand—would remove our burden. That event would leave in the treasury a large surplus: a surplus that could not be expended under the most extravagant schemes of appropriation, having the least color of decency or constitutionality. That event at last arrived. At the last session of Congress, it was avowed on all sides that the public debt, as to all practical purposes, was in fact paid, the small surplus remaining being nearly covered by the money in the treasury and the bonds for duties which had already accrued; but with the arrival of this event our last hope was doomed to be disappointed. After a long session of many months and the most earnest effort on the part of South Carolina and the other southern States to obtain relief, all that could be effected was a small reduction in the amount of the duties; but a reduction of such a character, that, while it diminished the amount of burden, distributed that burden more unequally than even the obnoxious act of 1828: reversing the principle adopted by the bill of 1816, of laying higher duties on the unprotected than the protected articles, by repealing almost entirely the duties laid upon the former, and imposing the burden almost entirely on the latter. It was thus that instead of relief—instead of an equal distribution of the burdens and benefits of the government, on the payment of the debt, as had been fondly anticipated—the duties were so arranged as to be, in fact, bounties on one side and taxation on the other; thus placing the two great sections of the country in direct conflict in reference to its fiscal action, and thereby letting in that flood of political corruption which threatens to sweep away our constitution and our liberty.

This unequal and unjust arrangement was pronounced, both by the administration, through its proper organ, the Secretary of the Treasury, and by the opposition, to be a permanent adjustment; and it was thus that all hope of relief through the action of the General Government terminated; and the crisis so long apprehended at length arrived, at which the State was compelled to choose between absolute acquiescence in a ruinous system of oppression, or a resort to her reserved powers—powers of which she alone was the rightful judge, and which only, in this momentous juncture, could save her. She determined on the latter.

The consent of two-thirds of her legislature

which was considered the only legitimate organ through which the people, in their sovereignty, could speak. After an arduous struggle the State Rights party succeeded; more than two-thirds of both branches of the legislature favorable to a convention were elected; a convention was called—the ordinance adopted. The convention was succeeded by a meeting of the legislature, when the laws to carry the ordinance into execution were enacted: all of which have been communicated by the President, have been referred to the Committee on the Judiciary, and this bill is the result of their labor.

Having now corrected some of the prominent misrepresentations as to the nature of this controversy, and given a rapid sketch of the movement of the State in reference to it, I will next proceed to notice some objections connected with the ordinance and the proceedings under it.

The first and most prominent of these is directed against what is called the test oath, which an effort has been made to render odious. So far from deserving the denunciation which has been levelled against it, I view this provision of the ordinance as but the natural result of the doctrines entertained by the State, and the position which she occupies. The people of Carolina believe that the Union is a union of States, and not of individuals; that it was formed by the States, and that the citizens of the several States were bound to it through the acts of their several States; that each State ratified the constitution for itself, and that it was only by such ratification of a State that any obligation was imposed upon its citizens. Thus believing, it is the opinion of the people of Carolina that it belongs to the State which has imposed the obligation to declare, in the last resort, the extent of this obligation, as far as her citizens are concerned; and this upon the plain principles which exist in all analogous cases of compact between sovereign bodies. On this principle the people of the State, acting in their sovereign capacity in convention, precisely as they did in the adoption of their own and the federal constitution, have declared, by the ordinance, that the acts of Congress which imposed duties under the authority to lay imposts, are acts, not for revenue, as intended by the constitution, but for protection, and therefore null and void. The ordinance thus enacted by the people of the State themselves, acting as a sovereign community, is as obligatory on the citizens of the State as any portion of the constitution. In prescribing, then, the oath to obey the ordinance, no more was done than to prescribe an oath to obey the constitution. It is, in fact, but a particular oath of allegiance, and in every respect similar to that which is prescribed, under the constitution of the United States, to be administered to all the officers of the State and Federal Governments; and is no more deserving the harsh and bitter epithets

that according to the opinion which prevails in Carolina, the right of resistance to the unconstitutional acts of Congress belongs to the State, and not to her individual citizens; and that, though the latter may, in a mere question of "meum" and "tuum," resist, through the courts, an unconstitutional encroachment upon their rights, yet the final stand against usurpation rests not with them, but with the State of which they are members; and such act of resistance by a State binds the conscience and allegiance of the citizen. But there appears to be a general misapprehension as to the extent to which the State has acted under this part of the ordinance. Instead of sweeping every officer by a general proscription of the minority, as has been represented in debate, as far as my knowledge extends, not a single individual has been removed. The State has, in fact, acted with the greatest tenderness, all circumstances considered, towards citizens who differed from the majority; and in that spirit has directed the oath to be administered only in case of some official act directed to be performed, in which obedience to the ordinance is involved.

It has been further objected, that the State has acted precipitately. What! precipitately! after making a strenuous resistance for twelve years—by discussion here and in the other House of Congress—by essays in all forms—by resolutions, remonstrances, and protests on the part of her legislature—and, finally, by attempting an appeal to the judicial power of the United States? I say attempting, for they have been prevented from bringing the question fairly before the court, and that by an act of that very majority in Congress who now upbraid them for not making that appeal; of that majority who on a motion of one of the members in the other House from South Carolina, refused to give to the act of 1828 its true title—that it was a protective, and not a revenue act. The State has never, it is true, relied upon that tribunal, the Supreme Court, to vindicate its reserved rights; yet they have always considered it as an auxiliary means of defence, of which they would gladly have availed themselves to test the constitutionality of protection, had they not been deprived of the means of doing so by the act of the majority.

Notwithstanding this long delay of more than ten years, under this continued encroachment of the Government, we now hear it on all sides, by friends and foes, gravely pronounced that the State has acted precipitately—that her conduct has been rash! That such should be the language of an interested majority, who, by means of this unconstitutional and oppressive system, are annually extorting millions from the south, to be bestowed upon other sections, is not at all surprising. Whatever impedes the course of avarice and ambition, will ever be denounced as rash and precipitate; and had

from the same quarter the same language; but it is really surprising, that those who are suffering in common with herself, and who have complained equally loud of their grievances; who have pronounced the very acts which she has asserted within her limits to be oppressive, unconstitutional, and ruinous, after so long a struggle—a struggle longer than that which preceded the separation of these States from the mother-country—longer than the period of the Trojan war—should now complain of precipitancy! No, it is not Carolina which has acted precipitately; but her sister States, who have suffered in common with her, have acted tardily. Had they acted as she has done; had they performed their duty with equal energy and promptness, our situation this day would be very different from what we now find it. Delays are said to be dangerous; and never was the maxim more true than in the present case, a case of monopoly. It is the very nature of monopolies to grow. If we take from one side a large portion of the proceeds of its labor, and give it to the other, the side from which we take must constantly decay, and that to which we give must prosper and increase. Such is the action of the protective system. It exacts from the south a large portion of the proceeds of its industry, which it bestows upon the other sections, in the shape of bounties to manufactures, and appropriations in a thousand forms; pensions, improvement of rivers and harbors, roads and canals, and in every shape that wit or ingenuity can devise. Can we, then, be surprised that the principle of monopoly grows, when it is so amply remunerated at the expense of those who support it? And this is the real reason of the fact which we witness, that all acts for protection pass with small minorities, but soon come to be sustained by great and overwhelming majorities. Those who seek the monopoly endeavor to obtain it in the most exclusive shape; and they take care, accordingly, to associate only a sufficient number of interests barely to pass it through the two Houses of Congress, on the plain principle, that the greater the number from whom the monopoly takes, and the fewer on whom it bestows, the greater is the advantage to the monopolists. Acting in this spirit, we have often seen with what exact precision they count: adding wool to woollens, associating lead and iron, feeling their way, until a bare majority is obtained, when the bill passes, connecting just as many interests as are sufficient to ensure its success, and no more. In a short time, however, we have invariably found that this *lean* becomes a decided majority, under the certain operation which compels individuals to desert the pursuits which the monopoly has rendered unprofitable, that they may participate in those which it has rendered profitable. It is against this dangerous and growing disease that South Carolina has acted—a disease, whose cancerous action would soon

There is another powerful reason why the action of the State could not have been safely delayed. The public debt, as I have already stated, for all practical purposes, has already been paid; and, under the existing duties, a large annual surplus of many millions must come into the treasury. It is impossible to look at this state of things without seeing the most mischievous consequences; and, among others, if not speedily corrected, it would interpose powerful and almost insuperable obstacles to throwing off the burden under which the south has been so long laboring. The disposition of the surplus would become a subject of violent and corrupt struggle, and could not fail to rear up new and powerful interests in support of the existing system, not only in those sections which have been heretofore benefited by it, but even in the south itself. I cannot but trace to the anticipation of this state of the treasury the sudden and extraordinary movements which took place at the last session in the Virginia legislature, in which the whole south is vitally interested.* It is impossible for any rational man to believe that that State could seriously have thought of effecting the scheme to which I allude by her own resources, without powerful aid from the General Government.

It is next objected, that the enforcing acts have legislated the United States out of South Carolina. I have already replied to this objection on another occasion, and I will now but repeat what I then said: that they have been legislated out only to the extent that they had no right to enter. The constitution has admitted the jurisdiction of the United States within the limits of the several States only so far as the delegated powers authorize; beyond that they are intruders, and may rightfully be expelled; and that they have been efficiently expelled by the legislation of the State through her civil process, as has been acknowledged on all sides in the debate, is only a confirmation of the truth of the doctrine for which the majority in Carolina have contended.

The very point at issue between the two parties there, is, whether nullification is a peaceable and an efficient remedy against an unconstitutional act of the General Government, and may be asserted, as such, through the State tribunals. Both parties agree that the acts against which it is directed are unconstitutional and oppressive. The controversy is only as to the means by which our citizens may be protected against the acknowledged encroachments on their rights. This being the point at issue between the parties, and the very object of the majority being an efficient protection of the citizens through the State tribunals, the measures adopted to enforce the ordinance, of course received the most decisive character. We were not children, to act by halves. Yet for acting thus efficiently the State is denounced, and this bill

reported, to overrule, by military force, the civil tribunals and civil process of the State! Sir, I consider this bill, and the arguments which have been urged on this floor in its support, as the most triumphant acknowledgment that nullification is peaceful and efficient, and so deeply intrenched in the principles of our system, that it cannot be assailed but by prostrating the constitution, and substituting the supremacy of military force in lieu of the supremacy of the laws. In fact, the advocates of this bill refute their own argument. They tell us that the ordinance is unconstitutional; that it infracts the constitution of South Carolina, although to me, the objection appears absurd, as it was adopted by the very authority which adopted the constitution itself. They also tell us that the Supreme Court is the appointed arbiter of all controversies between a State and the General Government. Why, then, do they not leave this controversy to that tribunal? Why do they not confide to them the abrogation of the ordinance, and the laws made in pursuance of it, and the assertion of that supremacy which they claim for the laws of Congress? The State stands pledged to resist no process of the court. Why, then, confer on the President the extensive and unlimited powers provided in this bill? Why authorize him to use military force to arrest the civil process of the State? But one answer can be given: That, in a contest between the State and the General Government, if the resistance be limited on both sides to the civil process, the State, by its inherent sovereignty, standing upon its reserved powers, will prove too powerful in such a controversy, and must triumph over the Federal Government, sustained by its delegated and unlimited authority; and in this answer we have an acknowledgment of the truth of those great principles for which the State has so firmly and nobly contended.

Having made these remarks, the great question is now presented, Has Congress the right to pass this bill? which I will next proceed to consider. The decision of this question involves an inquiry into the provisions of the bill. What are they? It puts at the disposal of the President the army and navy, and the entire militia of the country; it enables him, at his pleasure, to subject every man in the United States, not exempt from militia duty, to martial law; to call him from his ordinary occupation to the field, and under the penalty of fine and imprisonment, inflicted by a court-martial, to imbrue his hand in his brother's blood. There is no limitation on the power of the sword;—and that over the purse is equally without restraint; for among the extraordinary features of the bill, it contains no appropriation, which, under existing circumstances, is tantamount to an unlimited appropriation. The President may, under its authority, incur any expenditure, and pledge the national faith to meet it. He may create a new national debt, at the very moment lions, to be paid out of the proceeds of the labor of that section of the country whose dearest constitutional rights this bill prostrates! Thus exhibiting the extraordinary spectacle, that the very section of the country which is urging this measure, and carrying the sword of devastation against us, is, at the same time, incurring a new debt, to be paid by those whose rights are violated; while those who violate them are to receive the benefits in the shape of bounties and expenditures.

And for what purpose is the unlimited control of the purse and of the sword thus placed at the disposition of the executive? To make war against one of the free and sovereign members of this confederation, which the bill proposes to deal with, not as a State, but as a collection of banditti or outlaws. Thus exhibiting the impious spectacle of this government, the creature of the States, making war against the power to which it owes its existence.

The bill violates the constitution, plainly and palpably, in many of its provisions, by authorizing the President at his pleasure, to place the different ports of this Union on an unequal footing, contrary to that provision of the constitution which declares that no preference shall be given to one port over another. It also violates the constitution by authorizing him, at his discretion, to impose cash duties in one port, while credit is allowed in others; by enabling the President to regulate commerce, a power vested in Congress alone; and by drawing within the jurisdiction of the United States courts, powers never intended to be conferred on them. As great as these objections are, they become insignificant in the provisions of a bill which, by a single blow—by treating the States as a mere lawless mass of individuals—prostrates all the barriers of the constitution. I will pass over the minor considerations, and proceed directly to the great point. This bill proceeds on the ground that the entire sovereignty of this country belongs to the American people, as forming one great community, and regards the States as mere fractions or counties, and not as integral parts of the Union; having no more right to resist the encroachments of the government than a county has to resist the authority of a State; and treating such resistance as the lawless acts of so many individuals, without possessing sovereignty or political rights. It has been said that the bill declares war against South Carolina. No. It decrees a massacre of her citizens! War has something ennobling about it, and, with all its horrors, brings into action the highest qualities, intellectual and moral. It was, perhaps, in the order of Providence that it should be permitted for that very purpose. But this bill declares no war, except, indeed, it be that which savages wage—a war, not against the community, but the citizens of whom that community is composed. But I regard it as worse than *savage* warfare—as an attempt to take away life under the color of law, without

the constitution has thrown around the life of the citizen? It authorizes the President, or even his deputies, when they may suppose the law to be violated, without the intervention of a court or jury, to kill without mercy or discrimination!

It has been said by the senator from Tennessee (Mr. Grundy) to be a measure of peace! Yes, such peace as the wolf gives to a lamb—the kite to the dove! Such peace as Russia gives to Poland, or death to its victim! A peace, by extinguishing the political existence of the State, by awing her into an abandonment of the exercise of every power which constitutes her a sovereign community. It is to South Carolina a question of self-preservation; and I proclaim it, that, should this bill pass, and an attempt be made to enforce it, it will be resisted, at every hazard—even that of death itself. Death is not the greatest calamity: there are others still more terrible to the free and brave, and among them may be placed the loss of liberty and honor. There are thousands of her brave sons who, if need be, are prepared cheerfully to lay down their lives in defence of the State, and the great principles of constitutional liberty for which she is contending. God forbid that this should become necessary! It never can be, unless this government is resolved to bring the question to extremity, when her gallant sons will stand prepared to perform the last duty—to die nobly.

I go on the ground that this constitution was made by the States; that it is a federal union of the States, in which the several States still retain their sovereignty. If these views be correct, I have not characterized the bill too strongly: and the question is, whether they be or be not. I will not enter into the discussion of this question now. I will rest it, for the present, on what I have said on the introduction of the resolutions now on the table, under a hope that another opportunity will be afforded for more ample discussion. I will, for the present, confine my remarks to the objections which have been raised to the views which I presented when I introduced them. The authority of Luther Martin has been adduced by the senator from Delaware, to prove that the citizens of a State, acting under the authority of a State, are liable to be punished as traitors by this government. Eminent as Mr. Martin was as a lawyer, and high as his authority may be considered on a legal point, I cannot accept it in determining the point at issue. The attitude which he occupied, if taken into view, would lessen if not destroy, the weight of his authority. He had been violently opposed in convention to the constitution, and the very letter from which the senator has quoted was intended to dissuade Maryland from its adoption. With this view, it was to be expected that every consideration calculated to effect that object should be urged; that real objections should be exaggerated; and that those having no foundation, except mere plausible deductions, should

ute the opinion of Mr. Martin in reference to the point under consideration. But if his authority be good on one point, it must be admitted to be equally so on another. If his opinion be sufficient to prove that a citizen of a State may be punished as a traitor when acting under allegiance to the State, it is also sufficient to show that no authority was intended to be given in the constitution for the protection of manufactures by the General Government, and that the provision in the constitution permitting a State to lay an impost duty, with the consent of Congress, was intended to reserve the right of protection to the States themselves, and that each State should protect its own industry. Assuming his opinion to be of equal authority on both points, how embarrassing would be the attitude in which it would place the Senator from Delaware, and those with whom he is acting—that of using the sword and bayonet to enforce the execution of an unconstitutional act of Congress. I must express my surprise that the slightest authority in favor of *power* should be received as the most conclusive evidence, while that which is, at least, equally strong in favor of right and *liberty*, is wholly overlooked or rejected.

Notwithstanding all that has been said, I may say that neither the Senator from Delaware (Mr. Clayton), nor any other who has spoken on the same side, has directly and fairly met the great question at issue: Is this a federal union? a union of States, as distinct from that of individuals? Is the sovereignty in the several States, or in the American people in the aggregate? The very language which we are compelled to use when speaking of our political institutions, affords proof conclusive as to its real character. The terms union, federal, united, all imply a combination of sovereignties, a confederation of States. They are never applied to an association of individuals. Who ever heard of the United State of New York, of Massachusetts, or of Virginia? Who ever heard the term federal or union applied to the aggregation of individuals into one community? Nor is the other point less clear—that the sovereignty is in the several States, and that our system is a union of twenty-four sovereign powers, under a constitutional compact, and not of a divided sovereignty between the States severally and the United States. In spite of all that has been said, I maintain that sovereignty is in its nature indivisible. It is the supreme power in a State, and we might just as well speak of half a square, or half of a triangle, as of half a sovereignty. It is a gross error to confound the exercise of sovereign powers with sovereignty itself, or the delegation of such powers with the surrender of them. A sovereign may delegate his powers to be exercised by as many agents as he may think proper, under such conditions and with such limitations as he may impose; but to surrender any portion of his sovereignty to another is to annihilate

Clayton) calls this metaphysical reasoning, which he says he cannot comprehend. If by metaphysics he means that scholastic refinement which makes distinctions without difference, no one can hold it in more utter contempt than I do; but if, on the contrary, he means the power of analysis and combination—that power which reduces the most complex idea into its elements, which traces causes to their first principle, and, by the power of generalization and combination, unites the whole in one harmonious system—then, so far from deserving contempt, it is the highest attribute of the human mind. It is the power which raises man above the brute—which distinguishes his faculties from mere sagacity, which he holds in common with inferior animals. It is this power which has raised the astronomer from being a mere gazer at the stars to the high intellectual eminence of a Newton or a Laplace, and astronomy itself from a mere observation of insulated facts into that noble science which displays to our admiration the system of the universe. And shall this high power of the mind, which has effected such wonders when directed to the laws which control the material world, be for ever prohibited, under a senseless cry of metaphysics, from being applied to the high purpose of political science and legislation? I hold them to be subject to laws as fixed as matter itself, and to be as fit a subject for the application of the highest intellectual power. Denunciation may, indeed, fall upon the philosophical inquirer into these first principles, as it did upon Galileo and Bacon when they first unfolded the great discoveries which have immortalized their names; but the time will come when truth will prevail in spite of prejudice and denunciation, and when politics and legislation will be considered as much a science as astronomy and chemistry.

In connection with this part of the subject, I understood the Senator from Virginia (Mr. Rives) to say that sovereignty was divided, and that a portion remained with the States severally, and that the residue was vested in the Union. By Union, I suppose the Senator meant the United States. If such be his meaning—if he intended to affirm that the sovereignty was in the twenty-four States, in whatever light he may view them, our opinions will not disagree; but according to my conception, the whole sovereignty is in the several States, while the exercise of sovereign powers is divided—a part being exercised under compact, through this General Government, and the residue through the separate State governments. But if the Senator from Virginia (Mr. Rives) means to assert that the twenty-four States form but one community, with a single sovereign power as to the objects of the Union, it will be but the revival of the old question, of whether the Union is a union between States, as distinct communities, or a mere aggregate of the American people, as a mass of individuals; and in this light

But to return to the bill. It is said that the bill ought to pass, because the law must be enforced. The law must be enforced! The imperial edict must be executed! It is under such sophistry, couched in general terms, without looking to the limitations which must ever exist in the practical exercise of power, that the most cruel and despotic acts ever have been covered. It was such sophistry as this that cast Daniel into the lions' den, and the three Innocents into the fiery furnace. Under the same sophistry the bloody edicts of Nero and Caligula were executed. The law must be enforced. Yes, the act imposing the "tea-tax must be executed." This was the very argument which impelled Lord North and his administration to that mad career which for ever separated us from the British crown. Under a similar sophistry, "that religion must be protected," how many massacres have been perpetrated? and how many martyrs have been tied to the stake? What! acting on this vague abstraction, are you prepared to enforce a law without considering whether it be just or unjust, constitutional or unconstitutional? Will you collect money when it is acknowledged that it is not wanted? He who earns the money, who digs it from the earth with the sweat of his brow, has a just title to it against the universe. No one has a right to touch it without his consent except his government, and this only to the extent of its legitimate wants; to take more is robbery, and you propose by this bill to enforce robbery by murder. Yes: to this result you must come, by this miserable sophistry, this vague abstraction of enforcing the law, without a regard to the fact whether the law be just or unjust, constitutional or unconstitutional.

In the same spirit, we are told that the Union must be preserved, without regard to the means. And how is it proposed to preserve the Union? By force? Does any man in his senses believe that this beautiful structure—this harmonious aggregate of States, produced by the joint consent of all—can be preserved by force? Its very introduction will be certain destruction to this Federal Union. No, no. You cannot keep the States united in their constitutional and federal bonds by force. Force may, indeed, hold the parts together, but such union would be the bond between master and slave—a union of exaction on one side and of unqualified obedience on the other. That obedience which, we are told by the senator from Pennsylvania (Mr. Wilkins), is the Union! Yes, exaction on the side of the master; for this very bill is intended to collect what can be no longer called taxes—the voluntary contribution of a free people—but tribute—tribute to be collected under the mouths of the cannon! Your custom-house is already transferred to a garrison, and that garrison with its batteries turned, not against the enemy of your country, but on subjects (I will not say citizens), on whom you

from our borders? Have we ceased to reflect? It is madness to suppose that the Union can be preserved by force. I tell you plainly, that the bill, should it pass, cannot be enforced. It will prove only a blot upon your statute-book, a reproach to the year, and a disgrace to the American Senate. I repeat, it will not be executed; it will rouse the dormant spirit of the people, and open their eyes to the approach of despotism. The country has sunk into avarice and political corruption, from which nothing can arouse it but some measure, on the part of the government, of folly and madness, such as that now under consideration.

Disguise it as you may, the controversy is one between power and liberty; and I tell the gentlemen who are opposed to me, that, as strong as may be the love of power on their side, the love of liberty is still stronger on ours. History furnishes many instances of similar struggles, where the love of liberty has prevailed against power under every disadvantage, and among them few more striking than that of our own Revolution; where, as strong as was the parent country, and feeble as were the colonies, yet, under the impulse of liberty, and the blessing of God, they gloriously triumphed in the contest. There are, indeed, many and striking analogies between that and the present controversy. They both originated substantially in the same cause—with this difference—in the present case, the power of taxation is converted into that of regulating industry; in the other, the power of regulating industry, by the regulation of commerce, was attempted to be converted into the power of taxation. Were I to trace the analogy further, we should find that the perversion of the taxing power, in the one case, has given precisely the same control to the northern section over the industry of the southern section of the Union, which the power to regulate commerce gave to Great Britain over the industry of the colonies in the other; and that the very articles in which the colonies were permitted to have a free trade, and those in which the mother country had a monopoly, are almost identically the same as those in which the Southern States are permitted to have a free trade by the act of 1832, and in which the Northern States have, by the same act, secured a monopoly. The only difference is in the means. In the former, the colonies were permitted to have a free trade with all countries south of Cape Finisterre, a cape in the northern part of Spain; while north of that, the trade of the colonies was prohibited, except through the mother country, by means of her commercial regulations. If we compare the products of the country north and south of Cape Finisterre, we shall find them almost identical with the list of the protected and unprotected articles contained in the act of last year. Nor does the analogy terminate here. The very arguments resorted to at the commencement of the American Revolution, and the bring on that contest, (to enforce the law,) are almost identically the same.

But to return from this digression to the consideration of the bill. Whatever difference of opinion may exist upon other points, there is one on which I should suppose there can be none: that this bill rests on principles which, if carried out, will ride over State sovereignties, and that it will be idle for any of its advocates hereafter to talk of State rights. The Senator from Virginia (Mr. Rives) says that he is the advocate of State rights; but he must permit me to tell him that, although he may differ in premises from the other gentlemen with whom he acts on this occasion, yet, in supporting this bill, he obliterates every vestige of distinction between him and them, saving only that, professing the principles of '98, his example will be more pernicious than that of the most open and bitter opponents of the rights of the States. I will also add, what I am compelled to say, that I must consider him (Mr. Rives) as less consistent than our old opponents, whose conclusions were fairly drawn from their premises, while his premises ought to have led him to opposite conclusions. The gentleman has told us that the new-fangled doctrines, as he chooses to call them, have brought State rights into disrepute. I must tell him, in reply, that what he calls new-fangled are but the doctrines of '98; and that it is he (Mr. Rives), and others with him, who, professing these doctrines, have degraded them by explaining away their meaning and efficacy. He (Mr. R.) has disclaimed, in behalf of Virginia, the authorship of nullification. I will not dispute that point. If Virginia chooses to throw away one of her brightest ornaments, she must not hereafter complain that it has become the property of another. But while I have, as a representative of Carolina, no right to complain of the disavowal of the senator from Virginia, I must believe that he (Mr. R.) has done his native State great injustice by declaring on this floor, that when she gravely resolved, in '98, that "in cases of deliberate and dangerous infractions of the constitution, the States, as parties to the compact, have the right, and are in duty bound, to interpose to arrest the progress of the evil, and to maintain within their respective limits, the authorities, rights, and liberties, appertaining to them," she meant no more than to proclaim the right to protest and to remonstrate. To suppose that, in putting forth so solemn a declaration, which she afterwards sustained by so able and elaborate an argument, she meant no more than to assert what no one had ever denied, would be to suppose that the State had been guilty of the most egregious trifling that ever was exhibited on so solemn an occasion.

In reviewing the ground over which I have passed, it will be apparent that the question in controversy involves that most deeply important of all political questions, whether ours is a

tion, on the decision of which depend, as I solemnly believe, the liberty of the people, their happiness, and the place which we are destined to hold in the moral and intellectual scale of nations. Never was there a controversy in which more important consequences were involved; not excepting that between Persia and Greece, decided by the battles of Marathon, Platea, and Salamis—which gave ascendency to the genius of Europe over that of Asia—and which, in its consequences, has continued to affect the destiny of so large a portion of the world even to this day. There are often close analogies between events apparently very remote, which are strikingly illustrated in this case. In the great contest between Greece and Persia, between European and Asiatic polity and civilization, the very question between the federal and consolidated form of government was involved. The Asiatic governments, from the remotest time, with some exceptions on the eastern shore of the Mediterranean, have been based on the principle of consolidation, which considers the whole community as but a unit, and consolidates its powers in a central point. The opposite principle has prevailed in Europe—Greece, throughout all her states, was based on a federal system. All were united in one common, but loose bond, and the governments of the several states partook, for the most part, of a complex organization, which distributed political power among different members of the community. The same principles prevailed in ancient Italy; and, if we turn to the Teutonic race, our great ancestors—the race which occupies the first place in power, civilization, and science, and which possesses the largest and the fairest part of Europe—we shall find that their governments were based on federal organization, as has been clearly illustrated by a recent and able writer on the British constitution, (Mr. Palgrave,) from whose works I take the following extract:

"In this manner the first establishment of the Teutonic States was effected. They were assemblages of septs, clans, and tribes; they were confederated hosts and armies, led on by princes, magistrates, and chieftains; each of whom was originally independent, and each of whom lost a portion of his pristine independence in proportion as he and his compeers became united under the supremacy of a sovereign, who was superinduced upon the state, first as a military commander and afterward as a king. Yet, notwithstanding this political connection, each member of the State continued to retain a considerable portion of the rights of sovereignty. Every ancient Teutonic monarchy must be considered as a federation; it is not a unit, of which the smaller bodies politic therein contained are the fractions, but they are the integers, and the state is the multiple which results from them. Dukedoms and counties, burghs and baronies, towns and townships, and shires, strangers to each other, and separate in jurisdiction, though all obedient to the supreme executive authority. This general description, though not always strictly applicable in terms, is always so substantially and in effect; and hence it becomes necessary to discard the language which has been very generally employed in treating on the English Constitution. It has been supposed that the kingdom was reduced into a regular and gradual subordination of government, and that the various legal districts of which it is composed, arose from the divisions and subdivisions of the country. But this hypothesis, which tends greatly to perplex our history, cannot be supported by fact; and, instead of viewing the constitution as a whole, and then proceeding to its parts, we must examine it synthetically, and assume that the supreme authorities of the State were created by the concentration of the powers originally belonging to the members and corporations of which it is composed."

Here Mr. Calhoun gave way for a motion to adjourn; and, on the next day resumed:—

I have omitted at the proper place, in the course of my observations yesterday, two or three points, to which I will now advert, before I resume the discussion where I left off. I have stated that the ordinance and acts of South Carolina were directed, not against the revenue, but against the system of protection. But it may be asked, if such was her object, how happens it that she has declared the whole system void—revenue as well as protection, without discrimination? It is this question which I propose to answer. Her justification will be found in the necessity of the case; and if there be any blame it cannot attach to her. The two are so blended, throughout the whole, as to make the entire revenue system subordinate to the protective, so as to constitute a complete system of protection, in which it is impossible to discriminate the two elements of which it is composed. South Carolina, at least, could not make the discrimination; and she was reduced to the alternative of acquiescing in a system which she believed to be unconstitutional, and which she felt to be oppressive and ruinous, or to consider the whole as one, equally contaminated through all its parts, by the unconstitutionality of the protective portion, and as such, to be resisted by the act of the State. I maintain that the State has a right to regard it in the latter character, and that, if a loss of revenue follow, the fault is not hers, but of this government, which has improperly blended together in a manner not to be separated by the State, two systems wholly dissimilar. If the sincerity of the State be doubted; if it be supposed that her action is against revenue as well as protection, let the two be separated—let so much of the duties as are intended for revenue be put in one bill, and the residue intended for

self that the ordinance and the acts of the State will cease as to the former, and be directed exclusively against the latter.

I also stated, in the course of my remarks yesterday, and I trust that I have conclusively shown, that the act of 1816, with the exception of a single item, to which I have alluded, was in reality, a revenue measure; and that Carolina and the other States, in supporting it, have not incurred the slightest responsibility in relation to the system of protection which has since grown up, and which now so deeply distracts the country. Sir, I am willing, as one of the representatives of Carolina, and I believe I speak the sentiments of the State, to take that act as the basis of a permanent adjustment of the tariff, simply reducing the duties, in an average proportion, on all the items, to the revenue point. I make that offer now to the advocates of the protective system; but I must, in candor, inform them that such an adjustment would distribute the revenue between the protected and unprotected articles more favorably to the State, and to the south, and less to the manufacturing interest, than an average uniform "ad valorem," and, accordingly, more so than that now proposed by Carolina through her convention. After such an offer, no man who values his candor will dare accuse the State, or those who have represented her here, with inconsistency in reference to the point under consideration.

I omitted, also, on yesterday, to notice a remark of the senator from Virginia (Mr. Rives), that the only difficulty in adjusting the tariff grew out of the ordinance and the acts of South Carolina. I must attribute an assertion, so inconsistent with the facts, to an ignorance of the occurrences of the last few years in reference to this subject, occasioned by the absence of the gentleman from the United States, to which he himself has alluded in his remarks. If the senator will take pains to inform himself, he will find that this protective system advanced with a continued and rapid step, in spite of petitions, remonstrances, and protests, of not only Carolina, but also of Virginia, and of all the Southern States, until 1828, when Carolina, for the first time, changed the character of her resistance, by holding up her reserved rights as the shield of her defence against further encroachment. This attitude alone, unaided by a single State, arrested the further progress of the system, so that the question from that period to this, on the part of the manufacturers, has been, not how to acquire more, but to retain that which they have acquired. I will inform the gentleman that, if this attitude had not been taken on the part of the State, the question would not now be how duties ought to be repealed, but a question, as to the protected articles, between prohibition on one side and the duties established by the act of 1828, on the other. But a single remark will be sufficient in reply to what I must consider the invidious remark of the

and which was passed but a few months since, was declared by the supporters of the system to be a permanent adjustment, and the bill proposed by the Treasury Department, not essentially different from the act itself, was in like manner declared to be intended by the administration as a permanent arrangement. What has occurred since, except this ordinance, and these abused acts of the calumniated State, to produce this mighty revolution in reference to this odious system? Unless the senator from Virginia can assign some other cause, he is bound, upon every principle of fairness, to retract this unjust aspersion upon the acts of South Carolina.

The senator from Delaware (Mr. Clayton), as well as others, has relied with great emphasis on the fact that we are citizens of the United States. I do not object to the expression, nor shall I detract from the proud and elevated feelings with which it is associated; but I trust that I may be permitted to raise the inquiry, In what manner are we citizens of the United States? without weakening the patriotic feeling with which, I trust, it will ever be uttered. If by citizen of the United States he means a citizen at large, one whose citizenship extends to the entire geographical limits of the country, without having a local citizenship in some State or territory, a sort of citizen of the world, all I have to say is, that such a citizen would be a perfect nondescript; that not a single individual of this description can be found in the entire mass of our population. Notwithstanding all the pomp and display of eloquence on the occasion, every citizen is a citizen of some State or territory, and, as such, under an express provision of the constitution, is entitled to all privileges and immunities of citizens in the several States; and it is in this, and in no other sense, that we are citizens of the United States. The senator from Pennsylvania (Mr. Dallas), indeed, relies upon that provision in the constitution which gives Congress the power to establish a uniform rule of naturalization; and the operation of the rule actually established under this authority, to prove that naturalized citizens are citizens at large, without being citizens of any of the States. I do not deem it necessary to examine the law of Congress upon this subject, or to reply to the argument of the senator, though I cannot doubt that he (Mr. D.) has taken an entirely erroneous view of the subject. It is sufficient that the power of Congress extends simply to the establishment of a uniform rule by which foreigners may be naturalized in the several States or territories, without infringing, in any other respect, in reference to naturalization, the rights of the States as they existed before the adoption of the constitution.

Having supplied the omissions of yesterday, I now resume the subject at the point where my remarks then terminated. The Senate will remember that I stated, at their close, that the great question at issue is, whether ours is a fed-

language of Mr. Palgrave, are the integers, and the whole the multiple, or in which the whole is an unit and the parts the fractions. I stated, that on the decision of this question, I believed, depended not only the liberty and prosperity of this country, but the place which we are destined to hold in the intellectual and moral scale of nations. I stated, also, in my remarks on this point, that there is a striking analogy between this and the great struggle between Persia and Greece, which was decided by the battles of Marathon, Platea, and Salamis, and which immortalized the names of Miltiades and Themistocles. I illustrated this analogy by showing that centralism or consolidation, with the exception of a few nations along the eastern borders of the Mediterranean, has been the pervading principle in the Asiatic governments, while the federal system, or, what is the same in principle, that system which organizes a community in reference to its parts, has prevailed in Europe.

Among the few exceptions in the Asiatic nations, the government of the twelve tribes of Israel, in its early period, is the most striking. Their government, at first, was a mere confederation without any central power, till a military chieftain, with the title of king, was placed at its head, without, however, merging the original organization of the twelve distinct tribes. This was the commencement of that central action among that peculiar people which, in three generations, terminated in a permanent division of their tribes. It is impossible even for a careless reader to peruse the history of that event, without being forcibly struck with the analogy in the causes which led to their separation, and those which now threaten us with a similar calamity. With the establishment of the central power in the king commenced a system of taxation, which, under King Solomon, was greatly increased, to defray the expenses of rearing the temple, of enlarging and embellishing Jerusalem, the seat of the central government, and the other profuse expenditures of his magnificent reign. Increased taxation was followed by its natural consequences—discontent and complaint, which, before his death, began to excite resistance. On the succession of his son, Rehoboam, the ten tribes, headed by Jeroboam, demanded a reduction of the taxes; the temple being finished, and the embellishment of Jerusalem completed, and the money which had been raised for that purpose being no longer required, or, in other words, the debt being paid, they demanded a reduction of the duties —a repeal of the tariff. The demand was taken under consideration, and after consulting the old men, the counsellors of '98, who advised a reduction, he then took the opinion of the younger politicians, who had since grown up, and knew not the doctrines of their fathers; he hearkened unto their counsel, and refused to make the reduction, and the secession of the

the disbursements, alone remained to the house of David.

But to return to the point immediately under consideration. I know that it is not only the opinion of a large majority of our country, but it may be said to be the opinion of the age, that the very beau ideal of a perfect government is the government of a majority, acting through a representative body, without check or limitation on its power; yet, if we may test this theory by experience and reason, we shall find that, so far from being perfect, the necessary tendency of all governments, based upon the will of an absolute majority, without constitutional check or limitation of power, is to faction, corruption, anarchy, and despotism; and this, whether the will of the majority be expressed directly through an assembly of the people themselves, or by their representatives. I know that, in venturing this assertion, I utter what is unpopular both within and without these walls; but where truth and liberty are concerned, such considerations should not be regarded. I will place the decision of this point on the fact that no government of the kind, among the many attempts which have been made, has ever endured for a single generation, but, on the contrary, has invariably experienced the fate which I have assigned to it. Let a single instance be pointed out, and I will surrender my opinion. But, if we had not the aid of experience to direct our judgment, reason itself would be a certain guide. The view which considers the community as an unit, and all its parts as having a similar interest, is radically erroneous. However small the community may be, and however homogeneous its interests, the moment that government is put into operation—as soon as it begins to collect taxes and to make appropriations, the different portions of the community must, of necessity, bear different and opposing relations in reference to the action of the government. There must inevitably spring up two interests—a direction and a stockholder interest—an interest profiting by the action of the government, and interested in increasing its powers and action; and another, at whose expense the political machine is kept in motion. I know how difficult it is to communicate distinct ideas on such a subject, through the medium of general propositions, without particular illustration; and in order that I may be distinctly understood, though at the hazard of being tedious, I will illustrate the important principle which I have ventured to advance, by examples.

Let us, then, suppose a small community of five persons, separated from the rest of the world; and, to make the example strong, let us suppose them all to be engaged in the same pursuit, and to be of equal wealth. Let us further suppose that they determine to govern the community by the will of a majority; and, to make the case as strong as possible, let us

say of one hundred dollars, on each individual of this little community. Their treasury would contain five hundred dollars. Three are a majority; and they, by supposition, have contributed three hundred as their portion, and the other two (the minority), two hundred. The three have the right to make the appropriations as they may think proper. The question is, how would the principle of the absolute and unchecked majority operate, under these circumstances, in this little community? If the three be governed by a sense of justice—if they should appropriate the money to the objects for which it was raised, the common and equal benefit of the five, then the object of the association would be fairly and honestly effected, and each would have a common interest in the government. But, should the majority pursue an opposite course—should they appropriate the money in a manner to benefit their own particular interest, without régard to the interest of the two (and that they will so act, unless there be some efficient check, he who best knows human nature will least doubt), who does not see that the three and the two would have directly opposite interests in reference to the action of the government? The three who contribute to the common treasury but three hundred dollars, could, in fact, by appropriating the five hundred to their own use, convert the action of the government into the means of making money, and, of consequence, would have a direct interest in increasing the taxes. They put in three hundred and take out five; that is, they take back to themselves all that they put in, and, in addition, that which was put in by their associates; or, in other words, taking taxation and appropriation together, they have gained, and their associates have lost, two hundred dollars by the fiscal action of the government. Opposite interests, in reference to the action of the government, are thus created between them: the one having an interest in favor, and the other against the taxes; the one to increase, and the other to decrease the taxes; the one to retain the taxes when the money is no longer wanted, and the other to repeal them when the objects for which they were levied have been secured.

Let us now suppose this community of five to be raised to twenty-four individuals, to be governed, in like manner, by the will of a majority: it is obvious that the same principle would divide them into two interests—into a majority and a minority, thirteen against eleven, or in some other proportion; and that all the consequences which I have shown to be applicable to the small community of five would be applicable to the greater, the cause not depending upon the number, but resulting necessarily from the action of the government itself. Let us now suppose that, instead of governing themselves directly in an assembly of the whole, without the intervention of agents, they should themselves, they should be governed by a majority of their representatives. It is obvious that the operation of the system would not be affected by the change, the representatives being responsible to those who chose them, would conform to the will of their constituents, and would act as they would do were they present and acting for themselves; and the same conflict of interest, which we have shown would exist in one case, would equally exist in the other. In either case, the inevitable result would be a system of hostile legislation on the part of the majority, or the stronger interest, against the minority, or the weaker interest; the object of which, on the part of the former, would be to exact as much as possible from the latter, which would necessarily be resisted by all the means in their power. Warfare, by legislation, would thus be commenced between the parties, with the same object, and not less hostile than that which is carried on between distinct and rival nations—the only distinction would be in the instruments and the mode. Enactments, in the one case, would supply what could only be effected by arms in the other; and the inevitable operation would be to engender the most hostile feelings between the parties, which would merge every feeling of patriotism—that feeling which embraces the whole—and substitute in its place the most violent party attachment; and instead of having one common centre of attachment, around which the affections of the community might rally, there would in fact be two—the interests of the majority, to which those who constitute that majority would be more attached than they would be to the whole—and that of the minority, to which they, in like manner, would also be more attached than to the interests of the whole. Faction would thus take the place of patriotism; and, with the loss of patriotism, corruption must necessarily follow, and in its train, anarchy, and, finally, despotism, or the establishment of absolute power in a single individual, as a means of arresting the conflict of hostile interests; on the principle that it is better to submit to the will of a single individual, who by being made lord and master of the whole community, would have an equal interest in the protection of all the parts.

Let us next suppose that, in order to avert the calamitous train of consequences, this little community should adopt a written constitution, with limitations restricting the will of the majority, in order to protect the minority against the oppression which I have shown would necessarily result without such restrictions. It is obvious that the case would not be in the slightest degree varied, if the majority be left in possession of the right of judging exclusively of the extent of its powers, without any right on the part of the minority to enforce the restrictions imposed by the constitution on the will of the majority. The point is almost too

power, and imposes limitations on the exercise of that power, whatever interests may obtain possesion of the government, will be in favor of extending the power at the expense of the limitation; and that, unless those in whose behalf the limitations were imposed have, in some form or mode, the right of enforcing them, the power will ultimately supersede the limitation, and the government must operate precisely in the same manner as if the will of the majority governed without constitution or limitation of power.

I have thus presented all possible modes in which a government founded upon the will of an absolute majority will be modified; and have demonstrated that, in all its forms, whether in a majority of the people, as in a mere democracy, or in a majority of their representatives, without a constitution or with a constitution, to be interpreted as the will of the majority, the result will be the same: two hostile interests will inevitably be created by the action of the government, to be followed by hostile legislation, and that by faction, corruption, anarchy, and despotism.

The great and solemn question here presents itself: Is there any remedy for these evils? on the decision of which depends the question, whether the people can govern themselves, which has been so often asked with so much skepticism and doubt. There is a remedy, and but one, the effect of which, whatever may be the form, is to organize society in reference to this conflict of interests, which springs out of the action of government; and which can only be done by giving to each part the right of self-protection; which, in a word, instead of considering the community of twenty-four a single community, having a common interest, and to be governed by the single will of an entire majority, shall upon all questions tending to bring the parts into conflict, the thirteen against the eleven, take the will, not of the twenty four as a unit, but of the thirteen and of the eleven separately—the majority of each governing the parts, and where they concur, governing the whole—and where they disagree, arresting the action of the government. This I will call the concurring, as distinct from the absolute majority. In either way the number would be the same, whether taken as the absolute or as the concurring majority. Thus, the majority of the thirteen is seven, and of the eleven six; and the two together make thirteen, which is the majority of twenty-four. But, though the number is the same, the mode of counting is essentially different: the one representing the strongest interest, and the other, the entire interests of the community. The first mistake is, in supposing that the government of the absolute majority is the government of the people—that beau ideal of a perfect government which has been so enthusiastically entertained in every age by the generous and patriotic, where civilization and liberty have made the

ernment of the whole community—of the twenty-four—the self-government of all the parts—too perfect to be reduced to practice in the present, or any past stage of human society. The government of the absolute majority, instead of being the government of the people, is but the government of the strongest interests, and, when not efficiently checked, is the most tyrannical and oppressive that can be devised. Between this ideal perfection on the one side, and despotism on the other, no other system can be devised but that which considers society in reference to its parts, as differently affected by the action of the government, and which takes the sense of each part separately, and thereby the sense of the whole, in the manner already illustrated.

These principles, as I have already stated, are not affected by the number of which the community may be composed, but are just as applicable to one of thirteen millions—the number which composes ours—as of the small community of twenty-four, which I have supposed for the purpose of illustration; and are not less applicable to the twenty-four States united in one community, than to the case of the twenty-four individuals. There is, indeed, a distinction between a large and a small community, not affecting the principle, but the violence of the action. In the former, the similarity of the interests of all the parts will limit the oppression from the hostile action of the parts, in a great degree, to the fiscal action of the government merely; but in the large community, spreading over a country of great extent, and having a great diversity of interests, with different kinds of labor, capital, and production, the conflict and oppression will extend, not only to a monopoly of the appropriations on the part of the stronger interests, but will end in unequal taxes, and a general conflict between the entire interests of conflicting sections, which, if not arrested by the most powerful checks, will terminate in the most oppressive tyranny that can be conceived, or in the destruction of the community itself.

If we turn our attention from these supposed cases, and direct it to our government and its actual operation, we shall find a practical confirmation of the truth of what has been stated, not only of the oppressive operation of the system of an absolute majority, but also a striking and beautiful illustration in the formation of our system, of the principle of the concurring majority, as distinct from the absolute, which I have asserted to be the only means of efficiently checking the abuse of power, and, of course, the only solid foundation of constitutional liberty. That our government for many years has been gradually verging to consolidation; that the constitution has gradually become a dead letter; and that all restrictions upon the power of government have been virtually removed, so as practically to convert the general government into a government of an absolute majority with-

It is not necessary to trace the commencement and gradual progress of the causes which have produced this change in our system; it is sufficient to state that the change has taken place within the last few years. What has been the result? Precisely that which might have been anticipated: the growth of faction, corruption, anarchy, and, if not despotism itself, its near approach, as witnessed in the provisions of this bill. And from what have these consequences sprung? We have been involved in no war. We have been at peace with all the world. We have been visited with no national calamity. Our people have been advancing in general intelligence, and, I will add, as great and alarming as has been the advance of political corruption among the mercenary corps who look to government for support, the morals and virtue of the community at large have been advancing in improvement. What, I again repeat, is the cause? No other can be assigned but a departure from the fundamental principles of the constitution, which has converted the government into the will of an absolute and irresponsible majority, and which, by the laws that must inevitably govern in all such majorities, has placed in conflict the great interests of the country, by a system of hostile legislation, by an oppressive and unequal imposition of taxes, by unequal and profuse appropriations, and by rendering the entire labor and capital of the weaker interest subordinate to the stronger.

This is the cause, and these the fruits which have converted the government into a mere instrument of taking money from one portion of the community to be given to another; and which has rallied around it a great, a powerful and mercenary corps of office-holders, office-seekers, and expectants, destitute of principle and patriotism, and who have no standard of morals or politics but the will of the Executive—the will of him who has the distribution of the loaves and the fishes. I hold it impossible for any one to look at the theoretical illustration of the principle of the absolute majority in the cases which I have supposed, and not be struck with the practical illustration in the actual operation of our government. Under every circumstance the absolute majority will ever have its American system (I mean nothing offensive to any senator); but the real meaning of the American system is, that system of plunder which the strongest interest has ever waged, and will ever wage, against the weaker, where the latter is not armed with some efficient and constitutional check to arrest its action. Nothing but such a check on the part of the weaker interest can arrest it; mere constitutional limitations are wholly insufficient. Whatever interest obtains possession of the government, will, from the nature of things, be in favor of the powers, and against the limitations imposed by the constitution, and will resort to every device that can be imagined to remove them. The interest, that which I hear designated as the stock-holding interests, the tax-payers, those on whom the system operates, will resist the abuse of powers, and contend for the limitations. And it is on this point, then, that the contest between the delegated and the reserved powers will be waged; but in this contest, as the interests in possession of the government are organized and armed by all its powers and patronage, the opposite interest, if not in like manner organized and possessed of a power to protect themselves under the provisions of the constitution, will be as inevitably crushed as would be a band of unorganized militia when opposed by a veteran and trained corps of regulars. Let it never be forgotten that power can only be opposed by power, organization by organization; and on this theory stands our beautiful federal system of government. No free system was ever further removed from the principle that the absolute majority, without check or limitation, ought to govern. To understand what our government is, we must look to the constitution, which is the basis of the system. I do not intend to enter into any minute examination of the origin and the source of its powers: it is sufficient for my purpose to state, what I do fearlessly, that it derived its power from the people of the separate States, each ratifying by itself, each binding itself by its own separate majority, through its separate convention,—the concurrence of the majorities of the several States forming the constitution;—thus taking the sense of the whole by that of the several parts, representing the various interests of the entire community. It was this concurring and perfect majority which formed the constitution, and not that majority which would consider the American people as a single community, and which, instead of representing fairly and fully the interests of the whole, would but represent, as has been stated, the interests of the stronger section. No candid man can dispute that I have given a correct description of the constitution-making power: that power which created and organized the government, which delegated to it, as a common agent, certain powers, in trust for the common good of all the States, and which imposed strict limitations and checks against abuses and usurpations. In administering the delegated powers, the constitution provides, very properly, in order to give promptitude and efficiency, that the government shall be organized upon the principle of the absolute majority, or rather, of two absolute majorities combined: a majority of the States considered as bodies politic, which prevails in this body; and a majority of the people of the States, estimated in federal numbers, in the other House of Congress. A combination of the two prevails in the choice of the President, and, of course, in the appointment of Judges, they being nominated by the President and confirmed by the Senate. It is thus that the concurring

tution, and the other in making and executing the laws; thus beautifully blending the moderation, justice, and equity of the former, and more perfect majority, with the promptness and energy of the latter, but less perfect.

To maintain the ascendency of the constitution over the law-making majority is the great and essential point, on which the success of the system must depend. Unless that ascendency can be preserved, the necessary consequence must be, that the laws will supersede the constitution; and, finally, the will of the executive, by the influence of his patronage, will supersede the laws—indications of which are already perceptible. This ascendency can only be preserved through the action of the States as organized bodies, having their own separate governments, and possessed of the right, under the structure of our system, of judging of the extent of their separate powers, and of interposing their authority to arrest the unauthorized enactments of the General Government within their respective limits. I will not enter, at this time, into the discussion of this important point, as it has been ably and fully presented by the senator from Kentucky (Mr. Bibb), and others who preceded him in this debate on the same side, whose arguments not only remain unanswered, but are unanswerable. It is only by this power of interposition that the reserved rights of the States can be peacefully and efficiently protected against the encroachments of the General Government—that the limitations imposed upon its authority can be enforced, and its movements confined to the orbit allotted to it by the constitution.

It has, indeed, been said in debate, that this can be effected by the organization of the General Government itself, particularly by the action of this body, which represents the States—and that the States themselves must look to the General Government for the preservation of many of the most important of their reserved rights. I do not underrate the value to be attached to the organic arrangement of the General Government, and the wise distribution of its powers between the several departments, and, in particular, the structure and the important functions of this body; but to suppose that the Senate, or any department of this government, was intended to be the only guardian of the reserved rights, is a great and fundamental mistake. The government, through all its departments, represents the delegated, and not the reserved powers; and it is a violation of the fundamental principle of free institutions to suppose that any but the responsible representative of any interest can be its guardian. The distribution of the powers of the General Government, and its organization, were arranged to prevent the abuse of power in fulfilling the important trusts confided to it, and not, as preposterously supposed, to protect the reserved powers, which are confided wholly to the

presented, and the right of the States to interpose, it is objected that it would lead to anarchy and dissolution. I consider the objection as without the slightest foundation; and that, so far from tending to weakness or disunion, it is the source of the highest power and of the strongest cement. Nor is its tendency in this respect difficult of explanation. The government of an absolute majority, unchecked by efficient constitutional restraints, though apparently strong, is, in reality, an exceedingly feeble government. That tendency to conflict between the parts, which I have shown to be inevitable in such governments, wastes the powers of the State in the hostile action of contending factions, which leaves very little more power than the excess of the strength of the majority over the minority. But a government based upon the principle of the concurring majority, where each great interest possesses within itself the means of self-protection, which ultimately requires the mutual consent of all the parts, necessarily causes that unanimity in council, and ardent attachment of all the parts to the whole, which give an irresistible energy to a government so constituted. I might appeal to history for the truth of these remarks, of which the Roman furnishes the most familiar and striking proofs. It is a well-known fact, that, from the expulsion of the Tarquins to the time of the establishment of the tribunitian power, the government fell into a state of the greatest disorder and distraction, and, I may add, corruption. How did this happen? The explanation will throw important light on the subject under consideration. The community was divided into two parts—the Patricians and the Plebeians; with the power of the State principally in the hands of the former, without adequate checks to protect the rights of the latter. The result was as might be expected. The patricians converted the powers of the government into the means of making money, to enrich themselves and their dependants. They, in a word, had their American system, growing out of the peculiar character of the government and condition of the country. This requires explanation. At that period, according to the laws of nations, when one nation conquered another, the lands of the vanquished belonged to the victor; and, according to the Roman law, the lands thus acquired were divided into two parts—one allotted to the poorer class of the people, and the other assigned to the use of the treasury—of which the patricians had the distribution and administration. The patricians abused their power by withholding from the plebeians that which ought to have been allotted to them, and by converting to their own use that which ought to have gone to the treasury. In a word, they took to themselves the entire spoils of victory, and had thus the most powerful motive to keep the State perpetually involved in war, to the utter im-

able means, and the oppression becoming intolerable, the plebeians, at last, withdrew from the city—they, in a word, seceded; and to induce them to reunite, the patricians conceded to them, as the means of protecting their separate interests, the very power which I contend is necessary to protect the rights of the States, but which is now represented as necessarily leading to disunion. They granted to them the right of choosing three tribunes from among themselves, whose persons should be sacred, and who should have the right of interposing their veto, not only against the passage of laws, but even against their execution—a power which those, who take a shallow insight into human nature, would pronounce inconsistent with the strength and unity of the State, if not utterly impracticable; yet so far from this being the effect, from that day the genius of Rome became ascendant, and victory followed her steps till she had established an almost universal dominion. How can a result so contrary to all anticipation be explained? The explanation appears to me to be simple. No measure or movement could be adopted without the concurring assent of both the patricians and plebeians, and each thus became dependent on the other; and, of consequence, the desire and objects of neither could be effected without the concurrence of the other. To obtain this concurrence, each was compelled to consult the good-will of the other, and to elevate to office, not those only who might have the confidence of the order to which they belonged, but also that of the other. The result was, that men possessing those qualities which would naturally command confidence—moderation, wisdom, justice, and patriotism—were elevated to office; and the weight of their authority and the prudence of their counsel, combined with that spirit of unanimity necessarily resulting from the concurring assent of the two orders, furnish the real explanation of the power of the Roman State, and of that extraordinary wisdom, moderation, and firmness which in so remarkable a degree characterized her public men. I might illustrate the truth of the position which I have laid down by a reference to the history of all free States, ancient and modern, distinguished for their power and patriotism, and conclusively show, not only that there was not one which had not some contrivance, under some form, by which the concurring assent of the different portions of the community was made necessary in the action of government, but also that the virtue, patriotism, and strength of the State were in direct proportion to the perfection of the means of securing such assent.

In estimating the operation of this principle in our system, which depends, as I have stated, on the right of interposition on the part of a State, we must not omit to take into consideration the amending power, by which new powers may be granted, or any derangement of the system corrected, by the concurring assent of three-fourths of the States; and thus, in the same degree, strengthening the power of repairing any derangement occasioned by the eccentric action of a State. In fact, the power of interposition, fairly understood, may be considered in the light of an appeal against the usurpations of the General Government, the joint agent of all the States, to the States themselves, to be decided under the amending power, by the voice of three-fourths of the States, as the highest power known under the system. I know the difficulty, in our country, of establishing the truth of the principle for which I contend, though resting upon the clearest reason, and tested by the universal experience of free nations. I know that the governments of the several States, which, for the most part, are constructed on the principle of the absolute majority, will be cited as an argument against the conclusion to which I have arrived; but, in my opinion, the satisfactory answer can be given—that the objects of expenditure which fall within the sphere of a State government are few and inconsiderable, so that be their action ever so irregular, it can occasion but little derangement. If, instead of being members of this great confederacy, they formed distinct communities, and were compelled to raise armies, and incur other expenses necessary to their defence, the laws which I have laid down as necessarily controlling the action of a State where the will of an absolute and unchecked majority prevailed, would speedily disclose themselves in faction, anarchy, and corruption. Even as the case is, the operation of the causes to which I have referred is perceptible in some of the larger and more populous members of the Union, whose governments have a powerful central action, and which already show a strong moneyed tendency, the invariable forerunner of corruption and convulsion.

But, to return to the General Government. We have now sufficient experience to ascertain that the tendency to conflict in its action is between the southern and other sections. The latter having a decided majority, must habitually be possessed of the powers of the government, both in this and in the other House; and being governed by that instinctive love of power so natural to the human breast, they must become the advocates of the power of government, and in the same degree opposed to the limitations; while the other and weaker section is as necessarily thrown on the side of the limitations. One section is the natural guardian of the delegated powers, and the other of the reserved; and the struggle on the side of the former will be to enlarge the powers, while that on the opposite side will be to restrain them within their constitutional limits. The contest will, in fact, be a contest between power and liberty, and such I consider the present—a contest in which the weaker section, with its peculiar labor, productions, and institutions, has at stake all that can be dear to freemen. Should we be able to maintain in

prosperity will be our portion; but if we yield, and permit the stronger interest to concentrate within itself all the powers of the government, then will our fate be more wretched than that of the aborigines whom we have expelled. In this great struggle between the delegated and reserved powers, so far from repining that my lot, and that of those whom I represent, is cast on the side of the latter, I rejoice that such is the fact; for, though we participate in but few of the advantages of the government, we are compensated, and more than compensated, in not being so much exposed to its corruptions. Nor do I repine that the duty, so difficult to be discharged, of defending the reserved powers against apparently such fearful odds, has been assigned to us. To discharge it successfully requires the highest qualities, moral and intellectual; and should we perform it with a zeal and ability proportioned to its magnitude, instead of mere planters, our section will become distinguished for its patriots and statesmen. But, on the other hand, if we prove unworthy of the trust—if we yield to the steady encroachments of power, the severest calamity and most debasing corruption will overspread the land. Every southern man, true to the interests of his section, and faithful to the duties which Providence has allotted him, will be for ever excluded from the honors and emoluments of this government, which will be reserved for those only who have qualified themselves, by political prostitution, for admission into the Magdalen Asylum.

JOHN SERGEANT.

This eminently honorable man, and learned advocate, was the son of Jonathan Dickinson Sergeant, a distinguished lawyer, a patriot of the Revolution, and the first Attorney-General of the State of Pennsylvania. He was born at Philadelphia, on the fifth of December, 1779; was educated at the schools attached to the university of his native State, and at Princeton College, from which latter institution he graduated in 1795. From this period, he was engaged in mercantile pursuits until the spring of 1797, when he commenced the study of law, in the office of Jared Ingersoll. "In this position," says the venerable Horace Binney, who was a fellow-student with him, "he was a faithful student—addicted to little pleasure—social, cheerful, and gay with the friends whom he preferred, and giving to myself, without stint, all the leisure time that either of us had, by night and by day, for the purpose of refreshment, or of natural benefit, in the course of our studies. He had, at that time, what all have since observed, an extraordinary quickness of thought, and an equally extraordinary grasp or comprehension of the thought or argument that was opposed to him. Whatever he studied, he knew well, and when he left the office, was as accomplished a student as was ever admitted to the bar." The highest opinion of his talents and ability was held by his preceptor, Mr. Ingersoll—an opinion which can best be estimated from the following remark, that he was accustomed to use to other of his pupils, who went to him for information on difficult points:—"Go to Mr. Sergeant," he would say, "he has been over that, and he can tell you, if any body can." *

Mr. Sergeant was admitted to the bar in December, 1799, and at once entered upon a large and lucrative practice. In 1800, he was appointed, by Governor McKean, Deputy Attorney-General for the counties of Philadelphia and Chester, and remained in that office several years, at the same time practising in the municipal courts of the city of Philadelphia. In 1802, he was appointed, by Mr. Jefferson, a Commissioner of Bankrupts.

The occasion on which he first became celebrated as a remarkable lawyer, was at the argument of a case in the Supreme Court of Pennsylvania, in the year 1806. The power and learning he displayed at that time, although it did not avail him in gaining all the points of his case, won the applause of his associates at the bar, as well as that of the presiding judge, who intimated that if any argument would have shaken his opinion, it would have been Mr. Sergeant's. From this time he took his station among the foremost in his profession, continually advanced, and ere long attained a position in the first rank, which he held with increasing reputation until the period of his death.

In 1805, Mr. Sergeant was chosen to the House of Representatives of Pennsylvania, from the city of Philadelphia. Declining to serve the following year, he was re-elected to the same office in 1807. During the latter session he was prominent and successful in the advocacy of internal improvement; was chairman of the committee on *Roads and Inland Navigation*, and in that capacity rendered important services in the establishment of turnpikes and other highways. In many other measures of public utility he manifested the deepest interest.

In 1815, he was chosen to represent the district in which he resided, in the lower House of

Congress, and held his seat in that assembly until 1820; when, returning to Philadelphia, he devoted himself to the avocations of his profession. In the various debates which arose during his Congressional career, on the *Military Academy Bill*, the *United States Bank*, the *Bankrupt Law*, and the exciting question of *Internal Improvement*, he took an active and prominent part. But the most powerful of his parliamentary efforts was made on the occasion of the discussion of the Missouri Question. That speech is spoken of as "one of the best reasoned, and most able speeches, that has ever been heard in the Hall of either House of Congress. It has almost exhausted the argument in favor of the prohibition of slavery in the new States and territories, and it was no small token of the respect and esteem which was then entertained for him (although comparatively but a young member and a young man), that he was selected and pitted as the champion of the North, against the best abilities of the able and experienced members who maintained the opposite doctrines." In 1825, Mr. Sergeant was the President of the Board of Canal Commissioners of Pennsylvania. The following year he was appointed by President Adams, Minister from the United States to the Congress of Panama, and passed the winter in Mexico, waiting the assembling of that body, which was to meet at Tacubaya, in that country. Owing to the political disturbances in South America at that time, the plenipotentiaries did not assemble, and in July, 1827, Mr. Sergeant returned to Philadelphia. Soon after he was again elected to Congress, and, in 1832, was the Whig candidate for the Vice Presidency, on the ticket with Mr. Clay. He was a member of the Pennsylvania convention that assembled for the purpose of amending the constitution of the State, and entered earnestly into the debates which arose on the several important measures that sprung up during its session. His speech on the Judicial tenure is referred to by his contemporaries, as embodying a clear and forcible exposition of the doctrines and principles which he held on that question.

In 1840, he was again elected to Congress, but remained there only one session. On the accession of General Harrison to the Presidency, he was invited to become one of his cabinet, but declined the honor. Soon after the mission to the Court of Great Britain was tendered him. This he also declined. In 1844, he was associated with Horace Binney in the celebrated Girard Will case. In 1847, he was selected by Mr. Marcy, then Secretary of State, as Arbitrator on the part of the United States, to determine the protracted controversy existing between the State of Delaware and the United States, on the question of the title to the *Pea Patch Island*. That difference was finally settled by his decree. This was the last public office he occupied. His last appearance before the public was at the Union meeting (of which he was the president) that assembled in Philadelphia, on the adoption of the Compromise measures. The last time his voice, then enfeebled by disease, was heard, was in an appeal for the Constitution and the Union. He died at Philadelphia, on the twenty-third of November, 1852.

As a lawyer, Mr. Sergeant was not surpassed, if equalled, by any who have occupied positions at the bar, of which he was a member. During a long life he was a diligent student. He was learned, not only in the different branches of his profession, but in the various subjects of history, ethics and philosophy, and by this multiplicity of knowledge he was enabled to bring to his aid, in the consideration of the greatest constitutional questions, or of the more simple matters of common practice, resources which seldom failed to ensure success. "The range of his mind," says Mr. Binney, "was just as wide as the whole circle of his professional necessities. He knew the bearings of every part of the law. * * * He could draw his resources from every part of it with equal ease when it was necessary. He had acquired an early training in criminal law, and in that he not only went before his contemporaries, but he stood on one side of them, walking a different line. His honor and integrity in all that regarded the profession or the management of his cause, were not only above impeachment or imputation, but beyond the thought of it. His heart, his mind, his principles, his conscience, his bond to man, and his bond to Heaven, which he had given early, and which to the last he never intentionally violated, would have made it, humanly speaking, impossible for him to swerve from his integrity. It is the best example possible for the rising generation to have before them. He was perfectly fair—there was no evasion, no stratagem, no surprisal, no invocation of prejudice, no appeal to unworthy passions—he was above, far above all this. He had too much strength to make use of such arts.

to say nothing of his virtue. He was charitable in doing work at the bar without pecuniary compensation, though not without reward; he had that which, in his judgment, was the best reward. But he did not do it ostentatiously. He never let his left hand know what his right hand did. Still less did he ever impose upon the left hands of others, by giving those little informed of it what his right hand had not done. He was in every respect, internally, in the heart, a kind man." No extended biography of Mr. Sergeant has yet been written. A small collection of his speeches and addresses was collected and published in 1832, among which are those delivered in the Congress of the United States, the *Oration in Commemoration of Thomas Jefferson and John Adams*, a *Discourse delivered at Rutgers College*, in July, 1829, and the *Argument in the case of the Cherokee Nation* vs. *the State of Georgia*, in the Supreme Court of the United States, on the fifth of March, 1631.*

THE MISSOURI QUESTION.

The following speech, on a bill to enable the people of the Missouri Territory to form a constitution and State Government, and for the admission of such State into the Union, was delivered by Mr. Sergeant in the House of Representatives of the United States,† on the eighth and ninth of February, 1820.‡

Mr. CHAIRMAN: The important question now before the committee, has already engaged the best talents and commanded the deepest attention of the nation. What the people strongly feel, it is natural that they should freely express; and whether this is done by pamphlets and essays, by the resolutions of meetings or citizens, or by the votes of State legislatures, it is equally legitimate and entitled to respect, as the voice of the public, upon a great and interesting public measure. The free expression of opinion is one of the rights guaranteed by the constitution, and, in a government like ours, it is an invaluable right. It has not, therefore, been without some surprise and concern, that I have heard it complained of, and even censured in this debate. One member suggests to us that, in the excitement which prevails, he discerns the efforts of what he has termed an "expiring party," aiming to re-establish itself in the possession of power, and has spoken of a "juggler behind the scene." He surely has not reflected upon the magnitude of the principle contended for, or he would have perceived at once the utter insignificance of all objects of factious and party contest, when compared with the mighty interests it involves. It concerns ages to come, and millions to be born. We, who are here, our dissensions and conflicts, are nothing, absolutely nothing, in the comparison: and I cannot well conceive, that any man, who is capable of raising his view to the elevation of this great question, could suddenly bring it down to the low and paltry consideration of party interests and party motives.

Another member (Mr. M'Lane), taking indeed a more liberal ground, has warned us against ambitious and designing men, who, he thinks, will always be ready to avail themselves of occasions of popular excitement, to mount into power upon the ruin of our government, and the destruction of our liberties. Sir, I am not afraid of what is called popular excitement—all history teaches us, that revolutions are not the work of men, but of time and circumstances, and a long train of preparation. Men do not produce them: they are brought on by corruption—they are generated in the quiet and stillness of apathy, and to my mind nothing could present a more frightful indication, than public indifference to such a question as this. It is not by vigorously maintaining great moral and political principles, in their purity, that we incur the danger. If gentlemen are sincerely desirous to perpetuate the blessings of that free constitution under which we live, I would advise them to apply their exertions to the preservation of public and private virtue, upon which its existence, I had almost said, entirely depends. As long as this is preserved, we have nothing to fear. When this shall be lost, when luxury and vice and corruption, shall have usurped its place, then, indeed, a government resting upon the people for

* See the Philadelphia newspapers, published after Mr. Sergeant's death, also the Hon. W. M. Meredith's Eulogium.

† The debate commenced on the 26th of January, 1820, on the following amendments, proposed by Mr. Taylor of New York, to the bill: And shall ordain and establish that there shall be neither slavery nor involuntary servitude in the said State, otherwise than in the punishment of crimes whereof the party shall have been duly convicted. Provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any other State, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid. And provided also, that the said provision shall not be construed to alter the condition or civil rights of any person now held to service or labor in the said territory.

Another member, the gentleman to whom the committee lately listened with so much attention, (Mr. Clay,) after depicting forcibly and eloquently, what he deemed the probable consequences of the proposed amendment, appealed emphatically to Pennsylvania; "the unambitious Pennsylvania, the keystone of the federal arch," whether she would concur in a measure calculated to disturb the peace of the Union. Sir, this was a single arch; it is rapidly becoming a combination of arches, and where the centre now is, whether in Kentucky or Pennsylvania, or where at any given time it will be, might be very difficult to tell. Pennsylvania may indeed be styled "unambitious," for she has not been anxious for what are commonly deemed honors and distinctions, nor eager to display her weight and importance in the affairs of the nation. She has, nevertheless, felt, and still does feel, her responsibility to the Union; and under a just sense of her duty, has always been faithful to its interests, under every vicissitude, and in every exigency. But Pennsylvania feels also a high responsibility to a great moral principle, which she has long ago adopted with the most impressive solemnity, for the rule of her own conduct, and which she stands bound to assert and maintain, wherever her influence and power can be applied, without injury to the just rights of her sister States. It is this principle, and this alone, that now governs her conduct. She holds it too sacred to suffer it to be debased by association with any party or factious views, and she will pursue it with the singleness of heart, and with the firm but unoffending temper which belong to a conscientious discharge of duty, and which, I hope I may say, have characterized her conduct in all her relations. If any one desire to know what this principle is, he shall hear it in the language of Pennsylvania herself, as contained in the preamble to her act of abolition, passed in the year 1780. I read it not without feelings of sincere satisfaction, as abridged by a foreign writer, with his introductory remark. (2 Belsham, 23, memoirs of Geo. 3.)

"It affords a grateful relief from the sensations which oppress the mind in listening to the tale of human folly and wretchedness, to revert to an act of the most exalted philanthropy, passed about this period, by the legislature of Pennsylvania, to the following purport:" "When we contemplate our abhorrence of that condition, to which the arms and tyranny of Great Britain were exerted to reduce us, when we look back on the variety of dangers to which we have been exposed, and deliverances wrought, when even hope and fortitude have become unequal to the conflict, we conceive it to be our duty, and rejoice that it is in our power, to extend a portion of that freedom to others which hath been extended to us, to add one more step to universal civilization, by removing, as much as possible, the sorrows of those who have lived in undeserved bondage. Weaned by a long dices and partialities we had imbibed, we conceive ourselves, at this particular period, called upon, by the blessings we have received, to manifest the sincerity of our profession. In justice, therefore, to persons who, having no prospect before them, whereon they may rest their sorrows and their hopes, have no reasonable inducement to render that service to society which otherwise they might; and also, in grateful commemoration of our own happy deliverance from that state of unconditional submission to which we were doomed by the tyranny of Britain—Be it enacted, that no child born hereafter shall be a slave, &c." In this manner did Pennsylvania express her thankfulness for the deliverance that had been wrought for her, and I am confident she will never incur the sin and the danger of ingratitude.

Steadfastly as Pennsylvania holds the position here taken, she will not officiously obtrude her opinions upon her sister States. One of the grounds of her rejoicing, and one of the causes of her gratitude, was, that "she had it in her power to abolish slavery." She will not, in this respect, presume to judge for others, though she will rejoice if they too should have the power and feel the inclination. But, whenever the question presents itself, in a case where she has a right to judge, I trust she will be true to her own principles, and do her duty. Such I take to be the case now before the committee.

The proposed amendment presents for consideration three questions: that of the constitutional power of Congress, that which arises out of the treaty of cession, and, finally, that which is termed the question of expediency. I beg the indulgence of the committee while I endeavor to examine them in the order stated.

First. We are about to lay the foundation of a new State, beyond the Mississippi, and to admit that State into the Union. The proposition, contained in the amendment, is, in substance, to enter into a compact with the new State, at her formation, which shall establish a fundamental principle of her government, not to be changed without the consent of both parties; and this principle is, that every human being, born or hereafter brought within the State, shall be free.

The only questions under the constitution, seem to me to be, whether the parties are competent to make a compact, and whether they can make such a compact? If they cannot, it must be either for want of power in the parties to contract, or from the nature of the subject.

It cannot, at this time of day, be denied, that the United States have power to contract with a State, nor that a State has power to contract with the United States. It has been the uniform and undisputed practice, both before and since the adoption of the constitution.

There are numerous instances of cessions of territory or claims to territory. By States, to the Union. By New York, in 1781; by Virginia, in 1784 and in 1788; by Massachusetts, in 1785; by Connecticut, in 1786; by South Caro-

by Georgia, in 1802. The last mentioned cession is the more remarkable, because it was made by a formal agreement between the United States and Georgia; in which the stipulations on each side are stated in the same manner and with the like solemnity, as in contracts with individuals. No doubt they were considered to be, and really are, of equal efficacy.

There is one instance, of a cession of territory by the United States to a State, that to Pennsylvania, in September, 1788, in which also there are mutual stipulations.

Each of these instances is a case of mutual compact, by which there was a surrender of a portion of power and sovereignty, on the part of the respective States; by which, too, there were terms mutually agreed upon. The most striking is that from Virginia, to which I shall have occasion to refer hereafter, and that from Georgia, because they both contain conditions operating as a restraint upon the legislative authority of the United States, binding and adhering to the ceded territory, and fixing the terms and conditions of its future government. So, when the United States soon after the State of Louisiana was admitted into the Union, enlarged the territory of the State by a cession, it was done upon conditions, which thenceforth became obligatory upon the State.

These instances are sufficient to show that the United States, and a State, are competent to make a binding compact. Indeed, it is impossible that any man should doubt it. The States have capacity to contract with each other, so far as they are not restrained by the constitution. In 1785 a compact was made between Pennsylvania and Virginia. There was a compact between Pennsylvania and New Jersey, and between South Carolina and Georgia. The only restraints in the constitution (art. 1 sec. 10, clause 2,) is that which prohibits States from entering into any agreement or compact with each other, or with a foreign power, without the consent of Congress; and this prohibition, from its very nature, admits that they may enter into such compacts or agreements with the United States.

The States have a capacity to contract even with individuals, and in so doing, to part with a portion of their legislative power. This is the case wherever a charter of incorporation is granted, by which rights of property become vested. During the period of the charter, the subject is beyond the control of the legislative authority, which is so far suspended or extinguished by the grant. The United States have done the same thing, and with the like effect.

If it be competent to the United States to contract with an old State, it seems to follow of course, that it has a competency to contract with a new one. The admission of the State is itself a compact, as the Constitution of the United States was a compact between the existing States, and it would be difficult to assign any good reason, why any that had been of the

and benefits of the Union, such terms might not be proposed and insisted upon as the general welfare should seem to require. As the stipulation, whatever it may be, derives its binding efficacy from the assent of the State, which its sovereignty, or qualified sovereignty, enables it to give, a new State is as competent as an old one. Indeed, the possession and the exercise of this power are necessary to enable the United States to execute the contracts they may enter into, with any State of the Union, upon receiving from it a cession of territory, wherever such cession is accompanied, as it usually has been, with terms upon the part of the ceding State, applying to and intended to bind the territory ceded.

Accordingly, no new State (unless formed out of an old one) has ever been admitted into the Union, but upon terms agreed upon by compact, and irrevocable without the consent of all the parties. The States formed out of the North-west Territory, (Ohio, Indiana, and Illinois,) have been made subject, as a fundamental law of their government, to the terms of the ordinance of 1787, including the very condition now proposed for Missouri. The States of Mississippi and Alabama, formed out of the territory ceded by Georgia, have been subjected to all the provisions of the ordinance, except the one which regards slavery, and that was expressly excluded by the terms of the cession. The State of Louisiana, the only one yet formed out of the territory acquired from France, has been, in like manner, admitted upon terms, different, it is true, from those which have been required from the other States, but still such terms as Congress thought applicable to her situation, and such as are sufficient to demonstrate the extent of the authority possessed by the United States. Even in the bill now under consideration, certain propositions, as they are styled, are offered to the free acceptance of Missouri, but if accepted, they are to be for ever binding upon her.

Thus it appears, that a new State may contract; and it is essential that it should be so, for her own sake as well as for the sake of the Union. It remains, then, to inquire, whether the stipulation proposed in the amendment is, on account of the nature of the subject, such a one as it is beyond the power of a State to enter into? It has already been remarked, that a State, at the moment of its formation, is as entirely sovereign, and as capable of making a binding contract, as at any future period. The real question, therefore, is, whether it is beyond the power of any State in this Union, for any consideration whatever, to bind itself by a compact with a State, or with the United States, to prohibit slavery within its borders? To suppose so, seems to impute a want of sovereign power, which could only arise from its being parted with by the constitution; and this, I think, can scarcely be affirmed. But I do not

In this view, the ordinance of 1787, respecting the North-west Territory, and the history of the States formed under it, are eminently deserving of consideration and respect. This ordinance was framed upon great deliberation. It was intended to regulate the government of the territory; to provide for its division into States, and for their admission into the Union; and to establish certain great principles, which should become the fundamental law of the States to be formed. In its territorial condition, it was subject to the exclusive jurisdiction of Congress, to be exercised by the ordinary process of legislation. But it was one of the terms of the cession by Virginia to the United States, that this territory, as it became peopled, should be divided into States, and that these States should be admitted into the Union, "upon an equal footing, in all respects, with the original States." We shall now see how the fulfilment of this engagement was effected. After providing for the territorial government, the ordinance proceeds as follows: "And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which for ever hereafter shall be formed in the said territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils, on an equal footing with the original States, at as early periods as may be consistent with the general interest—It is hereby ordained and declared, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and for ever remain unalterable, unless by common consent." Then follow the several articles, of which the sixth declares, "that there shall be neither slavery nor involuntary servitude, &c." The fifth article provides expressly, that "the constitution and government (of the States) so to be formed, shall be republican, and in conformity to the principles contained in these articles." When the States of Ohio, Indiana and Illinois, respectively, applied for admission, they were admitted upon the express condition, that their constitutions should be republican, and in conformity to the ordinance of 1787. They assented to the condition, and were admitted "upon an equal footing with the original States."

I am aware that all this has been pronounced, rashly I think, to be a usurpation. The term does not well apply at this time of day, after the repeated sanction of every kind which the ordinance has received. In truth, if there be any thing in our legislative history, which is entitled to our affection for the motives in which it originated; to our veneration for the authority by which it is supported; to our respect for the principles embodied in it; it is the ordinance of 1787. It is in every sense inapplicable; for the efficacy of the contract arises from the assent of the State to the conditions proposed as the terms of her admission.

But this ordinance is entitled to still higher consideration. It was a solemn compact between the existing States, and it cannot be doubted that its adoption had a great influence in bringing about the good understanding that finally prevailed in the convention upon several points which had been attended with the greatest difficulty. It passed on the 18th of July, 1787, while the convention that framed the constitution was in session. From the minutes of that body, lately published, it will be seen, that the two most important and difficult points to adjust were those of the admission of States, and the slave representation. This ordinance finally adjusted both these matters, as far as concerned all the territories then belonging to the United States, and was therefore eminently calculated to quiet the minds of the advocates of freedom, to remove their objections to the principle of slave representation, and to secure their assent to the instrument which contained that principle, by limiting its operation to the existing States. It is not to be questioned that this ordinance, unanimously adopted, and, as it were, fixing an unchangeable basis by common consent, had a most powerful influence in bringing about the adoption of the constitution. It is a part of the groundwork of the constitution itself: one of the preliminary measures upon which it was founded. Hence the unusual solemnity of the terms in which it is conceived, so different from the ordinary forms of legislation, and which give to it the character of a binding and irrevocable covenant.

Such, then, is the power that has always been exercised by Congress, upon the admission of new States into the Union, and exercised without dispute. Whence was it derived? It was exercised, as we have seen, immediately before the adoption of the constitution, while that instrument was under consideration, and recognized immediately after by the act of the first Congress, supplementary to the ordinance. Nothing can be more clear than that, if the ordinance of 1787 was inconsistent with the constitution, it was repealed by that instrument. If the convention had meant to repeal it, they would have done so. It was directly in their view, and embraced a subject which was earnestly and carefully treated by that body. And yet, immediately after, when the same men who had framed the constitution, and knew its intention, were many of them members of Congress, the supplement to the ordinance was adopted. That was not a time, you may be assured, for stretching the federal power. The greatest jealousy prevailed, and the friends of the constitution were obliged to observe the utmost caution, while it was slowly winning its way to the public favor, refuting the suggestions

firmly, upon the solid foundation of ascertained public benefit.

In what part of the constitution is this power conferred? It is conferred by that provision which authorizes Congress to admit new States into the Union; and to me it seems perfectly plain that we need look no further for it. There are other parts of the constitution which have a bearing upon the question, because they apply to the subject upon which it is proposed to exercise the power, and may very well be used for the purpose of illustration or of argument. This use of them affords no just occasion for the remark, which has been so triumphantly made, that the friends of the restriction differ among themselves, as to the part of the constitution from which the power to impose it is derived. They do not differ. But, as upon every other question of constitutional power, they naturally resort for information to all the provisions of the constitution which have relation to the matter in discussion.

The power to admit new States is given to Congress in general terms, without restriction or qualification, and, upon every just principle of construction, must be understood to confer whatever authority is necessary for carrying the power into effect, and every authority which in practice had become incident to the principal power, or was deemed to make a part of it.

Of late it has been the fashion to insist upon a liberal construction of the constitution, and its most extensive efficacy has been found in the implied powers it is supposed to confer. All powers are implied that are necessary for the execution of the enumerated powers, and the necessity need not be absolute; a modified necessity, or high degree of expediency, is sufficient. Whence the authority to incorporate a bank? Whence the authority to apply the public treasure to the improvement of the country by roads and canals? Whence the authority to encourage domestic industry by bounties and prohibitions? Whence the authority to purchase and to govern the territory now in question? Is it to be found in the letter of the constitution? They all rest upon this single position, that, an original power having been granted, every other power is implied which is necessary or useful for carrying that power into execution—and this is an inherent, essential principle of the constitution, altogether independent of its express words.

But the power in question rests upon stronger ground than this. The constitution of the United States, though in form the work of the people (who made it their own by adoption), was a compact between States. It was made by delegates chosen by the States. The votes in the convention were given by States. It was submitted to the States for their ratification: and its existence depended upon the sanction of a certain number of the States. These States were sovereign, but confederated by a slight and insufficient union, incapable from its weakness sovereignty extended to every thing within their limits, and to every thing else but the few powers (if they deserve to be so denominated), which were conceded to the Congress of the Union. Nevertheless it was a confederation, which comprehended all who were parties to it, and excluded all others. Was there a power in this confederacy to admit new members? It cannot be doubted. To whom was that power confided? The express provision in the articles of confederation, which has been quoted and relied upon in opposition to the power contended for, has no relation to the subject of new States, to be formed and admitted from the territory of the United States. It was an invitation to Canada and the other British colonies in America to join us in resistance to the common enemy; and if they had accepted the invitation, they would have come into the confederation upon the terms only of making common cause with us. But there was a power, independently of this provision, to admit new members. That is clear from its exercise—and that power was exercised by the States in Congress. When Virginia, in 1786, ceded to the United States her claim to the North-west Territory, it was upon condition that the territory should be formed into States, and that these States should be admitted upon an equal footing with the original States. Congress accepted the cession upon that condition, and proceeded to fulfil it by the ordinance of 1787.

The extent of the power, the mode of its exercise, and the incidents belonging to it, were also determined by the practice of our government. Among these incidents, was that of making terms, conditions or compacts, with the States admitted: and so inseparably incident was this deemed to be, that, when Virginia stipulated for the admission of the States upon an equal footing with the original States, that stipulation was understood to be fully complied with by admitting them upon terms. It is not at all material to the present purpose to inquire, whether the ordinance of 1787 was or was not a usurpation. If there was any authority usurped, it was that of admitting the States—the principal power itself, not the incidents. It it sufficient that, in point of fact, the power of admitting new States was exercised, and was understood from its exercise to include in it the power of proposing terms, conditions or stipulations, and, among them, the very condition now in question.

When the power of admitting new States into the Union was vested by the constitution, without limitation, in the Congress of the United States, was it not intended to carry with it whatever in practice had been established to be an incident of the power, or a part of the power? Where was the residue lodged? Not with the States; for the States, as such, have no longer a voice in the Union, except for the purpose of amending the constitution. Not with the people; for the people have no voice,

The matter resolves itself at last into this single question: Did the people of the United States, when they framed their constitution, mean to give up, and for ever relinquish the power of proposing terms, or did they deposit it with their own immediate agents, chosen by themselves? They had always found terms of some sort beneficial and necessary, and they have been necessary and expedient in every instance since the constitution was formed, so that, with the exception of Vermont, not a single State has ever been admitted into the Union but upon conditions agreed to by compact. Who are the Congress of the United States; by whom are they chosen; who do they represent? The people of the existing States. Who is it claims to be admitted into the confederacy, and to participate in the benefits of the Union? An alien, as yet, one who has no right of admission, whom the people of these United States, as a political association, may at their pleasure reject. Can it be supposed, that, by framing a constitution of government for themselves, the people of the United States meant to destroy for ever their own inherent right of prescribing terms and conditions of admission? And yet this is the obvious result of the argument, for as it denies the power to Congress, and it cannot be exercised by the States or the people, it is for ever gone. In what part of the constitution do you find any countenance for such a conclusion? There are limits, it is true, to the powers of Congress; but those limits are the boundaries which separate the rights of the Union from those of the States and the people. Is there any power denied to Congress which is not reserved to the States or the people? Was any power intended to be denied to them, in its nature fit and proper to be exercised, but which could not be exercised by the States or the people?

Besides, if this power was, in its exercise, to be merely ministerial, why was it confided to Congress, the highest legislative authority of the nation, intrusted with the care of all its most important concerns? It is derogatory to the character of Congress, and altogether inconsistent with the general tenor of its high duties, to suppose that it shall be required to perform an office so humiliating.

One gentleman tells us that Missouri has a right to be admitted, and will assert her right. What is this but to say, she will knock at the door, because it is civil to do so, but if it be not immediately opened, she will break it down and come in by force. Another gentleman has told us of a citizen of Missouri, who said, that rather than submit to the restriction, he would shoulder his musket against the United States. Such intimations have no other effect than to create a very reasonable doubt whether Missouri is yet fit to be admitted. Admission presupposes the existence in the new territory of principles and feelings somewhat like those which govern other parts of this Union, and the constitution and laws, and the authority exercised under them. If we have no right to impose the condition, there is an end of the question; but if we have a right, and it is deemed expedient to exercise it, I trust the Congress of the United States are not to be frightened from their purpose by threats like these. What becomes of the Union, which gentlemen express so much anxiety to preserve, if it cannot assert and maintain its rightful authority, even against a territory, without the original limits of the United States, only very lately acquired, and with a population who have scarcely had time to become acquainted with each other? Such a Union could hardly be worth preserving. Why, sir, when Virginia brought her eldest daughter Kentucky, trained up in the habits and affections of her parent to an age, when she was fit to be introduced into the society of the Union, and offered her as an associate fit to be received, Congress, it is admitted, had a right to receive or reject her. But when a State, formed out of an alien territory, and having had no paternity but that of Congress, offers herself for admission, she may demand and insist upon being received. And does Missouri deem so lightly of the privilege of belonging to this Union, that she would rather forego it than make a slight sacrifice of a seeming advantage; or that she would hazard it for the sake of asserting her own opinion in opposition to that of Congress? I cannot believe that, upon reflection, she will adopt any such course. If she should, it will be time enough then to consider how the authority of the Union is to be maintained.

I have said that it is derogatory to the authority of Congress, and wholly inconsistent with the tenor of its high duties and capacities, to suppose that it is merely to perform the humble ministerial office of opening the door, upon demand, for the admission of a State, without any discretion whatever. No instance can be found, where the constitution has assigned to the legislative power the performance of such a duty. Thus construed, it is not a power at all. The cases that have been put are in no respect analogous. The power of Congress, upon the death of the President and Vice President, to declare what officer shall act as President of the United States, is a very high power, involving in its exercise much discretion, a discretion commensurate with the various and important trusts confided to the chief magistrate. It can with no propriety be said to be ministerial, and its being deposited with Congress, is the strongest proof of the confidence reposed in that body. The office of counting the ballots, upon the election of President and Vice President, simple as it may seem, and easy as in ordinary cases it is, is nevertheless an office of important trust, and including some judicial discretion, as well as a most serious responsibility. It is a fit office to be executed by the highest body in the nation. The power of im-

single branch. The same remark applies, with equal force, to the right which each branch possesses of judging of the elections and returns of its members; a judicial power, incident to every body composed of elected delegates, and one of its inherent privileges. In all these cases, however, it may not be amiss to observe, that the constitution gives only the principal power. The incidental powers, such as sending for persons and papers, enforcing the attendance of witnesses, and the like, are implied from the principal grant.

That construction which supposes that Congress have a power indeed to admit or to reject, but simply to admit or reject, seems to me, (though it might be sufficient for the present case) to reflect upon the wisdom of the framers of the constitution. The objection to the admission of a State may arise from something not in its nature insuperable, but which might be removed by compact or by accepting a condition. Would it not be worse than idle to say, that in such a case, the State must be rejected, for want of a power on the one side to propose, and on the other to agree, to certain terms of compact? In truth, as will be shown more fully hereafter, such a discretion in Congress is essentially necessary to the just exercise of the power of admission, not only on account of the Union, but also of the States to be admitted.

The gentleman from Delaware, has indeed argued, that the power given is to "admit," not to "form or create" a State, and therefore Congress have no power to interfere in the formation. This only brings us back to the inquiry, what is meant by the word "admit?" It has always been understood that Congress have a right, and are in duty bound, to superintend the formation of a State, and to see that it is properly formed. The terms of the very bill now on your table (following the usual phraseology), "authorize" the people of Missouri to form a constitution of State government preparatory to their admission.

But antecedently to the constitution itself, the States then existing had prescribed certain terms or conditions to the States to be formed out of the N. W. Territory. If Congress have no power but to admit or to reject, the territory was by the constitution liberated from those conditions for want of authority to impose them. There might be a question indeed, whether the territory has not reverted to the States which ceded it, in consequence of the incapacity of Congress to fulfil the stipulations.

I beg leave then to return to the question—the incidents to this power being quite as important as the power itself, the power being worse than worthless without them—did the people of the United States, in framing a constitution of government for themselves, intend to destroy the power, by stripping it of the incidents that gave it all its value? Did they mean to prevent its application to the cases to which they had

power at all should have been given to Congress, than that they should thus be required, either blindly to admit, or sullenly to reject. The design of the constitution was not to abridge, but to enlarge and strengthen the powers of the federal government, and it would be strangely inconsistent with the general plan, to suppose, that in a matter which is properly of a national concern, it had denied to Congress a portion of power which had been actually and beneficially exercised under the confederation. We should naturally expect to find it where it was deposited before. I think it is accordingly there deposited, with all its established incidents, among which is that now in question.

This power is not now asserted for the first time under the constitution. It has always been exercised by Congress. There never has been a State admitted, except Vermont, without conditions which surrendered a portion of legislative authority more or less extensive. Kentucky entered into stipulations with Virginia, and among them was one by which she bound herself for five years, not to tax the lands of non-residents higher than those of residents, and never to tax the lands of non-residents who should reside in Virginia, higher than those of residents. This is a perpetual restraint upon her power of legislation, but it is no diminution of her sovereignty. The States of Ohio, Indiana, and Illinois, by compact with the United States, are under a perpetual incapacity to permit slavery within their limits. This is no derogation from their just sovereignty, nor does any man imagine that it impairs their character or lessens their weight in the Union. Alabama, Mississippi, and Louisiana, too, have come in upon conditions imposed by Congress at the time of their admission. In every such instance, the States have been deemed to be, and have in fact been, admitted upon an equal footing with the original States. The uniform exertion of this authority for such a length of time, is not regarded merely as furnishing us with so many precedents, entitled to more or less consideration according to circumstances. There must be a time after which the practical construction of the constitution, universally understood, and adopted and acquiesced in by the people, especially in matters of great public concern, is to be deemed the true construction, and placed beyond the reach of dispute or controversy. Shall we now undo all that has been done for above thirty years, and done with the common consent? Shall we reject as erroneous the interpretation that has been, without exception, put upon the constitution from the time of its adoption? It is due to the constitution itself, that it should not be exposed to treatment which must weaken its claim to the public confidence and respect. It is due to the people, whose constitution it is, that what it has always been understood in practice to be, it shall continue to be, until they may think proper to change its

seems to be considered by those who present it as of great force. If one condition may be proposed, why not another, and another, without limit, to the entire annihilation of all the rights of the State? This argument, though pressed with a sort of triumph, as if it were completely unanswerable; can scarcely be said to be even plausible. The possible abuse of power can never be urged to show that a power does not exist, or that it is not upon the whole salutary and proper; for if admitted at all, it proves by far too much, as it is equally available against every grant of power. In the formation of government, the first inquiry must be, what authority is fit and necessary to be delegated; and then we are to inquire to whom it shall be confided, and what security can be provided against its faithless exercise? All authority is exposed to the danger of abuse, for it is administered by men. Government has been said, by a once celebrated popular writer, to be itself an evil, inasmuch as its necessity arises from the vices and weakness of our nature. But the constitution has provided with the greatest care against the abuse of power, by making every public agent in some way accountable for his conduct, and by conferring the highest powers upon those who are immediately responsible to the people; and as long as the people shall continue to be faithful to themselves, so long the check will continue to be effectual. This is the great security, and it depends upon the virtue and intelligence of the people. No government ever afforded the same degree of protection, with so little burthen, and if we had not been most vehemently censured abroad for speaking well of ourselves, I would add, that there is probably no other people upon earth who could be kept quiet by so light a pressure. The government and the people are suited to each other. Long may they continue so.

The Congress of the United States, the immediate representatives of the people, and immediately accountable to the people, are the fit depositories of such a power as that now claimed, for it concerns the general welfare. They have no motive to abuse it; and if they were so inclined, they cannot abuse it, because they have no power to impose the condition. The State may, at her pleasure, reject the offer, and remain in her territorial condition, where she will be subject to the unqualified power of Congress.

It must be manifest to every one who has reflected upon the subject, that there are terms which are obviously salutary and proper, and necessary to be proposed upon the admission of a State. When Louisiana asked to come into the Union, did any one doubt that it was right to require, that her legislative and judicial proceedings should no longer be carried on in a language unintelligible to the other citizens of the United States, without the aid of an interpreter? There are terms, too, which would be

the constitution. There must be a discretion somewhere, to judge between the two first classes. Our government would be incomplete without it. Where can the power be so safely lodged as with the Congress of the United States, to decide what terms the general interests require to be proposed? They have never yet abused it, and I think there is no danger that they ever will. But where do the opponents of the amendment propose to lodge the power? Leave the State free, it is said; let her adopt such a plan of government as best suits her own circumstances. And is there no danger to be apprehended from that quarter? Supposing her to be competent to judge what is best for herself, or most for her own advantage (of which, if she desires slaves, I must be permitted to doubt), yet, as she claims to become a member of this Union, the general interests are involved in her decision, and her views may not be those which best comport with the public welfare. Of that she is not, in any sense, as competent to judge as those who are intrusted with the care of the concerns of the whole.

Is it too much then to say, that the right to judge of terms, which are not incompatible with the constitution, belongs to the Union, and to Congress as the admitting power? It is essential that it should be so, for the sake even of the State applying for admission. I have immediately at hand an illustration, and if I mistake not, a most cogent argument, to which I invite the particular attention of the delegate from Missouri. I feel nothing but good will for that gentleman, and nothing but good will for his constituents, whom he represents here with so much zeal and ability; and I submit this matter for his and their consideration. It is not to be denied that Congress have the power to fix the limits of the State, and that they are not obliged to give her all the territory comprehended in the boundaries stated in the bill. This is entirely within their control. Suppose Congress should be of opinion that, if Missouri is to be a slave State, her northern boundary ought to be the river, cutting off the large and fertile tract of country that lies beyond it: but if she will adopt the proposition of the amendment, she ought to have for her domain the whole territory within her present limits. Might not Congress propose to her the alternative, take the restriction, and you shall have all the territory; reject the restriction, and you shall not go beyond the river? Something of this kind is very likely to happen, and it may hereafter appear that Missouri is contending for a principle that will operate much to her disadvantage. For my own part—and I only speak for myself—I most freely and sincerely declare, that if the restriction be not agreed to, I will vote for reducing Missouri to the smallest limits that are consistent with the character of a State. If the restriction be agreed to, I will vote for giving her such boundaries as will secure her

to take, it will follow that whoever objects to any condition proposed, as beyond the power of Congress, must fail, unless he show, that the particular condition is incompatible with the constitution of the United States: that it is such a condition as the State has not a power to assent to. I am very sensible that the question, which arises here, is interesting and important, and that it is delicate, though otherwise I think not difficult. No one who has a feeling of regard for his country, can be indifferent to the sensation it occasions in this House, nor perceive, without some emotion, the line of division it marks. Yet it is a question that is before us; it is a question we must meet; and while we owe it to our country to meet it fully and fairly we owe it to each other to meet it with mutual respect and forbearance. I will concede even more: we are not to entertain, much less to express a thought hostile to the rights of the inhabitants of those States where slavery exists; and in any thing I may say, I hope it will always be understood, that I consider those rights entitled to the protection of all the power of the country, without reference to any other consideration than that they are acknowledged by the constitution. Among the many evils of slavery, it is one, that where it exists, it can scarcely be freely discussed, and yet there may be occasions when its free discussion is of the greatest importance. The same kind of difficulty existed at the formation of the constitution. It was not removed by crimination, or suspicion, or threats; it was adjusted upon the basis of an existing state of things.

Is this condition then incompatible with the Constitution of the United States—so incompatible that a State cannot assent to it? For if a State might voluntarily surrender it, Congress may require its surrender as the term of admission. With what part of the constitution is it incompatible? It interferes with no express provision of that instrument. It must then be implied. What an implication! Instead, however, of pointing out the parts of the constitution from which this implication can be made, State rights are immediately sounded in our ears—State rights are invaded and violated. Sir, State rights is a phrase of potent efficacy, and, properly understood, of sacred regard. But what are State rights? They are ample—they are inviolable; they are the sure foundation and the lasting security of our liberties, and I hope I may add, they are in no danger from the present proposition. But I must be permitted to say, there are rights of the States who were parties to the constitution, and rights of States afterwards to be admitted into the confederacy. Will it be contended that they are, in all respects, identically the same, or that a new State is not upon an equal footing with the original States, unless it possesses precisely the same powers? A moment's attention will show that it cannot. Before the confederation, the sessing all the attributes of sovereignty. The confederation was of sovereign and independent States, united only for certain purposes of common concern, in the management of which they acted as States. When, in the course of events, these States came to form a more intimate union, they presented to the convention points in which they agreed, and points in which they differed. They were respectively sovereigns of all the soil within their limits, and the proprietors of all the vacant land. They were sovereigns for all the purposes of foreign as well as domestic legislation; and no new confederate could be admitted but by common consent, and upon such terms as the existing States might think fit to prescribe. There were, too, accidental diversities among them, of which I need only mention one, the existence of negro slavery in some of the States, permitted by their laws and incorporated into their institutions.

With respect to the existing States, it may truly be affirmed, that they were left in the possession of every power and right, which was not conceded by them to the Union. They derived no right or power from the constitution; they only retained what they before possessed, without inquiry into the nature of its origin. The extent of this reserved possession is more easily understood than defined. It is sufficient for the present purpose to say, that it comprehended all the power of slavery, as an existing state or condition, which they did not choose to renounce or relinquish, and perhaps had it not in their power to extirpate, if they had so desired. The constitution was thus the creature of the States; the work of their own hands. But what is a new State? It is the creature of the constitution, deriving from the constitution its existence and all its rights, and possessing no power but what is imparted to it by the constitution. If it have a power to establish slavery, it derives that power from the constitution, and the constitution becomes stained with the sin of having originated a state of slavery. What a reflection would this be upon that instrument! How is it calculated to diminish the sacred regard that has been felt for it here and abroad! Up to the present moment, no such charge can be made against the constitution. With respect to the existing States, it only tolerated what it could not remove; and in the case of Louisiana, it submitted to circumstances equally uncontrollable. But (and I say it with pride and with pleasure), it never yet has conferred a power to establish the condition of slavery, and I warn those, who are intrusted with its administration, to beware how they claim for it the exertion of a capacity so odious.

But we are told that every thing is implied in the use of the word "state"—that the constitution when it speaks of the admission of new "states" into the union, necessarily means that they should possess certain faculties and powers, of which it is also contended, that the pre-

I admit, unhesitatingly, that there are rights so inherent and essential, and, if you please, inalienable, that a State cannot surrender them, nor exist as a member of this Union without them. But is it essential, by the principles of our constitution, to the character of a member of this Union, (a newly admitted member, especially,) that it should possess all the powers, or even all the rights, that belonged to the original States? It must then be the sovereign of all the territory within its limits, which has never been the case in a single instance of a State newly formed out of the territory of the United States. It cannot be the case; for, by the practice of the government, the admission is made to depend upon the number of the inhabitants, and not upon the appropriation of the land. The unappropriated lands belong to the United States. Even its limits are settled by Congress. It must, too, have an unlimited right of taxation; and it must have an independent and absolute power, extending to every thing within its limits; for all these powers belonged to the original States. Then, sir, not a single new State, (excepting Vermont,) has been properly admitted into the Union, and the practice of the government from its first foundation has been one tissue of error and usurpation.

In every instance some restriction or curtailment of legislative authority, more or less extensive, has been imposed and assented to, with universal approbation. In the case of Kentucky, as we have seen, Virginia stipulated, among other things, that for a limited time the lands of non-residents should not be taxed higher than those of residents, and that the lands of non-residents residing in Virginia, should never be taxed higher than those of residents. This is a palpable restraint upon the exercise of a legislative authority, which every one of the existing States possesses without restriction, and yet it never has been supposed to place Kentucky in a condition of inferiority to her sister States. I will not tire the patience of the committee by going through the other instances, which have been already very fully brought into view. Enough has been said to show, that it has never been thought requisite that a new State should possess the same identical powers which confessedly belonged to the original States, and that such identity is not necessary to a perfect political equality.

To come nearer to the question, I beg leave to ask, is it essential, by the principles of our constitution, to the character of a State, that it should have the power of originating, establishing, or perpetuating the condition of slavery within its limits?

I request gentlemen to pause before they answer this question, and to look it fairly in the face, for it must be met. Is it essential to the character of a free republican State, that it should have the power of originating, establishing, or perpetuating a system of slavery—so without the power, nor qualified to be a member of this confederacy?

Can it be possible that a constitution, framed to secure, to preserve, and to extend the blessings of liberty, itself rests upon a principle so impolitic and so indefensible as this? I should very much fear that we neither expect the favor of Heaven nor the approbation of men for a constitution so constructed—whose professions were so entirely at variance with its principles. Can it be pretended, will any one be hardy enough to assert that this power belongs to the rights of self-government, or of a just sovereignty, or that it is to be arranged in the same class with the authority exercised by every well constituted society, in regulating the domestic relations? Where slavery exists it may be, (as was said by a gentleman from Virginia,) that slaves are regarded as in a state of perpetual minority. It might with equal propriety be said at once that they are regarded as in a state of perpetual subjection—it amounts to the same thing; for surely no man will seriously affirm, that this decree of perpetual minority has its source in the same feelings and views which in all civilized nations have led to the enactment of laws for the protection of infancy against its own folly and imprudence. The one originates in parental affection, anxiously providing for the welfare of its offspring during the period when by nature the judgment is weak and the passions strong; and every incapacity which the laws have established is meant as a shield for infancy against danger to itself. The other—has it any view to the comfort or well being of this perpetual minor? I will not pursue the inquiry lest I should wound the feelings of some who hear me, and whom I would not willingly offend. Where slavery exists you may call it what you please; you have a perfect right to do so, and to regulate it by such laws as you deem best; but in a discussion like the present, it seems to me an utter perversion of language to style it a minority, as it would be an utter perversion of sentiment to suppose that it has any resemblance to the endearing relation out of which the laws for the government of infancy have grown.

How is this power essential to the character of a free republican State? Suppose this evil were now happily extirpated, is there any m[illegible] or political compulsory under the constitution to restore it among us? Has any one ever seriously contended for such a power? No: it, certainly could not be re-established without the consent of Congress, and yet I think it will scarcely be asserted, that the States would not still possess all the essential powers of self-government, and a just sovereignty; that they would not be as free, as independent, as happy, and at least as powerful as they are now.

Upon what footing, then, do the original States stand in this respect? Did the constitution either give or reserve to them the right of originating or establishing a state of slavery?

right? Is there a right in any of them to reduce a free man to a state of slavery, except as a punishment for crimes of which he has been legally convicted, and not extending to his offspring? The great principles of the constitution are all at variance with such a doctrine. It is plain enough how the convention considered the matter, and how it was considered by the States, individually and collectively. They regarded it then as they regard it now, as an unfortunately existing evil, of which it was impossible to rid themselves, and which, therefore, they must manage in the manner most conducive to their safety: an accidental and deplorable state of things, not to be terminated by any means which human wisdom was then able to devise. It was upon this footing, that which is called the compromise took place—it was a compromise with an afflicting necessity, and mark well the manner of it! It was a silent compact between the existing States, upon a subject which they all felt was beyond their power to deal with. That silence, that most emphatic and impressive silence of the constitution, is the sure indication of the feelings which prevailed in the convention. What could they say? They would not utter the word slave or slavery, and whenever they found occasion to make any provision on the subject, they had recourse to other language, as if the very terms were hateful and offensive, and unfit to be employed in that instrument. What could they do? They could only indulge a hope that a time would come when this evil might be eradicated, and, in the mean time, they bore their testimony against it by that expressive silence, of which no one could mistake or misunderstand the meaning.

That compact, not of words, but of silence, had the precise effect, while it avoided a recognition of the legitimate origin of the evil, of leaving every one of the then existing States in possession of the power which it actually exercised, except so far as it was parted with to the Union. The ambiguity in the constitution, if any there be, arises altogether from this well-meant mode of treating the subject. What the framers of that instrument intended should signify their detestation of slavery, has furnished an argument in favor of its extension. For, as silence left the existing States in possession of the power, so silence is interpreted, in the admission of new States, to confer the power; and this rule of construction throws upon Congress the necessity of an active exertion of authority for its restraint, for which gentlemen insist we must show a positive grant. But, with respect to the existing States, it was a power paramount to the constitution itself, and which no State surrendered; a power, however, and a necessity, too, confined to her own limits.

Can this be affirmed with truth of any State newly admitted into the Union? Can it be said to stand upon the same footing as the original States, either as to paramount power, and existing condition, as the case of negroes-

ty? Up to the moment of admission, it is subject entirely and exclusively to the government of Congress, as a part of the territory of the Union. It presents itself to Congress, as a territory, asking to become a State, but bringing with it no State rights—no State powers—nothing to be reserved, but every thing to be received. It presents itself free from the condition of slavery, or subject to it in so slight a degree as to be easily manageable, and affording no just ground for its continuance. Unless, therefore, it can be shown, that it is so essential to the completion of a free republican State of this Union, to have the power of originating or perpetuating slavery, that it cannot be free and republican without it, the argument must fail altogether. Besides, sir, how can the rights of the new State be affected. It has the choice of coming in upon the terms, or not coming in at all.

I am aware, it may be said, that the compact, between the existing States, ought to be considered as a mutual stipulation, with each other; that new States should, in this respect, be left free to choose for themselves. It is nowhere said so; and to me it seems worse than idle to suppose, that there is a dormant abstract principle in the constitution, in favor of slavery, to spring up only as a barrier against what is, and always has been conceded to be, right and just. Show me the value of it, in practice, and I am then prepared to listen to the deduction; but, as long as the argument terminates only in evil, or, which is the same thing, in preventing a good, so long exactly it is impossible for it to find its way to the hearts or the understanding of men. When, not long ago, it was affirmed in this House, that the constitution gave to Congress a power to make certain public improvements—to open the channels for wealth and trade to flow from one quarter of the country to another—to approximate them to each other, to connect them by the ties of interest and mutual dependence and mutual regard, I listened with attention and pleasure, for I expected to find a power so beneficent. So, sir, if I am told that there is a power in the constitution to arrest the march of slavery, to extend the sphere of freedom, personal as well as political, that too, I expect to find. But, when I am told, that there is a silent, dormant principle in the constitution, a sullen power that forbids us to check the extension of slavery, I confess to you, that I involuntarily shrink from the process of reasoning by which it is deduced, and revolt involuntarily from the conclusion. If it be apparent, I must and I will submit to it; but if it be not clear, I am not disposed to search for it, either among the high attributes of sovereign power, or the more frequent refuge of State rights.

But I admit that this assertion is true, as to every rightful and essential power, which belongs inseparably to republican self-govern-

an equal political footing with her sister States, and render her worthy to be a member of the confederacy. As to the rights of self-government, I have nothing more to say. It only remains to inquire, whether the proposed restriction disturbs or interferes with any of the great political rights of the State, or is calculated to lessen her weight and influence in the scale of the Union? The great and important right of every State, is that which regards her representation in the national councils. Is that impaired by the restriction? The compromise of the constitution, in the article of representation, was founded upon a simple, and now well-established principle, applied to preserve the balance of the existing States. It was not that property was to be represented —for then, every kind of property ought to have been estimated in fixing the ratio—but that this particular kind of property occupied the place and consumed the food of a free population, and to that extent lessened the comparative numbers of the State, not for a time only, but for ever. If the free population had furnished the ratio, how many representatives would Virginia now have? To preserve the balance of the States, then and thereafter, the rule of three-fifths was adopted, and with this rule, the constitution considers that there is a fair political *equality between the free States and the* slave States. Can it be said, that the political rights of the State are, in this leading and all important point, impaired by the restriction? In point of fact, her influence and power are increased, for the free population will increase more rapidly than the slave population, and she is entitled to a representation for the whole number, instead of being limited, as to a part, to three-fifths. Whoever will take the trouble to examine the comparative increase of the two descriptions of States, will be satisfied of this, and I have no desire to obtain for the free States the advantage, hinted at by a member who has opposed the amendment, of infusing into the States to be formed a debilitating disease, which will stint their growth and lessen their political weight in the Union. The political right of a State, secured by the constitution, is, if there are slaves, to apply to them the rule of three-fifths, and that right, I admit, cannot be infringed. But it is not necessary to the enjoyment of the full benefit of the principle of representation, nor fairly to be deduced from it as a part of the compromise, that a new State should be permitted to have slaves.

I may be allowed again to ask, what are the political rights of a State in regard to the Union? They are the political rights of the free inhabitants, the only condition known to the constitution. Slaves have no political rights. They are acquired by force, and they are held by force; and if it be lawful to hold them at all, it is also lawful to use any degree of force that is necessary to hold them in quiet subjection. Every liar exertions of authority, by an unusual discipline, or by unusual terrors and punishments, having no view to their own benefit, but only to the safety of their masters, is an exertion of force (necessary where the condition exists) for the security of society, not to be mentioned reproachfully, much less to be interfered with, but still a mere exertion of force demonstrating that slaves have no political rights. They add nothing to the mass of rights. I would not be understood to question the power of the States where this condition exists. Whether it is a power reserved or a power acquired, it is, as to them, recognized by the constitution, and entitled to the support and protection of the whole strength of the Union. We may have our wishes and our feelings on the subject—it is for them alone to decide, how long this state of things shall continue. If ever the time should come, when they shall be able and willing to rid themselves of the evil, it will be hailed with unaffected delight. Till then, while this constitution endures, we have no right to ascend beyond its provisions, and we are bound to carry them fully into effect. The State which I have the honor to represent has been as ardent and sincere in the cause of emancipation as any State in this Union. But she has never lost sight of her obligations to her sister States. Her laws *and her judicial decisions will be found to be* in strict conformity with the constitution, and so they will continue to be.

If the members of the convention meant to frame a compact between the States, to the effect which has been mentioned, that is to say, that every new State should, in this respect, be left entirely free, we might reasonably expect to find it somewhere in the constitution. It could not have been forgotten or overlooked: it was a subject in itself of too much interest and importance; and, besides, the ordinance of 1787 was adopted while the convention was sitting that framed the constitution, and that ordinance provided for the admission of States, with a perpetual inhibition of slavery. Under the confederation it had been assumed as a power belonging to Congress, and exercised as a power fit to be exercised by Congress. It is incredible that the constitution should have designed to disaffirm all this, and yet have said nothing about it, but conferred without limitation the very power to which it had become an established incident.

Can any good reason be assigned why the existing States should have entered into such a compact? It was not necessary to the compromise, which regarded only the actual condition of the States, and which meant to preserve to each of them nothing more than the power within its limits. The constitution was not formed for a day or a year, but for a succession of time—I hope for ages; and it might easily have been foreseen, that cases would probably occur in which the exercise of such a

tant or a frontier State applying for admission. If you permit her to have this kind of population, you are bound by the constitution to protect her, with all the means of the Union, against the insurrection of the enemy within her bosom, and against the inroads of any foreign nation. You are bound even to secure to her the enjoyment of this very property, and if a neighboring power should, by force or seduction, carry off her slaves, it would become a cause of national quarrel and of war. Our own recent history gives us an example of something of this sort. What was the Seminole war? The runaway slaves of Georgia, combining with outlaws and Indians in Florida, carried on hostilities upon the borders of Georgia, and that State (as she had a right to do) called upon the United States for protection. It was granted, and hence the Seminole war. If a new State, circumstanced as I have supposed, should apply for admission into the Union, would it not be reasonable, nay, would it not be essentially just and necessary, to require her first to stipulate that she would not introduce that source of weakness, and that cause of quarrel, which might be so expensive and burdensome to the Union? It ought not to be a concern of the State alone, because it may become a charge to the nation.

I think I may safely affirm that this is the practical, established construction of the constitution, used and approved from its adoption to the present day. But permit me for a moment to examine the spirit of that instrument. If, as is clearly shown, the toleration of slavery by the constitution, and the corresponding provisions, were owing to an incidental, existing, and uncontrollable necessity, then it is plainly the spirit of the compact that the power should never be permitted to a new State, but where the same imperious circumstances exist to demand it, as in the case of the original States. Such was the fact in the instance of Louisiana. What, then, is it that Congress are to do upon such an occasion? To impose conditions, arbitrarily? No. To judge of the circumstances, regarding in due proportion the interests of the State and the Union. If that deplorable necessity exist, they permit, in silence, what (like the framers of the constitution) they will not in terms avow. If not, they adjudicate by the restriction, which it is then their moral and constitutional duty to impose.

This is the true, it is the necessary, and only just construction of the constitution: the only one that is consistent either with the professions we have always been in the habit of making, or with the hope that was certainly once very much cherished, that a mode might some day be devised of abolishing this great evil. We may assert as we will that we are not in favor of slavery; as long as it shall be seriously insisted that, by the constitution of our country, every new State has the inherent and inalienable right of establishing domestic lieved, and we ourselves, as well as that venerated instrument, be charged with hypocrisy. Suppose, sir, that the existing States were in a course of abolition, would it be permitted to a new State, governed by some selfish or ill-judged views of interest, to revive the condition of slavery, and thus to control and defeat the policy of all the others? Ought it to be in the power of any new State to enlarge the region of slavery, and thus to increase the difficulties, already sufficiently great, presented by this very difficult and embarrassing subject? Can it be that we sincerely believe it to be an evil, and yet will gravely insist that it is a right of every new State to do—what? I was going to say, enjoy this evil, but that would be a perversion of terms—afflict and injure herself, and her associates too, by admitting it within her limits? If it be a good, the argument is intelligible: if it be even doubtful, there is still some scope for choice; but if it be an acknowledged evil, it seems to me extravagant, if not absurd, to contend that there is a right to have it, and that a prohibition restrains or impairs the just liberty of a new State.

This construction too is plainly indicated by at least one provision of the constitution—I mean the ninth section of the first article. "The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by Congress prior to the year 1808." Why is this restraint upon the power of Congress confined to the States "now existing?" It was to give to Congress the power, immediately, to prevent the introduction of slavery into the States to be formed. I do not doubt that it had a particular reference to the ordinance of 1787, and was meant to guard against the inference that Congress had not the authority to complete the work the ordinance had begun. For, if the restraint had been general, comprehending the States to be formed, as well as those existing, Congress could not, within the twenty years, have prohibited the "migration or importation" of slaves into the States to be admitted into the North-west Territory; and then one of two consequences must have followed; either Congress would have refused to admit the States within the twenty years, which would not have been consistent with the engagements entered into, or they must have admitted them with the power of receiving slaves, which would have been contrary to the provisions of the ordinance. It is therefore, I say, that this section of the constitution had a plain reference to the ordinance; and while it evinces, in the clearest manner, a constitutional distinction between the existing States and States to be admitted, upon the very subject now in question, and plainly intimates a design to give a control to Congress over the introduction of slavery into States to be formed; it also seems to me to afford a constitutional sanction to the ordinance itself.

great expense of time and patience to the committee, endeavored to present, is to my mind so conclusive, that I should hope it would be unnecessary to detain them longer. But, there has been all along an assumption, by those who are opposed to the amendment, which I think extremely questionable, if it be not wholly unfounded. It is assumed, that the condition proposed by the amendment will produce an inequality between the State to be admitted, and the existing States. It is not material, (the inequality being of no consequence,) but I mistake if I may not safely deny that it will occasion an inequality at all. Sir, has any State in this Union a constitutional capacity to originate or establish a state of slavery? To be more precise—if a State, (Pennsylvania, for example,) has once abolished slavery, has it a power, without the consent, and against the will of Congress, to restore that condition? This is an interesting, but, I think, it is not a difficult question, and certainly it is not a dangerous one to discuss. No State, that has once abolished slavery, will, I believe, ever desire to restore it. And here, sir, I invoke to my aid the great principles of the constitution, and the great truths of the Declaration of Independence. I invoke, too, the principle of the compromise, founded as it was upon an existing state of things, and recognizing no rights but what necessity conferred.

The reduction of a fellow-creature to slavery, to a state where nothing is his own but his sorrows and his sufferings, is, if you please, an act of sovereign power; that is, of sovereign force, which obeys no law but its own will, and knows no limits but the measure of its strength. If these States were sovereign, they too, like other sovereigns, might exert a lawless power. It would, nevertheless, be morally wrong. But, they are sovereignties, qualified by the grants of power to the Union, and by the great political principles upon which all our institutions repose. The sanction of these principles is now added to the force of moral obligation; and the beautiful feature of our government, that which entitles it to the respect of strangers, and to our affection, that which distinguishes it from all the governments that have ever existed, is to be found in this single truth. Such is its structure, that it can do no lawless violence, and whenever we speak of sovereignty, we mean a rightful, moral sovereignty, and not a power to do whatever it has strength to accomplish.

Whence, then, can a State derive such a right, I mean a right to originate or re-establish slavery? It cannot, by force, reduce freemen to the condition of slaves. This no one would undertake to maintain. It cannot draw them from abroad, for Congress have the unquestionable power to prohibit importation. Can it receive them from other States of this Union? The supposition imputes to the constitution the greatest weakness, and is wholly inconsistent with the hope entertained by the great men

abolished. I think this channel is stopped, as it ought to be, by the power of Congress to prevent importation and migration. Importation, we all understand to include slaves brought in from abroad, from any foreign territory, whether by land or by water; and we all agree, that it is sufficient to comprehend in its interdict, every bringing in of slaves from abroad. The term "migration" is applied to the same description of "persons," and upon the plainest principles of construction must be understood to apply to something different from "importation." What can it apply to, but the passage or transfer of slaves from one State or Territory to another? An argument, urged by the member who last addressed the committee, (Mr. Clay,) I mean the argument derived from that part of the constitution which denies to Congress the power of imposing a duty upon exports from any of the States, strongly supports this interpretation. The two clauses, taken together, (and they are in the same section,) amount to this: you shall not prohibit the "importation" until after the year 1808; but, in the mean time, you may impose a tax or duty upon "such importation" not exceeding ten dollars for each person; you shall not, during the same period, prohibit "migration," but can you impose a duty or tax? No. The authority to impose a duty or tax is dropped, and why? Because migration, meaning, (as we insist,) a transfer from State to State, includes, in every instance, the exportation from a State; and therefore, by the fifth clause of the same section, no "duty or tax" can be laid upon it.

Various interpretations of this clause of the constitution have been attempted by those who are opposed to the amendment, but none of them, I think, consistent with the fair import of the terms, or the manifest spirit of the constitution. One gentleman, indeed, (Mr. Smith, of Maryland,) has said, some days ago, that it was intended to give to Congress the power to prevent the passage, from one State into another, of slaves imported into the former from abroad. His long experience and knowledge entitle the suggestion to great consideration, and it appears to me to concede the precise construction contended for. He admits that the clause applies to slaves, and the term "migration" to slaves transferred from one State to another. Now, as there is no description of the kind of slaves, which limits it to slaves imported, it must apply to all slaves. I will not insist upon the advantage of this concession; the case is fully made out without it.

But we are told by the gentleman from Delaware, that the technical meaning of the word migration, is a change of residence from one country to another. I must be permitted to say, that I am not aware that the word in question has ever received a technical meaning. We call those words technical which have been appropriated to the service of an art or science, and in relation to that art or science have

sense, well understood by those who are acquainted with the subject. Thus, when we speak of an "estate tail," or "a contingent remainder," the language is perfectly intelligible to a lawyer. The term migration has never, to my knowledge, been so appropriated, unless it may be considered as having been adopted by naturalists as descriptive of the habits of certain animals, and then it means simply a change of climate for the sake of temperature, or a change of place for the sake of food; but not a change of country. In its vulgar sense, that is, its common sense, as given to us in dictionaries, as used in conversation or by approved writers, it means only a change of place. In two pages of Dr. Seybert's Statistical Annals, (37, 38,) the word is three times used to denote the change or transfer of residence from one State to another; and it may be remarked, in passing, is accompanied with a reflection which well deserves the attention of those who insist so strenuously upon the free admission of Missouri, in order that the owners of slaves may be enabled to go into that State. "It is important to consider how far the diffusion of our population may weaken us as a nation, and what will be the effect of the migrations on the agriculture of the Atlantic States? Many valuable farms, originally productive, have been abandoned, after they were exhausted and made barren from constant cultivation, and no application of the means to restore their lost fertility. If migration be continued under these circumstances, some districts will hereafter exhibit all the features and poverty of a desert, and extensive tracts of valuable land will be a waste, to the injury of our agriculture, manufactures and commerce. In many of these situations, industry would be abundantly rewarded for all the labor and expense of renovating the unmanaged and impoverished soil." I am reminded, by some one near me, of another difficulty supposed to be in the way of our construction, and that is, that migration means a voluntary change of place, and that the removal of a slave is without his own consent. Even if this were correct, it would amount to nothing. The will of a slave is always the will of his master, and his acts, whenever they are in obedience to his master's orders, are by the constitution and laws deemed to be voluntary. What other term could have been employed? We are to remember, that though the slave is regarded as property, yet is he also regarded as a "person," a human being, having a will, but that will ever in coincidence with the wishes of his master; and it is from this anomalous composition of character, that the constitution itself had great difficulty in finding terms applicable to his condition or conduct.

We have been told, too, (for the attempts have been numerous to avoid the force of this clause), that it applies to freemen coming from abroad. It would be very extraordinary, indeed if the constitution contained two provisions so opposite as freemen and slaves. But all this is minute, verbal criticism, and I fear I shall fatigue the committee by dwelling upon it. There is a much broader, and still more satisfactory answer to the objection. The clause in question has always been understood to apply to slaves, and to slaves only, from the adoption of the constitution to the present time. It is (and that is entirely conclusive) a restraint upon the power of Congress, insisted upon by the slaveholding States, to secure for a limited time the right of supplying themselves with slaves. This is familiarly known to every person who has any acquaintance with the history of the constitution, and it is known, also, that two of the States (South Carolina and Georgia) would not have come into the Union without it. How any one, knowing these things, can gravely assert that the clause has any provision relating to freemen, it is entirely impossible for me to conceive. It imputes either mistake or foolish design to the framers of that instrument; for no good reason can possibly be assigned for withholding from Congress, during the twenty years, any power it possessed over the admission of freemen, though we know well the reason (good or bad) for restraining the power as it respected slaves. I need not notice the observation of the member from Delaware, that this, being a federal power, must be understood as applying, in its exercise, to the Union, and not the States. Every power to be exercised by Congress is a federal power; but it does not follow that it is not to operate upon the States. This, in particular, by its very terms, is to apply to the States individually. But I hasten to another objection, which has been very seriously urged, and, if well founded, renders all this examination superfluous. We are informed that the clause in question is not a grant of power; it is only a restriction or restraint upon power. To speak with perfect precision, it is an exception or restraint, for a limited time, upon the exercise of a power. Such an exception, it is most clear, is conclusive evidence of a grant; for, if there were no power granted, there could be no exception from or restraint upon its exercise. It is, of itself, equivalent to a grant of the power, after the expiration of the time. A rule of this House directs that strangers shall not be admitted during the time it is in session. Would any one doubt that this gives permission to strangers to enter at other times?

If this interpretation, however, (contrary as it is to the plain design of the constitution,) were correct, still there would be no difficulty. It follows immediately after the enumeration of the powers granted to Congress, and among them we shall certainly find that which was intended, for a time, to be restrained, unless we suppose the framers of the constitution to have misunderstood most grossly their own work. If there be some ambiguity in the language, it arises from the remarkable reserve of the con-

biguity ought to be favorably expounded. Congress, then, have a power "to provide for the common defence and general welfare," and for that purpose they have a specific power to "regulate commerce with foreign nations, among the States, and with the Indian tribes." Slaves are every where articles of trade, the subject of traffic and commerce, bought and sold from place to place, and from hand to hand, by public sale or by private sale, as suits the convenience or interest of the owner, and are in all respects treated as property. The general power to regulate commerce includes in it, of course, a power to regulate this kind of commerce. With respect to slaves imported from abroad, this has not been disputed, and cannot be disputed—while it continued, it was a branch of the trade with foreign nations. The power to regulate commerce "among the States" is given in the same clause, and in exactly the same terms, as the power to "regulate commerce with foreign nations." If the latter authorized Congress to prohibit the importation of slaves from abroad (which has never been even questioned), how can it be doubted that the former gives them authority, when in their opinion the "general welfare" or the "common defence" require it, to prohibit the transportation from State to State? If one comprehends slaves, so does the other; and if this conclusion had never been carried into practical effect, it would only prove that no case had occurred in which Congress thought it expedient to exert the power. But this construction is obviously necessary to the plain design of the constitution, not only to the large and liberal views with respect to the whole subject of slavery, of which I will speak hereafter, but the particular design manifested in the very clause now in question. It is conceded that Congress might at all times prohibit the importation of slaves from abroad into the territories of the United States, as well as into States formed after the constitution, the restriction, until the year 1808, being confined to the States then existing. Of what avail was this power, however derived, unless they could also prevent importation through other States, or rather the passage of newly imported slaves from the old States into new States or territories? Sir, this construction, in itself so reasonable, has actually been adopted in practice. By the act of 1804, for dividing Louisiana into two territories, and making provision for the government of the southern portion, it is enacted that no slaves shall be imported from abroad; and none shall be brought from any port or place within the limits of the United States, that have been imported since the first day of May, 1798—or shall hereafter be imported. It is no answer to this to say that the slaves of a man, migrating from one State to another, are not carried thither for the purpose of commerce or trade, but are a part of what has been called "his family." The power to regulate commerce extends to every thing which is the subject of the article, not by the intention or views of the owner; or else, every law for the regulation of trade would become ineffectual. Slaves may be carried for the purpose of selling, and, even when this is not the original intention, they may nevertheless be sold; and a man, after disposing of all his "family," may return and buy another family, and afterwards sell it. They are articles of traffic, and that is enough—neither is it any answer to say that the power in question is a power to be exercised by legislation, and not in the form of a condition to be prescribed to a particular State. If it exist at all, of which I hope there is now no doubt, we arrive, after this, I fear, very tedious investigation, at a result decisive of the present controversy. For if the exposition given be correct, it will follow that no State in the Union, having once abolished slavery, can re-establish it without the consent of Congress; and that it is no disparagement of the rights of a new State to lay it under the same prohibition. There is, then, a precise and perfect equality.

But, notwithstanding any supposed ambiguity in the constitution, arising from the cause I have adverted to, there are great leading points in that instrument, which were intended to stand out upon occasions like the present, as guides and marks to direct our steps; and it is a relief to ourselves, as well as a debt of justice to those who framed the constitution, to keep them constantly in view. We can see there, plainly asserted, the political and personal equality of men—a deep and humiliating sense of the evil of slavery—a hope that it might at some time be abolished, and a determination, as soon as possible, to abolish it. From the date of the constitution to the present moment, these have been the governing principles of this nation's conduct, and the present is the first effort to arrest a career urged equally by policy and humanity. If Missouri be permitted to establish slavery, we shall bring upon ourselves the charge of hypocrisy and insincerity, and upon the constitution a deep stain, which must impair its lustre, and weaken its title to the public esteem. It is to no purpose to say that the question of slavery is a question of State concern. It affects the Union in its interests, its resources and character, permanently—perhaps for ever. One single State, to gratify the desire of a moment, may do what all the Union cannot undo—may produce an everlasting evil, shame and reproach. And why? Because it is a State right. Sir, you may turn this matter as you will; Missouri, when she becomes a State, grows out of the constitution; she is formed under the care of Congress, and admitted by Congress; and if she has a right to establish slavery, it is a right derived directly from the constitution, and conferred upon her through the instrumentality of Congress. We cannot escape from our share of the blame, and (which is infinitely worse) we cannot rescue the constitution from the opprobrium which belongs to

makes the constitution a silent and acquiescing accessory, looking with undisturbed complacency upon what it professes to hold in detestation, may answer the purpose of argument here, but it can avail nowhere else. The judgment of mankind is not formed upon artificial distinctions like this. As surely as the tree is judged by its fruit will the constitution be judged by what it produces. I earnestly beseech gentlemen, then, to save the constitution from a stain which has never yet been fixed upon it; and with this entreaty, under the deepest and most sincere feeling, I leave it their hands.

2. Upon the subject of the treaty of cession, I will detain the committee but a very short time. It has always appeared to me to be a proof of the weakness of the argument against the amendment, that it was obliged to resort for support to this topic, because it supposes that the inhabitants of the Territory of Missouri have higher rights and privileges than the citizens of any territory within the original limits of the United States. One gentleman says, indeed, that Missouri derives her right from heaven. If so, there is an end to all question about the constitution or the treaty, though it might be extremely difficult for some of us to understand, how from such a source could be derived a lawful power to establish slavery.

If we are bound by treaty stipulations, it will be admitted that they must be fulfilled. The public faith is to be preserved inviolate, at every hazard of consequences. But, before we admit a construction so dangerous as that contended for, let us examine carefully the extent of our obligations.

There are none, I suppose it will be conceded, who can call the treaty to their aid, but those who were inhabitants of the ceded territory, and subjects of the ceding power, at the time of the cession. In terms, the article in question applies only to them. Suppose it had all been vacant territory at the time of the cession, and since peopled by citizens of the United States. Would it have been seriously asserted, that they acquired any new or higher privileges or rights, by migrating to Louisiana? As to the original inhabitants themselves, it is a question, not of legislative, but of judicial cognizance, for a treaty is the supreme law of the land. The condition, however, such as it is, is not annexed to the territory; it is a stipulation in favor of the free inhabitants, and as to them, it has no application, after they have become incorporated into the Union, and are made citizens of the United States—they then become subject to the legislation of Congress. The distinction between the territory and the inhabitants is so obvious as to be perceived at a single glance. The one is simply ceded, transferred in sovereignty, which places it exactly upon the same footing as any other territory of the United States, without any condition. The other, that is, the free inhabitants, are also transferred, in the Union, and admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States," and "in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

How it was intended to make them citizens, I do not pretend to know. Certainly a treaty cannot confer the privileges of citizenship; that can only be done by the operation of an uniform naturalization law; and while it is acknowledged, that the treaty-making power may rightfully bind us to do every thing which is within the constitutional competency of any department of the government, it can never be allowed to go further, for then it would transcend the constitution itself. By what means these free inhabitants were to be made citizens, or at what time, are questions I need not now attempt to answer. There is some difficulty in them undoubtedly. This difficulty it was—or rather the impossibility of bringing the inhabitants into the Union, by any process unknown to the ordinary legislation—that occasioned, in the first place, the qualification in the engagement "as soon as possible," which may be fairly interpreted to mean, "as soon as our constitution would permit;" and, in the next place, the stipulation, that until they should become citizens, they should be maintained and protected in the enjoyment of their liberty, property, and religion. From the moment they are incorporated (this is the precise import of the treaty) they are to be upon the same footing with all other citizens of the United States. Till then, they are aliens, but are not to be prejudiced by their alienage.

Did we mean to permit any foreign power to intermeddle with our internal concerns? The sanction of treaties is in the ability of those who make them to enforce the observance of the stipulations they contain. Were our negotiations so unwise—were the President and Senate so forgetful of their duty, as to make and ratify a treaty by which our own citizens were unable to appeal from this government to a foreign power, and call in its interference, by war if necessary, to settle their rights? Such a supposition is entirely inadmisible. This article was probably proposed by our own negotiators. If it was, it was a most unequivocal tribute from the other high contracting party, of respect for our constitution and laws, for it admits, that no further security was necessary for the protection of their ceded subjects. But, did it mean to give to the free inhabitants of Louisiana any peculiar rights of property, higher or greater than those enjoyed by other citizens, after they should become citizens of the United States? It was beyond the treaty-making power to grant or to contract to that extent. Will it be admitted that it was necessary for the security of the citizen, that to the constitution should be superadded the obligations of a treaty,

power? Why, sir, I have heard it said in this debate, that the treaty gives not only rights to those who inhabited the territory, but also to our own citizens who may have migrated thither since the cession. The doctrine thus asserted, appears even more objectionable than that I have alluded to; but it is only worse in appearance, for in both cases it supposes an appeal to a foreign power, from our own citizens, against the government.

What are the "rights, advantages, and privileges" of a citizen of the United States, which are guaranteed to the inhabitants of Louisiana? They are the same throughout the United States. They are, therefore, independent of local rights, or those which depend upon residence in a particular place. An inhabitant of a State has certain privileges arising from his inhabitancy of the State. An inhabitant of a territory, too, has certain privileges, which arise from his living in a territory. A citizen of the United States, who resides neither in a State or territory, but is out of the limits of the Union, enjoys neither the privileges of a State or a territory, but he possesses the rights, privileges, and immunities of a citizen of the United States, which are common to all the three descriptions of persons. When an inhabitant of Louisiana is made a citizen of the United States, he becomes entitled to the "rights, advantages, and immunities" of a citizen. He carries them with him wherever he goes; if he is in a State he may add to them State privileges; if he is in a territory he may enjoy the rights of an inhabitant of a territory—in either, or beyond the limits of both, he is still a citizen of the United States, and upon an equal footing with any other citizen.

It has been argued indeed, that they are to be incorporated into the Union, and that this cannot be done without forming them into a State or States. Should we admit this argument to its full extent, it would leave us exactly where it found us, for as they are to be incorporated (by the express terms of the treaty) "according to the principles of the Federal Constitution," we should still be obliged to return to the constitution, to inquire upon what terms States are to be admitted. And certainly the plain answer would be, that they are to be admitted upon the same terms as other territories in the United States. But the fallacy of the argument lies, in applying to the territory (which was ceded in full sovereignty) what was intended only for the inhabitants. Nothing more is necessary, to enable us to detect the fallacy, than to trace it to some of its consequences. What right upon the construction contended for, had we to postpone the admission for a single day? Why, gentlemen will say the territory had not the requisite number of inhabitants. But no number of inhabitants is necessary, except by the practice under the constitution, and that same practice gives us certain sir,—according to this hypothesis,—what authority had we to divide this great territory? why not admit in all as one State? They will say it was too large for a single State. True, but the constitution has not ascertained the size of a State, nor has it even been settled in practice, for we have States of all sizes, from 70,500 square miles, (Virginia,) to 1,548 square miles, (Rhode Island.) The truth is, and it is vain to attempt to disguise it, that the common understanding of all parties has long ago fixed the interpretation of the treaty upon a footing not now to be disturbed. This territory, like every other territory of the United States, is subject to the power of the government, to be opened for sale, to be settled, divided, and subdivided, and regulated, according to its policy, and finally to be formed into States, and admitted when it may be deemed expedient.

While I am upon this subject of the treaty, I wish to examine it with a different view, and at the same time to show the enormous extent of the doctrine contended for, which will, I think, afford a strong argument in favor of the right of Congress to impose the restriction. Whence did the treaty-making power derive its authority to purchase lands, and freemen, and slaves? From any express words of the constitution? No. It must then be implied from what? Either from the possession of sovereign authority to which it is an incident—or from the broad terms of the grant, which is to make treaties upon the ground that treaties may stipulate for a purchase of territory. It is then a sort of implied power. And what is next implied? That the territory thus acquired is to be upon a different footing from any other territory of the United States; and that Congress must form States of it, and must admit them. There, sir, the implication all at once stops short. No conditions are to be imposed; no terms offered; no stipulations entered into, however salutary or even indispensably necessary for the welfare of the Union. No, you are not even to require them to have their legislative and judicial proceedings in intelligible language. The whole policy of the nation is to yield to the views and interests of the inhabitants of the territory, who are, notwithstanding, to become an integral part of the Union, and have a full voice in your deliberations. What is your treaty-making power then? Paramount to all the authorities of the nation; paramount to the constitution itself; paramount even to the people.

Try this principle by any practical test, and see where it will lead us. The United States have no power (it is contended) to prevent or limit slavery, and they have no power to stop migration. You have purchased a territory, nearly equal in extent to all the original States. A single plantation may inoculate the whole with this odious disease. The 50,000 slaves in Louisiana may blacken the country from the

there are three votes, and the time may come when the voice of the slaves, in the councils of the nation, will be louder than that of the freemen. Heaven forbid! For if it should, what will be the condition of those who live in the free States? There is something humiliating in labor—in the labor of getting a living—and it is scarcely to be expected that the master of an hundred slaves should have any feeling in common with him, who earns his bread by his daily work. What becomes of the compact of the constitution itself, settled, as it was, upon the basis of the existing States, and of the States to be formed out of the North-west Territory, whose condition, as respects slavery, was irrevocally fixed? The sense of that compact is entirely changed. Its form may remain, but the substance—the life of it, is gone for ever. The same principle, too, (for it is indefinite in its capacity,) may be applied to future acquisitions. War or negotiation, conquest or treaty, might bring the island of Cuba within the limits of the Union. But, I am satisfied, and I hope the committee are satisfied, that the treaty has nothing to do with the question. I discard it altogether.

I will now, with the leave of the committee, proceed to the remaining branch of this very interesting subject, or what is called the question of expediency.

It is decreed that slavery shall be a very great evil; and (as has been already remarked) one of its incidents is, that where it exists, it can never be fairly or freely discussed. It must be taken up at a certain point, which admits every thing that goes before, and among the rest, (in a qualified sense,) the lawfulness of its origin and existence. I will not disturb this arrangement, but I must be permitted to say, that slavery is a great moral and political evil. If it be not, let it take its course. If it be a good, let it be encouraged. If it be an evil, I am opposed to its further extension. This is plain, simple, clear, intelligible ground.

Most of those, who have opposed the amendment, have agreed with us in characterizing slavery as an evil and a curse, in language stronger than we should perhaps be at liberty to use. One of them only, the member from Kentucky, who last addressed the committee, (Mr. Clay,) rather reproves his friends for this unqualified admission. He says it is a very great evil indeed to the slave; but it is not an evil to the master; and he challenges us to deny that our fellow-citizens of the south are as hospitable, as generous, as patriotic, as public-spirited as their brethren of the north or east. Sir, they are all this, and even more. For some of the virtues enumerated, they are eminently and peculiarly distinguished; and I believe they are deficient in none of them. It has long ago been remarked, that the masters of slaves have the keenest relish for their own liberty, and the proudest sense of their own independence. It

before them. But it seems to me that the concession with respect to slavery, modified as it is in appearance, is quite as broad as the unlimited admission of every one else who has spoken. It is an evil to the slave; it is an evil founded in wrong, and its injustice is not the less, because it is advantageous to some one else. Every injury, from the least to the greatest, might find the same sort of mitigation. It is a very great evil to him who suffers, but it is no evil to him who inflicts it. The same gentleman, however, has himself made the most unqualified concession; for he said he would recommend to the people of Missouri to abolish slavery, and that in his own State he would favor a general emancipation, as soon as it should be practicable, which he surely would not do if it were not an evil.

I beg leave further to say, that I do not consider this as a question of humanity, or a question of policy, or interest, or profit, or ease—it is (disguise or argue it as you will) a question of the extension of slavery. It is a question, too, not for the present only, but for future ages; and the glorious example of our ancestors admonishes to make the sacrifice, (if sacrifice it be,) as we would have the blessings or the curses of posterity. Why should we spread an acknowledged evil? Is there any other moral or physical evil that we should think it wise or expedient to treat in this way? Would you extend the ravages of an infectious disease? Would you cultivate the growth and enlarge the noxious influence of a poisonous weed? Would any father so treat his offspring, even in this very instance? If he were surrounded with slaves, whom he believed to be an injury and a curse to him, would he require his son at setting out in life, to relieve him, by taking upon himself a part of the odious burden?

Besides, it is an evil founded in wrong, and originating in our own choice. The extension of it, therefore, is not to be justified, but by the most urgent and instant necessity, so evident, that every man will at once agree to submit to its imperious dictates. I reject all speculative, or probable, or modified, or remote necessity—that which resolves itself at last, when fairly analyzed, into matter of profit, of convenience, or comparative political power. If there be doubt, it is decisive—even though there were considerable weight of probability in favor of the argument, I would decide against it. Has any one seriously considered the scope of this doctrine? It leads directly to the establishment of slavery throughout the world. The same reasoning that will justify the extension of slavery into one region, or country, will equally justify its extension to another. It leads, too, directly to the re-establishment of the foreign slave trade, for it has a tendency to break down that great moral feeling which has been gradually making its way into the world, and to which alone, supported and encouraged as it has been by the untiring exertions of hu-

the disgrace of Christendom. To look upon slavery with indifference; to witness its extension without emotion; to permit one's self even to calculate its advantages—sir, the next step, and a very short one it is, may be readily imagined. There are parts of this country now, at this very moment, where the laws against the importation of slaves, with all their heavy denunciations, are continually violated. It is notorious, that in spite of the utmost vigilance that can be employed, African negroes are clandestinely brought in and sold as slaves. This could not happen if there were a universal sentiment against the trade; the existence of the illicit traffic, to any extent, however small, affords the fullest proof, that in those parts of the Union where it continues to be carried on, it meets encouragement from the feelings and the interests of some part of the community. Far be it from me to impute these feelings to any State, or to any considerable part of a State. But the sordid appetite exists, or such inhuman means would not be employed to gratify it.

We are told, however, that it is not extension, it is only diffusion, that is to be the effect.

I confess that I do not well understand the distinction. The diffusion of slaves, is an extension of the system of slavery, with all its odious features; and if it were true, (as it certainly is not,) that their numbers would not be increased by it, still, it would be at least impolitic. But for what purpose is this diffusion to be encouraged? To disperse and weaken, and dilute the morbid and dangerous matter says one. To better the condition of the slaves, by spreading them over a large surface, says another. A third tells us, that we cannot justly refuse to permit a man to remove with his family. A fourth comes directly to the question of interest, and his reason is, that land in the State of Missouri has been bought by individuals upon the faith of its being a slave State, and if we prohibit slavery there, these lands will fall in value. And in the rear of all these, comes an appeal to the public interest, in the shape of a suggestion, that slavery must be permitted in order to maintain the price of the public lands.

I would ask gentlemen seriously to examine their hearts, and see if they are not deceiving themselves—I am sure they mean not to deceive others. Do they remember the arguments by which the slave trade was so long and so obstinately defended in England? The triumph of humanity there is quite recent, and the contest is a monument of the zeal and ingenuity that may be enlisted in a cause, which we all agree to have been utterly indefensible, and which no man, having a respect for himself, would now have the hardihood to attempt to defend. The arguments, then employed, I am sorry to say, have too much resemblance to those which are urged upon this question of expediency. The debates in parliament, the memorials from Bristol and Liverpool, the representations of the West India merchants, and ship owners, and with statements of the importance of the traffic to the navigation and trade, and revenue and colonies, and all the other great interests of the kingdom. Yes, sir; and they undertook to strengthen their argument by gravely asserting that the African slave was really rescued from much greater misery, by putting him on board a slave ship, and carrying him in irons, (if he happened to survive,) to the place destined for his perpetual imprisonment. These things are familiar to every body, and they are now treated as they deserve to be.

But it is only diffusion that is desired! Is this a reasonable desire? Little more than thirty years have elapsed since the constitution was adopted. Two States of this Union (South Carolina and Georgia), then insisted upon reserving, for twenty years, the privilege of supplying themselves with slaves from abroad, and refused to come into the Union unless Congress were prohibited, during that time, from preventing importation. Congress were accordingly prohibited, and scarcely ten years have elapsed since the prohibition ceased. Can they reasonably ask already to be permitted to diffuse what they were then so anxious to possess? Are they so soon overburdened? It cannot be, for the illicit trade is still carried on, and that would end at once if there were not a demand and a market.

I may be told, and told with truth, that the other slave-holding States are not exposed to the same remark. Of Virginia, especially, it gives me pleasure to be able to speak on this subject, with sincere respect. While yet a colony, she remonstrated against the introduction of slaves. One of the earliest acts of her government, after her independence, put an end to the trade. And it has always been understood to her honor, that in the convention, her voice and her most strenuous exertions were employed in favor of the immediate abolition of the traffic. Still, sir, with respect to any, or all the slave-holding States, I may be allowed to ask, is diffusion now necessary? I think it is not. Look at the present price of slaves. Does that indicate an actual increase of their numbers to such an amount as to require diffusion? I am informed by a gentleman, upon whose accuracy I place great reliance, that from the adoption of the constitution to the present time, the price has been regularly advancing. I do not mean to say that it is as high now as it was a year ago. It was then like every thing else, affected by speculation. But taking average periods, say of five or six years, there has been a regular and constant advance, manifesting a demand at least equal to the supply.

Take another and a larger view. Look at the extent of territory, occupied entirely by freemen, and that which is occupied by freemen and by slaves. You will find, that at the time of the last census, in 1810, four hundred and forty-four thousand and seventy square miles were inhabited by two millions, three hundred

thirty-six free persons, and one million, one hundred and thirty-eight thousand, three hundred and sixty slaves; giving a total of three millions, four hundred and seventy-one thousand, six hundred and ninety-six. At the same period, three millions, six hundred and fifty thousand, one hundred and one free persons had for their portion three hundred and twelve thousand, seven hundred and thirty-six square miles. Such was then the comparative extent and population of the free States, and of the slave-holding States and territories; the latter with fewer inhabitants by almost two hundred thousand, posessing above one hundred and thirty thousand square miles of land more than the former —a tract of country equal in size to the two largest States in the Union. The population, in the free States, we know increases with greater rapidity than in the slave-holding States. At the present time it is not to be doubted, that the disparity is greater than it was in 1810, and more unfavorable to the free inhabitants. In making the distribution of future comforts, we ought to have at least an equal eye to the latter, and they, I think from this statement, are most likely soon to want room to diffuse.

If it were not dwelling too long upon this part of the subject, I would ask gentlemen to look also at the comparative statement of the population to the square mile, in the free States, and in the slave-holding States. They will find it in Dr. Seybert's work, (page 45.) If I mistake not, the average of the former was twenty-seven, fifty-six, and of the latter, fifteen, thirty-six, applying the computation to the States contained in his table. These facts sufficiently answer the question, whether the diffusion of the slave population is now necessary.

I am fully convinced, however, that this idea of diffusion, (as distinguished from extension,) which is at present so great a favorite, is altogether founded in error. If the amount of the slave population were fixed, and it could not be increased, it would no doubt be correct to say, that in spreading it over a larger surface, you only diffused it. But this is certainly not the case. We need not recur for proof or illustration to the laws that govern population. Our own experience unhappily shows that this evil has a great capacity to increase; and its present magnitude is such as to occasion the most serious anxiety. In 1790, there were in the United States, six hundred and ninety-four thousand, two hundred and eighty slaves; in in 1800, there were eight hundred and eighty-nine thousand, eight hundred and eighty-one; and in 1810, one million, one hundred and sixty-five thousand, four hundred and forty-one. This is a gloomy picture. The arguments of gentlemen on the opposite side admit that an increase will take place, for they are founded upon the belief that the time must arrive when the slaves will be so multiplied as to become dangerous to their possessors. There are indeed no limits to the increase of population, black or upon the means of subsistence. By enlarging the space, generally speaking, you increase the quantity of food, and of course you increase the numbers of the people. Our own illustrious Franklin, with his usual sagacity, long ago discovered this important truth. "Was the face of the earth," he says, "vacant of other plants, it might be gradually sowed and overspread with one kind only, as for instance, with fennel; and were it empty of other inhabitants, it might, in a few ages, be replenished with one nation only, as for instance, with Englishmen." If this does not exactly happen, it is only because in their march, they are met and resisted by other plants and by other people, struggling like themselves for the means of subsistence.

By enlarging the limits for slavery, you are thus preparing the means for its indefinite increase and extension, and the result will be, to keep the present slave-holding States supplied to their wishes with this description of population, and to enable them to throw off the surplus, with all its productive power, on the West, as long as the country shall be able and willing to receive them. To what extent you will, in this way increase the slave population, it is impossible to calculate; but that you will increase it there can be no doubt, and it is equally certain that the increase will be at the expense of the free population.

The same gentleman to whom I have several times referred before, (Mr. Clay,) insists that this will not be the case. He says that the ratio of increase of slave population shows, that its activity is now at the maximum; and as this implies the existence of the most favorable circumstances, you cannot, by any change, accelerate the increase. He therefore infers, that if from twenty slaves in an old State, you take two, and transfer them to a new one, it is an actual diminution in the State from which they are taken to that amount, and putting the two States together, you simply change the place but not alter the quantity. Supposing the fact to be, as it is here assumed to be, that the activity of increase is now at its maximum, it affords a most conclusive argument against the necessity of diffusion. It proves that there is ample room, and abundant means of subsistence, within the limits that now circumscribe the slave population, and that no enlargement of those limits is necessary. But, sir, we must look a little into the future. Legislation, on this subject, is not merely for the moment we occupy. The whole scope of the argument against us, is founded upon the belief, that the time must come when the slaves will be straitened in the territory, large as it is, which now confines them. When that time shall arrive, I presume it will not be denied, that their numbers will be increased by enlarging the space for them, and then, certainly, you will have extended slavery, in every sense.

Will it be such a dispersion as the gentleman from Virginia, (Mr. Smyth,) has talked of?

has mentioned,) they were to be detained for a limited time, and then set at liberty; or, if they were to be mixed in society, and gradually lose their distinctive character in the mixture, dispersion would be highly expedient and just. But, they are negroes and slaves—so they are to continue. Their descendants are to be negroes and slaves, to the latest generation, and for ever chained to their present condition. Nature has placed upon them an unalterable physical mark, and you have associated with it an inseparable moral degradation, either of which opposes a barrier, not to be passed, to their coalescing with the society that surrounds them. They are, and for ever must remain distinct.

And now, let me ask gentlemen, where this diffusion is to end? If circumstances require it at present, will not the same circumstances demand it hereafter? Will they not, at some future time, become straitened in their new limits, however large? And what will you do then? Diffuse again; and what then? Even this diffusion will have its limits, and when they are reached, the case is without remedy and without hope. For a present ease to ourselves, we doom our posterity to an interminable curse. But we seem to forget, altogether, that while the slaves are spreading, the free population is also increasing, and, sooner or later, must feel the pressure, which it is supposed may at some time be felt by the slaves. Where you place a slave, he occupies the ground that would maintain a freeman. And who, in this code of speculative humanity, making provisions for times afar off, is to have the preference, the freeman or the slave?

In this long view of remote and distant consequences, the gentleman from Kentucky, (Mr. Clay,) thinks he sees how slavery, when thus spread, is at last to find its end. It is to be brought about by the combined operation of the laws which regulate the price of labor, and the laws which govern population. When the country shall be filled with inhabitants, and the price of labor shall have reached a minimum, (a comparative minimum I suppose is meant,) free labor will be found cheaper than slave labor. Slaves will then be without employment, and, of course, without the means of comfortable subsistence, which will reduce their numbers, and finally extirpate them. This is the argument, as I understand it. When the period referred to will arrive, no one can pretend to conjecture. Much less, would any one attempt to say, what number of slaves we shall have, (with the previous encouragement proposed to be given to them,) when this severe law shall begin to operate. But every prudent and feeling man will, I think, agree without hesitation, that he would rather see the experiment tried upon a small scale than a large one; that it would be much more easily and safely conducted, and with much less suffering, in the present slave-holding States, than if it were to embrace, in addition, the whole of the great territory

gentleman, what he supposes will happen in the mean time? The diminished price of labor, and the reduced means of subsistence, are, according to this theory, first to operate upon the freemen, and then upon the slaves, and upon both by producing a considerable degree of misery. Does he suppose that they will patiently submit, and wait till the slow destruction arrives? The two great classes, kept distinct by your laws, would, in such a struggle, like two men upon a single plank in the ocean, make a desperate effort each to secure to itself existence, by destroying the life of the other. When want and misery begin to press upon them, instinct will teach them how to seek relief, and deadly violence will be its agent. And what would then be the situation of the country? I shudder even to think of it. The present slave-holding States have a security in being surrounded by States that are free. But if the whole nation, or even a considerable part of it, were in the same condition, what security should we then have?

Again, sir, we are told, that the amendment in question will injure the rights of property, by depriving the owners of slaves of their unborn descendants, and by lessening the value of their lands, bought upon the presumption that Missouri would be a slave State. Sir, we have no right to meddle with the question of slavery in the existing States. Their own laws must regulate the subject, and they may modify it as to them shall seem best. But as a general position, independently of State provisions, it may safely be averred, that no man has a property in an unborn human being. We need not go far for the proof of this. The States that have abolished slavery, have done so by declaring, that the children to be born should be free; which would have been beyond their power, if there had been a property in the children before their birth. This principle, however, is so well established, that it need not be further insisted upon. The depreciation in the value of land, is a consequence not likely to happen. The reverse will be the case. Let any one compare the prices and the improvement of land in the free States, and in the slave-holding States, and he will be satisfied, that in this, as in every other respect, Missouri will be a great gainer by the restriction. But if it were otherwise, is the great policy of the nation in a point so vital —are the essential interests of justice and humanity, to yield to the pecuniary interests of a few individuals? Can you always avoid doing a partial injury by your public measures? When war is declared, what is the effect upon the merchant? When peace is made, how does it fare with the manufacturer? You cannot even alter the rate of duty, without affecting some interest of the community, either to its prejudice or benefit, and at last you must come to the consideration of the great question of national concern, to which minor considerations must give way.

pressed upon us, there is but a single one which deserves a moment's attention. It is that which arises out of the inquiry so often repeated, will you not suffer a man to migrate with his family? Those who have been accustomed to the labor and service of slaves, it is not to be denied, cannot at once change their habits, without feeling, at least, a great deal of inconvenience. It is also true, that the associations, which have been formed in families, cannot be broken up without violence and injury to both the parties; and in proportion as the authority has been mild in its exercise, will the transfer of it to other hands be disadvantageous, especially to the servant. But, it is impossible to make a discrimination, or to permit the introduction of slaves at all, without giving up the whole matter. If you allow slavery to exist, you must allow it without limits. The consequence is, that the State becomes a slave State. Free labor and slave labor cannot be employed together. Those who go there must become slaveholders, and your whole system is overturned. Besides, if the limited permission did not, of itself, produce the evil, to an unlimited extent, (as it certainly would,) it is liable to abuses, beyond all possibility of control, which would inevitably have that effect. The numbers of a family are not defined—the number of families of this sort, which a single individual may have, cannot be fixed. It is easy to see how, under color of such permission, a regular trade might be established, and carried on as long as there was any temptation of profit or interest. This argument, however, has been pressed, as if a prohibition to go with slaves, was, in effect, a prohibition to the inhabitants of a slave-holding State to go at all. I cannot believe this to be the case. They may go without slaves; for, though slaves are a convenience and a luxury to those who are accustomed to them, yet the inhabitants of the slave-holding States would hardly admit that they are indispensably necessary. Besides, they may take their slaves with them as free servants. But look at the converse. The introduction of slavery banishes free labor, or places it under such discouragement and opprobrium as are equivalent in effect. You shut the country, then, against the free emigrant, who carries with him nothing but his industry. There are large and valuable classes of people, who are opposed to slavery, and cannot live where it is permitted. These too you exclude. The laws and the policy of a slave State will and must be adapted to the condition of slavery, and, without going into any particulars, it will be allowed, that they are, in the highest degree, offensive to those who are opposed to slavery. It seems to me, sir, I may be pardoned for so far expressing an opinion upon the concerns of the slave-holding States—it seems to me, that the people of the south have a common interest with us in this question, not for themselves, perhaps, but for those who are equally dear to

vided. In the course of time, and before very long, it will happen that the younger children of southern families must look elsewhere to find employment for their talents, and scope for their exertion. What better provision can they have, than free States, where they may fairly enter into competition with freemen, and every one find the level which his proper abilities entitle him to expect? The hint is sufficient; I venture to throw it out for the consideration of those whom it concerns.

But, independently of the objections to the extension, arising from the views thus presented by the opponents of the amendment, and independently of many much more deeply founded objections, which I forbear now to press, there are enough, of a very obvious kind, to settle the question conclusively. With the indulgence of the committee, I will touch upon some of them.

It will be remembered, that this is the first step beyond the Mississippi—the State of Louisiana is no exception, for there slavery existed to an extent which left no alternative. It is the last step, too, for this is the last stand that can be made. Compromise is forbidden by the principles contended for on both sides. Any compromise that would give slavery to Missouri is out of the question. It is, therefore, the final, irretrievable step, which can never be recalled, and must lead to an immeasurable spread of slavery over the country beyond the Mississippi. If any one falter; if he be tempted by insinuations, or terrified by the apprehension of losing something desirable; if he find himself drawn aside by views to the little interests that are immediately about him—let him reflect upon the magnitude of the question, and he will be elevated above all such considerations. The eyes of the country are upon him; the interests of posterity are committed to his care; let him beware how he barters, not his own, but his children's birthright, for a mess of pottage. The consciousness that we have done our duty is a sure and never failing dependence. It will stand by us and support us through life, under every vicissitude of fortune, and in every change of circumstances. It sheds a steady and a cheering light upon the future, as well as the present, and is at once a grateful and a lasting reward.

Again, sir; by increasing the market for slaves, you postpone and destroy the hope of extinguishing slavery by emancipation. It seems to me, that the reduction in value of slaves, however accomplished, is the only inducement that will ever effect an abolition of slavery. The multiplication of free States will at the same time give room for emancipation, or to speak more accurately, for those who are emancipated. This, I would respectfully suggest, is the only effectual plan of colonization; but it can never take effect while it is the interest of owners to pursue their slaves with so

increase the number of slave-holding States, and you destroy the possibility of emancipation, even if every part of the Union should desire it. You extend, indefinitely, the formidable difficulties which already exist.

Nor does the mischief stop here. All liberal minds, and all parts of the Union, have with one voice agreed in the necessity of abolishing that detestable traffic in human flesh, the slave trade—the foreign slave trade. But reject the amendment on your table, admit Missouri without restriction, and you will inevitably introduce and establish a great inland domestic slave trade, not, it is true, with all the horrors of the middle passage, nor the cold-blooded calculation upon the waste of human life in the seasoning, but still with many of the odious features, and some of the most cruel accompaniments of that hateful traffic. From Washington to St. Louis, may be a distance of one thousand miles. Through this great space, and even a much greater, you must witness the transportation of slaves with the usual appendages of handcuffs and chains. The ties of domestic life will be violently rent asunder, and those, whom nature has bound together, suffer all the pangs of an unnatural and cruel separation. Unfeeling force, stimulated by unfeeling avarice, will tear the parent from the child, and the child from the parent—the husband from the wife, and the wife from the husband. We have lately witnessed something of this sort, during the period of high prices. Gentlemen of the south, particularly those from Virginia, who speak of their slaves as a part of their family, would start at this; they would reject, with scorn and indignation, even a suggestion, that they were to furnish a market for the supply of slaves to the other States. I can well believe, that in families where the relation has long subsisted, there are feelings that would revolt at such a thought—feelings that have considerably modified this severe condition, and grown out of the associations, it has, in a long course of time, produced. But can any one tell, what cupidity may win or necessity extort? No man is superior to the assaults of fortune; and, if he were, the stroke of death will surely come, and break down his paternal government, and then the slave dealer, whom he would have kicked from his enclosure like a poisonous reptile, presents himself—to whom? He cannot tell. Thoughts like these have often, I doubt not, produced the liberation of slaves. If gentlemen question our sincerity, let them consider at what period of life it is, that emancipation most frequently takes place. It is at that serious moment, when men sit down to settle their worldly concerns, and, as it were, to take their leave of the world. Then, it is, by the last will, to take effect when their own control is ended, that owners restore their slaves to freedom, and, by what they certainly consider an act of justice, surrender them to themselves, rather than leave them to the disposal of they know not whom. Let gentlemen from

upon the subject of slavery, is every where improved, and still improving. It has already destroyed that monstrous inhumanity called the slave trade. I fear that such a measure, as is now proposed by the opponents of the restriction, would not merely check and retard its progress. I seriously fear that it may gradually work an entire change. The effects are not to be contemplated without the deepest anxiety.

The political aspect of the subject is not less alarming. The existence of this condition among us, continually endangers the peace and well-being of the Union, by the irritation and animosity it creates between neighboring States. It weakens the nation while it is entire. And if ever a division should happen, can any one reflect, without horror, upon the consequences that may be worked out of an extensively prevailing system of slavery? We are told, indeed, both in the House and out of it, to leave the matter to Providence. Those who tell us so, are nevertheless active and eager in the smallest of their own concerns, omitting nothing to secure success. Sir, we are endowed with faculties that enable us to judge and to choose—to look before and after, however imperfectly. When these have been fairly and conscientiously exerted, we may then humbly submit the consequences, with the hope and belief, that whatever they may be, they will not be imputed to us. The issue of our counsels, however well meant, is not in our hands. But if for own gratification, regardless of all considerations of right or wrong, of good or evil, we hug a vicious indulgence to our bosom, until we find it turning to a venomous serpent, and threatening to sting us to the heart, with what rational or consoling expectation, can we call upon Providence to tear it away and save us from destruction.

It is time to come to a conclusion; I fear I have already trespassed too long. In the effort I have made to submit to the committee my views of this question, it has been impossible to escape entirely the influence of the sensation that pervades this House. Yet I have no such apprehensions as have been expressed. The question is indeed an important one; but its importance is derived altogether from its connection with the extension, indefinitely, of negro slavery, over a land which I trust Providence has destined for the labor and the support of freemen. I have no fear that this question, much as it has agitated the country, is to produce any fatal division, or even to generate a new organization of parties. It is not a question upon which we ought to indulge unreasonable apprehensions, or yield to the counsels of fear. It concerns ages to come and millions to be born. It is, as it were, a question of a new political creation, and it is for us, under Heaven, to say, what shall be its condition. If we impose the restriction, it will, I hope, be finally imposed. But, if hereafter it should be found right to remove it, and the State consent, we can remove

ever gone all the efforts that have been made by the non-slaveholding States, to repress and limit the sphere of slavery, and enlarge and extend the blessings of freedom. With it, perhaps, is gone for ever the power of preventing the traffic in slaves, that inhuman and detestable traffic, so long a disgrace to Christendom. In future, and no very distant times, convenience, and profit, and necessity, may be found as available pleas as they formerly were, and for the luxury of slaves, we shall again involve ourselves in the sin of the trade. We must not presume too much upon the strength of our resolutions. Let every man, who has been accustomed to the indulgence, ask himself if it is not a luxury—a tempting luxury, which solicits him strongly and at every moment. The prompt obedience, the ready attention, the submissive and humble, but eager effort to anticipate command—how flattering to our pride, how soothing to our indolence! To the members from the south I appeal, to know whether they will suffer any temporary inconvenience, or any speculative advantage to expose us to the danger. To those of the north, no appeal can be necessary. To both, I can most sincerely say, that as I know my own views on this subject to be free from any unworthy motive, so will I believe, that they likewise have no object but the common good of our common country; and that nothing would have given me more heartfelt satisfaction, than that the present proposition should have originated in the same quarter to which we are said to be indebted for the ordinance of 1787. Then, indeed, would Virginia have appeared in even more than her wonted splendor, and spreading out the scroll of her services, would have beheld none of them with greater pleasure, than that series which began, by pleading the cause of humanity in remonstrances against the slave trade, while she was yet a colony, and, embracing her own act of abolition, and the ordinance of 1787, terminated in the restriction of Missouri. Consider, what a foundation our predecessors have laid! And behold, with the blessing of Providence, how the work has prospered! What is there, in ancient or in modern times, that can be compared with the growth and prosperity of the States formed out of the North-west Territory? When Europeans reproach us with our negro slavery, when they contrast our republican boast and pretensions with the existence of this condition among us, we have our answer ready—it is to you we owe this evil—you planted it here, and it has taken such root in the soil we have not the power to eradicate it. Then, turning to the west, and directing their attention to Ohio, Indiana and Illinois, we can proudly tell them, these are the offspring of our policy and our laws, these are the free productions of the constitution of the United States. But, if, beyond this smiling region, they should descry another dark spot upon the face of the new creation—another scene of negro slavery, established by ourselves, and spreading continually towards the further ocean, what shall we say then? No, sir, let us follow up the work our ancestors have begun. Let us give to the world a new pledge of our sincerity. Let the standard of freedom be planted in Missouri, by the hands of the constitution, and let its banner wave over the heads of none but freemen—men retaining the image impressed upon them by their Creator, and dependent upon none but God and the laws. Then, as our republican States extend, republican principles will go hand in hand with republican practice—the love of liberty with the sense of justice. Then, sir, the dawn, beaming from the constitution, which now illuminates Ohio, Indiana, and Illinois, will spread with increasing brightness to the further west, till, in its brilliant lustre, the dark spot which now rests upon our country shall be for ever hid from sight. Industry, arts, commerce, knowledge, will flourish with plenty and contentment for ages to come, and the loud chorus of universal freedom, re-echo from the Pacific to the Atlantic, the great truths of the declaration of independence. Then, too, our brethren of the south, if they sincerely wish it, may scatter their emancipated slaves through this boundless region, and our country, at length, be happily freed for ever from the foul stain and curse of slavery. And if (may it be far, very far distant!) intestine commotion—civil dissension—division, should happen—we shall not leave our posterity exposed to the combined horrors of a civil and a servile war. If any man still hesitate, influenced by some temporary motive of convenience, or ease, or profit, I charge him to think what our fathers have suffered for us, and then to ask his heart, if he can be faithless to the obligation he owes to posterity!

WILLIAM GASTON.

JUDGE WILLIAM GASTON was descended, on the paternal side, from an influential and distinguished Huguenot ancestry. On the revocation of the Edict of Nantes, they fled from France, and settled at Ballymore in Ireland. There, Doctor Alexander Gaston, the father of the present subject, was born. He studied medicine in the College of Edinburgh, was appointed to a surgeoncy in the English navy, and was present at the capture of Havana. Soon after that event he resigned his situation, sailed for America, and landed at Newbern, North Carolina, where he commenced the practice of medicine. In the spring of 1775, he married Margaret Sharpe, by whom he had three children; two sons and a daughter. William, the second child, was born, at Newbern, on the nineteenth of September, 1778. His brother died during infancy, and, in the summer of 1781, his father was murdered by a band of tories, who had joined the British standard; a short time previous borne in triumph throughout the southern colonies. The particulars of his tragical death will not be uninteresting in this place, and will verify the eloquent exclamation made by his son during an exciting Congressional debate, that "he was baptized an American in the blood of a murdered father." Mr. Gaston's biographer thus recounts the circumstances of the case:—Doctor Gaston was one of the most decided whigs in North Carolina, and as early as the month of August, 1775, was elected, by the Provincial Congress, a member of the committee of safety, for the district of Newbern. At various periods of the war he served in the army, generally in his professional capacity, and once, in the spring of 1776, as captain of a band of volunteers, marched to the aid of Wilmington, on the approach of the British forces under the command of Sir Henry Clinton. By his zealous and ardent support of the cause of freedom, he acquired the confidence of the patriots, and was distinguished by the bitter hatred of the loyalists, who, though in a minority, were still numerous in the vicinity in which he lived. In the month of August, 1781, Major James H. Craig,* of the British army, whose head-quarters were at Wilmington, marched at the head of a small detachment of regular troops, and a gang of tories, towards Newbern, with a view of investing that place. The tories were several miles in the advance, and rapidly entered the town. The whigs, thus surprised, had but little opportunity to make a regular stand, and after an ineffectual resistance, gave up the contest. Doctor Gaston, however, knew too well the hatred and ferocity of his foes, to surrender himself into their hands, and hurrying off his wife and children, endeavored to escape across the river Trent, and thus retire to his plantation on Bryce's creek. He reached the wharf, accompanied by his family, but before he could embark them in the light scow which he had seized, the tories in a body came galloping down, in their eager and bloody pursuit, and forced him to push off into the stream, leaving his wife and children unprotected on the shore. He was standing erect in the boat, which floated about forty yards from the bank, watching the situation of his wife, and while she, at the feet of his pursuers, with all the agony of anticipated bereavement, was imploring mercy for herself and life for her husband, a musket, levelled over her shoulder, was discharged and the victim fell dead.†

By this sad occurrence the early training and education of young William devolved entirely on his mother. To this object she devoted herself with untiring and affectionate energy. Pure, high-minded, deeply religious, and noble in her own life, she left an impress of these sterling qualities on her son's character, which rendered him peculiarly eminent.

In the autumn of 1791, young Gaston was entered in the college at Georgetown, now of the District of Columbia, where he remained until the spring of 1793. At that time he abandoned his studies on account of severe illness, but a return to his native climate renewed his health, and he was placed under the superintendence of a private tutor, to prepare for college. After a few months' instruction he joined the junior class of Princeton College, from whence he received his degree, with the highest honors of the institution, in 1796. He studied law with Francis Xavier Martin, then a prominent practitioner; and subsequently a judge of the Supreme Court of Louisiana; and at the age of twenty years (1800) commenced practice. The next year, on arriving at his majority, he was elected a member of the senate of his native State. In 1808, he was chosen an elector of President and Vice President of the United States, and the same year became a member of the House of Delegates, from the district in which he resided. Soon after its assembling, he was chosen the presiding officer. In this position he rendered services valuable to his constituency and honorable to himself: among which was the preparation of the act regulating the descent of inheritances.

In 1813, he was elected to the lower House of the Congress of the United States, and continued there by re-election, until 1817, when he voluntarily retired to the less exciting and more agreeable pursuits of his profession and his home. His congressional career was distinguished by a sincere devotion to the interests of the country—a high moral and political rectitude. He was an ardent federalist, and, as the "acknowledged leader of that party," opposed the celebrated loan bill of 1815. In his speech on that question he manifests extensive views of national policy, and bases his arguments on the firm considerations of justice, honesty, and humanity.

The next great effort of Mr. Gaston in Congress, was made in 1816, during the exciting and able discussions on the motion of Mr. Stanford of North Carolina, to expunge *the previous question* from the rules of the House. In this debate Mr. Gaston was opposed by Mr. Clay, in one of his most powerful speeches, and to him, in the main, he directed his reply. A short extract will give the character of the argument he used on that occasion. After a brief and clear exordium, he remarked:—"And, sir, I rejoice equally at the opposition which the motion of my colleague has encountered. If this hideous rule could have been vindicated, we should have received that vindication from the gentleman who has just resumed his seat, Mr. Clay. If his ingenuity and zeal combined, could form for the previous question no other defence than that which we have heard, the previous question cannot be defended. If beneath his shield it finds so slight a shelter, it must fall a victim to the just, though long delayed vengeance of awakened and indignant freedom. If Hector cannot defend his Troy, the doom of Troy is fixed by fate. It is indispensable, before we proceed further in the consideration of this subject, that we should perfectly understand what is our previous question. Gentlemen may incautiously suppose that it is the same with what has been called the previous question elsewhere. This would be a most fatal mistake. Our previous question is altogether *sui generis*, the only one of its kind; and to know it, we must consider not merely what is written of it in our code, but what it has been rendered by exposition and construction. Our previous question 'can only be admitted when demanded by a majority of the members present.' It is a question, 'whether the question under debate should now be put.' On the previous question 'there shall be no debate;' 'until it is decided, it shall preclude all amendment and debate of the main question.' If it be decided negatively, viz., that the main question shall *not* now be put, the main question is, of course, superseded; but if it be decided affirmatively, that the main question *shall* now be put, the main question is to be put *instantaneously*, and no member can be allowed to amend or discuss it. The previous question is entitled to precedence over motions to amend, commit, or postpone the main question, and therefore, when admitted, puts these entirely aside. This, according to the latest improvement, is now our rule of the previous question; and certainly in your patent

ends of tyranny. It is a power vested in a majority, to forbid at their sovereign will and pleasure, every member not of that majority, from making known either his own sentiments, or the wishes or complaints of his constituents, in relation to any subject under consideration, or from attempting to amend what is proposed as a law for the government of the whole nation." Mr. Gaston continued in this impassioned and vehement manner to the end, and at once excited the astonishment and admiration of the House.

After his retirement from Congress until 1834, he was generally engaged in the duties of his profession; but, during the same time, was for a long period a member of the North Carolina assembly. In that body, it is said, he delivered many of his ablest and most brilliant speeches; two of which are mentioned with peculiar approbation: one, on the currency of the State, delivered in 1828; the other in defence of the constitution of North Carolina. Of the latter, one of his contemporaries says:—"That speech will long be remembered. The Constitution of the State is a venerable instrument. It came down to the present generation, from the sages of the Revolution, and is loved and venerated in North Carolina for its very antiquity. It was a fit subject for the exhibition of his learning, eloquence and patriotism, and these resources of his mind he poured forth with the most brilliant profusion.

In 1834, Mr. Gaston was elevated to the bench of the Supreme Court of North Carolina, where he remained until his death. His judicial decisions evince the most profound acquaintance with the science of the law, and are ranked, by competent authority, among the ablest legal arguments of the United States. In the prosecution of his duties as judge he was affable, patient and devoted. On the day of his death, January the twenty-third, 1843, he took his seat as usual, though he had for several days experienced quite severe illness. He remained on the bench until nearly two o'clock in the afternoon, giving attention to a case then under consideration, when he was attacked with faintness, and other violent symptoms. He was then taken to his room, and soon relieved; he became quite cheerful, and conversed freely with his friends. In the course of the evening he related several anecdotes, and gave a description of a party he attended in Washington many years previous. Speaking of one whom he met on that occasion, who declared himself a free-thinker in matters pertaining to religion, he said, "From that day I always looked on that man with distrust. I do not say that a free-thinker may not be an honorable man, or that he may not, from higher motives, scorn to do a mean act; but I dare not trust him. A belief in an All-ruling Divinity, who shapes our ends, whose eye is upon us, and who will reward us according to our deeds, is necessary. We must believe and feel that there is a God; all-wise and almighty." As he was uttering the last sentence, he rose to give it greater emphasis, when he suddenly fell back and expired.*

This speech, on a bill to authorize a loan of twenty-five millions of dollars, was delivered by Mr. Gaston, in the House of Representatives of the United States, on the eighteenth and nineteenth days of February, 1814.

Mr. CHAIRMAN: I fear I am about to engage in a very injudicious attempt—I fear that the patience of the committee is exhausted, and that it would be idle to hope for their attention. It was originally my wish to claim their notice at an early stage of the debate; but I found this wish was not to be effected but by a competition for the floor, and I thought such a competition not justified by the nature of the remarks which I had to submit. Under these impressions I had made up my mind to wait until some favorable unoccupied interval should be presented; and I should not now have presumed to anticipate other gentlemen who seem disposed to address you, but for some extraordinary observations which have just been uttered, and which in my opinion demand immediate animadversion.

The gentleman from Tennessee, who has this moment resumed his seat, (Mr. Grundy,) seems a little sore that his doctrine of Moral Treason, which he promulgated at the last session, should

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* National Intelligencer, 1843; American Almanac, 1845;

sons for whose benefit he had compiled it. I am not of the number of those, Mr. Chairman, who have deemed this doctrine worthy of examination. As originally understood, it was so preposterous and so repugnant to the principles of our constitution, that every intelligent freeman found its refutation in the consciousness of his own liberty. By subsequent explanations and definitions it has been so attenuated and subtilized, that what was never very distinct now almost eludes perception. According to the last attempt at exposition, if it have any meaning, it would seem to embrace systematic efforts to persuade capitalists not to lend money, and the unthinking youth not to enlist as soldiers to carry on the war against Canada. His denunciations of such a system—of the existence of which I know nothing; and which, if it exist, is innocent or criminal according to the motives from which it springs—pass by me altogether unheeded. But his unfounded imputations upon some of the best men and truest patriots of the country, and his attempt to support his doctrine by their example, ought to be repelled, and a very short notice will suffice for that purpose.

The gentleman has referred to the act of 14th July, 1798, the much misrepresented and abused sedition law. It is difficult for me to express my astonishment at the construction which he affixes to the first section of this act. Need we wonder at any error, however gross, at any prejudice, however irrational, prevailing in respect to party measures and party opinions, when we find a professional gentleman assigning to a law a meaning which, but for what we have heard, would have been pronounced impossible on the part of any man of ordinary good sense? The first section of this law declares, that if any persons shall conspire together with intent to oppose any measures of the government of the United States, and in pursuance of such intent shall counsel, or attempt to procure, insurrections, riots, &c., they shall be deemed guilty of a misdemeanor punishable by fine and imprisonment. Can it be necessary to ask what was meant in this law by the expression "with intent to oppose any measures of the government?" To oppose, in its plain original sense, necessarily implies physical resistance—the exercise of force. It is metaphorically used, indeed, to signify dissuasion, as the word to combat is applied to denote a controversy in argument; and a law prohibiting single combats might as well be interpreted to forbid controversies in discourse, as a law prohibiting opposition to the measures of government construed to interdict the expression of honest opinions that may retard their operations. But the act is still more explicit. To constitute crime, it requires not only that the persons should combine "with intent to oppose the measures of government," but that in pursuance of such intent they should proceed to "counsel or attempt to procure insurrections, riots," &c. The design of the act is unequivocal—it is to check and itself in actual war against the nation. It was altogether unnecessary, if there had been any common law applicable in the courts of the United States; for in every government under Heaven the acts which it describes are made punishable. A doubt whether the common law had a federal existence alone occasioned the passing of the law. Yet we are gravely asked if, in the year 1798, men had combined together to dissuade persons from lending money to the government, or from enlisting in the army; whether they could not have been punished under this law? No, sir.—No, sir. There was not a prosecuting officer in the United States so ignorant of his duty as to dare to bring forward an indictment upon such a pretext.

To the next section of this abused act the gentleman has given an interpretation as destitute of plausibility even as his exposition of the first section. To find a warrant for his doctrine of moral treason, or to lessen its odium by casting reproach on others, the gentleman has charged that this section subjected to indictment and punishment the publication of scandalous and malicious writings against the government, although they might be true—and that had it not been for the third section of the act, which his predecessor moved in the House of Representatives after the bill had passed the Senate, the truth would have afforded no defence on an indictment for a libel against the government. Sir, this position is utterly untenable. No part of it is true. The gentleman must be presumed to know, and ought to recollect, that when an offence is created by statute, every word of the description of the offence is material and essential. What are the words describing the offence? "If any person shall write, print, or publish any false, scandalous and malicious writing against the government, &c." It is a necessary part of the offence that the writing should be false. If it be not false, then the crime has not been committed, the law has not been broken, and punishment cannot be inflicted. Why then, I may be asked, was the third section, moved by the gentleman's predecessor, inserted in the law? The answer is, to avoid all cavil, all real or pretended doubt, all foundation for the charge that would have been made had it been rejected. It might have been pretended that on an indictment for libel at common law, the truth or falsehood of the charge was not a matter of inquiry before the jury, so on an indictment for libel under this act, notwithstanding its plain words, the falsehood of the publication was not material to constitute the offence; and had the proposed amendment been rejected, from the specimen we have this day had of the course of legal thinking of one of the bar of Tennessee, there is a moral certainty, that the law would have been there stigmatized as designed to prohibit the publication of truth. To adopt the amendment removed all pretext for such a misrepresentation. It was accordingly incorporated into the

of any new principle, it was expressed as declaratory of the preceding section, "And be it enacted and declared, that it shall be lawful for the defendant, on trial, to give in evidence, in his defence, the truth of the matter charged as a libel." No, sir—the idea of punishing truth when published against the officers of the government was reserved until more recent times—until the abused sedition law had expired, and the champions of a free press were safely fixed in power. Surely the gentleman has not been so inattentive to the course of public proceedings as never to have heard of the case of Harry Croswell. He, for an alleged libel on Mr. Jefferson, was indicted at common law, not under the horrible sedition act; he was not permitted to prove the truth of his publication, and was thus convicted!

I have done, sir, with the gentleman from Tennessee, his moral treason, and his exposition of the sedition law—and will endeavor to call your attention to subjects not altogether so foreign from the bill upon the table. The object of the bill is to authorize a loan to the government of the United States. The precise proposition before you is to declare what sum shall be borrowed; "twenty-five millions of dollars." Enormous as is the addition which is thus proposed to be made to our debts, could it be shown to be necessary to accomplish any purposes demanded by the honor and welfare of the country, it assuredly would meet with no opposition from me. Is a loan wanted, or revenue required to enable the government to pay off its just engagements? to give security and protection to any part of our territory, or any portion of our citizens? to afford to our gallant navy (that precious relic of better days) such encouragement and extension as may enable it more effectually to vindicate our rights on the element where they have been assailed? My voice and assistance shall be cheerfully rendered to obtain them. Let the present proposition be withdrawn, and let it be moved to fill the blank with such sum as shall be adequate to supply any deficiency of revenue wanted for these purposes, and I will second the motion. Nay, sir, should the present proposition be rejected, (for while it is pending, a smaller sum cannot be moved,) and none of those who are most conversant with the state of our finances, should come forward with a further proposition, I will myself undertake to move the sum which shall appear competent to effect all these objects. But, sir, this enormous sum is wanted not for these purposes; it is avowedly not necessary, except to carry on the scheme of invasion and conquest against the Canadas. To this scheme I have never been a friend; but to its prosecution now, I have invincible objections, founded on considerations of justice, humanity, and national policy. These objections I wish to explain and enforce, and thus avail myself of an opportunity of discussing some of the most in-

do will avail nothing; but, sir, representing a respectable portion of the American people who are suffering with peculiar severity from the pressure of this unfortunate and mismanaged war, who, with me, believe no good is to grow out of it, and who apprehend, from its continuance, evils, compared with which all they have yet suffered are but trifles light as air—I should be unfaithful to them and myself, if I did not interpose my best efforts to arrest the downhill career of ruin. In performing this duty I shall certainly say the things I do think. Endeavoring to use such language only as is consistent with self-respect and decency towards those who differ from me in opinion, I mean freely to exercise the right which belongs to my station.

Right! did I say, sir? The expression is inaccurate; once indeed there did exist in this House the right of free discussion. It was once deemed a constitutional privilege for every member to bring forward any proposition he deemed beneficial to the country, and support it by whatever arguments he could adduce; to offer amendments to the propositions of others, so as to render them, in his judgment, more unexceptionable; and to state the reasons of his dissent from any measure on which he was called to vote, and endeavor to impress his opinion on others. No doubt a vast portion of the good people of this republic yet believe that such is the course of proceedings here. Little do they dream of the complicated machinery, by means of which every privilege, except that of thinking, is made to depend on the pleasure, the courtesy, the whim of the majority. By certain interpolations into our practice, but which nowhere show their hideous front in our written code, the system of suppressing the liberty of speech is brought to a degree of perfection that almost astonishes its authors. A gentleman wishes to bring forward an original proposition—he must first state it, and obtain permission from a majority of the House to let it be considered, before he can show the propriety of adopting it, or ask even for a decision upon it. Thus is annihilated the right of originating a proposition. But a proposition is originated by others, it is passed through the ordeal of consideration, and he is desirous of amending its defects or of exposing its impropriety. This is, perhaps, deemed inconvenient by the majority. It may give them trouble, or bring forward a discussion which they do not wish the people to hear, or detain them too long from their dinners—a new species of legerdemain is resorted to. The previous question, utterly perverted from its original and legitimate use, is demanded; the demand is supported by a majority. In an instant all the proposed amendments disappear; every tongue is so fettered, that it can utter but aye or no, and the proposition becomes a law without deliberation, without correction, and without debate. And this process is called legislation! And the

Sir, this procedure must be corrected, or freedom is ejected from her citadel and wounded in her very vitals. Inconveniences also result to the majority from this tyrannical exercise of power, sufficient, perhaps, to counterbalance all the benefits which can be derived from it. Gentlemen often complain that the minority do not pursue the practice which is adopted by minorities elsewhere. In England, say they, the opposition address the House and the nation only on great fundamental questions involving disputed principles, and do not hang on the skirts of every bill, fighting the ministry through all the details of their measures. Why is not the same course pursued here? The answer is obvious. Here the minority are not allowed to bring forward these great fundamental questions—they have no opportunity of showing their views, except such as may be casually afforded by some measure of the majority, on which they are good natured enough to allow debate. Unless they avail themselves of such a bill in every stage of it, as a peg on which to hang their observations, they must be utterly mute. Thus it happens, too, that there is frequently not any discernible connection between the topics discussed, and the subject supposed to be under debate. Perhaps the very course I am pursuing is an apt illustration of these facts. Some weeks since I submitted to the House a resolution which I thought eminently deserving of attention—a resolution "that pending our negotiation with Great Britain, it is inexpedient to prosecute a war of invasion and conquest against the Canadas." This resolution could not be discussed, for the House would not vouchsafe to it a consideration. But, as on the proposition now before you, debate is indulged, and has assumed a latitude that seems to permit every thing connected with the war, I am willing to embrace the occasion to support my favorite proposition, to which a regular hearing has been refused. Grateful even for this opportunity, I acknowledge the courtesy which is shown me by the majority; sorely as I feel the degradation of indirectly using as a favor what, as a freeman and the representative of freemen, I ought openly to enjoy as a right.

It is very far from my design to enter into a particular inquiry as to the origin of this war, or as to its causes whether technical or real. Such an inquiry would present a theme too important and too extensive to be taken up as collateral or subsidiary to some other investigation. At the present moment, too, it is not so essential to know how this war has been produced, as it is to ascertain how it ought to be prosecuted, and how it may be speedily and fairly brought to a close:—So far only as a knowledge of the origin and causes of this war may be useful in producing this result, is it my purpose now to consider them.

An honorable gentleman from South Carolina (Mr. Calhoun) claims for this war the character of defensive. Sir, I am not disposed to question the motives of any man, or to arraign the purity of his intentions. Charity commands us to suppose that he who asserts a proposition believes it to be true, and that he who supports a measure does so from a conviction that it is right. But, sir, the character of a war is not to be decided by the motives of those who support it, but by the nature of its operations, and of consequence that its character is not defined by the nature of these operations. But, sir, he is incorrect in supposing that its character is to be tested by the motive which occasioned its institution. War is offensive or defensive, simply as it is instituted by or against a nation. It is an appeal to force to decide controversies between sovereigns who admit of no other tribunal to determine their rights. There is a perfect analogy in this respect between nations at war, and individuals litigating in a court of justice. He who commences the process is the actor—he who is summoned to the controversy, has the defensive part, and it is in this view immaterial whether the motive to litigation be found in an honest desire to claim what is due, or in the malignant wish to oppress and defraud. For the correctness of these ideas, I rely not on my own judgment. This ought not without hesitation to be opposed to that of the honorable gentleman who, independently of his personal claims to attention as chairman of the committee of foreign relations, must be presumed to be particularly conversant with all questions connected with national law. Any person who has the curiosity to test these sentiments by the authority of jurists, will find them explicitly recognized by Burlamaqui, vol. 2. part 4. chapt. 3. § 5., and by Vattel—b. 3. chapt. 3. § 35 and 37.

Nor let it be deemed, sir, of no importance whether this war be called defensive or offensive. It is always of moment that things should be called by their right names. Many of the vices and most of the errors of men arise from the misapplication of terms. The reasoner, who uses words to convey a meaning variant from their received signification, will probably occasion error, however precise his definitions. In spite of definitions, the hearer appropriates to his expressions the sense which usage has associated, and a confusion of ideas fatal to truth is the unavoidable consequence. Many phrases, too, besides their primary meaning, convey a secondary sense of commendation or blame. By an artful use of these, the sophist is enabled to convert the honest prejudices of man, the guards of his security, into the instruments of his deception. The sagacious Mirabeau, than whom none better understood the arts which render the human understanding and passions subservient to the tyranny of fraud, he who so long "rode in the whirlwind, and directed the storm" of the most furious of revolutions; compressed the elements of his science into one sententious maxim, "words are things." But the distinction between offensive and defensive war has peculiar claims upon our recollection. So fatal is war to the best interests of the human family, that a tremendous responsibility always rests upon the nation that commences it. This responsibility attaches through all its stages, and is awfully increased into certain guilt, by the neglect of any fair opportunity to restore the

consideration which emphatically creates the obligation to terminate its horrors as speedily as justice will permit—will frequently be found to present the greatest obstacles to efforts at reconcilation.

The advocates for this war, vieing with each other in zeal for its justification and continuance, do not precisely agree in opinion, as to its causes, or as to the objects for which it is to be prosecuted. The gentleman from Pennsylvania who presides over your judiciary committee (Mr. Ingersoll), in an elaborate argument seems desirous to prove (I am not certain which) either that the war is a consequence of the violation on the part of Great Britain of his favorite principle "free ships make free goods," or is to result in the establishment of this principle. This comprehensive dogma the gentleman contends to be a part of the original unadulterated code of national law, consecrated by the treaty of Utrecht, strenuously asserted by Britain herself in her dispute with Spain, in the year 1737, recognized in her commercial treaty with France, in 1786, and vitally essential to our maritime interests. The gentleman from Virginia, whom I yesterday heard with much pleasure (Mr. Jackson,) dissents from his political friend, and declares that this maxim has never been asserted by our government under any administration, as founded on the common law of nations. Although the gentleman from Virginia is, in this respect, unquestionably correct, yet it is not certain that the chairman of the judiciary committee is altogether erroneous in attributing to the administration an expectation of establishing, by this war, some such theory. That the neutral flag shall protect all that it covers from capture, is a very convenient doctrine for a nation frequently at war with an adversary of decidedly superior maritime strength. France, who, with occasional short intervals, has been for centuries at war with England, has very naturally wished to incorporate this doctrine into the law of nations. Her imperial master has adopted it as one of the elementary principles of his new maritime code, which he solemnly promulgated in his decree of Berlin, of November, 1806, and in support of which he has used every violence and stratagem to array the nations of the world into one great maritime confederacy. At least, as early as the infamous Turreau letter of June, 1809, the executive of this country was perfectly apprised of the existence of such a confederacy, of the purposes which it was to uphold, and of the determination of France to bribe or compel our accession to it. The decree of the great protector of the confederacy, of the date of April, 1811, though probably not issued till May, 1812, announced in language sufficiently distinct, that this claim had been so far complied with on our part as to exempt us from the further application of the penalties of disobedience—And our declaration of war against the sole recusant of exertion to vindicate the new religion of the flag, which like the superstition of the sanctuary was to protect every fraud, and shelter every crime. Extravagant therefore, as the positions of the gentleman from Pennsylvania may be thought by the far greater part of this committee, they may have more countenance from the administration than is generally suspected, and on this account may deserve a rapid and transient examination. The assertion that by the general law of nations the character of the vessel gives a character to the goods, is unequivocally denied. The actual reverse of the assertion is maintained by jurists generally with a harmony that forbids doubt.

Instead of detailing their opinions separately, permit me to give the language of one who wished well to the gentleman's doctrine, who had often carefully explored the musty volumes of national law, and who was never apt to carry his admissions beyond the line which candor prescribed. Mr. Jefferson in his letter to Genet, of the 24th July, 1793, expresses himself thus: "I believe it cannot be doubted but that by the general law of nations, the goods of a friend found in the vessel of an enemy are free, and the goods of an enemy found in the vessel of a friend are lawful prize. It is true that sundry nations, desirous of avoiding the inconveniences of having their vessels stopped at sea, ransacked, carried into port, and detained under pretence of having enemy's goods on board, have in many instances introduced another principle between them, that enemy bottoms shall make enemy goods, and that friendly bottoms shall make friendly goods; a principle much less embarrassing to commerce, and equal to all parties in point of gain or loss—but this is altogether the effect of particular treaty controlling in special cases the general principles of the law of nations, and therefore taking effect between such nations only as have agreed to control it." If the gentleman will examine the treaties to which he has adverted, the commercial treaty of Utrecht, between England and France (which by the bye the House of Commons refused to sanction), and the subsequent commercial treaty of Mr. Pitt, in 1786, he will find the language on this head unequivocal. The arrangement is declared to be made with a view to prevent the embarrassments and dissensions that would arise without such an arrangement—or in other words, from the application of the principles of the common law of nations. Nor is it at all strange that Britain, in a commercial treaty, from which she expected to derive immense advantages, should acquiesce in such an arrangement as between her and France. For it is obvious that no practical effect could result from it, except when one was at peace and the other at war. And such a state of things has so rarely happened that its recurrence might be numbered among political impossibilities.

The "no search" clamor in England of 1737,

to do with the belligerent right to capture enemy's property conveyed in neutral ships, as the "no search" cry made about thirty years afterwards in the case of John Wilkes and General Warrants. The dispute of 1737 with Spain, grew out of a municipal claim asserted by that government and of the rigorous practice of their Guarda Costas, to search British vessels hovering on the coasts of the Spanish colonies for prohibited articles designed to be smuggled into them—a claim said to be repugnant to the treaty of Seville, and certainly very inconvenient to the illicit trade between Jamaica and the Spanish main—and a practice enforced with all that barbarity which usually characterizes the minions of custom-house and revenue tyrants. How far the establishment of the gentleman's project would be beneficial to this country, is perhaps not so clear. At a time when we had no capital to afford employment to our navigation, it certainly would have been advantageous. But since that period has passed away, the most enlightened commercial men will tell you, they wish for no such innovation. Its effect would be, to give us, when neutrals, the benefit of being among the carriers of the commodities of the weaker maritime belligerent for freight. But the effect of the old principle is to give us the profit which results, not merely from the carriage, but the purchase and re-sale of these commodities, with almost a monopoly in either market.

The gentleman from Pennsylvania has assigned another cause for the war, in which he has obtained the concurrence of several of his friends —the instigation, by the British government, of Indian wars. Although, sir, this theme of popular declamation has almost become trite; although the tomahawk and the scalping knife have been so often brandished with rhetorical ambi-dexterity, that their exhibition almost ceases to excite interest; yet far be it from me to think or speak lightly of the cruelties of savage warfare, or to conceal my utter abhorrence and detestation of them. But it is a different, a very different question, whether the Canadians have armed the Indians to join in defence against a common invader, or had, previously to war, instigated them to hostilities against us. This last charge I do not believe—no evidence has been given to warrant it, that I have yet heard. Over the affair of Tippecanoe, the commencement of Indian war, there hovers a mystery which ought to be dissipated, but which the government will not dispel. I have sought, honestly sought for information. Of official, there is little or none. From private sources, not likely, in this respect, to mislead, (for they are friendly to this war, and connected with the western interest and feeling,) I learn that the great cause of Indian hostilities is to be found where experience and history would prompt us to look for it—is to be found in our cupidity for their lands, and their jealousy and distrust of our superior intelligence and force, almost uninterrupted in this country, both before and since the Revolution. They need no other instigations than are to be found in the inconsistent views, interests, claims, passions and habits of neighboring yet distinct races of people. Sir, General Harrison's treaty of November, 1809, was the mine of the great Indian explosion. The Indians complained, I know not how justly, that in that treaty they were cheated of lands which the parties to it had no right to convey, and never meant to convey. There are gentlemen in this legislature who know that Tecumseh immediately afterwards avowed his fixed purpose to vindicate by force, and by an union of the red men, the rights of his tribe and the menaced independence of the whole race. And we all know (the fact is on record), that shortly after this treaty the British governor general of Canada caused it to be officially communicated to the government of the United States that the Indians were meditating hostile designs. Sir, the holy command, "thou shalt not bear false witness against thy neighbor," applies even to an enemy. I will not sanction this charge without evidence, and against evidence, lest I violate this high injunction. I am not a disciple of that new moral school which would construe this divine prohibition, as the gentleman from Tennessee, Mr. Grundy, has expounded the commandment, "thou shalt not kill," as a "mere municipal regulation applying solely to the Jews!"

But this war, say its advocates, nearly one and all, was declared to protect our seamen against impressment—in fashionable phrase, for "sailors' rights." There is no doubt, sir, that the conflicting claims of the two countries on the subject of seamen, and the occasional abuse of the practice of search for British seamen on board of American merchantmen, had excited serious dissatisfaction in America—yet I hazard nothing by the assertion, that the question of seamen was not a cause of this war. I remember full well the characteristic special pleading of the gentleman from Tennessee on this subject, at the last session, "that he really could not tell whether, if the orders in council had been repealed, we should have gone to war about seamen or not"—but, sir, I consider this as little more or less than adherence to a cautious form, as a protestando by way of excluding a conclusion, or in the nature of the commencement of an answer to a bill in chancery, in which the defendant takes care to save to himself now, and at all times hereafter, all, and all manner of benefit of exception to the errors that may be discovered in complainant's allegations. I am aware, too, of the very conspicuous blazon which is given to our sailors' wrongs in the President's war-message, and in the manifesto of the committee of foreign relations. But this proves no more, than that when war was determined on, it was deemed advisable to make out as strong a case as possible, either to excite the sympathy of the world, or to rouse the indignation of our

was grouped in the picture with the dearly-bought Henry plot; the at least dubious excitement of Indian hostilities, and the adjusted controversy about constructive blockades.

No, sir, the question of seamen was not a cause of this war. More than five years had passed over since an arrangement on this question perfectly satisfactory to our ministers had been made with Great Britain; but it pleased not the President and was rejected. Yet during the whole period that afterwards elapsed until the declaration of war, no second effort was made to adjust this cause of controversy. From December, 1807, with very short intervals, we waged against Britain a commercial war to coerce her into an observance of the rights we claimed at her hands. In every step of this system, whether embargo, non-intercourse, or non-importation, we avowed the grounds of this contest, and the condition on which it should terminate—the orders in council, and their repeal. In April, 1809, the famous arrangement with Erskine was made, hailed by the well-meaning as a second treaty of amity between the two countries; yet it contained nothing upon the question of seamen. In the President's communication to Congress at the commencement of the war session, November, 1811, enumerating, in no light tone, our controversies with Britain, and recommending preparations for war, the impressment of seamen was not remembered. The Secretary of State was earnestly engaged in a correspondence with the British minister, Foster, at the seat of government, until the declaration of war; nay, until after it had passed the House of Representatives. The object of the correspondence avowedly was, to bring our differences to an amicable close. But in this correspondence, the question of impressment finds no place, except incidentally, not as a substantive topic of discussion. And in the official communication from our government to our minister in Russia, stating the fact of a war declared against Britain, and alleging its justification, with a view to be communicated to the Russian government—[Mr. Monroe's letter to John Q. Adams, of July, 1812]—this justification is rested solely on the British orders in council. These, then, were emphatically and exclusively the cause of war. And had it not been for very many weighty considerations to be found in the state of the world, in the nature of the war in Europe, out of which proceeded this violation of neutral rights; in the conduct of the other mighty belligerent, her injuries, her menaces and intrigues, and in the peculiar condition of this country, actually growing into unexampled prosperity, under the very state of things of which we complained—had it not been for these, and considerations like these, that trumpet-tongued, warned us from the gulf into which we were about to plunge, the orders in council would have justified the resort to war—at all events, they formed what might be termed a sufficient technical cause of hostilities.

ous effect, in the manifestoes of princes, under the specious names of justice, independence and violated rights. But, sir, scarcely had the fatal step been taken, and the destinies of our nation risked on the fortune of the sword, when the obnoxious orders were revoked, the causes of war removed, and an honorable opportunity afforded of returning to the happy state of peace, commerce, and successful enterprise. How grateful must not the executive of a country, whose policy was fundamentally pacific—how grateful must it not have been for this happy rescue from the horrors of war! How rejoiced, that all had been effected without a struggle, which it was the object to obtain by a bloody and precarious contest! Exulting to show, that when it unsheathed the sword, not passion, but duty urged the reluctant deed, surely it hastened to return the unstained weapon to the scabbard, and extend the blessed olive branch of peace. Was it so? Sir, I never can think of the conduct of the executive upon this occasion, without mingled feelings of surprise, regret, and anger. It can be accounted for but by an infatuation the most profound—an infatuation which is not yet dissipated, and which should fill every breast with apprehensions of that dreadful result, which, in the wisdom of Providence, is preceded by the "darkened counsels" of rulers.

But it is entirely a mistake, says the gentleman from Pennsylvania. The orders in council never were revoked; they were indeed withdrawn, but under a declaration, asserting the right to re-enact them, should the violence of France, acquiesced in by America, renew the necessity for them. Will the administration, sir, bring forward this excuse? Will they take this ground? No, sir, they cannot, they dare not. The President has told the nation, that the revocation of the orders was substantially satisfactory—in his peculiar phraseology, "The repeal of the orders in council, was susceptible of explanations meeting the just views of this government." How could he do otherwise, after his proclamation of the 2d of November, 1810, declaring the French edicts so revoked as to cease to be injurious to our rights; a proclamation founded solely on the letter of the Duke de Cadore, of the 5th August, promising a revocation. Does the gentleman recollect the celebrated "Bien entendu," or proviso, annexed to this letter: "Provided, that in consequence of this declaration, the British Government shall revoke their orders in council, and renounce their new principles of blockade, or America shall cause her rights to be respected, conformably to the act which you have communicated?" Does the gentleman remember the tortuous and labored efforts of Mr. Secretary Monroe to explain this proviso into a condition subsequent? To prove that it was designed only to assert the right of France to re-enact these decrees, if Britain should persist in her orders, and we forbear from resisting them? Such a condition subsequent annexed to a pro-

effect to impair its force—but the same annexed in terms to the actual revocation of the British orders renders it entirely null! No, sir, the executive cannot take this ground—his discreet friends will not take it for him. In the emphatic language of the eloquent Junius, this would indeed "resemble the termagant chastity of a prude, who prosecutes one lover for a rape, while she solicits the lewd embraces of another."

But can it be urged, says the gentleman, that the revocation of the orders in council removed all our causes of complaint, and left us nothing more to demand of the enemy? No, sir, this is not urged. But it is contended, that as the revocation of the orders in council removed the cause of war, hostilities should instantly have been suspended, and a fair manly effort made to settle by negotiation all unadjusted differences which had not caused the war. A question of much importance and delicacy remained to be settled, in relation to the search for British seamen on board our merchant vessels, and the occasional impressment of Americans. Under every administration of our country, this question had excited great interest, and been attended with much difficulty. Of late, indeed, it had in some degree lost its interest, and partly because of the comparatively rare occurrence of the practice. The restrictive anti-commercial system had expelled native and foreign seamen in vast numbers from our country, and almost removed the temptations to an exercise of what the British claimed as a maritime right. For five years before the war, the dispute had, in fact, slept. Subjects more important pressed themselves on our notice, and while these pressed, that was postponed as a matter for future arrangement. But out of these new subjects a controversy arose which issued in war. It had scarcely been declared, before the matter in controversy was arranged to our satisfaction, by the voluntary act of the enemy. What was our plain, obvious course—the course of duty and of policy? Sheathe the sword until it is ascertained whether the dispute which had been laid aside for future arrangement, and which, in consequence of the adjustment of more pressing concerns, is now properly presented to notice, can or cannot be amicably settled. Even tyrants pronounce war the "ultima ratio regum," the last resort of princes. Nothing can justify the exercise of force but the inability to obtain right by other means. You had not supposed your just claims on the subject of seamen unattainable by negotiation, or you would not have reserved them for years as a subject for negotiation. And if they be thus attainable, how will ye answer to God and the country for blood and treasure uselessly, criminally expended? This mode of thinking, sir, seems to me very straight, and quite in accordance with the good old notions of practical morality. Besides, it is the incumbent might have been in relation to seamen, she was not without her claims on us. At a time when her floating bulwarks were her sole safeguard against slavery, she could not view without alarm and resentment the warriors who should have manned those bulwarks, pursuing a more gainful occupation in American vessels. Our merchant ships were crowded with British seamen—most of them deserters from their ships of war, and all furnished with fraudulent protections, to prove them American. To us they were not necessary; they ate the bread and bid down the wages of native seamen, whom it was our first duty to foster and encourage. To their own country, they were necessary, essentially necessary. They were wanted for her defence, in a moment of unprecedented peril. Ought we not, then, while seeking to protect our own seamen from forced British service, to have removed from her seamen the temptation to desert their country, and to supplant ours at home? Why need I ask the question? Your seamen's bill, as it is called, enacted into a law since the war, is an acknowledgment that this ought to have been done. However deceptive some of its provisions may appear, its very principle is to restore to Britain her seamen, and save our own from her service. Unless you believed this principle right, it was the meanest of degradations at such a time to pass such a law. And if it was right, then you had justice to render, as well as to seek. Had you pursued this plain path of right, had you suspended hostilities, you would have consulted also the true policy of your country. An unconditional proposition for an armistice upon the revocation of the orders, or an unconditional acceptance of the offer for an armistice would have passed for magnanimity. The disgraces which have since foully distained our military character were not then anticipated. The world would have believed, your enemy would have believed, that you suspended your career of conquest because the war had owed its origin not to ambition, but to duty—because you sought not territory, but justice—because you preferred an honest peace to the most splendid victory. With the reputation of having commanded, by your attitude of armor, a repeal of the offensive orders, you would have evinced a moderation which must have secured the most beneficial arrangements on the question of seamen.

But, sir, this was not done. No armistice could obtain the approbation of the executive, unless it was preceded by an abandonment, formal or informal, of the British claim to search for their seamen on board our merchant vessels. As an evidence of this abandonment, the exercise of the claim must, by stipulation, be suspended during the armistice, and this suspension was to be the price of its purchase. Even without an armistice, no "arrangement" was to be deemed a fit subject for negotiation which

seamen, and an absolute prohibition of search to their officers. This, sir, was taking very lofty ground; but at that moment the Canada fever raged high, and the delirium of foreign conquest was at its acme. In a few weeks the American flag was to wave triumphant on the ramparts of Quebec—the proposition for an armistice from the governor of Canada was utterly inadmissible. In the language of our Secretary of State, it wanted reciprocity—"The proposition is not reciprocal, because it restrains the United States from acting where their power is greatest, and leaves Great Britain at liberty, and gives her time to augment her forces in our neighborhood."

Mr. Russell did condescend to offer an armistice to the enemy, upon the condition of yielding as preliminary, even to a suspension of arms, all that could be extorted by the most triumphant war. But even he, in his pacific proposition, could not refrain from exulting at the glorious conquests that would enevitably be made, if submission was refused or delayed.

"Your lordship is aware of the difficulties with which a prosecution of the war, even for a short period, must necessarily embarrass all future attempts at accommodation. Passions exasperated by injuries; alliances, or conquests on terms which forbid their abandonment, will inevitably hereafter embitter and protract a contest which might now be so easily and happily terminated."

I cannot forbear, sir, from one remark at the "awful squinting" in this letter at an alliance with France. Gentlemen are sensitive when the possibility of such a connection is intimated. The very suspicion of such a design in the cabinet is viewed as a calumny. Here the accredited agent of the American executive proclaims such a connection, such an alliance as inevitable—proclaims it in an official communication to the public enemy. The declaration is laid before Congress and the people by the President, unaccompanied by any disavowal. The minister is not censured: for his very conduct in this employment he is raised to the highest grade of foreign ministers; and in spite of the reluctance of the Senate to confirm his nomination, he is pressed upon them by the President until their assent to his appointment is extorted. I dwell not upon this topic, for I confess to you the honest fears which once congealed my heart are now dissipated. The sun of national freedom has burst forth from behind the portentous eclipse that "with fear of change" had perplexed the darkened world. Napoleon, no longer invincible, stript of the false glare which splendid crime threw around his character, is no longer eulogized as "super-eminent" but denounced by the champions of administration as a "usurper." No one courts the friendship of a fallen tyrant!

It is not for me to say in what manner the dispute about seamen is to be settled. On this subject I have no hesitation, however, in giving government to protect its seamen (I mean its native seamen) from the forced service of any and every power on earth, so far as the strength of the country can obtain for them protection. True it is, that in my opinion the number of impressed Americans bears no reasonable proportion to the number alleged. I live in a State which, though it carries not on an extensive foreign commerce, has many native seamen. At the moment of the declaration of war, the inquiry was made whether a single native seaman of North Carolina was then detained by British impressment. I could hear of none. I know that during our restrictive system many of our sailors entered voluntarily into the British service, and when tired of it, complained that they had been impressed. Instances have actually occurred at Plymouth and at London, of men surrendered as impressed Americans, who afterwards boasted that they had cheated their king. In the battle, I think, of the President and the Little Belt, a neighbor of mine, now an industrious farmer, noticed in the number of the slain one of his own name. He exclaimed, there goes one of my protections. On being asked for an explanation, he remarked, that in his wild days, when he followed the sea, it was an ordinary mode of procuring a little spending-money, to get a protection from a notary for a dollar, and sell it to the first foreigner whom it at all fitted for fifteen or twenty. The protected alien assumed, of course, the American name, and if impressed, claimed to be liberated under it. The examinations which have been had before the committee of the Massachusetts legislature, and especially that of William Gray, confirm the belief that the number of impressed Americans has been exaggerated infinitely beyond the truth. But their number has been large enough to render the grievance a serious one; and be they more or less, the right to the protection of their country is sacred, and must be regarded. This government would forfeit its claims to the respect and affection of its citizens, if it omitted any rational means to secure the rights of American seamen from actual violation. Seek to obtain this security by practical means. If you cannot by substitute obtain an abandonment of the right or practice to search our vessels, regulate it so as to prevent its abuse—waving for the present, not relinquishing your objections to the right. Do all that can fairly be asked of you to supersede the necessity of the practice. When this is done, and you shall nevertheless fail—when war is rendered necessary to obtain a practical and reasonable security for American seamen against the abuses of impressment, then, sir, that war is just. Whoever may question its expediency, none who admit that wars may ever be justly waged can feel any conscientious scruples in yielding it support. This, sir, is no late opinion of mine. It has been long and publicly avowed—not indeed as a pledge to my constituents, as my friend and colleague (Mr. Murfree)

because it is my habit to be frank when no duty commands concealment. Nor is it strange that I should feel attached to the rights of the American sailor. I am a native of the sea-board. Many of the playmates of my infancy have become the adventurous ploughmen of the deep. Seafaring men are among my strongest personal and political friends. And for their true interests—their fair rights, I claim to feel a concern as sincere, and a zeal as fervent as can be boasted by any gentleman from the interior, or from beyond the mountains, who has heard of them, but knows them not.

Has the prosecution of your scheme of invasion and conquest against the Canadas a tendency to secure these rights, and advance these interests? This, sir, is a momentous question, on which it is the duty of every man in authority to reflect dispassionately, and with a fixed purpose to attain the truth. Unless this tendency be manifest, and morally certain, every motive which can be addressed to an honest heart and intelligent mind, forbids its prosecution at the present moment. Make a fair comparison of its certain or probable ills with its possible gains, and then pronounce the sentence which justice, humanity, and policy demand; and a suffering nation will bless your decision.

It is not my design to consider the immense expenditure which this scheme has cost, and which a continuance of it will cost to this country.* Well worthy is this topic of consideration, especially at a moment when industry is without encouragement, and external revenue is utterly destroyed. But it has been examined with great ability by gentlemen who ahve preceded me, especially by the gentlemen from Connecticut and Virginia, (Mr. Pitkin and Mr. Sheffey,) and contenting myself with an earnest request, that their remarks be not forgotten, and that in your zeal for conquest you do not beggar your people, I hasten to present other views which have not been so fully unfolded.

There is something in the character of a war made upon the people of a country, to force them to abandon a government which they cherish, and to become the subjects or associates of their invaders, which necessarily involves calamities beyond those incident to ordinary wars. Among us, some remain who remember the horrors of the invasion of the Revolution—and others of us have hung with reverence on the lips of narrative old age, as it related the interesting tale. Such a war is not a contest between those only who seek for renown in military achievements, or the more humble mercenaries whose "business 'tis to die." It breaks in upon all the charities of domestic life, and interrupts all the pursuits of industry. The peasant quits his plough, and the mechanic is hurried from his shop to commence without apprenticeship the exercise of the trade of death. The irregularity of the resistance which is opposed to the invader, its occasional obstinacy and occasional intermission, provoking every bad passion of his soldiery, is the excuse for plunder, lust, and cruelty. These atrocities exasperate the sufferers to revenge; and every weapon which anger can supply, and every device which ingenious hatred can conceive, is used to inflict vengeance on the detested foe. There is yet a war more horrible than this. As there is no anger so deadly as the anger of a friend, there is no war so ferocious as that which is waged between men of the same blood, and formerly connected by the closest ties of affection. The pen of the historian confesses its inability to describe, the fervid fancy of the poet cannot realize, the horrors of a civil war. This invasion of Canada involves the miseries of both these species of war. You carry fire and sword amongst a people who are "united against you (say your generals) to a man"—amongst a people who, happy in themselves, satisfied with their condition, view you not as coming to emancipate them from thraldom, but to reduce them to a foreign yoke; a people long and intimately connected with the bordering inhabitants of our country by commercial intercourse, by the ties of hospitality, by the bonds of affinity and of blood—a people, as to every social and individual purpose, long identified with your own. It must be that such a war will rouse a spirit of sanguinary ferocity that will overleap every holy barrier of nature and venerable usage of civilization. Where will you find an authenticated instance of this ferocity, that more instantaneously compels the shuddering abhorrence of the heart, than the fact asserted by my eloquent friend from New Hampshire (Mr. Webster), "The bayonet of the brother has been actually opposed to the breast of the brother." Merciful heaven! That those who have been rocked in the same cradle by the same maternal hand—who have imbibed the first genial nourishment of infant existence from the same blessed source—should be forced to contend in impious strife for the destruction of that being derived from their common parents! It should not be so! Every feeling of our nature cries aloud against it!

One subject is intimately connected with this Canadian war, which demands the most thorough and deliberate examination. I tremble to approach it thus incidentally, lest I injure the cause of humanity and truth, by a cursory vindication. And yet I dare not altogether omit

* It was well remarked by Mr. Pearson, that the constitutional rule of ascertaining the contribution of each individual to the satisfaction of the public debt, was to be collected from the system of direct taxes. Supposing the debt which will have been created by the Canada war by the close of the next campaign to be ninety millions, every man may ascertain how much of his property is mortgaged for its payment, by adverting to his portion of the direct tax. The whole amount of this direct tax is three millions. Multiplying, therefore, each man's direct tax by thirty, will give the

urgency and of a magnitude that forbid it to be overlooked. I mean, sir, the falsely called system of retaliation, which threatens to impart to the war a character of barbarity which has not its parallel in the modern annals of Christendom. Twenty-three persons of our invading army, who were taken prisoners by the enemy at the battle of Queenstown, in Canada, have been sent to England as British subjects, to be tried for treason. To deter the enemy from executing the law upon these unhappy men, our executive has ordered into close custody an equal number—not of American citizens invading our country, (this would, indeed, be retaliation,) but of British prisoners who have committed no crime. It is avowed that these shall be put to instantaneous death, if the men sent to England should be convicted and executed. The British Government have proceeded in return, to confine a corresponding number of Americans as hostages for the safety of these British prisoners, under the same determination and avowal. This has been again retaliated on our side, and the retaliation retorted by the enemy, so that an indiscriminate and universal destruction of the prisoners on each side, is the menaced consequence of the execution of one of the presumed Englishmen ordered home for trial.

Before we enter upon this career of cold-blooded massacre, it behooves us, by every obligation which we owe to God, to our fellow-men, and to ourselves, to be certain that the right is with us, and that the duty is imperative. If, in a moment of excited feeling, we should heedlessly enact the fatal deed which consigns thousands of the gallant and the brave Americans and Britons, to an ignominious death, and should afterwards discover that the deed was criminal; that the blood of the innocent is upon us, and the cries of their fatherless infants have ascended against us to the throne of the Most High; how shall we silence the reproaches of conscience; how atone for the widespread and irreparable mischief; or how efface from the American name, the infamous stain that will be stamped upon it? With motives thus awfully obligatory to a correct decision, we are in imminent danger, of error, from causes of which we are not aware. A portion of our population, inconsiderable in number as compared with the whole mass, but influential, because of their activity, violence, boldness, and their control of the popular presses—I mean, sir, that part of our naturalized citizens, who, not content with pursuing the private occupations of industry, undertake to manage the affairs of state, or teach us how they should be managed, have systematically and zealously labored to disseminate false principles, and excite prejudices and passions calculated to mislead the public mind. Divesting ourselves, as far as possible, from all hasty impressions, let us examine upon what foundation rests the right to put our prisoners to death, in revenge for the England for treason. If it shall be, that these men are native subjects of Great Britain, who have never pretended to shake off their allegiance by naturalization here, their crime in making war against their acknowledged country, and actually invading its territories, is so manifestly treason; and the right of their country to punish such treason, is so complete, that I will not presume it necessary to argue upon either of these topics. If the enemy has a perfect right to regard them as traitors, we cannot have the inconsistent right to avenge, with innocent blood, their just doom. But it may be, that some of them are British subjects, naturalized in America. I believe this is not the fact. We have no official information; but from the most respectable inofficial sources, I learn it is not the fact. If it should be, however, a very interesting inquiry presents itself: What is the effect of naturalization in severing the ties which bind a man to his native country; and in requiring, as against its claims, the protection of his adopted country? It is my conviction, that erroneous opinions prevail upon this point. It is a point on which this country, surrounded by foreign territories, into which our citizens are migrating in vast numbers, has a very deep interest to form correct opinions.

Every political association must be considered as originally founded on a contract between each of its members and the whole body. Each stipulates to yield obedience to the laws, and to refrain from acts destructive of the existence of the State—while the community, as such, stipulates to secure to each individual the enjoyment of his rights. The duration of such an association, if not defined by the original compact, is necessarily unlimited. When any of its members is desirous to free himself from his engagements it is manifest that he cannot do it by his own act, at his own pleasure, for such a power would be utterly inconsistent with the notion of an obligation. He can be released from his contract only upon the occurrence of some event which, by the terms of the association, it is stipulated shall have such effect, or by the consent of the community to which he was bound. As is the state of the original parties to the association such is that of their descendants. Children, in every political community, must be viewed as succeeding to the rights and with them to the consequent obligations of their parents. But for this principle the great inducement to the social state, the desire of providing for the security and happiness of a family, would be annihilated, and the trammels of government never would be submitted to. But for this, that perpetual succession which keeps up the identity of a nation, although its individuals are all in a state of decay and renovation, which gives it a corporate being essential to its action, is at once destroyed. From these principles, or principles like these, it is, that all jurists agree that when a political society is

any individual of it shall be freed from his engagement to defend it. That each society possesses this right is a principle of universal law. No dictum can be found to contradict it. How such right shall be exercised must of course depend on the wisdom and virtue of the society itself, or of those who enact its laws. It must be perfectly obvious, that in any case where the fundamental laws of the society do not permit the individual to release himself from his engagement, the intervention of a third party cannot effect this release. A promise of A to B cannot be discharged by an act of C. The effect therefore which the naturalization in any country of the subject of another has upon the original obligations of that subject to his native country, must depend upon its laws prescribing to what extent, and under what circumstances these original obligations may be lessened or destroyed. The institutions of different countries vary from each other in this respect—some are more rigid and others more indulgent. But I know of but one State on earth, the State of Virginia, which allows the native subject or citizen so completely to divest himself of his original character as to raise against her with impunity the hand of parricide. Virginia, by a statute, does permit a citizen, by a formal deed executed before witnesses, acknowledged in court and recorded, to quit-claim and renounce his birth-right, and thenceforth to be deemed as though he never had been of the State. All other states in the civilized world impose this restraint, that their original subject shall never wage war against his country.

With the fundamental laws of England in relation to this subject, we have a perfect acquaintance. In general, every man is there at liberty to quit the kingdom, to pursue abroad such occupations and enter into such engagements as he may find beneficial; but on the express condition that he shall not violate his faith to his sovereign, the first great duty of which, is not to invade his territories, and war against his subjects. I was surprised to hear a gentleman from Kentucky, whose good sense and independence I much respect (Mr. Montgomery), argue, that the permission to a British subject to leave his country was an implied consent that he might throw off all allegiance to it. Such an implication is done away by the very terms of the permission. The law is as old as Magna Charta, and has been uniform down to this day. "Licuit unicuique de cetero exire de regno nostro et redire salvo et secure per terram et per aquam, salva fide nostra." 33d article Abbott's edition of Magna Charta. "It may be lawful for every one hereafter to go out of our kingdom, and return safely and securely by land and by sea, saving his faith to us." In the reign of Elizabeth occurred the case of Dr. Story, which gentlemen will find accurately reported, 2d Dyer, 298b. 304b. A native of England, he had long quitted that country, had Philip at the English court. He was indicted for treason—he pleaded the fact of his having become a Spanish subject—the plea was overruled—he was convicted and executed. The case of colonel Townly occurred in 1746. He was indicted for treason in aiding in the rebellion in 1745, was convicted and executed; notwithstanding the fact of his having become a French subject, and bearing a French commission. The case of Æneas McDonald in the same year was more remarkable. He had left Scotland, his native land, a mere infant, and ever afterwards resided in France. As a subject of the King of France, and an officer in his army, he accompanied the Pretender in 1745—was taken prisoner, indicted for treason, and convicted. He was, indeed, not executed. The hardship of his fate excited commiseration, and upon the recommendation of his jury to mercy, his sentence was commuted into perpetual banishment. It is vain to multiply proofs. Nothing can be more certain than the English law in relation to its subjects naturalized abroad, waging war against their country. The law of France is more strict, and equally precise. The edict of Trianon, of 23d August, 1813, with great precision declares, "no Frenchman can be naturalized abroad without our consent, (that is of the Emperor)"—and that "Frenchmen naturalized abroad, even with our permission, can at no time carry arms against France, under pain of being indicted in our courts, and condemned to the punishment enacted in the penal code.—Book 3. ch. 75." During the French revolution in 1795, a corps of emigrants whom oppression and brutal violence had compelled to quit their country, formed themselves into an army in the pay and employment of Britain, and as such engaged in the ill-fated expedition to Quiberon. They were made prisoners, and executed as traitors. What is our own law? In every State of the Union except Virginia, it is precisely the law which obtains in Great Britain—no man shall exempt himself from the obligation not to war against his country—and in Virginia even, he can only get rid of this obligation, by observing the stipulated forms which its law prescribes. Naturalization granted in another country, has no effect whatever to destroy his original primary allegiance. A gentleman from Virginia (Mr. Eppes) informed us that under a British statute, two years voluntary service in their navy, ipso facto, naturalized a foreigner. Be it so, sir. Let us suppose that during our restrictions on commerce an American citizen, a Virginian for instance, who had not gone through the stipulated formalities of expatriation, had entered on board the British navy, and after serving there two years, and thus becoming a naturalized subject of George III., had infamously joined in the invasion of his native land. Suppose this miscreant taken prisoner heading a hostile band at the burning of Havre, or at the atrocious outrages of Hampton,

for him? Is there a gentleman in the House with any pretensions to legal science, who will so far hazard his reputation as to allege that a defence could be made for him? Is there a judge in our land, from those who adorn the bench of our supreme court, down to the humblest in capacity and office, who could be even amused by the miserable sophistry, that naturalization in Britain repealed our law of treason? No, sir. The traitor would be condemned—inevitably condemned; and if the President were frightened from executing the sentence by an insolent threat from Britain, to put innocent Americans to death, in revenge for the just doom of the convict, he would encounter the contempt and execration of his country. How is it, then, that we undertake by such menaces to deter the enemy from executing a like law, under like circumstances against her unnatural children?

This law against the alienation of allegiance is no relief of tyranny; it is founded in the analogy of nature, and essential to the harmony of the world. There is a striking similitude between the duties of a citizen to his country, and those of a son to his father. Indeed, sir, what is the word country, but a comprehensive phrase, embracing all those charities which grow out of the domestic relations of parents, children, kindred, and friends? When the boy has attained manhood, and the father's care is no longer necessary to guard him from daily harms, he is at liberty to quit the parental roof, to become the inmate of another family, there form connections essential to his happiness, and take upon himself obligations of respect and tenderness, as the adopted son of other parents. But is nature's first great bond utterly severed? Can he return at the bidding of his new friends, to ravage and destroy the home of his childhood, and pollute it with the life-blood of those from whom he received life? Would this be but an ordinary trespass, a common homicide, which provocation might extenuate, excuse, or even justify? An association, sir, formed by a resurrection of the wretches who have died on the gibbet, would disdain such a principle in their code. What is the jargon of modern expatriation but the same principle interpolated into the code of nations?

The peace and independence of every State, and of none more than ours, demand that the citizen should not be released from the just claims of his country by the interference of foreign powers. Give to such interference this effect, and every nation is made dependent upon the arbitrary exercise of a foreign right to control and regulate its vital concerns. The Spanish dominions to the south, and the British territories to the north, have tempted from us many of our boldest spirits. Let them go—let them there enjoy every privilege, if they can find it, which in our happy country is given to the fugitive European; every privilege which is essential to their comfort. Let them pursue in

ize the profits of enterprise, and be protected from every invasion of individual right. In return for these advantages, let them, like the European whom we naturalize, render a cheerful obedience to the laws, perform every social duty which is assigned to them, and contribute to the support of the government a fair proportion of their gains. But permit them not to forget the country which gave them birth and protected their infancy. Suffer them not with impunity to be converted into hostile tribes, whose numbers may be swelled from day to day by the factious, the restless, and the criminal, who have but to pass an ideal line, and the duty of obedience is converted into the right to destroy.

Unless I am greatly deceived, the law of England must be suffered to have its course with the individuals, if natives of England, and migrating to us since the Revolution, who are sent thither for trial. Whether they ought to be executed, if convicted, is a very different question. Considering the intimate connection which common origin, language, and manner, and a long and intimate commerce has heretofore induced between the countries, and the consequent interchange of their inhabitants; remembering, too, that general laws are often cruel in their application to particular cases, the executive authority in that country is bound by the strongest motives, to consult the dictates of humanity, and forbear the too rigorous exercise of right. But if these considerations should not there prevail, and the severe penalty of the law of treason is exacted, as of right it may be, shall we, without right, without the semblance of law, coldly murder those who are in our power, who have committed no treason against us, and against whom crime is not pretended? Is this called retaliation? Britain executes British traitors serving in the American army, regularly tried and convicted of treason, and we, in return, execute—whom? American traitors, serving in the British army, and convicted of treason? No, but faithful, loyal men, bearing arms in the cause of their native country! tried by no law! offenders against no law! Sir, the pretension is monstrous. I have met with no instance of such a pretension being ever asserted in a civilized country. Did Philip of Spain retaliate in this way for the execution of Dr. Story? Did France retaliate for the execution of Col. Townly? Did Britain thus retaliate for the execution of the French emigrants taken at Quiberon? I have heard it said that Napper Tandy, an Irishman, naturalized in France, was surrendered upon a threat of retaliation from France. I doubt the fact—the only evidence of it is in a note to an evidently partial and one-sided account of his trial, in a collection of Curran's speeches. In no authentic register have I been able to find it. But if it were true, the note itself states, that the ground on which he was demanded was, not that he had been naturalized by France, and therefore not liable

been unjustly seized at Hamburg, in neutral territory, and ought to be returned. Theobald Wolf Tone, Tandy's associate, and, like him, an officer of France, but not like him arrested in a violated and neutral territory, was neither demanded nor delivered. Condemned to death, he changed the mode of its execution by committing suicide. And shall my country, claiming to excel in humanity, as it excels in freedom, the nations of Europe, shall it be the first to avow a monstrous, unfounded pretension, and vindicate it by innocent blood? Shall it teach a lesson of barbarity to the hardened chieftains of slaughter, of which they were before ignorant? Shall it seek to protect foreigners from the vengeance of their sovereigns, at the cost of immolating its own native citizens? Shall it doom a revolutionary Winchester, or a gallant Winder, to a shameful death, because it cannot save alien traitors from their legal fate?

Think for a moment, sir, on the consequences, and deem it not unworthy of you to regard them. True courage shuts not its eyes upon danger or its results. It views them steadily, and calmly resolves whether they ought to be encountered. Already has this Canadian war a character sufficiently cruel, as Newark, Buffalo, and Niagara can testify. But when the spirit of ferocity shall have been maddened by the vapor streaming from the innocent blood that shall stagnate around every depot of prisoners, then will it become a war, not of savage, but of demoniac character. Your part of it may, perhaps, be ably sustained. Your way through the Canadas may be traced afar off, by the smoke of their burning villages. Your path may be marked by the blood of their furious peasantry. You may render your course audible by the frantic shrieks of their women and children. But your own sacred soil will also be the scene of this drama of fiends. Your exposed and defenceless seaboard, the seaboard of the south, will invite a terrible vengeance. That seaboard which has been shamefully neglected, and is at this moment without protection, has been already invaded. But an invasion, after the war shall have assumed its unmitigated form of carnage, and woe, and wickedness, must be followed with horrors which imagination can but faintly conceive. I will not trust myself to tell you all I feel, all my constituents feel, upon this subject. But I will say to the gentleman from Pennsylvania, that when he alludes to the probability that an intestine foe may be roused to assassination and brutality, he touches a chord that vibrates to the very heart. Yes, sir, I live in a State whose misfortune it is to contain the materials out of which may be made such a foe—a foe that will be found every where—in our fields, our kitchens, and our chambers; a foe, ignorant, degraded by habits of servitude, uncurbed by moral restraints—whom no recollections of former kindness will soften, and whom the remembrance of or pity—and whose subjugation will be but another word for extermination. Such a foe, sir, may be added to fill up the measure of our calamities. Let me not be misunderstood. Let no gentleman misconceive my meaning. Do I state these consequences to intimidate or deter you? I think better of my countrymen. I hope and believe, in the language of Wilkinson to Prevost, that Americans will not be deterred from pursuing what is right by any dread of consequences. No, sir, I state them to rouse your attention and waken your scrutiny into the correctness of the course you are pursuing. If, on mature deliberation, you are sure that you are right, proceed, regardless of what may happen.

> Justum et tenacem propositis virum—
> Si fractus illabatur orbis,
> Impavidum ferient Ruinæ.
>
> The man resolv'd and steady to his trust,
> Inflexible to ill, and obstinately just;
> * * * * * * *
> * * * * * * *
> From orbs convuls'd should all the planets fly,
> World crush on world, and ocean mix with sky;
> HE, unconcern d, would view the falling whole,
> And still maintain the purpose of his soul.

But reflect well, I conjure you, before reflection is too late—let not passion or prejudice dictate the decision—if erroneous, its reversal may be decreed by a nation's miseries, and by the world's abhorrence.

Mr. Chairman—Turning from the gloomy view of the effects of the Canada war, my attention is arrested by another consequence likely to follow from it, on which I will not long detain you, but which is not less interesting nor less alarming. In proportion as gentlemen become heated in their pursuit of conquest, and are baffled in their efforts to overtake it, the object becomes more valuable in their estimation, and success is more identified with their pride. The conquest of Canada contemplated as an easy sport, without a fixed design either to keep it to secure, or surrender it to purchase rights, has from its difficulty swelled into an importance which causes it to be valued above all rights. Patriotism was relied on to fill the ranks of the invading army; but it did not sufficiently answer the call. These ranks, however, must be filled. Avarice is next resorted to. The most enormous price is bid for soldiers, that was ever offered in any age or country. Should this fail, what is the next scheme?—There is no reserve or concealment. It has been avowed that the next scheme is a conscription. It is known that this scheme was recommended even at this session by the war department—and that it was postponed only to try first the effect of enormous bounty. The freemen of this country are to be drafted from the ranks of the militia, and forced abroad as military machines, to wage a war of conquest! Sir—I

United States, as the most valuable patrimony I have to leave to those beings in whom I hope my name and remembrance to be perpetuated. But I solemnly declare, that if such a doctrine be engrafted into this constitution, I shall regard it as without value, and care not for its preservation. Even in France, where man inured to despotism, has become so passive and subservient as almost to lose the faculty of feeling oppression, and the capacity to perceive it, even there, sir, the tyranny of conscription rouses him to the assertion of his innate freedom, to a struggle against slavery in its most malignant form. No, sir, not the dread of all the severe punishments* ordained for refractory conscripts, not the "peine du boulet," the "travaux publiques," nor death itself, can stupefy him into seeming submission. He yields only to absolute force, and is marched to the field of glory manacled and hand-cuffed. And is such a principle to be introduced into our benign, our free institutions? Believe me, the attempt will be fatal. It cannot succeed but by military terror—it will be the signal for drawing the sword at home. Americans are not fitted to be the slaves of a system of French conscription, the most detestable of the inventions of tyranny. Sir, I hear it whispered near me, this is not worse than the impressment of seamen. It is worse, infinitely worse. Impressment forces seamen to serve in the public ships of their country, instead of pursuing their occupation in the merchant service. It changes their employment to one more rigorous, of longer continuance, of greater danger. But it is yet employment of the same kind—it is employment for which they are fitted by usage and education. But conscription is indiscriminate in the victims of its tyranny. The age, not the pursuit of the conscript, is the sole criterion of his fitness. Whatever be his habits, whatever his immediate views, whatever his designed occupation in life, a stern mandate tears him from the roof of his father, from the desk, the office, the plough, or the workshop, and he is carried far from home to fight in foreign climes the battles of ambition. But, sir—if conscription were not worse than impressment I should not lose my objections to it—I am not prepared to assent to the introduction of either conscription or impressment into my country. For all the British territories in the Western World, I would not. Fight for sailor's rights—yet rivet on our citizens a French conscription! Fight for rights on the ocean, and annihilate the most precious of all rights at home—the right of a freeman never to be forced out of his own country. How alarming is the infatuation of that zeal, which, in its ardor for attaining its object, tramples in the dust objects of infinitely higher price!

What is the probability of success in this scheme of conquest, is a topic on which I mean not to enlarge. It is not necessary that I should, for others have ably discussed it. That you may take Upper Canada, that you may overrun the lower province, I believe. But that you will take Quebec, while the mouth of the St. Lawrence is commanded by a hostile fleet, I cannot believe—if an opposite thought sometimes get possession of my imagination, I find it springing from that impulse of the heart which makes me fancy victory perched on the standard of my country, and not the result of an exertion of the understanding. But, sir, if you should conquer the Canadas, subdue Nova Scotia, and possess yourself of all the British territories in America—if after impoverishing your country by ruinous loans and grinding down your people by oppressive taxes, you should wade at last through the horrors of invasion, massacre of prisoners, a servile war, and a military conscription to the now darling object of your wishes—I pray you, sir, what is then to be done? What do you design to do with conquered territory? We will keep it, say the gentlemen from Vermont and Pennsylvania, (Mr. Bradley and Mr. Ingersoll.) We will keep it because it is an object with our people—because it will keep off Indian wars—and retribute us for the wrongs we have sustained. I believe, indeed, that if conquered there will be a powerful party to the north and west that will not consent to part with it, with whom it is an *object*. But how shall it be kept? As a conquered province? To retain it as such against the efforts of an exasperated, though conquered people within, and the exertions of a powerful, proud and irritated enemy without, that enemy master of the sea, always able to invade and to succor the invaders, will require a military strength and a pecuniary expenditure not less continued or less in amount than were demanded to take it—such a conquest is never finished—when nominally effected, it is to be begun. But we will incorporate it into the Union—aye, this would be indeed a pleasant result. Let my southern friends—let gentlemen who represent slaveholding States attend to this. How would this project take at home? What would their constituents give to have half a dozen new States made out of the Canadas? It is, besides, so notable an expedient for strengthening the nation, and so perfectly in accordance with the principles of our form of government. We are to force men into an association the very life of

* The system of conscription is upheld in France, by the most rigorous punishments upon all who are instrumental in evading its operation. The most ruinous fines are imposed upon the parents of the refractory conscript, and where they are accessory to his escape, the severest corporal punishment, such as branding with hot iron, public exposure and imprisonment. The "Peine du Boulet," is an iron ball of eight pounds weight, fastened to the leg by an iron chain seven feet long. It is accompanied with hard labor of ten hours daily, and, in the intervals of rest, solitary confinement. It lasts ten years, and the poor wretch wears a disgraceful dress, the emblem of his ignominy. The "travaux publiques" are employment in such public labors

unrestrained choice! And to give vigor to the nation, we are to admit into its councils, and into a free participation of its power men whose dislike of its government has been strengthened into abhorrence by the exasperations of war, and all whose affections are fixed upon its enemy! But at all events you are to keep the Canadas. What then will you do about sailor's rights? You will not be a jot nearer to them then than you are now. How will you procure them or seek to procure them? Will you then begin in good earnest to protect or obtain them by naval means? Would it not be advisable to attend to this declared object of the war now rather than wait until after the Canadian scheme is effected? Perhaps you mean to keep Canada and abandon sailors' rights—if so, why not avow to the people that it is conquest you fight for and not right? But perhaps it is designed when the conquest is effected to give it back to Britain as an equivalent for the cession, on her part, of some maritime right—for the privilege that our ships shall not be searched for British sailors. On this question you may make an arrangement practically securing all we ought now to contend for. You will I hope make it in the pending negotiation. But that by a surrender of Canada after it is conquered you may purchase from her a disavowal or relinquishment of the right, no man can believe who understands either the views or the prejudices of that people. They believe the right essential to their naval existence, to deter their seamen from general desertion. All classes in that country so regard it—we know there is not a difference of opinion among any description of politicians in the kingdom upon this subject. If they have any jealousy of you, (and I believe some of them have,) it is not a jealousy of your territorial extent—but of your fitness to become their commercial and naval rival. Can it be believed then that they would compromise in a surrender of a claim, which surrendered, in their judgment, weakens them and invigorates you, where alone they are apprehensive of a competition, for the sake of preventing an accession to the territory which extends your limits, while it takes away from your strength? Indulge no such delusion. Were Canada a thousand times more important to Britain than it is, it were yet of less value than her naval power. For the sake of it she would never yield a principle on which that naval power depends. No, sir, the return of conquered Canada, even with the hoped for agency in our favor of the Russian Emperor, would not weigh a feather in the scale against what she deems her first great national interest. As it regards, too, these fancied exertions of Russia in our favor, gentlemen surely deceive themselves. However attached Russia may be to the most liberal principles of commercial intercourse she never will array herself against the right of the sovereign to compel the services of his sea-faring subjects. On this head her policy is not less rigorous (to say the particular—a short time will probably show the grounds of my belief.

But, sir, among the reasons for prosecuting the invasion of Canada, one has been gravely stated of a very peculiar kind. Canada, says a gentleman from South Carolina, (Mr. Calhoun,) should be invaded to protect our frontiers and seaboard from invasion—it is the most economical and effectual method of defence. Although this consideration presents nothing very splendid to our view, yet it would be worth all other reasons for the invasion, if it were founded on fact. But ask the people on your frontiers and on your seaboard, and what will they say? —They will tell you that it is the invasion of Canada alone which endangers them—the most effectual defence to them would be an abandonment of your scheme. Sir, an invasion of the United States, but for the purpose of diverting your forces from Canada, or retorting on you the distresses of war, cannot enter into the scheme of British or Canadian policy. It is not to be prosecuted, but at vast inconvenience and expense, with great loss of useful soldiers, under a certainty of ultimate failure, and without hope of glory or gain. The Canadian yeomanry, freed from the terrors of invasion, will cheerfully resume their peaceful occupations—and such of the British regulars as are not required for ordinary garrison duty, instead of being employed in a miserable, predatory, yet destructive border warfare, will be sent to mingle in the European strife, where renown and empire are the mighty stake. Surely this is emphatically the age and the government of paradox. A war for "free trade" is waged by embargo and prohibition of all commercial intercourse—"sailors' rights" are secured by imprisoning them at home, and not permitting them to move from place to place within their prison, but by a license from a collector like a negro's pass, and obtained on the security of a bondsman—and our frontiers and sea-board are to be defended by an invasion of Canada, which can alone endanger an attack?

But the real efficient argument for perseverance in the scheme of Canadian conquest, has been given by the gentleman from Tennessee, (Mr. Grundy.) We made the war on Britain, says the gentleman, and shall we restrict ourselves to defensive measures? For what purpose was war declared, if we do nothing against the possessions of the enemy? Yes, sir, it is the consideration that this war was originally offensive on our side, that creates the, I fear, insuperable obstacle to our discontinuance of it. It were vain to lament that gentlemen are under the influence of feelings which belong to human nature. It would be idle to declaim against the sinfulness or the folly of false pride. All must admit that it is one of the greatest efforts of magnanimity to retract a course publicly taken, and on the correctness of which reputation is staked. If honorable gentlemen could but perceive that this difficulty is one of pride, vain

terests, I know that they could, and believe many of them would, make the effort. Painful as may be the acknowledgment of *political* error, yet, if they clearly saw that either this humiliation must be endured, or the nation ruined, they could not hesitate in their choice between such alternatives. But, sir, I wish not to present such alternatives to their election. So difficult is it to produce a conviction, against which the pride of our heart rebels, that I will not attempt it. Gentlemen are not called on to retract. They may now suspend the execution of their scheme of invasion, without an acknowledgment of its error. They may now, without humiliation, restrict themselves to defence, although the war was in its origin offensive. A second favorable opportunity is presented of restoring tranquillity to our once happy country: the first, the revocation of the orders in council, was suffered to pass unimproved. Let not this be lost—a third may not shortly occur. Your enemy has invited a direct negotiation for the restoration of peace. Your executive has accepted the offer, and ministers have been appointed to meet the commissioners of the opposite party. This circumstance ought to produce an entire and essential change in your policy. If the executive be sincere in the acceptance of this proposition, he must have acted on the hope that an amicable adjustment of differences might be made. And while there is such a hope, such a prospect, on what principle can you justify invasion and conquest? Force is the substitute, not the legitimate coadjutor of negotiation: nations fight because they cannot treat. Every benevolent feeling and correct principle is opposed to an effusion of blood, and an extension of misery, which are hoped to be unnecessary. 'Tis necessity alone which furnishes their excuse: do not, then, at the moment when you avow a belief, a hope at least, that such necessity exists not, pursue a conduct which, but for its existence, is inhuman and detestable.

Besides, sir, if you are earnest in the wish to obtain peace from the Gottenburg mission, suspend in the mean time offensive operations, which cannot facilitate, and may prevent the accomplishment of your object. Think you that Britain is to be intimidated by your menaced invasion of her territories? If she had not learned by experience how harmless are your threats, she would nevertheless see but little cause for fear. She knows that the conquest cannot be completed in one, nor in two campaigns. And when she finds that every soldier whom you enlist is to cost you in bounty alone upwards of 100 guineas,* she will perceive that the war is more destructive to your finance, the great source of military strength, than to her territories. The blow aimed at her recoils upon *yourselves. But the exasperations which must* result from the wrongs mutually inflicted in the course of the campaign, may have a very injurious effect upon the disposition to pursue pacific efforts. They will be apt to create a temper on each side, unfavorable to an amicable arrangement. In truth, too, sir, you are not prepared for such a campaign, as in honor and humanity you can alone permit yourselves to carry on. Suppose by the month of May or June you raise your men—what are they? Soldiers, fitted to take care of themselves in camp, and support the reputation of your arms in the field? No—they are a mere rabble of raw recruits. March them to Canada, and pestilence will sweep them off by regiments and brigades—while the want of discipline will unfit *those whom pestilence spares for an honorable* contest with an experienced foe. Instead, therefore, of the hurry and bustle of filling your ranks with recruits, and rushing with them into Canada, attend rather to the training and improvement of those now in service. Make soldiers of them—by gradual enlistments you may regularly add to their number, and insensibly incorporate the new levies with the disciplined troops. If it should hereafter become necessary to march into the field, you will then have an army under your command, not a multitude without subordination. Suspend, therefore, hostilities while you negotiate. Make an armistice until the result of the negotiation is ascertained. You can lose nothing—you may gain every thing by such a course. Then negotiate fairly, with a view to obtain for your native seamen a practical and reasonable security against impressment—and with a disposition to aid Britain in commanding the services of her own. Such an arrangement might have been made on the revocation of the orders in council, could you have been then satisfied with any thing short of an abandonment of the British claim to search. I doubt not but that it may now be made—more you probably cannot obtain. The time may come when, with greater effect, you can prefer, if necessary, higher claims. All is hazarded by precipitately urging more than your relative strength enables you to enforce. Permit your country to grow—let no just right be abandoned. If any be postponed, it may be advanced at a more opportune season, with better prospect of success. If you will quit this crusade against Canada, and seek peace in the spirit of accommodation—and (permit me to add) if you will forego your empiric schemes of embargo and commercial restrictions—you will restore harmony at home, and allay that widespread, and in some places alarming spirit of discontent that prevails in our land. And if your pacific efforts fail, if an obstinate and implacable foe will not agree to such a peace as the country can with credit accept, then appeal to the candor and spirit of your people for a

* The bounty to each soldier was one hundred and twenty-four dollars, cash, and one hundred and sixty acres of land, *which, at two dollars per acre, was three hundred and twenty* dollars—in all, four hundred and forty-four dollars, besides

that such an appeal, under such circumstances, cannot be made in vain.

It is time, Mr. Chairman, that I should release you from the fatigue of hearing me. There is but one more topic to which I solicit your attention. Many admonitions have been addressed to the minority, by gentlemen on the ministerial side of this House, not without merit, and I hope not without edification, on the evils of violent opposition and intemperate party spirit. It is not to be denied that opposition may exceed all reasonable bounds and a minority become factious. But when I hear it seriously urged that the nature of our government forbids that firm, manly, active opposition, which in countries less free is salutary and necessary, and when I perceive all the dangers of faction apprehended only on the side of a minority, I witness but new instances of that wonderful ductility of the human mind, which, in its zeal to effect a favorite purpose, begins with the work of self-deception. Why, sir, will not our form of government tolerate or require the same ardor of constitutional opposition, which is desirable in one wherein the chief magistrate is hereditary? "Because," says the gentleman from South Carolina, (Mr. Calhoun,) "in a monarchy the influence of the executive and his ministers requires continual vigilance, lest it obtain too great a preponderance; but here the executive springs from the people, can do nothing without their support, and cannot, therefore, overrule and control the public sentiment." Sir, let us not stop at the surface of things. The influence of the executive in this country, while he retains his popularity, is infinitely greater than that of a limited monarch. It is as much stronger as the spasm of convulsion is more violent than the voluntary tension of a muscle. The warmth of feeling excited during the contest of an election, and the natural zeal to uphold him whom they have chosen, create, between the executive and his adherents, a connection of "passion"—while the distribution of office and emolument adds a communion of "interest"—which combined, produce a union almost indissoluble. "Support the administration" becomes a watch-word, which passes from each chieftain of the dominant party to his subalterns, and thence to their followers in the ranks, till the President's opinion becomes the criterion of orthodoxy, and his notions obtain a dominion over the public sentiment, which facilitates the most dangerous encroachments, and demands the most jealous supervision. In proportion as a government is free, the spirit of bold inquiry, of animated interest in its measures, and of firm opposition where they are not approved, becomes essential to its purity and continuance. And he who in a democracy or republic attempts to control the will of the popular idol of the day, may envy the luxurious ease with which ministerial oppressions are opposed and thwarted in govern-

party, wherever found, never will meet with an advocate in me. It is a most calamitous scourge to our country—the bane of social enjoyment, of individual justice, and of public virtue—unfriendly to the best pursuits of man, his interest and his duty—it renders useless, or even pernicious, the highest endowments of intellect, and the noblest dispositions of the soul. But, sir, whatever may be the evils necessarily inherent in its nature, its ravages are then most enormous and desolating when it is seated on the throne of power, and vested with all the attributes of rule. I mean not to follow the gentleman from South Carolina over the classic ground of Greece, Carthage, and Rome, to refute his theory, and show that not to vehement opposition, but to the abuse of factious and intolerant power their doom is to be attributed. Nor will I examine some more modern instances of republics whose destruction has the same origin. The thing is no longer matter of discussion. It has passed into a settled truth in the science of political philosophy. One who on a question of historical deduction, of political "theory," is entitled to high respect, has given us an admirable summary of the experience of republics on this interesting inquiry. In the tenth number of the Federalist, written by Mr. Madison, we find the following apt and judicious observations:—"By a faction, I understand a number of citizens whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion or of interest adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."

The inference to which we are brought is, that the "causes" of faction cannot be removed; and that relief is only to be sought in the means of controlling its "effects." If a faction consists of less than a majority, relief is supplied by the republican principle which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society, but it will be unable to execute and mask its violence under the forms of the constitution. "When a majority is included in a faction, the form of popular government on the other hand enables it to sacrifice to its ruling passion or interest, both the public good, and the rights of other citizens. To secure the public good and private rights against the dangers of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which alone this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind."

If this doctrine were then to be collected from the history of the world, can it now be doubted since the experience of the last twenty-five years? Go to France, once revolutionary

factious power, or intemperate opposition, be the more fatal to freedom and happiness? Perhaps at some moment when the eagle eye of her master is turned away, she may whisper to you to behold the demolition of Lyons, or the devastation of La Vendee. Perhaps she will give you a written answer: Draw near to the once fatal lamp-post, and by its flickering light, read it as traced in characters of blood that flowed from the guillotine. "Faction is a demon! Faction out of power, is a demon enchained! Faction, vested with the attributes of rule, is a Moloch of destruction!"

Sir, if the denunciations which gentlemen have pronounced against factious violence, are not merely the images of rhetoric pomp—if they are, indeed, solicitous to mitigate the rancor of party feuds—in the sincerity of my soul I wish them success. It is melancholy to behold the miserable jealousies and malignant suspicions which so extensively prevail, to the destruction of social comfort, and the imminent peril of the republic. On this subject I have reflected much, not merely in the intervals stolen from the bustle of business, or the gaieties of amusement, but in the moments of "depression and solitude," the most favorable to the correction of error. For one I am willing to bring a portion of party feeling and party prejudice, as an oblation at the shrine of my country. But no offering can avail any thing if not made on the part of those who are the political favorites of the day. On them it is incumbent to come forward and set the magnanimous example. Approaches or concessions on the side of the minority would be misconstrued into indications of timidity or of a hankering for favor. But a spirit of conciliation arising from "those ranks" would be hailed as the harbinger of sunny days, as a challenge to liberality, and to a generous contention for the public weal. This spirit requires not any departure from deliberate opinion, unless it is shown to be erroneous—such a concession would be a dereliction of duty. Its injunctions would be but few, and it is to be hoped not difficult of observance. Seek to uphold your measures by the force of argument, not of denunciation. Stigmatize not opposition to your notions with offensive epithets. These prove nothing but your anger or your weakness, and are sure to generate a spirit of "moral resistance" not easily to be checked or tamed. Give to presidential views constitutional respect, but suffer them not to supercede the exercise of independent inquiry. Encourage instead of suppressing fair discussion, so that those who approve may not at least have a respectful hearing. Thus, without derogating a particle from the energy of your measures, you would impart a tone to political dissensions which would deprive them of their acrimony, and render them harmless to the nation.

The nominal party distinctions, sir, have become mere cabalistic terms. It is no longer a question whether according to the theory of our constitution, there is more danger of the federal encroaching on the State Governments, or the democracy of the State Governments paralyzing the arm of federal power—Federalism and democracy have lost their meaning. It is now a question of commerce, peace, and union of the States. On this question, unless the honesty and intelligence of the nation shall confederate into one great American party, disdaining petty office-keeping and office-hunting views, defying alike the insolence of the popular prints, the prejudices of faction, and the dominion of executive influence—I fear a decision will be pronounced fatal to the hopes, to the existence of the nation. In this question I assuredly have a very deep interest—but it is the interest of a citizen only. My public career I hope will not continue long. Should it please the Disposer of events to permit me to see the great interests of this nation confided to men who will secure its rights by firmness, moderation and impartiality abroad, and at home cultivate the arts of peace, encourage honest industry in all its branches, dispense equal justice to all classes of the community, and thus administer the government in the true spirit of the constitution, as a trust for the people, not as the property of a party, it will be to me utterly unimportant by what political epithet they may be characterized. As a private citizen grateful for the blessings I may enjoy, and yielding a prompt obedience to every legitimate demand that can be made upon me, I shall rejoice, as far as my little sphere may extend, to foster the same dispositions among those who surround me.

AN EXTRACT.*

Sir, I am opposed, out and out, to any interference of the State with the opinions of its citizens, and more especially with their opinions on religious subjects. The good order of society requires that actions and practices injurious to the public peace and public morality, should be restrained, and but a moderate portion of practical good sense is required to enable the proper authorities to decide what conduct is

* From Mr. Gaston's speech on the "thirty second article," in the North Carolina Convention, called to amend

truth or error, on the salutary or pernicious consequences of opinions, requires a skill in dialectics, a keenness of discernment, a forecast and comprehension of mind, and above all, an exemption from bias, which do not ordinarily belong to human tribunals. The preconceived opinions of him, who is appointed to try, become the standard by which the opinions of others are measured, and as these correspond with, or differ from his own, they are pronounced true or false, salutary or pernicious. Let the Arminian pass on the doctrines of the high Calvinist, and he will have no hesitation in branding them as utterly destructive of the distinctions between right and wrong, and leading to the subversion of all morality. Let the Calvinist determine on the soundness and the tendencies of the Arminian faith, and he will have little difficulty in arraigning it for blasphemy, as stripping the Almighty of his essential attributes, and setting up man as independent of God and needing not his grace. Law is the proper judge of action, and reward or punishment its proper sanction. Reason is the proper umpire of opinion, and argument and discussion its only fit advocates. To denounce opinions by law is as silly, and unfortunately much more tyrannical, as it would be to punish crime by logic. Law calls out the force of the community to compel obedience to its mandates. To operate on opinion by law, is to enslave the intellect and oppress the soul—to reverse the order of nature, and make reason subservient to force. But of all the attempts to arrogate unjust dominion, none is so pernicious as the efforts of tyrannical men to rule over the human conscience. Religion is exclusively an affair between man and his God. If there be any subject upon which the interference of human power is more forbidden, than on all others, it is on religion. Born of Faith—nurtured by Hope—invigorated by Charity—looking for its rewards in a world beyond the grave—it is of Heaven, heavenly. The evidence upon which it is founded, and the sanctions by which it is upheld, are addressed solely to the understanding and the purified affections. Even He, from whom cometh every pure and perfect gift, and to whom religion is directed as its author, its end, and its exceedingly great reward, imposes no coercion on His children. They believe, or doubt, or reject, according to the impressions which the testimony of revealed truth makes upon their minds. He causes His sun to shine alike on the believer and the unbeliever, and His dews to fertilize equally the soil of the orthodox and the heretic. No earthly gains or temporal privations are to influence their judgment here, and it is reserved until the last day, for the just Judge of all the Earth to declare who have criminally refused to examine or to credit the evidences which were laid before them. But civil rulers thrust themselves in and become God's avengers. Under a pretended zeal for the honor of His house, and the propagation of His Revelation,

> Snatch from His hand the balance and the rod;
> Rejudge His justice—are the God of God;

define faith by Edicts, Statutes and Constitutions; deal out largesses to accelerate conviction, and refute unbelief and heresy by the unanswerable logic of pains and penalties. Let not religion be abused for this impious tyranny—religion has nothing to do with it. Nothing can be conceived more abhorrent from the spirit of true religion, than the hypocritical pretensions of Kings, Princes, Rulers and Magistrates, to uphold her holy cause by their unholy violence.

Engd by W. G. Jackman.

Robt. J. Mayne

N. Y. D. Appleton & Co.

ROBERT Y. HAYNE.

Robert Y. Hayne, distinguished as an orator, lawyer, and civilian, was a native of the parish of St. Paul, in South Carolina, where he was born on the tenth day of November, 1791. He was descended from a family celebrated for its patriotism, and its sacrifices during the war of the Revolution.* His father was a respectable planter. Unable to afford his children the benefits of a liberal education, his son Robert obtained his classical and English instruction in a grammar school in the city of Charleston. At seventeen he commenced a course of legal study under the guidance of Langdon Cheves, and soon after was admitted to practice. In 1812 previous to entering upon the duties of his profession, he volunteered his services to the United States, was appointed a lieutenant in the militia of South Carolina, and served with gallantry at Fort Moultrie, under the command of Col. William Drayton. While in this situation his powers of oratory first became conspicuous. In an address delivered on the anniversary of the independence of the United States, in 1812, before the officers and soldiers of the fort, he evinced such patriotism of sentiment, purity of style, and depth of pathos; as won the applause of his hearers, and widely extended his reputation.

Relinquishing military service, Mr. Hayne returned to Charleston, and commenced the practice of his profession, in which he was successful and soon became eminent. In the autumn of 1814 he was elected to the State Legislature, and, in his representative capacity, distinguished himself by his determined, energetic and disinterested exertions for the welfare of his constituents. He was a firm supporter of President Madison and the war, and upon all occasions during that exciting period, openly avowed his opinions and advocated the principles he had espoused. He continued in the Legislature until 1818, and during the last year, occupied the position of Speaker. At the end of his term, he was elected Attorney General of the State, the important and responsible duties of which station he discharged until his election to the Senate of the United States, in 1822. Here he remained ten years, near the expiration of which he resigned, to accept the governorship of South Carolina.

Mr. Hayne's career in the Senate, distinguished, fearless, and honorable as it is known to have been, requires but a passing notice here. His entrance to that body, then numbering among its members many of the ablest American statesmen, was considered by them as an accession to the talent and character of the chamber. "I know the estimate they put upon him," says his friend and associate, "the consideration they had for him, and the future they pictured for him; for they were men to look around, and consider who were to carry on the government after they were gone. But the proceedings of the Senate soon gave the highest evidence of the degree of consideration in which he was held. In the second year of his service, he was appointed to a high duty—such as would belong to age and long service, as well as to talent and elevated character. He was made Chairman of the Select Committee, which brought in the bill for the grants

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* Colonel Isaac Hayne, the "martyr of South Carolina," was the grand-uncle of Robert Y. Hayne: an account of his sufferings is given by General Lee in his interesting memoirs of the Southern Campaign.

to Lafayette; and as such became the organ of the expositions, as delicate as they were responsible, which reconciled such grants to the words and spirit of our constitution, and adjusted them to the merit and modesty of the receiver: a high function, and which he fulfilled to the satisfaction of the chamber and the country.* Among the first oratorical efforts of Mr. Hayne, that made during the debate on the exciting question of the tariff, in 1824, won him an exalted reputation, especially at home. He opposed the measure, as he considered it injurious to the country. He thought it was the true interest of the States to have no such restrictive policy, and that its adoption would be attended with ruin. Of the other speeches he made while a senator, among which is that on the Bankrupt Bill, of which he was the originator and zealous advocate, the most celebrated are those delivered in the "great debate" on Mr. Foot's resolution. The second and last one, which will be found in the subsequent pages of this work, is considered, by many, equal, as a constitutional argument, to any one delivered in the Senate. "It exhibits," says an able writer, "a profound knowledge of the true principles of our constitution, and of the relative rights and duties of the Federal and State governments. As an effort of intellect, it will rank among the highest in the annals of American eloquence; and as a faithful exposition of the true structure and objects of the American confederacy, it will be regarded as a text-book by the supporters of the sovereignty of the States in every section of the Union.†

Previous to resigning his seat in the Senate, Mr. Hayne was a member of the convention of South Carolina, which assembled for the purpose of taking "into consideration the several acts of the Congress of the United States, imposing duties on foreign imports, for the protection of domestic manufactures, or for other unauthorized objects, to determine on the character thereof, and to devise the means of redress, &c." The result of the deliberations of the convention was the adoption of the notorious nullification ordinance, which was reported to that body by Mr. Hayne, as chairman of the committee to which the subject had been referred. Of this policy, Mr. Hayne was a strenuous supporter, and, as Governor of the State, he was soon after its adoption called on to carry out its principles. The ordinance of nullification was adopted by the convention on the twenty-fourth of November, 1832. On the tenth of the following month, President Jackson issued a proclamation denouncing it and expressing his determination to compel a due observance of the laws of the United States. This instrument was met by a counter-proclamation from Governor Hayne, in which was exhibited a fixed resolution to resist the General Government, even at the point of the bayonet; and preparations for the defence of the State were every where made. The passage of the Compromise Act, however, in March, 1833, put an end to the symptoms of rebellion; and another convention in South Carolina, of which Governor Hayne was president, soon after repealed the obnoxious measure.

In December, 1834, Governor Hayne retired from office and from public life. Three years after, he was elected president of the Charleston, Louisville and Cincinnati Railroad, which office he held until his death. That event occurred on the twenty-fourth of September, 1839.

The distinguishing features of Mr. Hayne's character and appearance are thus given by Mr. Benton, in the work before quoted:—"Nature had lavished upon him all the gifts which lead to eminence in public, and to happiness in private life. Beginning with the person and manners—he was entirely fortunate in these accessorial advantages. His person was of middle size, slightly above it in height, well proportioned, flexible and graceful. His face was fine—the features manly, well formed, expressive and quite handsome: a countenance ordinarily thoughtful and serious, but readily lighting up, when accosted, with an expression of kindness, intelligence, cheerfulness and inviting amiability. His manners were easy, cordial, unaffected, affable; and his address so winning, that the fascinated stranger was taken captive at the first salutation. These personal qualities were backed by those of the mind—all solid, brilliant, practical and utilitarian: and always employed on useful objects, pursued from high motives, and by fair and open means. His judgment was good, and he exercised it in the serious consideration of whatever business he was engaged upon, with an honest desire to do what was right, and a laudable ambition to achieve an honorable fame. He had a copious and ready elocution, flowing at will in

a strong and steady current, and rich in the material which constitutes argument. His talents were various, and shone in different walks of life, not often united: eminent as a lawyer, distinguished as a senator: a writer as well as a speaker: and good at the council table. All these advantages were enforced by exemplary morals; and improved by habits of study, moderation, temperance, self-control, and addiction to business. There was nothing holiday or empty about him—no lying-in to be delivered of a speech of phrases. Practical was the turn of his mind: industry an attribute of his nature: labor an inherent impulsion, and a habit: and during his ten years of senatorial service, his name was incessantly connected with the business of the Senate. He was ready for all work—speaking, writing, consulting—in the committee-room as well as in the chamber—drawing bills and reports in private as well as shining in the public debate, and ready for the social intercourse of the evening when the labors of the day were over. A desire to do service to the country, and to earn just fame for himself, by working at useful objects, brought all these high qualities into constant, active and brilliant requisition. To do good by fair means was the labor of his senatorial life; and I can truly say that, in ten years of close association with him, I never saw him actuated by a sinister motive, a selfish calculation, or an unbecoming aspiration." Ardent and steadfast in his own peculiar principles, he never spoke harshly of those who differed from him in opinion: pure, affectionate, and amiable in all the relations of domestic life, he was universally beloved and respected.

SPEECH ON MR. FOOT'S RESOLUTION.

The following speech, in answer to Mr. Webster's first speech on Mr. Foot's resolution,* was delivered by Mr. Hayne, in the Senate of the United States, on the twenty-first of January, 1830.†

Mr. PRESIDENT: When I took occasion, two days ago, to throw out some ideas with respect to the policy of the government, in relation to the public lands, nothing certainly could have been further from my thoughts, than that I should have been compelled again to throw myself upon the indulgence of the Senate. Little did I expect to be called upon to meet such an argument as was yesterday urged by the gentleman from Massachusetts, (Mr. Webster.) Sir, I questioned no man's opinions; I impeached no man's motives; I charged no party, or State, or section of country, with hostility to any other, but ventured, as I thought in a becoming spirit, to put forth my own sentiments in relation to a great national question of public policy. Such was my course. The gentleman from Missouri, (Mr. Benton,) it is true, had charged upon the Eastern States an early and continued hostility towards the west, and referred to a number of historical facts and documents in support of that charge. Now, sir, how have these different arguments been met? The honorable gentleman from Massachusetts, after deliberating a whole night upon his course, comes into this chamber to vindicate New England; and instead of making up his issue with the gentleman from Missouri, on the charges which he had preferred, chooses to consider me as the author of those charges, and losing sight entirely of that gentleman, selects me as his adversary, and pours out all the vials of his mighty wrath upon my devoted head. Nor is he willing to stop there. He goes on to assail the institutions and policy of the south, and calls in question the principles and conduct of the State which I have the honor to represent. When I find a gentleman of mature age and experience—of acknowledged talents, and profound sagacity, pursuing a course like this, declining the contest offered from the west, and making war upon the unoffending south, I must believe, I am bound to believe, he has some object in view which he has not ventured to disclose. Mr. President, why is this? Has the gentleman discovered in former controversies with the gentleman from Missouri, that he is over-matched by that senator? And does he hope for an easy victory over a more feeble adversary? Has the gentleman's distempered

* The following is the resolution of Mr. Foot:—"*Resolved*, That the Committee on Public Lands be instructed to inquire and report the quantity of the public lands remaining unsold within each State and Territory, and whether it be expedient to limit, for a certain period, the sales of the public lands to such lands only as have heretofore been offered for sale, and are now subject to entry at the minimum price. And, also, whether the office of Surveyor General, and some of the Land Offices, may not be abolished without detriment to the public interest; or whether it be expedient to adopt measures to hasten the sales, and extend more rapidly the surveys of the public lands."

"new alliances to be formed" at which he hinted? Has the ghost of the murdered Coalition come back, like the ghost of Banquo, to "sear the eye-balls of the gentleman," and will it not "down at his bidding?" Are dark visions of broken hopes, and honors lost for ever, still floating before his heated imagination? Sir, if it be his object to thrust me between the gentleman from Missouri and himself, in order to rescue the east from the contest it has provoked with the west, he shall not be gratified. Sir, I will not be dragged into the defence of my friend from Missouri. The south shall not be forced into a conflict not its own. The gentleman from Missouri is able to fight his own battles. The gallant west needs no aid from the south to repel any attack which may be made on them from any quarter. Let the gentleman from Massachusetts controvert the facts and arguments of the gentleman from Missouri, if he can—and if he win the victory, let him wear the honors; I shall not deprive him of his laurels.

The gentleman from Massachusetts, in reply to my remarks on the injurious operations of our land system on the prosperity of the west, pronounced an extravagant eulogium on the paternal care which the government had extended towards the west, to which he attributed all that was great and excellent in the present condition of the new States. The language of the gentleman on this topic, fell upon my ears like the almost forgotten tones of the tory leaders of the British Parliament, at the commencement of the American Revolution. They, too, discovered, that the colonies had grown great under the fostering care of the Mother Country; and I must confess, while listening to the gentleman, I thought the appropriate reply to his argument, was to be found in the remark of a celebrated orator, made on that occasion: "They have grown great in spite of your protection."

The gentleman, in commenting on the policy of the government, in relation to the new States, has introduced to our notice a certain Nathan Dane, of Massachuetts, to whom he attributes the celebrated ordinance of '87, by which he tells us, "slavery was for ever excluded from the new States north of the Ohio." After eulogizing the wisdom of this provision, in terms of the most extravagant praise, he breaks forth in admiration of the greatness of Nathan Dane—and great indeed he must be, if it be true as stated by the senator from Massachusetts, that "he was greater than Solon and Lycurgus, Minos, Numa Pompilius, and all the legislators and philosophers of the world," ancient and modern. Sir, to such high authority it is certainly my duty, in a becoming spirit of humility, to submit. And yet, the gentleman will pardon me, when I say, that it is a little unfortunate for the fame of this great legislator, that the gentleman from Missouri should have proved, that he was not the author of the Massachusetts has reared so glorious a monument to his name. Sir, I doubt not the senator will feel some compassion for our ignorance, when I tell him, that so little are we acquainted with the modern great men of New England, that until he informed us yesterday that we possessed a Solon and a Lycurgus, in the person of Nathan Dane, he was only known to the south as a member of a celebrated assembly, called and known by the name of "the Hartford Convention." In the proceedings of that assembly, which I hold in my hand, (at page 19,) will be found, in a few lines, the history of Nathan Dane; and a little farther on, there is conclusive evidence of that ardent devotion to the interests of the new States, which it seems has given him a just claim to the title of "Father of the West." By the 2d resolution of the "Hartford Convention," it is declared, "that it is expedient to attempt to make provision for restraining Congress in the exercise of an unlimited power to make new States, and admitting them into the Union." So much for Nathan Dane, of Beverly, Massachusetts.

In commenting upon my views in relation to the public lands, the gentleman insists, that it being one of the conditions of the grants, that these lands should be applied to "the common benefit of all the States, they must always remain a fund for revenue;" and adds, "they must be treated as so much treasure." Sir, the gentleman could hardly find language strong enough to convey his disapprobation of the policy which I had ventured to recommend to the favorable consideration of the country. And what, sir, was that policy, and what is the difference between that gentleman and myself, on this subject? I threw out the idea, that the public lands ought not to be reserved for ever, as "a great fund of revenue;" that they ought not to be "treated as a great treasure;" but, that the course of our policy should rather be directed towards the creation of new States, and building up great and flourishing communities.

Now, sir, will it believed, by those who now hear me—and who listened to the gentleman's denunciation of my doctrines, yesterday—that a book then lay open before him—nay, that he held it in his hand, and read from it certain passages of his own speech, delivered to the House of Representatives in 1825, in which speech he himself contended for the very doctrines I had advocated, and almost in the same terms. Here is the speech of the Hon. Daniel Webster, contained in the first volume of Gales and Seaton's Register of Debates, (p. 251,) delivered in the House of Representatives on the 18th of January, 1825, in a debate on the Cumberland Road—the very debate from which the senator read yesterday. I shall read from the celebrated speech two passages, from which it will appear that both as to the past, and the future policy of the government in relation to the pub-

opinions which I have advanced; but which he now so strongly reprobates. I said, sir, that the system of credit sales by which the west had been kept constantly in debt to the United States, and by which their wealth was drained off to be expended elsewhere, had operated injuriously on their prosperity. On this point the gentleman from Massachusetts, in January, 1825, expressed himself thus: "There could be no doubt if gentlemen looked at the money received into the Treasury from the sale of the public lands to the west, and then looked to the whole amount expended by government, (even including the whole amount of what was laid out for the army,) the latter must be allowed to be very inconsiderable, and there must be a constant drain of money from the west to pay for the public lands. It might indeed be said that this was no more than the refluence of capital which had previously gone over the mountains. Be it so. Still its practical effect was to produce inconvenience, if not distress, by absorbing the money of the people."

I contended that the public lands ought not to be treated merely as "a fund for revenue"—that they ought not be hoarded "as a great treasure." On this point the senator expressed himself thus: "government, he believed, had received eighteen or twenty millions of dollars from the public lands, and it was with the greatest satisfaction he adverted to the change which had been introduced in the mode of paying for them; yet he could never think the national domain was to be regarded as any great source of revenue. The great object of the government in respect of these lands, was not so much the money derived from their sale, as it was the getting them settled. What he meant to say was, he did not think they ought to hug that domain as a great treasure, which was to enrich the exchequer."

Now, Mr. President, it will be seen that the very doctrines which the gentleman so indignantly abandons, were urged by him in 1825; and if I had actually borrowed my sentiments from those which he then avowed, I could not have followed more closely in his footsteps. Sir, it is only since the gentleman quoted this book, yesterday, that my attention has been turned to the sentiments he expressed in 1825, and, if I had remembered them, I might possibly have been deterred from uttering sentiments here, which it might well be supposed I had borrowed from that gentleman.

In 1825 the gentleman told the world, that the public lands "ought not to be treated as a treasure." He now tells us, that "they must be treated as so much treasure." What the deliberate opinion of the gentleman on this subject may be, belongs not to me to determine; but I do not think he can, with the shadow of justice or propriety, impugn my sentiments, while his own recorded opinions are identical with my own. When the gentleman refers to the conditions of the grants under which the

insists that, as they are declared to be "for the common benefit of all the States," they can only be treated as so much treasure, I think he has applied a rule of construction too narrow for the case. If in the deeds of cession it has been declared that the grants were intended for "the common benefit of all the States," it is clear, from other provisions, that they were not intended merely as so much property; for it is expressly declared, that the object of the grants is the erection of new States; and the United States, in accepting this trust, bind themselves to facilitate the foundation of these States to be admitted into the Union with all the rights and privileges of the original States. This, sir, was the great end to which all parties looked, and it is by the fulfilment of this high trust, that "the common benefit of all the States" is to be best promoted. Sir, let me tell the gentleman, that in the part of the country in which I live, we do not measure political benefits by the money standard. We consider as more valuable than gold, liberty, principle, and justice. But, sir, if we are bound to act on the narrow principles contended for by the gentleman, I am wholly at a loss to conceive how he can reconcile his principles with his own practice. The lands are, it seems, to be treated "as so much treasure," and must be applied to the "common benefit of all the States." Now, if this be so, whence does he derive the right to appropriate them for partial and local objects? How can the gentleman consent to vote away immense bodies of these lands, for canals in Indiana and Illinois, to the Louisville and Portland canal, to Kenyon College in Ohio, to schools for the Deaf and Dumb, and other objects of a similar description? If grants of this character can fairly be considered as made "for the common benefit of all the States," it can only be, because all the States are interested in the welfare of each—a principle which, carried to the full extent, destroys all distinction between local and national objects, and is certainly broad enough to embrace the principles for which I have ventured to contend. Sir, the true difference between us I take to be this: the gentleman wishes to treat the public lands as a great treasure, just as so much money in the treasury, to be applied to all objects, constitutional and unconstitutional, to which the public money is constantly applied. I consider it as a sacred trust, which we ought to fulfil, on the principles for which I have contended.

The senator from Massachusetts has thought proper to present in strong contrast the friendly feelings of the east towards the west, with sentiments of an opposite character displayed by the south in relation to appropriations for internal improvements. Now, sir, let it be recollected that the south have made no professions; I have certainly made none in their behalf of regard for the west. It has been reserved for the gentleman from Massachusetts, while he vaunts over his own personal devotion to western interests, to claim for the entire section of coun-

try to which he belongs, an ardent friendship for the west, as manifested by their support of the system of internal improvement, while he casts in our teeth the reproach that the south has manifested hostility to western interests in opposing appropriations for such objects. That gentleman, at the same time, acknowledged that the south entertains constitutional scruples on this subject. Are we then, sir, to understand, that the gentleman considers it a just subject of reproach, that we respect our oaths, by which we are bound "to preserve, protect and defend the constitution of the United States?" Would the gentleman have us manifest our love to the west by trampling under foot our constitutional scruples? Does he not perceive, if the south is to be reproached with unkindness to the west, in voting against appropriations, which the gentleman admits they could not vote for without doing violence to their constitutional opinions, that he exposes himself to the question: whether, if he was in our situation, he could not vote for these appropriations, regardless of his scruples? No, sir, I will not do the gentleman so great injustice. He has fallen into this error from not having duly weighed the force and effect of the reproach which he was endeavoring to cast upon the south. In relation to the other point, the friendship manifested by New England towards the west, in their support of the system of internal improvement, the gentleman will pardon me for saying, that I think he is equally unfortunate in having introduced that topic. As that gentleman has forced it upon us, however, I cannot suffer it to pass unnoticed. When the gentleman tells us that the appropriations for internal improvement in the west, would, in almost every instance, have failed, but for New England votes, he has forgotten to tell us the when, the how, and the wherefore this new born zeal for the west sprung up in the bosom of New England. If we look back only a few years, we will find, in both Houses of Congress, an uniform and steady opposition, on the part of the members from the eastern States, generally to all appropriations of this character. At the time I became a member of this House, and for some time afterwards, a decided majority of the New England senators were opposed to the very measures which the senator from Massachusetts tells us they now cordially support. Sir, the journals are before me, and an examination of them will satisfy every gentleman of that fact.

It must be well known to every one whose experience dates back as far as 1825, that up to a certain period, New England was generally opposed to appropriations for internal improvements in the west. The gentleman from Massachusetts may be himself an exception, but if he went for the system before 1825, it is certain that his colleagues did not go with him. In the session of 1824 and '25, however, (a memorable era in the history of this country,) a wonderful union of sympathies and of interests was then effected, which brought the east and the west into close alliance. The book from which I have before read contains the first public annunciation of that happy reconciliation of conflicting interests, personal and political, which brought the east and west together, and locked in a fraternal embrace the two great orators of the east and the west. Sir, it was on the 18th January, 1825, while the result of the Presidential election, in the House of Representatives, was still doubtful, while the whole country was looking with intense anxiety to that legislative hall, where the mighty drama was so soon to be acted, that we saw the leaders of two great parties in the House and in the nation, "taking sweet counsel together," and in a celebrated debate on the Cumberland Road, fighting side by side for western interests. It was on that memorable occasion that the senator from Massachusetts held out the white flag to the west, and uttered those liberal sentiments, which he, yesterday, so indignantly repudiated. Then it was, that that happy union between the members of the celebrated coalition was consummated, whose immediate issue was a President from one quarter of the Union, with the succession (as it was supposed) secured to another. The "American System," before a rude, disjointed and misshapen mass, now assumed form and consistency: then it was, that it became the "settled policy of the government," that this system should be so administered as to create a reciprocity of interests, and a reciprocal distribution of government favors, east and west, (the tariff and internal improvements,) while the south—yes, sir, the impracticable south was to be "out of your protection." The gentleman may boast as much as he pleases of the friendship of New England for the west, as displayed in their support of internal improvement—but, when he next introduces that topic, I trust that he will tell us when that friendship commenced, how it was brought about, and why it was established. Before I leave this topic, I must be permitted to say, that the true character of the policy now pursued by the gentleman from Massachusetts and his friends, in relation to appropriations of land and money, for the benefit of the west, is in my estimation very similar to that pursued by Jacob of old towards his brother Esau—it robs them of their birthright for a mess of pottage.

The gentleman from Massachusetts, in alluding to a remark of mine, that before any disposition could be made of the public lands, the national debt (for which they stand pledged) must be first paid, took occasion to intimate "that the extraordinary fervor which seems to exist in a certain quarter (meaning the south, sir) for the payment of the debt, arises from a disposition to weaken the ties which bind the people to the Union." While the gentleman deals us this blow, he professes an ardent desire

on that subject until I find this disposition manifested by something stronger than professions. I shall look for acts, decided and unequivocal acts; for the performance of which an opportunity will very soon, (if I am not greatly mistaken,) be afforded. Sir, if I were at liberty to judge of the course which that gentleman would pursue, from the principles which he has laid down in relation to this matter, I should be bound to conclude that, he will be found acting with those with whom it is a darling object to prevent the payment of the public debt. He tells us he is desirous of paying the debt, "because we are under an obligation to discharge it." Now, sir, suppose it should happen that the public creditors, with whom we have contracted the obligation, should release us from it, so far as to declare their willingness to wait for payment for fifty years to come, provided only, the interest shall be punctually discharged. The gentleman from Massachusetts will then be released from the obligation which now makes him desirous of paying the debt; and let me tell the gentleman, the holders of the stock will not only release us from this obligation, but they will implore, nay, they will even pay us not to pay them. But adds the gentleman, so far as the debt may have an affect in binding the debtors to the country, and thereby serving as a link to hold the States together, he would be glad that it should exist for ever. Surely then, sir, on the gentleman's own principles, he must be opposed to the payment of the debt.

Sir, let me tell that gentleman that the south repudiates the idea that a pecuniary dependence on the Federal Government is one of the legitimate means of holding the States together. A monied interest in the Government is essentially a base interest: and just so far as it operates to bind the feelings of those who are subjected to it, to the government,—just so far as it operates in creating sympathies and interests that would not otherwise exist—is it opposed to all the principles of free government, and at war with virtue and patriotism. Sir, the link which binds the public creditors, as such, to their country, binds them equally to all governments, whether arbitrary or free. In a free government this principle of abject dependence, if extended through all the ramifications of society, must be fatal to liberty. Already have we made alarming strides in that direction. The entire class of manufacturers, the holders of stocks, with their hundreds of millions of capital, are held to the government by the strong link of pecuniary interests; millions of people —entire sections of country, interested, or believing themselves to be so, in the public lands and the public treasure, are bound to the government by the expectation of pecuniary favors. If this system is carried much farther, no man can fail to see that every generous motive of attachment to the country will be destroyed, and in its place will spring up those low, grov- and enduring as those which attach them to free institutions. Sir, I would lay the foundation of this government in the affections of the people—I would teach them to cling to it by dispensing equal justice, and above all, by securing the "blessings of liberty" to "themselves and to their posterity."

The honorable gentleman from Massachusetts has gone out of his way to pass a high eulogium on the State of Ohio. In the most impassioned tones of eloquence, he described her majestic march to greatness. He told us that having already left all the other States far behind, she was now passing by Virginia and Pennsylvania, and about to take her station by the side of New York. To all this, sir, I was disposed most cordially to respond. When, however, the gentleman proceeded to contrast the State of Ohio with Kentucky, to the disadvantage of the latter, I listened to him with regret; and when he proceeded further to attribute the great, and as he supposed, acknowledged superiority of the former in population, wealth and general prosperity, to the policy of Nathan Dane of Massachusetts, which had secured to the people of Ohio (by the Ordinance of '87) a population of freemen, I will confess that my feelings suffered a revulsion, which I am now unable to describe, in any language sufficiently respectful towards the gentleman from Massachusetts. In contrasting the State of Ohio with Kentucky, for the purpose of pointing out the superiority of the former, and of attributing that superiority to the existence of slavery in the one State, and its absence in the other, I thought I could discern the very spirit of the Missouri question, intruded into this debate for objects best known to the gentleman himself. Did that gentleman, sir, when he formed the determination to cross the southern border, in order to invade the State of South Carolina, deem it prudent or necessary to enlist under his banners the prejudices of the world, which, like Swiss troops, may be engaged in any cause, and are prepared to serve under any leader? Did he desire to avail himself of those remorseless allies, the passions of mankind, of which it may be more truly said than of the savage tribes of the wilderness, "that their known rule of warfare is an indiscriminate slaughter of all ages, sexes, and conditions?" Or was it supposed, sir, that in a premeditated and unprovoked attack upon the south, it was advisable to begin by a gentle admonition of our supposed weakness, in order to prevent us from making that firm and manly resistance due to our own character and our dearest interest? Was the significant hint of the weakness of slave-holding States, when contrasted with the superior strength of free States, —like the glare of the weapon half drawn from its scabbard, intended to enforce the lessons of prudence and patriotism, which the gentleman had resolved, out of his abundant generosity, gratuitously to bestow upon us? Mr. President,

slave question, exposes us to such constant attacks, has done us so much injury, and is calculated to produce such infinite mischiefs, that I embrace the occasion presented by the remarks of the gentleman of Massachusetts, to declare that we are ready to meet the question promptly and fearlessly. It is one from which we are not disposed to shrink, in whatever form or under whatever circumstances it may be pressed upon us.

We are ready to make up the issue with the gentleman, as to the influence of slavery on individual and national character—on the prosperity and greatness, either of the United States or of particular States. Sir, when arraigned before the bar of public opinion, on this charge of slavery, we can stand up with conscious rectitude, plead not guilty, and put ourselves upon God and our country. Sir, we will not consent to look at slavery in the abstract. We will not stop to inquire whether the black man, as some philosophers have contended, is of an inferior race, nor whether his color and condition are effects of a curse inflicted for the offences of his ancestors? We deal in no abstractions. We will not look back to inquire whether our fathers were guiltless in introducing slaves into this country? If an inquiry should ever be instituted in these matters, however, it will be found that the profits of the slave trade were not confined to the south. Southern ships and southern sailors were not the instruments of bringing slaves to the shores of America, nor did our merchants reap the profits of that "accursed traffic." But, sir, we will pass over all this. If slavery, as it now exists in this country, be an evil, we of the present day found it ready made to our hands. Finding our lot cast among a people, whom God had manifestly committed to our care, we did not sit down to speculate on abstract questions of theoretical liberty. We met it as a practical question of obligation and duty. We resolved to make the best of the situation in which Providence had placed us, and to fulfil the high trusts which had devolved upon us as the owners of slaves, in the only way in which such a trust could be fulfilled, without spreading misery and ruin throughout the land. We found that we had to deal with a people whose physical, moral and intellectual habits and character totally disqualified them from the enjoyment of the blessings of freedom. We could not send them back to the shores from whence their fathers had been taken; their numbers forbade the thought, even if we did not know that their condition here is infinitely preferable to what it possibly could be among the barren sands and savage tribes of Africa; and it was wholly irreconcilable with all our notions of humanity to tear assunder the tender ties which they had formed among us, to gratify the feelings of a false philanthropy. What a commentary on the wisdom, justice, and humanity of the southern slave owner is presented by the example of certain benevolent where. Shedding weak tears over sufferings which had existence only in their own sickly imaginations, these "friends of humanity" set themselves systematically to work to seduce the slaves of the south from their masters. By means of missionaries and political tracts, the scheme was in a great measure successful. Thousands of these deluded victims of fanaticism were seduced into the enjoyment of freedom in our northern cities. And what has been the consequence? Go to these cities now and ask the question. Visit the dark and narrow lanes, and obscure recesses which have been assigned by common consent as the abodes of those outcasts of the world—the free people of color. Sir, there does not exist on the face of the whole earth, a population so poor, so wretched, so vile, so loathsome, so utterly destitute of all the comforts, conveniences, and decencies of life, as the unfortunate blacks of Philadelphia, and New York and Boston. Liberty has been to them the greatest of calamities, the heaviest of curses. Sir, I have had some opportunities of making comparison between the condition of the free negroes of the north, and the slaves of the south, and the comparison has left not only an indelible impression of the superior advantages of the latter, but has gone far to reconcile me to slavery itself. Never have I felt so forcibly that touching description, "the foxes have holes, and the birds of the air have nests, but the Son of Man hath not where to lay his head," as when I have seen this unhappy race, naked and houseless, almost starving in the streets, and abandoned by all the world. Sir, I have seen, in the neighborhood of one of the most moral, religious and refined cities of the north, a family of free blacks driven to the caves of the rocks, and there obtaining a precarious subsistence from charity and plunder.

When the gentleman from Massachusetts adopts and reiterates the old charge of weakness as resulting from slavery, I must be permitted to call for the proof of those blighting effects which he ascribes to its influence. I suspect that when the subject is closely examined, it will be found that there is not much force even in the plausible objection of the want of physical power in slave-holding States. The power of a country is compounded of its population and its wealth, and in modern times, where, from the very form and structure of society, by far the greater portion of the people must, even during the continuance of the most desolating wars, be employed in the cultivation of the soil and other peaceful pursuits, it may be well doubted, whether slave-holding States, by reason of the superior value of their productions, are not able to maintain a number of troops in the field, fully equal to what could be supported by States with a larger white population, but not possessed of equal resources.

It is a popular error, to suppose that in any possible state of things, the people of a country could ever be called out "en masse," or that a

physical force of any country, could ever be brought into the field. The difficulty is not to procure men, but to provide the means of maintaining them; and in this view of the subject, it may be asked whether the Southern States are not a source of strength and power, and not of weakness to the country?—whether they have not contributed, and are not now contributing largely to the wealth and prosperity of every State in this Union? From a statement which I hold in my hand, it appears that in ten years—from 1818 to 1827, inclusive—the whole amount of the domestic exports of the United States was $521,811,045. Of which, three articles, (the product of slave labor,) viz.—cotton, rice, and tobacco, amounted to $339,203,232—equal to about two-thirds of the whole. It is not true, as has been supposed, that the advantages of this labor is confined almost exclusively to the Southern States. Sir, I am thoroughly convinced, that at this time, the States north of the Potomac actually derive greater profits from the labor of our slaves, than we do ourselves. It appears from our public documents, that in seven years, from 1821 to 1827 inclusive, the six Southern States exported $190,337,281, and imported only $55,646,301. Now the difference between these two sums, (near $140,000,000,) passed through the hands of the northern merchants, and enabled them to carry on their commercial operations with all the world. Such part of these goods as found its way back to our hands, came charged with the duties, as well as the profits of the merchant, the ship owner, and a host of others, who found employment in carrying on these immense exchanges; and for such part as was consumed at the north, we received in exchange northern manufactures, charged with an increased price, to cover all the taxes which the northern consumer has been compelled to pay on the imported article. It will be seen, therefore, at a glance, how much slave labor has contributed to the wealth and prosperity of the United States, and how largely our northern brethren have participated in the profits of that labor. Sir, on this subject I will quote an authority, which will, I doubt not, be considered by the senator from Massachusetts as entitled to high respect. It is from the great father of the "American System," honest Matthew Carey—no great friend, it is true, at this time, to southern rights and southern interests, but not the worst authority on that account, on the point in question.

Speaking of the relative importance to the Union of the Southern and the Eastern States, Matthew Carey, in the sixth edition of his Olive Branch, (p. 278,) after exhibiting a number of statistical tables, to show the decided superiority of the former, thus proceeds:

"But I am tired of this investigation—I sicken for the honor of the human species. What idea must the world form of the arrogance of Union, to have so long suffered them to pass without exposure and detection. The naked fact is, that the demagogues in the Eastern States, not satisfied with deriving all the benefits from the southern section of the Union that they would from so many wealthy colonies—with making princely fortunes by the carriage and exportation of its bulky and valuable productions, and supplying it with their own manufactures, and the productions of Europe, and the East and West Indies, to an enormous amount and at an immense profit, have uniformly treated it with outrage, insult, and injury. And regardless of their vital interests, the Eastern States were lately courting their own destruction, by allowing a few restless, turbulent men to lead them blindfolded to a separation which was pregnant with their certain ruin. Whenever that event takes place, they sink into insignificance. If a separation were desirable to any part of the Union, it would be to the Middle and Southern States, particularly the latter, who have been so long harassed with the complaints, the restlessness, the turbulence, and the ingratitude of the Eastern States, that their patience has been tried almost beyond endurance. 'Jeshurun waxed fat and kicked,' and he will be severely punished for his kicking in the event of a dissolution of the Union." Sir, I wish it to be distinctly understood, that I do not adopt these sentiments as my own. I quote them to show that very different sentiments have prevailed in former times as to the weakness of the slave-holding States, from those which now seem to have become fashionable in certain quarters. I know it has been supposed by certain ill-informed persons, that the south exists only by the countenance and protection of the north. Sir, this is the idlest of all idle and ridiculous fancies that ever entered into the mind of man. In every State of this Union, except one, the free white population actually preponderates; while in the British West India Islands, (where the average white population is less than ten per cent. of the whole,) the slaves are kept in entire subjection: it is preposterous to suppose that the Southern States could ever find the smallest difficulty in this respect. On this subject, as in all others, we ask nothing of our northern brethren but to "let us alone." Leave us to the undisturbed management of our domestic concerns, and the directions of our own industry, and we will ask no more. Sir, all our difficulties on this subject have arisen from interference from abroad, which has disturbed, and may again disturb, our domestic tranquillity, just so far as to bring down punishment upon the heads of the unfortunate victims of a fanatical and mistaken humanity.

There is a spirit which, like the father of evil, is constantly "walking to and fro about the earth, seeking whom it may devour:" it is the spirit of false philanthropy. The persons whom it possesses do not indeed throw themselves

community. Their first principle of action is to leave their own affairs, and neglect their own duties, to regulate the affairs and duties of others. Theirs is the task to feed the hungry and clothe the naked of other lands, while they thrust the naked, famished, and shivering beggar from their own doors;—to instruct the heathen, while their own children want the bread of life. When this spirit infuses itself into the bosom of a statesman (if one so possessed can be called a statesman), it converts him at once into a visionary enthusiast. Then it is that he indulges in golden dreams of national greatness and prosperity. He discovers that "liberty is power," and, not content with vast schemes of improvement at home, which it would bankrupt the treasury of the world to execute, he flies to foreign lands, to fulfil obligations to "the human race," by inculcating the principles of "political and religious liberty," and promoting the "general welfare" of the whole human race. It is a spirit which has long been busy with the slaves of the south, and is even now displaying itself in vain efforts to drive the government from its wise policy in relation to the Indians. It is this spirit which has filled the land with thousands of wild and visionary projects, which can have no effect but to waste the energies and dissipate the resources of the country. It is the spirit, of which the aspiring politician dexterously avails himself, when, by inscribing on his banner the magical words, Liberty and Philanthropy, he draws to his support that class of persons who are ready to bow down at the very name of their idols.

But, sir, whatever difference of opinion may exist as to the effect of slavery on national wealth and prosperity, if we may trust to experience, there can be no doubt that it has never yet produced any injurious effect on individual or national character. Look through the whole history of the country, from the commencement of the Revolution down to the present hour; where are there to be found brighter examples of intellectual and moral greatness than have been exhibited by the sons of the south? From *the Father of his Country, down to the distin*guished chieftain who has been elevated by a grateful people to the highest office in their gift, the interval is filled up by a long line of orators, of statesmen, and of heroes, justly entitled to rank among the ornaments of their country, and the benefactors of mankind. Look at "the Old Dominion," great and magnanimous Virginia, "whose jewels are her sons." Is there any State in this Union which has contributed so much to the honor and welfare of the country? Sir, I will yield the whole question—I will acknowledge the fatal effects of slavery upon character, if any one can say that, for noble disinterestedness, ardent love of country, exalted virtue, and a pure and holy devotion to liberty, the people of the Southern States have ever been surpassed by any in the world. I know, sir, that this devotion to liberty, has

institutions; but it is in some degree the result of those very institutions. Burke, the most philosophical of statesmen, as he was the most accomplished of orators, well understood the operation of this principle, in elevating the sentiments and exalting the principles of the people in slaveholding States. I will conclude my remarks on this branch of the subject, by reading a few passages from his speech "on moving his resolutions for conciliation with the Colonies," the 22d of March, 1775.

"There is a circumstance attending the Southern Colonies, which makes the spirit of liberty still more high and haughty than in those to the northward. It is that in Virginia and the Carolinas they have a vast multitude of slaves. Where this is the case, in any part of the world, those who are free are by far the most proud and jealous of their freedom. Freedom is to them not only an enjoyment, but a kind of rank and privilege. Not seeing there, as in countries where it is a common blessing, and as broad and general as the air, that it may be united with much abject toil, with great misery, with all the exterior of servitude, liberty looks among them like something more noble and liberal. I do not mean, sir, to commend the superior morality of this sentiment, which has, at least, as much pride as virtue in it—but I cannot alter the nature of man. The fact is so; and these people of the Southern Colonies are much more strongly, and, with a higher and more stubborn spirit, attached to liberty, than those to the northward. Such were all the ancient commonwealths—such were our Gothic ancestors—such, in our days, were the Poles—and such will be all masters of slaves who are not slaves themselves. In such a people, the haughtiness of domination combines with the spirit of freedom, fortifies it, and renders it invincible."

In the course of my former remarks, Mr. President, I took occasion to deprecate, as one of the greatest evils, the consolidation of this government. The gentleman takes alarm at the sound. "Consolidation like the tariff," grates *upon his ear. He tells us, "we have heard* much of late about consolidation; that it is the rallying word of all who are endeavoring to weaken the Union, by adding to the power of the States." But consolidation (says the gentleman) was the very object for which the Union was formed; and, in support of that opinion, he read a passage from the address of the President of the Convention, to Congress, which he assumes to be authority on his side of the question. But, sir, the gentleman is mistaken. The object of the framers of the constitution, as disclosed in that address, was not the consolidation of the government, but "the consolidation of the Union." It was not to draw power from the States, in order to transfer it to a great National Government, but, in the language of the constitution itself, "to form a more perfect Union"—and by what means? By "establish-

securing the blessings of liberty to ourselves and our posterity." This is the true reading of the constitution.—But, according to the gentleman's reading, the object of the constitution was, to consolidate the Government, and the means would seem to be, the promotion of injustice, causing domestic discord, and depriving the States, and the people, "of the blessings of liberty," for ever.

The gentleman boasts of belonging to the party of National Republicans. National Republicans!—A new name, sir, for a very old thing. The National Republicans of the present day, were the Federalists of '98, who became Federal Republicans during the war of 1812, and were manufactured into National Republicans somewhere about the year 1825.

As a party, (by whatever name distinguished,) they have always been animated by the same principles, and have kept steadily in view a common object, the consolidation of the government. Sir, the party to which I am proud of having belonged, from the very commencement of my political life, to the present day, were the Democrats of '98, (Anarchists, Anti-Federalists, Revolutionists, I think they were sometimes called.) They assumed the name of Democratic Republicans, in 1822, and have retained their name and principles up to the present hour. True to their political faith, they have always, as a party, been in favor of limitations of power; they have insisted that all powers not delegated to the Federal Government, are reserved, and have been constantly struggling, as they now are, to preserve the rights of the States, and to prevent them from being drawn into the vortex, and swallowed up by one great consolidating government.

Sir, any one acquainted with the history of parties in this country, will recognize in the points now in dispute between the senator from Massachusetts and myself, the very grounds which have, from the beginning, divided the two great parties of this country, and which, (call those parties by what names you will, and amalgamate them as you may,) will divide them for ever. The true distinction between those parties is laid down in a celebrated manifesto, issued by the convention of the Federalists of Massachusetts, assembled in Boston, in February, 1824, on the occasion of organizing a party opposition to the re-election of Governor Eustis. The gentleman will recognize this as the "canonical book of political scripture;" and it instructs us that, "when the American Colonies redeemed themselves from British bondage, and became so many independent nations, they proposed to form a National Union—(not a Federal Union, sir, but a National Union.) Those who were in favor of a union of the States in this form, became known by the name of Federalists; those who wanted no union of the States, or disliked the proposed form of union, became known by the name of Anti-Federalists. By

of twelve years) our national rulers, and, for a period of sixteen years, until the close of Mr. Madison's administration, in 1817, continued to exercise the exclusive direction of our public affairs. Here, sir, is the true history of the origin, rise, and progress of the party of National Republicans, who date back to the very origin of the government, and who, then, as now, chose to consider the constitution as having created, not a Federal, but a National Union; who regarded "consolidation" as no evil, and who doubtless consider it "a consummation devoutly to be wished" to build up a great "central government," "one and indivisible." Sir, there have existed, in every age and every country, two distinct orders of men—the lovers of freedom, and the devoted advocates of power.

The same great leading principles, modified only by the peculiarities of manners, habits, and institutions, divided parties in the ancient republics, animated the whigs and tories of Great Britain, distinguished in our times the liberals and ultras of France, and may be traced, even in the bloody struggles of unhappy Spain. Sir, when the gallant Riego, who devoted himself, and all that he possessed, to the liberties of his country, was dragged to the scaffold, followed by the tears and lamentations of every lover of freedom throughout the world, he perished amid the deafening cries of "long live the absolute king!"—The people whom I represent, Mr. President, are the descendants of those who brought with them to this country, as the most precious of their possessions, "an ardent love of liberty;" and while that shall be preserved, they will always be found manfully struggling against the consolidation of the government—as the worst of evils.

The senator from Massachusetts, in alluding to the tariff becomes quite facetious. He tells us that "he hears of nothing but Tariff, Tariff, Tariff; and, if a word could be found to rhyme with it, he presumes it would be celebrated in verse, and set to music." Sir, perhaps the gentleman, in mockery of our complaints, may be himself disposed to sing the praises of the Tariff, in doggrel verse, to the tune of "Old Hundred." I am not at all surprised, however, at the aversion of the gentleman to the very name of Tariff. I doubt not it must always bring up some very unpleasant recollections to his mind. If I am not greatly mistaken, the senator from Massachusetts was a leading actor at a great meeting got up in Boston, in 1820, against the Tariff. It has generally been supposed that he drew up the resolutions adopted by that meeting, denouncing the Tariff system as unequal, oppressive and unjust; and if I am not much mistaken, denying its constitutionality. Certain it is, that the gentleman made a speech on that occasion in support of those resolutions, denouncing the system in no very measured terms; and, if my memory serves me, calling its constitutionality in question. I regret that I have

mistaken in their character. At that time, sir, the senator from Massachusetts entertained the very sentiments in relation to the Tariff which the South now entertains. We next find the senator from Massachusetts expressing his opinion on the Tariff, as a member of the House of Representatives, from the city of Boston, in 1824. On that occasion, sir, the gentleman assumed a position which commanded the respect and admiration of his country. He stood forth the powerful and fearless champion of free trade. He met, in that conflict, the advocates of restriction and monopoly, and they "fled from before his face." With a profound sagacity, a fulness of knowledge, and a richness of illustration that has never been surpassed, he maintained and established the principles of commercial freedom, on a foundation never to be shaken. Great indeed was the victory achieved by the gentleman on that occasion; most striking the contrast between the clear, forcible and convincing arguments, by which he carried away the understandings of his hearers, and the narrow views and wretched sophistry of another distinguished orator, who may be truly said to have "held up his farthing candle to the sun."

Sir, the senator from Massachusetts, on that, the proudest day of his life, like a mighty giant, bore away upon his shoulders, the pillars of the temple of error and delusion, escaping himself unhurt, and leaving his adversaries overwhelmed in its ruins. Then it was that he erected to free trade, a beautiful and enduring monument, and "inscribed the marble with his name." Mr. President, it is with pain and regret that I now go forward to the next great era in the political life of that gentleman, when he was found on this floor, supporting, advocating, and finally voting for the Tariff of 1828—that "bill of abominations." By that act, Sir, the Senator from Massachusetts has destroyed the labors of his whole life, and given a wound to the cause of free trade, never to be healed. Sir, when I recollect the position which that gentleman once occupied, and that which he now holds in public estimation, in relation to this subject, it is not at all surprising that the Tariff should be hateful to his ears. Sir, if I had erected to my own fame, so proud a monument as that which the gentleman built up in 1824, and I could have been tempted to destroy it with my own hands, I should hate the voice that should ring "the accursed Tariff" in my ears. I doubt not the gentleman feels very much, in relation to the Tariff, as a certain knight did to "instinct," and with him would be disposed to exclaim—

"Ah! no more of that, Hal, an' thou lovest me."

But, Mr. President, to be more serious; what are we of the south to think of what we have heard this day? The senator from Massachusetts tells us that the Tariff is not an eastern measure, and treats it as if the east had no interest in it; that it is not a western measure, and that it has done no good to the west. The south comes in, and, in the most earnest manner, represents to you, that this measure, which we are told "is of no value to the East or the West," is "utterly destructive of our interests." We represent to you, that it has spread ruin and devastation through the land, and prostrated our hopes in the dust. We solemnly declare that we believe the system to be wholly unconstitutional, and a violation of the compact between the States and the Union; and our brethren turn a deaf ear to our complaints, and refuse to relieve us from a system "which not enriches them, but makes us poor indeed." Good God! Mr. President, has it come to this? Do gentlemen hold the feelings and wishes of their brethren at so cheap a rate, that they refuse to gratify them at so small a price? Do gentlemen value so lightly the peace and harmony of the country, that they will not yield a measure of this description to the affectionate entreaties and earnest remonstrances of their friends? Do gentlemen estimate the value of the Union at so low a price, that they will not even make one effort to bind the States together with the cords of affection? And has it come to this? Is this the spirit in which this government is to be administered? If so, let me tell gentlemen, the seeds of dissolution are already sown, and our children will reap the bitter fruit.

The honorable gentleman from Massachusetts, (Mr. Webster,) while he exonerates me personally, from the charge, intimates that there is a party in the country, who are looking to disunion. Sir, if the gentleman had stopped there, the accusation would have "passed by me like the idle wind, which I regard not." But when he goes on to give to his accusation a local habitation, and a name, by quoting the expression of a distinguished citizen of South Carolina, (Dr. Cooper,) "that it was time for the south to calculate the value of the Union," and in the language of the bitterest sarcasm, adds, "surely then the Union cannot last longer than July, 1831," it is impossible to mistake either the allusion, or the object of the gentleman. Now, Mr. President, I call upon every one who hears me to bear witness, that this controversy is not of my seeking. The Senate will do me the justice to remember, that at the time this unprovoked and uncalled for attack was made upon the south, not one word had been uttered by me, in disparagement of New England; nor had I made the most distant allusion either to the senator from Massachusetts, or the State he represents. But, sir, that gentleman has thought proper, for purposes best known to himself, to strike the south, through me, the most unworthy of her servants. He has crossed the border, he has invaded the State of South Carolina, is making war upon her citizens, and endeavoring to overthrow her principles and her institutions. Sir, when the gentleman pro-

threshold—I will struggle while I have life, for our altars and our firesides—and, if God gives me strength, I will drive back the invader discomfited. Nor shall I stop there. If the gentleman provokes the war, he shall have war. Sir, I will not stop at the border—I will carry the war into the enemy's territory, and not consent to lay down my arms, until I have obtained "indemnity for the past, and security for the future." It is with unfeigned reluctance, Mr. President, that I enter upon the performance of this part of my duty—I shrink almost instinctively from a course, however necessary, which may have a tendency to excite sectional feelings, and sectional jealousies. But, sir, the task has been forced upon me; and I proceed right onward to the performance of my duty. Be the consequences what they may, the responsibility is with those who have imposed upon me this necessity. The senator from Massachusetts, has thought proper to cast the first stone; and if he shall find, according to a homely adage, "that he lives in a glass house" —on his head be the consequences. The gentleman has made a great flourish about his fidelity to Massachusetts—I shall make no professions of zeal for the interests and honor of South Carolina—of that, my constituents shall judge. If there be one State in the Union, Mr. President, (and I say it not in a boastful spirit,) that may challenge comparisons with any other, for an uniform, zealous, ardent, and uncalculating devotion to the Union, that State is South Carolina. Sir, from the very commencement of the Revolution up to this hour, there is no sacrifice, however great, she has not cheerfully made; no service she has ever hesitated to perform. She has adhered to you in your prosperity; but in your adversity she has clung to you, with more than filial affection.—No matter what was the condition of her domestic affairs, though deprived of her resources, divided by parties, or surrounded with difficulties, the call of the country has been to her as the voice of God. Domestic discord ceased at the sound—every man became at once reconciled to his brethren, and the sons of Carolina were all seen crowding together to the temple, bringing their gifts to the altar of their common country.

What, sir, was the conduct of the south during the Revolution? Sir, I honor New England for her conduct in that glorious struggle. But great as is the praise which belongs to her, I think, at least equal honor is due to the south. They espoused the quarrel of their brethren, with a generous zeal, which did not suffer them to stop to calculate their interest in the dispute. Favorites of the mother country, possessed of neither ships nor seamen to create a commercial rivalship, they might have found in their situation a guaranty that their trade would be for ever fostered and protected by Great Britain. But trampling on all considerations either of interest or of safety, they rushed into the conexhibited in the history of the world higher examples of noble daring, dreadful suffering, and heroic endurance, than by the whigs of Carolina, during the Revolution. The whole State, from the mountains to the sea, was overrun by an overwhelming force of the enemy. The fruits of industry perished on the spot where they were produced, or were consumed by the foe. The "plains of Carolina" drank up the most precious blood of her citizens! Black and smoking ruins marked the places which had been the habitations of her children! Driven from their homes, into the gloomy and almost impenetrable swamps, even there the spirit of liberty survived, and South Carolina (sustained by the example of her Sumters and her Marions,) proved, by her conduct, that though her soil might be overrun, the spirit of her people was invincible.

But, sir, our country was soon called upon to engage in another revolutionary struggle, and that, too, was a struggle for principle. I mean the political revolution which dates back to '98, and which, if it had not been successfully achieved, would have left us none of the fruits of the Revolution of '76. The revolution of '98 restored the constitution, rescued the liberty of the citizen from the grasp of those who were aiming at its life, and in the emphatic language of Mr. Jefferson, "saved the constitution at its last gasp." And by whom was it achieved? By the south, sir, aided only by the democracy of the north and west.

I come now to the war of 1812—a war which I well remember was called in derision (while its event was doubtful) the southern war, and sometimes the Carolina war; but which is now universally acknowledged to have done more for the honor and prosperity of the country, than all other events in our history put together. What, sir, were the objects of that war? "Free trade and sailors' rights!" It was for the protection of northern shipping, and New England seamen, that the country flew to arms. What interest had the south in that contest? If they had sat down coldly to calculate the value of their interests involved in it, they would have found that they had every thing to lose and nothing to gain. But, sir, with that generous devotion to country so characteristic of the south, they only asked, if the rights of any portion of their fellow-citizens had been invaded; and when told that northern ships and New England seamen had been arrested on the common highway of nations, they felt that the honor of their country was assailed; and acting on that exalted sentiment "which feels a stain like a wound," they resolved to seek, in open war, for a redress of those injuries which it did not become freemen to endure. Sir, the whole south, animated as by a common impulse, cordially united in declaring and promoting that war. South Carolina sent to your councils, as the advocates and supporters of that war, the noblest of her sons. How they fulfilled that

tory won, which contributed in any degree, to the success of that war, to which southern councils and southern valor did not largely contribute. Sir, since South Carolina is assailed, I must be suffered to speak it to her praise, that at the very moment when, in one quarter, we heard it solemnly proclaimed, "that it did not become a religious and moral people to rejoice at the victories of our army or our navy," her legislature unanimously

"*Resolved*, That we will cordially support the government in the vigorous prosecution of the war, until a peace can be obtained on honorable terms, and we will cheerfully submit to every privation that may be required of us, by our government, for the accomplishment of this object."

South Carolina redeemed that pledge. She threw open her treasury to the government. She put at the absolute disposal of the officers of the United States all that she possessed—her men, her money, and her arms. She appropriated half a million of dollars, on her own account, in defence of her maritime frontier, ordered a brigade of State troops to be raised, and when left to protect herself by her own means, never suffered the enemy to touch her soil, without being instantly driven off or captured.

Such, sir, was the conduct of the south—such the conduct of my own State in that dark hour "which tried men's souls."

When I look back and contemplate the spectacle exhibited at that time, in another quarter of the Union—when I think of the conduct of certain portions of New England, and remember the part which was acted on that memorable occasion by the political associates of the gentleman from Massachusetts—nay, when I follow that gentleman into the councils of the nation, and listen to his voice during the darkest period of the war, I am indeed astonished that he should venture to touch upon the topics which he has introduced into this debate. South Carolina reproached by Massachusetts! And from whom does the accusation come? Not from the democracy of New England; for they have been in times past, as they are now, the friends and allies of the south. No, sir, the accusation comes from that party whose acts, during the most trying and eventful period of our national history, were of such a character, that their own legislature, but a few years ago, actually blotted them out from their records, as a stain upon the honor of the country. But how can they ever be blotted out from the recollection of any one who had a heart to feel, a mind to comprehend, and a memory to retain, the events of that day? Sir, I shall not attempt to write the history of the party in New England, to which I have alluded—the war party in peace, and the peace party in war. That task I shall leave to some future biographer of Nathan Dane, and I doubt not it will be found quite easy to prove that the peace party of Massachu-

during the war, and actually achieved all our victories by land and sea. In the mean time, sir, and until that history shall be written, I propose, with the feeble and glimmering lights which I possess, to review the conduct of this party, in connection with the war, and the events which immediately preceded it.

It will be recollected, sir, that our great causes of quarrel with Great Britain, were her depredations on northern commerce, and the impressment of New England seamen. From every quarter we were called upon for protection. Importunate as the west is now represented to be, on another subject, the importunity of the east on that occasion was far greater. I hold in my hands the evidence of the fact. Here are petitions, memorials, and remonstrances from all parts of New England, setting forth the injustice, the oppression, the depredations, the insults, the outrages, committed by Great Britain against the unoffending commerce and seamen of New England, and calling upon Congress for redress. Sir, I cannot stop to read these memorials. In that from Boston, after stating the alarming and extensive condemnation of our vessels by Great Britain, which threatened "to sweep our commerce from the face of the ocean," and "to involve our merchants in bankruptcy," they called upon the government "to assert our rights, and to adopt such measures as will support the dignity and honor of the United States."

From Salem, we heard a language still more decisive; they call explicitly for "an appeal to arms," and pledge their lives and property, in support of any measures which Congress might adopt. From Newburyport, an appeal was made "to the firmness and justice of the government, to obtain compensation and protection." It was here, I think, that when the war was declared, it was resolved "to resist our own government, even unto blood!" (Olive Branch, p. 101.)

In other quarters, the common language of that day, was, that our commerce, and our seamen, were entitled to protection; and that it was the duty of the government to afford it, at every hazard. The conduct of Great Britain, we were then told, was "an outrage upon our national independence." These clamors, which commenced as early as January, 1806, were continued up to 1812. In a message from the governor of one of the New England States, as late as the tenth October, 1811, this language is held; "a manly and decisive course has become indispensable; a course to satisfy foreign nations, that while we desire peace, we have the means and the spirit to repel aggression. We are false to ourselves, when our commerce, or our territory, is invaded with impunity."

About this time, however, a remarkable change was observable in the tone and temper of those who had been endeavoring to force the country into a war. The language of complaint

smoke," (says one writer,) "my life on it, our executive has no more idea of declaring war, than my grandmother." "The committee of ways and means," (says another,) "have come out with their Pandora's box of taxes, and yet nobody dreams of war." "Congress does not mean to declare war; they dare not." But why multiply examples? An honorable member of the other House, from the city of Boston, Mr. Quincy, in a speech delivered on the third April, 1812, says, "neither promises, nor threats, nor asseverations, nor oaths, will make me believe that you will go to war. The navigation States are sacrificed, and the spirit and character of the country prostrated by fear and avarice;" "you cannot," said the same gentleman, on another occasion, "be kicked into a war."

Well, sir, the war at length came, and what did we behold? The very men who had been for six years clamorous for war, and for whose protection it was waged, became at once equally clamorous against it. They had received a miraculous visitation; a new light suddenly beamed upon their minds, the scales fell from their eyes, and it was discovered that the war was declared from "subserviency to France;" and that Congress, and the executive, "had sold themselves to Napoleon;" that Great Britain had, in fact, "done us no essential injury;" that she was "the bulwark of our religion;" that where "she took one of our ships, she protected twenty;" and, that if Great Britain had impressed a few of our seamen, it was because "she could not distinguish them from her own." And so far did this spirit extend, that a committee of the Massachusetts legislature actually fell to calculation, and discovered, to their infinite satisfaction, but to the astonishment of all the world beside, that only eleven Massachusetts sailors had ever been impressed. Never shall I forget the appeals that had been made to the sympathies of the south, in behalf of the "thousands of impressed Americans," who had been torn from their families and friends, and "immured in the floating dungeons of Britain." The most touching pictures were drawn of the hard condition of the American sailor, "treated like a slave," forced to fight the battles of his enemy, "lashed to the mast, to be shot at like a dog." But, sir, the very moment we had taken up arms in their defence, it was discovered that all these were mere "fictions of the brain;" and that the whole number in the State of Massachusetts was but eleven; and that even these had been "taken by mistake." Wonderful discovery! The Secretary of State had collected authentic lists of no less than six thousand impressed Americans. Lord Castlereagh himself acknowledged sixteen hundred. Calculations on the basis of the number found on board of the Guerriere, the Macedonian, the Java, and other British ships, (captured by the skill and gallantry of those heroes, whose achievements are the treasured monuments of their country's glory,) fixed the number at seven thousand: eleven! Eleven Massachusetts sailors taken by mistake! A cause of war indeed! Their ships too, the capture of which had threatened "universal bankruptcy," it was discovered that Great Britain was their friend and protector; "where she had taken one, she had protected twenty." Then was the discovery made, that subserviency to France, hostility to commerce, "a determination on the part of the south and west, to break down the eastern States," and especially, (as reported by a committee of the Massachusetts legislature,) "to force the sons of commerce to populate the wilderness," were the true causes of the war. * But let us look a little farther into the conduct of the peace party of New England, at that important crisis. Whatever difference of opinion might have existed as to the causes of the war, the country had a right to expect, that when once involved in the contest, all America would have cordially united in its support. Sir, the war effected in its progress a union of all parties at the south. But not so in New England; there, great efforts were made to stir up the minds of the people to oppose it. Nothing was left undone to embarrass the financial operations of the government, to prevent the enlistment of troops, to keep back the men and money of New England from the service of the Union—to force the President from his seat. Yes, sir, "the island of Elba! or a halter!" were the alternatives they presented to the excellent and venerable James Madison. Sir, the war was further opposed, by openly carrying on illicit trade with the enemy, by permitting that enemy to establish herself on the very soil of Massachusetts, and by opening a free trade between Great Britain and America, with a separate custom house. Yes, sir, those who cannot endure the thought that we should insist on a free trade, in time of profound peace, could, without scruple, claim and exercise the right of carrying on a free trade with the enemy in a time of war; and finally, by getting up the renowned "Hartford Convention," and preparing the way for an open resistance to the government, and a separation of the States. Sir, if I am asked for the proof of those things, I fearlessly appeal to contemporary history, to the public documents of the country, to the recorded opinion, and acts of public assemblies, to the declaration and acknowledgments, since made, of the executive and legislature of Massachusetts herself. †

Sir, the time has not been allowed me to trace this subject through, even if I had been

* Olive Branch, pages 134, 291.

† In answer to an address of Governor Eustis, denouncing the conduct of the Peace party, during the war, the House of Representatives of Massachusetts, in June, 1828, say—"The change of the political sentiments evinced in the late elections, forms indeed a new era in the history of our Commonwealth. It is the triumph of reason, over passion; of patriotism, over party spirit. Massachusetts has returned to her first love, and is no longer a stranger in the Union.

disposed to do so. But I cannot refrain from referring to one or two documents, which have fallen in my way since this debate began. I read, sir, from the Olive Branch of Matthew Carey, in which are collected "the actings and doings" of the peace party of New England, during the continuance of the embargo and the war. I know the senator from Massachusetts will respect the high authority of his political friend and fellow-laborer in the great cause of "domestic industry."

In page 301, et seq. 9 of this work, is a detailed account of the measures adopted in Massachusetts, during the war, for the express purpose of embarrassing the financial operations of the government, by preventing loans, and thereby driving our rulers from their seats, and forcing the country into a dishonorable peace. It appears that the Boston Banks commenced an operation, by which a run was to be made upon all the banks, to the south; at the same time stopping their own discounts; the effect of which was to produce a sudden and most alarming diminution of the circulating medium, and universal distress over the whole country —a distress which they failed not to attribute to the "unholy war."

To such an extent was this system caried, that it appears from a statement of the condition of the Boston Banks, made up in January, 1814, that with nearly $5,000,000 of specie in their vaults, they had but $2,000,000 of bills in circulation. It is added by Carey, that at this very time an extensive trade was carried on in British government bills, for which specie was sent to Canada, for the payment of the British troops, then laying waste our northern frontier, and this too at the very moment when New England ships, sailing under British licenses, (a trade declared to be lawful by the courts both of Great Britain and Massachusetts,*) were supplying with provisions those very armies destined for the invasion of our own shores. Sir, the author of the Olive Branch, with a holy indignation, denounces these acts as "treasonable!" "giving aid and comfort to the enemy." I shall not follow his example. But I will ask, with what justice or propriety can the south be accused of disloyalty from that quarter. If we had any evidence that the senator from Massachusetts had admonished his brethren then, he might, with a better grace, assume the office of admonishing us now.

When I look at the measures adopted in Boston at that day, to deprive the government of the necessary means for carrying on the war, and think of the success, and the consequences of these measures, I feel my pride, as an American, humbled in the dust. Hear, sir, the language of that day—I read from pages 301 and 302 of the Olive Branch: "Let no man who wishes to continue the war, by active means, by vote, or lending money, dare to prostrate himself at the altar on the fast day." "Will federalists subscribe to the loan? Will they lend money to our national rulers? It is impossible. First, because of principle, and secondly, because of principal and interest." "Do not prevent the abusers of their trust from becoming bankrupt. Do not prevent them from becoming odious to the public, and being replaced by better men." "Any federalist who lends money to government, must go and shake hands with James Madison, and claim fellowship with Felix Grundy." (I beg pardon of my honorable friend from Tennessee—but he is in good company. I had thought it was "James Madison, Felix Grundy, and the devil.") Let him no more "call himself a federalist, and a friend to his country—he will be called by others infamous," &c.

Sir, the spirit of the people sunk under these appeals. Such was the effect produced by them on the public mind, that the very agents of the government, (as appears from their public advertisements, now before me,) could not obtain loans, without a pledge, that "the names of the subscribers should not be known." Here are the advertisements: "The names of all subscribers," say Gilbert and Dean, the brokers employed by government, "shall be known only to the undersigned." As if those who came forward to aid their country, in the hour of her utmost need, were engaged in some dark and foul conspiracy, they were assured that their names should not be known. Can any thing show more conclusively the unhappy state of public feeling which prevailed at that day, than this single fact? Of the same character with these measures, was the conduct of Massachusetts, in withholding her militia from the service of the United States, and devising measures for withdrawing her quota of the taxes, thereby attempting, not merely to cripple the resources of the country, but actually depriving the government, as far as depended upon her, of all the means of carrying on the war—

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were adopted in this State, as occasioned double sacrifice of treasure and of life; covered the friends of the nation with humiliation and mourning, and fixed a stain on the page of our history: a redeeming spirit has at length arisen, to take away our reproach, and restore to us our good name, our rank among our sister States, and our just influence in the Union.

"Though we would not renew contentions, or irritate wantonly, we believe that there are cases when it is necessary we should 'wound to heal.' And we consider it among the first duties of the friends of our National Government, on this return of power, to disavow the unwarrantable course pursued by this State, during the late war; and to hold up the measures of that period, as beacons; that the present and succeeding generations may shun that career, which must inevitably terminate in the destruction of the individual, or party, who pursues it; and may learn the important lesson, that, in all times, the path of duty is the path of safety; and that it is never dangerous to rally around the standard of our country."

But it seems Massachusetts was to reserve her resources for herself—she was to defend and protect her own shores. And how was that duty performed? In some places on the coast neutrality was declared, and the enemy was suffered to invade the soil of Massachusetts, and allowed to occupy her territory, until the peace, without one effort to rescue it from his grasp. Nay, more—while our own government and our rulers were considered as enemies, the troops of the enemy were treated like friends—the most intimate commercial relations were established with them, and maintained up to the peace. At this dark period of our national affairs, where was the senator from Massachusetts? How were his political associates employed? "Calculating the value of the Union!" Yes, sir, that was the propitious moment, when our country stood alone, the last hope of the world, struggling for her existence against the colossal power of Great Britain, "concentrated in one mighty effort to crush us at a blow"—that was the chosen hour to revive the grand scheme of building up "a great northern confederacy"—a scheme, which, it is stated in the work before me, had its origin as far back as the year 1796, and which appears never to have been entirely abandoned.

In the language of the writers of that day, (1796,) "rather than have a Constitution such as the Anti-Federalists were contending for, (such as we now are contending for,) the Union ought to be dissolved;" and to prepare the way for that measure, the same methods were resorted to then, that have always been relied on for that purpose, exciting prejudice against the south. Yes, sir, our northern brethren were then told, "that if the negroes were good for food, their southern masters would claim the right to destroy them at pleasure."* Sir, in 1814, all these topics were revived. Again we heard of "a northern confederacy." "The Slave States by "themselves;" "the mountains are the natural boundary;" "we want neither the counsels nor the power of the west," &c. &c. The papers teemed with accusations against the south and the west, and the calls for a dissolution of all connection with them, were loud and strong. I cannot consent to go through the disgusting details. But to show the height to which the spirit of disaffection was carried, I will take you to the temple of the living God, and show you that sacred place (which should be devoted to the extension of "peace on earth and good will towards men," where "one day's truce ought surely to be allowed to the dissensions and animosities of mankind,") converted into a fierce arena of political strife, where from the lips of the priest, standing between the horns of the altar, there went forth the most terrible denunciations against all who should be true to their country in the hour of her utmost need.

"If you do not wish," said a Reverend clergyman, in a sermon preached in Boston, on the 23d July, 1812, "to become the slaves of those who own slaves, and who are themselves the slaves of French slaves, you must either, in the language of the day, cut the connection, or so far alter the national compact, as to ensure to yourselves a due share in the government." (Olive Branch, page 319.) "The Union," says the same writer, (page 320,) "has been long since virtually dissolved, and it is full time that this part of the disunited States should take care of itself."

Another Reverend gentleman, pastor of a church at Medford, (page 321,) issues his anathema—"let him stand accursed"—against all, all, who by their "personal services," or "loans of money," "conversation," or "writing," or "influence," give countenance, or support to the unrighteous war, in the following terms—"that man is an accomplice in the wickedness—he loads his conscience with the blackest crimes—he brings the guilt of blood upon his soul, and in the sight of God, and his law, he is a murderer!"

One or two more quotations, sir, and I shall have done. A Reverend Doctor of Divinity, the pastor of a church at Byfield, Massachusetts, on the 7th of April, 1814, thus addresses his flock, (321)—"The Israelites became weary of yielding the fruit of their labor to pamper their splendid tyrants. They left their political woes. They separated. Where is our Moses? Where the rod of his miracles? Where is our Aaron? Alas! no voice from the burning bush has directed them here."

"We must trample on the mandates of despotism, or remain slaves for ever." (p. 322.) "You must drag the chains of Virginia despotism, unless you discover some other mode of escape." "Those Western States, which have been violent for this abominable war—those States which have thirsted for blood—God has given them blood to drink." (323.) Mr. President, I can go no further. The records of the day are full of such sentiments, issued from the press, spoken in public assemblies, poured out from the sacred desk! God forbid, sir, that I should charge the people of Massachusetts with participating in these sentiments. The south, and the west, had there their friends,—men who stood by their country, though encompassed all around by their enemies.—The senator from Massachusetts, (Mr. Silsbee,) was one of them; the senator from Connecticut, (Mr. Foot,) was another, and there are others now on this floor. The sentiments I have read were the sentiments of a party, embracing the political associates of the gentleman from Massachusetts. If they could only be found in the columns of a newspaper, in a few occasional pamphlets, issued by men of intemperate feeling, I should not consider them as affording any evidence of the opinions, even of the peace party of New England. But, sir, they were the common language of

pulpit, and the press. Our books are full of them; and there is no man who now hears me, but knows that they were the sentiments of a party, by whose members they were promulgated. Indeed, no evidence of this would seem to be required, beyond the fact that such sentiments found their way even into the pulpits of New England. What must be the state of public opinion, where any respectable clergyman would venture to preach, and to print sermons containing the sentiments I have quoted? I doubt not the piety, or moral worth of these gentlemen. I am told they were respectable and pious men. But they were men, and they "kindled in a common blaze." And now, sir, I must be suffered to remark, that at this awful and melancholy period of our national history, the gentleman from Massachusetts, who now manifests so great a devotion to the Union, and so much anxiety lest it should be endangered from the south, was "with his brethren in Israel." He saw all these things passing before his eyes—he heard these sentiments uttered all around him. I do not charge that gentleman with any participation in these acts, or with approving of these sentiments.

But I will ask, why, if he was animated by the same sentiments then, which he now professes, if he can "augur disunion at a distance, and snuff up rebellion in every tainted breeze," why did he not, at that day, exert his great talents, and acknowledged influence, with the political associates by whom he was surrounded, and who then, as now, looked up to him for guidance and direction, in allaying this general excitement, in pointing out to his deluded friends the value of the Union; in instructing them, that, instead of looking "to some prophet to lead them out of the land of Egypt," they should become reconciled to their brethren, and unite with them in the support of a just and necessary war? Sir, the gentleman must excuse me for saying, that if the records of our country afforded any evidence that he had pursued such a course, then if we could find it recorded in the history of those times, that, like the immortal Dexter, he had breasted that mighty torrent which was sweeping before it all that was great and valuable in our political institutions—if like him he had stood by his country in opposition to his party, sir, we would, like little children, listen to his precepts and abide by his counsels.

As soon as the public mind was sufficiently prepared for the measure, the celebrated Hartford Convention was got up; not as the act of a few unauthorized individuals, but by authority of the Legislature of Massachusetts; and, as has been shown by the able historian of that convention, in accordance with the views and wishes of the party, of which it was the organ. Now, sir, I do not desire to call in question the motives of the gentlemen who composed that assembly—I knew many of them to be in private life, and in the public councils, of the purest patriotism, and the most ardent devotion to the Union. I believe they did not perceive the dangerous tendency of their proceedings. I will even go further, and say, that if the authors of the Hartford Convention believed that "gross, deliberate, and palpable violations of the constitution" had taken place, utterly destructive of their rights and interests, I should be the last man to deny their rights to resort to any constitutional measures for redress. But, sir, in any view of the case, the time when, and the circumstances under which that convention assembled, as well as the measures recommended, render their conduct, in my opinion, wholly indefensible. Let us contemplate, for a moment, the spectacle then exhibited to the view of the world. I will not go over the disasters of the war, nor describe the difficulties in which the government was involved. It will be recollected that its credit was nearly gone. Washington had fallen, the whole coast was blockaded, and an immense force collected in the West Indies was about to make a descent, which it was supposed we had no means of resisting. In this awful state of our public affairs, when the government seemed almost to be tottering on its base, when Great Britain, relieved from all her other enemies, had proclaimed her purpose of "reducing us to unconditional submission," we beheld the peace party of New England (in the language of the work before us) "pursuing a course calculated to do more injury to their country, and to render England more effective service, than all her armies." Those who could not find in their hearts to rejoice at our victories, sang Te Deum at the King's Chapel in Boston for the restoration of the Bourbons. Those who could not consent to illuminate their dwellings for the capture of the Guerriere, could give visible tokens of their joy at the fall of Detroit. The "beacon fires" of their hills were lighted up, not for the encouragement of their friends, but as signals to the enemy; and, in the gloomy hours of midnight, the very lights burned blue. Such were the dark and portentous signs of the times, which ushered into being the renowned Hartford Convention. That convention met, and from their proceedings it appears that their chief object was to keep back the men and money of New England from the service of the Union, and to effect radical changes in the government—changes that can never be effected without a dissolution of the Union.

Let us now, sir, look at their proceedings. I read from "A short account of the Hartford Convention," (written by one of its members), a very rare book, of which I was fortunate enough a few years ago to obtain a copy. [Here Mr. H. read from the proceedings.*]

* It appears at p. 6 of "The Account," that, by a vote of the House of Representatives of Massachusetts (260 to 90), delegates to this convention were ordered to be appointed to consult upon the subject "of their public grievances and concerns," and upon "the best means of preserving their

It is unnecessary to trace the matter further, or to ask what would have been the next chapter in this history, if the measures recommended had been carried into effect; and if, with the men and money of New England withheld from the government of the United States, she had been withdrawn from the war; if New Orleans had fallen into the hands of the enemy, and if, without troops and almost destitute of money, the southern and the western States had been thrown upon their own resources for the prosecution of the war, and the recovery of New Orleans.

Sir, whatever may have been the issue of the contest, the Union must have been dissolved. But a wise and just Providence, which "shapes our ends, rough-hew them as we will," gave us the victory, and crowned our efforts with a glorious peace. The ambassadors of Hartford were seen retracing their steps from Washington, "the bearers of the glad tidings of great joy." Courage and patriotism triumphed—the country was saved—the Union was preserved. And are we, Mr. President, who stood by our country then; who threw open our coffers; who bared our bosoms; who freely perilled all in that conflict, to be reproached with want of attachment to the Union? If, sir, we are to have lessons of patriotism read to us, they must come from a different quarter. The senator from Massachusetts, who is now so sensitive on all subjects connected with the Union, seems to have a memory forgetful of the political events that have passed away. I must, therefore, refresh his recollection a little farther on these subjects. The history of disunion has been written by one, whose authority stands too high with the American people to be questioned—I mean Thomas Jefferson—I know not how the gentleman may receive this authority. When that great and good man occupied the Presidential chair, I believe he commanded no portion of the gentleman's respect.

I hold in my hand a celebrated pamphlet on the embargo, in which language is held in relation to Mr. Jefferson, which my respect for his memory will prevent me from reading, unless any gentleman should call for it. But the senator from Massachusetts has since joined in singing hosannas to his name—he has assisted at his apotheosis, and has fixed him as "a brilliant star in the clear upper sky." I hope, therefore, he is now prepared to receive with deference and respect the high authority of Mr. Jefferson. In the fourth volume of his Memoirs, which has just issued from the press, we have the following history of disunion, from the pen of that illustrious statesman: "Mr. Adams called on me pending the embargo, and while endeavors were making to obtain its repeal; he spoke of the dissatisfaction of the eastern portion of our confederacy with the restraints of the embargo then existing, and their restlessness under it. That there was nothing which might not be attempted, to rid themselves of it. That he had information of the most unquestionable authority, that certain citizens of the Eastern States (I think he named Massachusetts particularly) were in negotiation with agents of the British Government, the object of which was an agreement that the New England States should take no further part in the war (the commercial war, the "war of restrictions," as it was called) then going on, and that without formally declaring their separation from the Union, they should withdraw from all aid and

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port and attachment of all the people, by placing all upon the basis of fair representation."

The convention assembled at Hartford, on the 15th December, 1814. On the next day it was

Resolved, That the most inviolable secrecy shall be observed by each member of this convention, including the secretary, as to all propositions, debate, and proceedings thereof, until this injunction shall be suspended or altered.

On the 24th of December, the committee appointed to prepare and report a general project of such measures as may be proper for the convention to adopt, reported, among other things,

"1. That it was expedient to recommend to the Legislatures of the States the adoption of the most effectual and decisive measures, to protect the militia of the States from the usurpations contained in these proceedings." [The proceedings of Congress and the Executive, in relation to the militia, and the war.]

"2. That it was expedient also to prepare a statement, exhibiting the necessity which the improvidence and inability of the General Government have imposed upon the States of providing for their own defence, and the impossibility of their discharging this duty, and at the same time fulfilling the requisitions of the General Government, and also to recommend to the Legislatures of the several States, with a view to some arrangement whereby the States may be enabled to retain a portion of the taxes levied by Congress, for the purposes of self-defence, and for the reimbursement of expenses already incurred on account of the United States."

"3. That it is expedient to recommend to the several State Legislatures, certain amendments to the constitution, viz.:

That the power to declare or make war, by the Congress of the United States, be restricted.

That it is expedient to attempt to make provision for restraining Congress in the exercise of an unlimited power to make new States, and admit them into the Union.

That an amendment be proposed respecting slave representation, and slave taxation."

On the 29th of December, 1814, it was proposed "that the capacity of naturalized citizens to hold offices of trust, honor, or profit, ought to be restrained," &c.

The subsequent proceedings are not given at large. But it seems that the report of the committee was adopted, and also a recommendation of certain measures (of the character of which we are not informed) to the States for their mutual defence; and having voted that the injunction of secrecy, in regard to all the debates and proceedings of the convention (except so far as relates to the report finally adopted), be continued," the convention adjourned sine die, but,

obedience to them, &c. From that moment, says Mr. J., I saw the necessity of abandoning it [the embargo], and, instead of effecting our purpose by this peaceful measure, we must fight it out, or break the Union." In another letter, Mr. Jefferson adds: "I doubt whether a single fact known to the world, will carry as clear conviction to it of the correctness of our knowledge of the treasonable views of the Federal party of that day, as that disclosed by this, the most nefarious and daring attempt to dissever the Union, of which the Hartford Convention was a subsequent chapter; and both of these having failed, consolidation becomes the fourth chapter of the next book of their history. But this opens with a vast accession of strength, from their younger recruits, who, having nothing in them of the feelings and principles of '76, now look to a single and splendid government, &c., riding and ruling over the plundered ploughman, and beggared yeomanry." (vol. 4, 419, 422.)

The last chapter, says Mr. Jefferson, of that history, is to be found in the conduct of those who are endeavoring to bring about consolidation; aye, sir, that very consolidation, for which the gentleman from Massachusetts is contending—the exercise by the Federal Government, of powers not delegated in relation to "internal improvements," and "the protection of manufactures." And why, sir, does Mr. Jefferson consider consolidation as leading directly to disunion? Because he knew that the exercise by the Federal Government, of the powers contended for, would make this "a government without limitation of powers," the submission to which, he considered as a greater evil than disunion itself. There is one chapter in this history, however, which Mr. Jefferson has not filled up; and I must, therefore, supply the deficiency. It is to be found in the protests made by New England against the acquisition of Louisiana. In relation to that subject, the New England doctrine is thus laid down by one of her learned Doctors of that day, now a Doctor of Laws, at the head of the great literary institution of the East; I mean Josiah Quincy, President of Harvard College. I quote from the speech delivered by that gentleman on the floor of Congress, on the occasion of the admission of Louisiana into the Union.

"Mr. Quincy repeated and justified a remark he had made, which, to save all misapprehension, he had committed to writing, in the following words: "If this bill passes, it is my deliberate opinion, that it is virtually a dissolution of the Union; that it will free the States from their moral obligation; and as it will be the right of all, so it will be the duty of some, to prepare for a separation, amicably if they can, violently if they must."

Mr. President, I wish it to be distinctly understood, that all the remarks I have made on this subject, are intended to be exclusively applied to a party, which I have described as the "Peace

—a party which controlled the operations of that State during the embargo, and the war, and who are justly chargeable with all the measures I have reprobated. Sir, nothing has been further from my thoughts, than to impeach the character, or conduct of the people of New England. For their steady habits, and hardy virtues, I trust I entertain a becoming respect. I fully subscribe to the truth of the description given before the Revolution, by one whose praise is the highest eulogy, "that the perseverance of Holland, the activity of France, and the dexterous and firm sagacity of English enterprise, have been more than equalled by this "recent people." Hardy, enterprising, sagacious, industrious, and moral—the people of New England of the present day, are worthy of their ancestors. Still less, Mr. President, has it been my intention to say any thing that could be construed into a want of respect for that party, who, trampling on all narrow, sectional feelings, have been true to their principles in the worst of times—I mean the democracy of New England.

Sir, I will declare that, highly as I appreciate the democracy of the South, I consider even higher praise to be due to the democracy of New England—who have maintained their principles "through good and through evil report," who, at every period of our national history, have stood up manfully for "their country, their whole country, and nothing but their country." In the great political revolution of '98, they were found united with the democracy of the south, marching under the banner of the constitution, led on by the patriarch of liberty, in search of the land of political promise, which they lived not only to behold, but to possess and to enjoy. Again, sir, in the darkest and most gloomy period of the war, when our country stood single-handed, against "the conqueror of the conquerors of the world," when all about and around them was dark, and dreary, disastrous, and discouraging, they stood a Spartan band in that narrow pass, where the honor of their country was to be defended, or to find its grave. And in the last great struggle, involving, as we believe, the very existence of the principle of popular sovereignty, where were the democracy of New England? Where they always have been found, sir, struggling side by side, with their brethren of the south and the west, for popular rights, and assisting in that glorious triumph, by which the man of the people was elevated to the highest office in their gift.

Who, then, Mr. President, are the true friends of the Union? Those who would confine the Federal Government strictly within the limits prescribed by the constitution; who would preserve to the States and the people, all powers not expressly delegated; who would make this a Federal and not a National Union, and who, administering the government in a spirit of

who are in favor of consolidation—who are constantly stealing power from the States, and adding strength to the Federal Government. Who, assuming an unwarrantable jurisdiction over the States and the people, undertake to regulate the whole industry and capital of the country. But, sir, of all descriptions of men, I consider those as the worst enemies of the Union, who sacrifice the equal rights which belong to every member of the confederacy, to combinations of interested majorities, for personal or political objects. But the gentleman apprehends no evil from the dependence of the States on the Federal Government; he can see no danger of corruption from the influence of money or of patronage. Sir, I know that it is supposed to be a wise saying "that patronage is a source of weakness," and in support of that maxim, it has been said, that "every ten appointments make a hundred enemies." But I am rather inclined to think, with the eloquent and sagacious orator now reposing on his laurels, on the banks of the Roanoke, that, "the power of conferring favors, creates a crowd of dependents;" he gave a forcible illustration of the truth of the remark, when he told us of the effect of holding up the savory morsel to the eager eyes of the hungry hounds gathered around his door. It mattered not whether the gift was bestowed on Towser or Sweetlips, "Tray, Blanch, or Sweetheart;" while held in suspense, they were all governed by a nod, and when the morsel was bestowed, the expectation of the favors of to-morrow, kept up the subjection of to-day.

The senator from Massachusetts, in denouncing what he is pleased to call the Carolina doctrine, has attempted to throw ridicule upon the idea that a State has any constitutional remedy, by the exercise of its sovereign authority, against "a gross, palpable, and deliberate violation of the constitution." He calls it "an idle" or "ridiculous notion," or something to that effect, and added, that it would make the Union "a mere rope of sand." Now, Sir, as the gentleman has not condescended to enter into any examination of the question, and has been satisfied with throwing the weight of his authority into the scale, I do not deem it necessary to do more than to throw into the opposite scale, the authority on which South Carolina relies; and there, for the present, I am perfectly willing to leave the controversy. The South Carolina doctrine, that is to say, the doctrine contained in an exposition reported by a committee of the legislature in December, 1828, and published by their authority, is the good old Republican doctrine of '98—the doctrine of the celebrated "Virginia Resolutions" of that year, and of "Madison's Report" of '99. It will be recollected that the Legislature of Virginia, in December '98, took into consideration the Alien and Sedition Laws, then considered by all Republicans as a gross violation of the Constitution of the United States, and on that day passed, among others, the following resolutions:

"Resolved, That this Assembly doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States, and the constitution of this State, against every aggression, either foreign or domestic, and that it views with indignant alarm the tendency of those unconstitutional laws, which have been passed by the federal government, under colour of certain powers supposed to be delegated by that constitution; the creation, construction, and maintenance of which powers, by quiet acquiescence, may drive these States into an united, consolidated government, and finally transform the present republican system of United States into an absolute, or at best a mixed monarchy.

"That this Assembly doth particularly protest against the palpable and alarming infractions of the constitution, in the two late cases of the 'Alien and Sedition Laws,' as they are called, and which were manifestly leveled against the rights of free speech and free discussion, the overthrow of which is essential to the security of freedom in every State.

"That this Assembly doth also express its deep regret that a spirit has been manifested by the federal government, to resist the just claims of the people, to punish presses freely employed in canvassing the merits and measures of public men and of public measures, and to silence forever the complaints and remonstrances of the injured people.

"That this Assembly doth solemnly declare, that it considers the principles of the federal constitution, and of the government created by the compact thereto, as essentially frustrated, and violated on divers important points and fundamental articles.

"That this Assembly doth solemnly appeal to the like dispositions of the other States, in the confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each, for co-operating with this State, in maintaining unimpaired the authorities, rights, and liberties, reserved to the States respectively, or to the people.

"That this Assembly doth finally express the confident hope that a frank and explicit avowal of the sentiments and opinions of this Commonwealth, in relation to the unconstitutional proceedings aforesaid, will be unnecessary to specify the many deliberate and dangerous infractions of the constitution of the United States, which have been committed, and which have not been denied, but will be seen and felt, and remembered by all; nor to anticipate the applications of this Commonwealth to the people, in the event that the unconstitutional laws aforesaid shall not be repealed at the present session."

The resolutions of Kentucky, which were drawn by Mr. Jefferson, and passed in November, 1798, are equally explicit. They declare that the Alien and Sedition Laws are unconstitutional, and that the people of Kentucky will not submit to them. They go further, and

"Resolved, That the several States composing the United States of America, are not united on the principle of unlimited submission to their general government; but that, by compact under the style and title of a constitution for the United States, and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving, each State to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each State acceded as a State, and is an integral party, its co-States forming as to itself, the other party: that the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself; since that would have made its discretion, and not the constitution, the measure of its powers; but that as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress."

The legislatures of several of the New England States, having, contrary to the expectation of the legislature of Virginia, expressed their dissent from these doctrines; the subject came up again for consideration during the session of 1799–1800, when it was referred to a select committee, by whom was made that celebrated report which is familiarly known as "Madison's Report," and which deserves to last as long as the constitution itself. In that report, which was subsequently adopted by the legislature, the whole subject was deliberately re-examined, and the objections urged against the Virginia doctrines carefully considered. The result was, that the legislature of Virginia re-affirmed all the principles laid down in the resolutions of 1798, and issued to the world that admirable report which has stamped the character of Mr. Madison as the preserver of that constitution which he had contributed so largely to create and establish. I will here quote from Mr. Madison's report one or two passages which bear more immediately on the point in controversy:

"The resolution having taken this view of the federal compact, proceeds to infer 'that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights, and liberties, appertaining to them.'

"It appears to your committee to be a plain principle, founded in common sense, illustrated by common practice, and essential to the nature of compacts, that, where resort can be had to no tribunal, superior to the authority of the parties, the parties themselves must be the

bargain made has been pursued or violated. The Constitution of the United States was formed by the sanction of the States, given by each in its sovereign capacity. It adds to the stability and dignity, as well as to the authority of the constitution, that it rests upon this legitimate and solid foundation. The States, then, being the parties to the constitutional compact, and in their sovereign capacity, it follows of necessity, that there can be no tribunal above their authority, to decide, in the last resort, whether the compact made by them be violated; and, consequently, that, as the parties to it, they must themselves decide, in the last resort, such questions as may be of sufficient magnitude to require their interposition."

"The resolution has guarded against any misapprehension of its object, by expressly requiring for such an interposition 'the case of a deliberate, palpable, and dangerous breach of the constitution, by the exercise of powers not granted by it.' It must be a case, not of a light and transient nature, but of a nature dangerous to the great purposes for which the constitution was established."

"But the resolution has done more than guard against misconstruction, by expressly referring to cases of a deliberate, palpable and dangerous nature. It specifies the object of the interposition which it contemplates, to be solely that of arresting the progress of the evil of usurpation, and of maintaining the authorities, rights, and liberties, appertaining to the States, as parties to the constitution."

"From this view of the resolution, it would seem inconceivable that it can incur any just disapprobation from those who, laying aside all momentary impressions, and recollecting the genuine source and object of the federal constitution, shall candidly and accurately interpret the meaning of the General Assembly. If the deliberate exercise of dangerous powers, palpably withheld by the constitution, could not justify the parties to it in interposing, even so far as to arrest the progress of the evil, and thereby to preserve the constitution itself, as well as to provide for the safety of the parties to it, there would be an end to all relief from usurped power, and a direct subversion of the rights specified or recognized under all the State constitutions, as well as a plain denial of the fundamental principles on which our independence itself was declared."

But, sir, our authorities do not stop here. The State of Kentucky responded to Virginia, and on the 10th of November, 1798, adopted those celebrated resolutions, well known to have been penned by the author of the Declaration of American Independence. In those resolutions, the legislature of Kentucky declare "That the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge, for itself, as well of infractions as of the mode and measure of redress."

At the ensuing session of the legislature, the subject was re-examined, and on the 14th November, 1799, the resolutions of the preceding year were deliberately reaffirmed, and it was among other things solemnly declared:

"That if those who administer the general government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, an annihilation of the State governments, and the erection upon their ruins of a general consolidated government will be the inevitable consequence. That the principles of construction contended for by sundry of the State legislatures, that the General Government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism; since the discretion of those who administer the government, and not the constitution, would be the measure of their powers. That the several States who formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction, and that a nullification, by those sovereignties, of all unauthorized acts done under color of that instrument, is the rightful remedy."

Time and experience confirmed Mr. Jefferson's opinion on this all-important point. In the year 1821, he expressed himself in this emphatic manner: "It is a fatal heresy to suppose that either our State governments are superior to the federal, or the federal to the State; neither is authorized literally to decide which belongs to itself or its co-partner in government; in differences of opinion between their different sets of public servants, the appeal is to neither, but to their employers peaceably assembled by their representatives in convention." The opinion of Mr. Jefferson on this subject has been so repeatedly and so solemnly expressed, that they may be said to have been among the most fixed and settled convictions of his mind.

In the protest prepared by him for the legislature of Virginia, in December, 1825, in respect to the powers exercised by the federal government in relation to the tariff and internal improvements, which he declares to be "usurpations of the powers retained by the States, mere interpolations into the compact, and direct infractions of it," he solemnly re-asserts all the principles of the Virginia resolutions of '98—protests against "these acts of the federal branch of the government, as null and void, and declares that, although Virginia would consider a dissolution of the Union as among the greatest calamities that could befall them, yet it is not the greatest. There is one yet greater—submission to a government of unlimited powers. It is only when the hope of this shall become absolutely desperate, that further forbearance could not be indulged."

In his letter to Mr. Giles, written about the same time, he says:

"I see, as you do, and with the deepest affliction, the rapid strides with which the federal branch of our government is advancing towards the usurpation of all the rights reserved to the States, and the consolidation in itself of all powers, foreign and domestic, and that too by constructions which leave no limits to their powers, &c. Under the power to regulate commerce, they assume, indefinitely, that also over agriculture and manufactures, &c. Under the authority to establish post-roads, they claim that of cutting down mountains for the construction of roads and digging canals, &c. And what is our resource for the preservation of the constitution? Reason and argument?—You might as well reason and argue with the marble columns encircling them, &c. Are we then to stand to our arms, with the hot-headed Georgian? No [and I say no, and South Carolina has said no]: that must be the last resource. We must have patience and long endurance with our brethren, &c., and separate from our companions only when the sole alternatives left are a dissolution of our union with them, or submission to a government without limitation of powers. Between these two evils, when we must make a choice, there can be no hesitation."

Such, sir, are the high and imposing authorities in support of "the Carolina doctrine," which is, in fact, the doctrine of the Virginia Resolutions of 1798.

Sir, at that day the whole country was divided on this very question. It formed the line of demarcation between the federal and republican parties; and the great political revolution which then took place, turned upon the very question involved in these resolutions. That question was decided by the people, and by that decision the constitution was, in the emphatic language of Mr. Jefferson, "saved at its last gasp." I should suppose, sir, it would require more self-respect than any gentlemen here would be willing to assume, to treat lightly doctrines derived from such high resources. Resting on authority like this, I will ask gentlemen whether South Carolina has not manifested a high regard for the Union, when, under a tyranny ten times more grievous than the alien and sedition laws, she has hitherto gone no further than to petition, remonstrate, and to solemnly protest against a series of measures which she believes to be wholly unconstitutional, and utterly destructive of her interests. Sir, South Carolina has not gone one step further than Mr. Jefferson himself was disposed to go, in relation to the present subject of our present complaints—not a step further than the statesmen from New England were disposed to go under similar circumstances; no further than the senator from Massachusetts himself once considered as within "the limits of a constitutional opposition." The doctrine that it is the right of a State to judge of the violations of the constitution on the part of the Federal Government, and to protect her citizens from the oppressions of the former, is the doctrine of '98. It is the doctrine of the enlightened citizens of Boston, who assembled in Faneuil Hall, on the 25th of January, 1809. They state, in that celebrated memorial, that "they looked only to the State legislature, who were competent to devise relief against the unconstitutional acts of the General Government. That your power (say they) is adequate to that object, is evident from the organization of the confederacy."

A distinguished senator from one of the New England States, (Mr. Hillhouse,) in a speech delivered here, on a bill for enforcing the embargo, declared—"I feel myself bound in conscience to declare, (lest the blood of those who shall fall in the execution of this measure, shall be on my head,) that I consider this to be an act which directs a mortal blow at the liberties of my country—an act containing unconstitutional provisions, to which the people are not bound to submit, and to which, in my opinion, they will not submit."

And the senator from Massachusetts himself, in a speech delivered on the same subject in the other House, said, "This opposition is constitutional and legal; it is also conscientious. It rests on settled and sober conviction, that such policy is destructive to the interests of the people, and dangerous to the being of government. The experience of every day confirms these sentiments. Men who act from such motives are not to be discouraged by trifling obstacles, nor awed by any dangers. They know the limit of constitutional opposition; up to that limit, at their own discretion, they will walk, and walk fearlessly." How "the being of the government" was to be endangered by "constitutional opposition" to the embargo, I leave to the gentleman to explain.

Thus, it will be seen, Mr. President, that the South Carolina doctrine is the republican doctrine of '98; that it was promulgated by the fathers of the faith—that it was maintained by Virginia and Kentucky in the worst of times—that it constituted the very pivot on which the political revolution of that day turned—that it embraces the very principles, the triumph of which, at that time, saved the constitution at its last gasp, and which New England statesmen were not unwilling to adopt, when they believed themselves to be the victims of unconstitutional legislation. Sir, as to the doctrine that the Federal Government is the exclusive judge of the extent as well as the limitations of its powers, it seems to me to be utterly subversive of the sovereignty and independence of the States. It makes but little difference, in my estimation, whether Congress or the Supreme Court are invested with this power. If the Federal Government, in all, or any of its departments, are to prescribe the limits of its own authority, and the States are bound to submit to the decision, and are not to be allowed to examine and decide for themselves, when the barriers of the constitution shall be overleaped, this is practically "a government without limi-

duced to mere petty corporations, and the people are entirely at your mercy. I have but one word more to add. In all the efforts that have been made by South Carolina, to resist the unconstitutional laws which Congress has extended over them, she has kept steadily in view the preservation of the Union, by the only means by which she believes it can be long preserved —a firm, manly, and steady resistance against usurpation. The measures of the Federal Government have, it is true, prostrated her interests, and will soon involve the whole South in irretrievable ruin. But even this evil, great as it is, is not the chief ground of our complaints. It is the principle involved in the contest—a principle, which substituting the discretion of Congress for the limitations of the constitution, brings the States and the people to the feet of the Federal Government, and leaves them nothing they can call their own. Sir, if the measures of the Federal Government were less oppressive, we should still strive against this usurpation. The south is acting on a principle she has always held sacred—resistance to unauthorized taxation. These, sir, are the principles which induced the immortal Hampden to resist the payment of a tax of twenty shillings. Would twenty shillings have ruined his fortune? No! but the payment of half twenty shillings, on the principle on which it was demanded, would have made him a slave. Sir, if in acting on these high motives—if animated by that ardent love of liberty which has always been the most prominent trait in the southern character—we should be hurried beyond the bounds of a cold and calculating prudence, who is there, with one noble and generous sentiment in his bosom, that would not be disposed, in the language of Burke, to exclaim, "You must pardon something to the spirit of liberty!"

SEARGENT S. PRENTISS

In roviewing the career of this eloquent lawyer and statesman, it can but be regretted that so much gćnius, intellectual worth and promise, should have so prematurely passed away. Marked as his life was by great performances, which of themselves have rendered his name familiar throughout the length and breadth of his country, it is reasonable to suppose that had it been prolonged, his maturity would have been crowned with still greater and growing glories.

He was the son of a highly respectable and prosperous shipmaster, and was born at Portland, in Maine, on the last day of September, 1808. A severe illness during infancy deprived him for several years of the use of his limbs, but by the kind attention of his mother, who watched him with unwearied devotedness and care, he in a few years recovered from his infirmities, with the exception of a partial lameness in one of his legs, which clung to him until the day of his death. Denied the privilege of walking, the greater part of his childhood was passed in the house, in the company of his mother, who taught him to read. Before he was ten years old he mastered all the books "he could lay his hands on," and thus stored his mind with a knowledge of history, poetry and select literature. The Bible was his favorite, and in the palaces, the castles, the deep vales, the quagmires, and the sunny pastures of the Pilgrim's Progress, he found an irresistible charm and the deepest gratification.

As soon as he was able to move about with the aid of a cane, he spent much of his time in the woods and fields, engaged in hunting and fishing. The latter diversion was his "greatest delight," says his brother. "Old Isaac Walton could hardly have excelled him in devotion to this 'treacherous art,' or in the skill with which he pursued it. Many and many a long summer's day did he spend in wandering slowly up and down the Great Brook; and never, in after life, was the subject mentioned without reviving some of the pleasantest memories of his youth."

As he advanced in years, his parents began to consider the subject of his mode of life in the future. His lameness rendered him incapable of severe physical duties, and the early development of his remarkable intellectual qualities, convinced them that he ought to be educated. To this end he was prepared at Gorham Academy; and in the autumn of 1824, entered the junior class of Bowdoin College. His course was marked and brilliant: "one of the few instances, in college life, of decided indications of future success and eminence." On leaving college he commenced the study of law, and in the summer of 1827, started for the west in "quest of fortune." He intended to establish himself at Cincinnati, but, soon after arriving at that place, inducements of a more lucrative character than he enjoyed at his new home, were offered, in the situation of a tutor in a private family at Natchez, Mississippi. He left Cincinnati a few months after his arrival from Maine, and in November took upon himself the duties of the tutorship. In this position he was enabled to devote much of his time to the study of his profession. His patroness was the widow of an eminent lawyer, and the entire use of his library was at Mr. Prentiss's disposal. It hardly need be said that to these great advantages he was fully awake, and that he made the best use of them.

In June, 1829, he was admitted to practice, and soon after formed a partnership with General Felix Huston. His first appearance at the bar is thus described in the recent interesting

ing, by no means physically imposing, and a stranger to all at the court. It was a case he was appearing in for Mr. Huston; and when it was called, he responded to it, and stated the nature of the case, and that it stood on demurrer to some part of the proceedings which he desired to argue. The Judge, with some nonchalance, told him he did not wish to hear argument on the subject, as he had made up his mind adversely to the side Mr. Prentiss appeared for; upon this, Mr. P. modestly, but firmly, insisted on his client's constitutional right to be heard, by himself or counsel, before his cause was adjudged against him. The right was recognized—and he was heard, and made a speech that astonished both court and bystanders: and the Judge, to his honor be it spoken, was not only convinced of the error of his previous opinion, but had the manliness to acknowledge it. Few young men, in a strange place, with a cause prejudged and the decision announced, would have so boldly asserted and maintained their client's rights."

During his residence at Natchez he continued to devote much of his leisure to general reading and the pursuits of literature. He prepared many pieces in prose and verse, for the periodicals in his locality, among which a poetical effusion entitled *The Ice Palace*, "yet lives in the recollection of his friends in the south-west." An essay on *Toasting*, written at this time, is preserved in the life of him, lately published.

Early in 1832, after having spent four years in Natchez, he removed to Vicksburg, where he at once rose to a conspicuous place in his profession. The case in which he was first engaged at this place "was one involving the power of the corporation to cut off by quarantine, a public hotel from all intercourse with the rest of the town. The hotel stood alone on a square, and was infested with the small pox. The Mayor and Council had passed an ordinance forbidding all persons out of it from going to it, and all persons in it, from coming out of it. Without any previous notice or preparation, except the examination of testimony, Mr. Prentiss spoke for two hours, and by an argument replete with metaphor, satire, and logic, he gained his cause and induced an immediate repeal of the obnoxious ordinance." About this time he made his appearance as a political orator, and seems to have gained for the patriotism of his sentiments not only the unbounded applause of his supporters, but even that of his bitterest adversaries.

In 1833, he appeared before the Supreme Court of the United States, and "made a speech three or four hours long."* His pleadings, in spite of his youthful fire and highly wrought fancy, were so happily fortified by deep reading and deep thought, as to instantly attract the notice of Chief Justice Marshall, and call forth from that master-mind involuntary praise.† During the same year he formed a business connexion with John J. Guion, an experienced and well-known practitioner of law in Vicksburg; and a few weeks after, his duel with General H. S. Foote occurred. Of the latter event Mr. Prentiss thus wrote in a letter to his youngest brother, who had strongly remonstrated with him respecting the course he had pursued:—"I am very sorry you heard at all of my foolish scrape. I regretted the occurrence as much as any one. I neither sought the difficulty, nor sent the challenge; but having received it under the circumstances that existed, I could not have acted differently from what I did. If I had, I should have lost my own self-respect, and life itself would have had no further objects for me. I know that with your principles, no excuse will be sufficient in such a case. I am no advocate of duelling, and always shall from principle avoid such a thing, as much as possible; but when a man is placed in a situation where if he does not fight, life will be rendered valueless to him, both in his own eyes and those of the community, and existence will become a burden to him; then, I say, he will fight, and by so doing, will select the least of two evils. I know you will say that such a case as I have supposed, cannot occur; but, brother, I think you are mistaken, and such cases may occur, but not often. However, I trust I shall never again have occasion to act in such a matter. You may rest assured, that I shall never seek a quarrel, and shall always avoid one, so long as I can do so, and retain my self-respect."

At this period Mr. Prentiss was enjoying a very large and lucrative practice. Business pressed upon him from all quarters, and his fame as an advocate was widely spread. His geniality, wit,

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* Memoir of S. S. Prentiss, vol. I., page 122.

and humor attracted every body to him. "Every body liked him, and he was disposed to like every body." A reference to his letters written at this time will afford a just estimate of the extensive and laborious duties of his profession. In August of this year (1834) he delivered at Jackson, Mississippi, an address, commemorative of the life and services of Lafayette.

After an absence of eight years, he visited his home in Maine, where he spent a short time amid the scenes of his boyhood; fished at the old brook, and went out to meet old faces and friends. On his return to Vicksburg, he entered upon his practice with renewed vigor, and soon after was elected to the State Legislature to represent his adopted town. In this station he remained, with occasional intervals, ardently engaged in the toil and strife of politics, for the next eight years. In the great questions of the day he evinced the warmest interest, was an ardent admirer of Henry Clay, and an active opponent of General Jackson. His political speeches at this time have not been preserved, but his cotemporaries refer to them as containing great strength, wit, and powerful argumentation. An anecdote relating to one of his earliest stump speeches, given by his biographer, will show the readiness and self-possession he displayed under trying circumstances. His speech "was a powerful invective against General Jackson, for his removal of the members of his first Cabinet. While he was summing up the excuses of the Democratic party alleged for the act, he was suddenly confronted by a fellow holding up a large flag, with nothing on it but the words "Hurrah for Jackson!" inscribed with large letters. The man advanced slowly towards the speaker, whose eye no sooner caught the pennant than he exclaimed, without the slightest perturbation—"In short, fellow-citizens, you have now before you the sum and substance of all the arguments of the party—*Hurrah for Jackson!*" The effect was electrical, and the poor man slunk away, trailing his banner after him."

Mr. Prentiss was untiring and diligent in the discharge of his legislative duties. He was appointed Chairman of the Judiciary Committee, and in the course of the session delivered several speeches advocating the system of internal improvement. Hardly one complete speech, however, is preserved; but such as remain display great political intelligence, wisdom, and straightforwardness; "they sparkle, like dust of gold, amidst the rubbish of ordinary legislative verbosity." In the following session, which met in January, 1837, he delivered a masterly speech on the question of admitting the delegates from the new counties. This effort is extant, and is sterlingly illustrative of its author's reverence for law and constitution. At the end of the session he resigned his seat; resumed his profession and the cultivation of general literature.

In the fall of 1837, he took an active part in the political campaign; canvassed his State, and was elected a representative to Congress. On his arrival at Washington, his seat was contested, and a day was set apart for him to address the House in support of his claims. On that day, says his biographer, "nearly all the members were in their seats, the galleries were crowded, and every eye and ear were fixed in eager expectation. His first sentence riveted the attention of the whole audience, and each succeeding sentence increased the surprise and pleasure awakened by the first. Some, anticipating an outburst of fervid but unpolished declamation, were charmed to find themselves listening to an orator, whose logic was as accurate and subtle as that of a schoolman, while the fairest gems of literary culture adorned his rhetoric. Others, expecting a violent party harangue, were no less astonished to find themselves in the presence of a statesman and jurist discussing, with patriotic zeal, a great principle of constitutional law. His peroration was short, but it thrilled the immense assemblage like an electric touch. Much of its force was owing to the tones of his voice, the glow of his eye and countenance, his peculiarly earnest manner, and the high-wrought feelings of his hearers; but no one can read it even now, without admiring its skill and beauty.

The moment he had finished, his friends flocked around him with their enthusiastic congratulations, in which they were joined by not a few of his political opponents. As Mr. Webster left the Hall, he remarked to a friend, with comprehensive brevity: "Nobody could equal it!" And this may suffice as a sample of the innumerable compliments elicited by his speech. It is still remembered with wonder by all who heard it. Few members of the House were less likely to be misled by false oratory than Ex-President Fillmore. In a letter, dated Buffalo, Nov. 28, 1853,

heard, and, as a whole, I think it fully equalled, if it did not exceed, any rhetorical effort to which it has been my good fortune to listen in either House of Congress. It elevated him at once to the first rank of Congressional orators, and stamped his short, but brilliant parliamentary career with the impression of undoubted genius, and the highest oratorical powers. I have never read the published speech, but I apprehend it is not possible that it should convey to the reader any adequate idea of the effect produced by its delivery."

When the vote was taken on the question of his right to a seat, it was a tie, and the vote of the Speaker, James K. Polk, being cast against him, Mr. Prentiss returned to Vicksburg. His second canvass was distinguished for the excitement it produced. Every where he was met with enthusiasm and delight. Among many anecdotes of this canvass, illustrative of the power he displayed as an orator, is the following. On one occasion, while he was speaking in his most fascinating manner, an old Democrat present became so charmed and excited, that, at the conclusion of the address, he walked towards him, and ripping his coat open behind, as he did so, cried out: "Well, they may call me a turn-coat, if they choose; but I won't be that—I shall just *back out* of my coat, and vote for S. S. Prentiss." In this election Mr. Prentiss was successful, and in May, 1838, he took his seat in Congress. But he had no taste for congressional life, and, after serving a brief term, he returned to the bar and to his extended practice. His representative career, however, short as it was, was of unusual brilliancy and success. His speech on the Defalcations of Public Officers, the Sub-Treasury Bill, and that on the Navy, gained him great applause throughout the country, and firmly established his reputation as a parliamentary orator. On his return from Washington, he stopped for some time at Louisville, to assist in the defence of Judge Wilkinson, who was indicted for murder. The limits of this sketch will not permit a detail of this affair. Mr. Prentiss's argument, (reported some time after its delivery,) which was regarded, by all who heard it, as a masterpiece of forensic eloquence, is now before the world.

In the Presidential campaign of 1840, Mr. Prentiss was constant and untiring in the advocacy of the Whig policy. His speeches, some of which were reported, are now fresh in the recollection of many.

Mr. Prentiss's opposition to the Mississippi Repudiation was firm and uncompromising. In his speeches, which were among the ablest he ever made, he denounced the measure as alike ruinous and wicked; every where he lifted up his voice against it; it mattered not whether he was addressing a polished audience at Natchez, a knot of idlers at the corner of the street in Vicksburg, a gathering of backwoodsmen, or a crowd well sprinkled with repudiating legislators at the capital; he never varied his speech, except to lash the iniquity with rebukes still more scathing when he saw its authors or abettors before him.

In 1845, he removed from Vicksburg to New Orleans, where he soon mastered the system of jurisprudence of Louisiana, which greatly differed from that under which he had been so long practising; became thoroughly conversant with the principles of civil law, and took a position foremost at the bar. His practice was extensive, and continued so until he became broken down by ill health. In the midst of his professional labors he always took an active part in the politics of the day. In truth, he is generally better known as a political orator, than a lawyer. Nor did he confine himself to these duties alone. He was distinguished for his fondness and thorough knowledge of literature. Besides rendering the most important services in the political campaigns, he was often called upon to appear as the popular orator of anniversaries, and, with his pen as well as his tongue, he was a ready advocate in the cause of philanthropy and the elevation of his fellow-men. During the few last years of his life, he suffered severe illness; yet he continued to labor assiduously in his profession, and only relinquished it a short time prior to his death. He died at Longwood, near Natchez, on the first day of July, 1851.

As a lawyer, Mr. Prentiss was distinguished for the remarkable rapidity and analytical power of his mind. His memory was singularly retentive. His logical faculty was very acute and discerning. "It was often the complaint of the court and his brother lawyers," says one of his cotemporaries, "that he would argue a case all to pieces. He would penetrate to the very bot-

any material object, or a surgeon making a dissection. His reading was full and general, and every thing he gathered from books, as well as from intercourse with his fellow-men, clung to his memory, and was ever at his command. But his most striking talent was his oratory. We have never known or read of a man who equalled Prentiss, in the faculty of thinking on his legs, or of extemporaneous eloquence. He required no preparation to speak on any subject, and on all he was equally happy. We have heard from him, thrown out in a dinner-speech, or at a public meeting, when unexpectedly called on, more brilliant and striking thoughts than many of the most gifted poets and orators ever elaborated in their closets. He possessed a rare wit. His garland was enwreathed with flowers culled from every shrub or plant, and from every clime. And if at times the thorn lurked beneath the bright flower, the wound it inflicted was soon assuaged and healed by some mirthful and laughter-moving palliative." In his social relations, he was courteous, affectionate, and generous. Of a brilliant imagination, sparkling wit, and rare convivial talents, he was always a welcome guest wherever he went. In his death, the American bar lost one of its brightest ornaments, and the human race a steadfast, loving, and disinterested friend.

Those who desire a full insight into the character and genius of Mr. Prentiss, would do well to consult the interesting memoir lately published by his brother, to which the editor here acknowledges his indebtedness for the material of this sketch.

THE NEW ENGLAND ADDRESS.

Mr. Prentiss delivered the following address, before the New England Society of New Orleans, on the twenty-second of December, 1845:

This is a day dear to the sons of New England, and ever held by them in sacred remembrance. On this day, from every quarter of the globe, they gather in spirit around the Rock of Plymouth, and hang upon the urns of their Pilgrim Fathers the garlands of filial gratitude and affection. We have assembled for the purpose of participating in this honorable duty; of performing this pious pilgrimage. To-day we will visit that memorable spot. We will gaze upon the place where a feeble band of persecuted exiles founded a mighty nation: and our hearts will exult with proud gratification as we remember that on that barren shore our ancestors planted not only empire but Freedom. We will meditate upon their toils, their sufferings, and their virtues, and to-morrow return to our daily avocations, with minds refreshed and improved by the contemplation of their high principles and noble purposes.

The human mind cannot be contented with the present. It is ever journeying through the trodden regions of the past, or making adventurous excursions into the mysterious realms of the future. He who lives only in the present, is but a brute, and has not attained the human dignity. Of the future but little is known; clouds and darkness rest upon it; we yearn to become acquainted with its hidden secrets; we stretch out our arms towards its shadowy inhabitants, our posterity, but they still reason becomes confused, and at last start back in fear, like mariners who have entered an unknown ocean, of whose winds, tides, currents, and quicksands they are wholly ignorant. Then it is we turn for relief to the past, that mighty reservoir of men and things. There we have something tangible to which our sympathies can attach; upon which we can lean for support; from whence we can gather knowledge and learn wisdom. There we are introduced into Nature's vast laboratory and witness her elemental labors. We mark with interest the changes in continents and oceans by which she has notched the centuries. But our attention is still more deeply aroused by the great moral events, which have controlled the fortunes of those who have preceded us, and still influence our own. With curious wonder, we gaze down the long aisles of the past, upon the generations that are gone. We behold, as in a magic glass, men in form and feature like ourselves, actuated by the same motives, urged by the same passions, busily engaged in shaping out both their own destinies and ours. We approach them, and they refuse not our invocation. We hold converse with the wise philosophers, the sage legislators and divine poets. We enter the tent of the general, and partake of his most secret counsels. We go forth with him to the battle-field, and behold him place his glittering squadrons; then we listen with a pleasing fear to the trumpet and the drum, or the still more terrible music of the booming cannon and the clashing arms. But most of all, among the innumerable multitudes who peopled the past, we seek our own ances-

sympathy. Indeed, they were our other selves. With reverent solicitude we examine into their character and actions, and as we find them worthy or unworthy, our hearts swell with pride, or our cheeks glow with shame. We search with avidity for the most trivial circumstances in their history, and eagerly treasure up every memento of their fortunes. The instincts of our nature bind us indissolubly to them and link our fates with theirs. Men cannot live without a past; it is as essential to them as a future. Into its vast confines we will journey to-day, and converse with our Pilgrim Fathers. We will speak to them and they shall answer us.

Two centuries and a quarter ago, a little tempest-tost, weather-beaten bark, barely escaped from the jaws of the wild Atlantic, landed upon the bleakest shore of New England. From her deck disembarked a hundred and one care-worn exiles. To the casual observer no event could seem more insignificant. The contemptuous eye of the world scarcely deigned to notice it. Yet the famous vessel that bore Cæsar and his fortunes, carried but an ignoble freight compared with that of the Mayflower. Her little band of pilgrims brought with them neither wealth nor power, but the principles of civil and religious freedom. They planted them, for the first time, in the Western Continent. They cherished, cultivated and developed them to a full and luxuriant maturity; and then furnished them to their posterity as the only sure and permanent foundations for a free government. Upon those foundations rests the fabric of our great Republic: upon those principles depends the career of human liberty. Little did the miserable pedant and bigot who then wielded the sceptre of Great Britain, imagine that from this feeble settlement of persecuted and despised Puritans, in a century and a half, would arise a nation capable of coping with his own mighty empire in arts and arms.

It is not my purpose to enter into the history of the Pilgrims; to recount the bitter persecutions and ignominious sufferings which drove them from England; to tell of the eleven years of peace and quiet spent in Holland, under their beloved and venerated pastor; nor to describe the devoted patriotism which prompted them to plant a colony in some distant land, where they could remain citizens of their native country and at the same time be removed from its oppressions: where they could enjoy liberty without violating allegiance. Neither shall I speak of the perils of their adventurous voyage; of the hardships of their early settlement; of the famine which prostrated, and the pestilence which consumed them.

With all these things you are familiar, both from the page of history and from the lips of tradition. On occasions similar to this, the ablest and most honored sons of New England have been accustomed to tell, with touching eloquence, the story of their sufferings, their fortitude, their perseverance, and their success. With pious care they have gathered and preserved the scattered memorials of those early days, and the names of Carver, Bradford, Winslow, Standish, and their noble companions, have long since become with us venerated household words.

There were, however, some traits that distinguished the enterprise of the Pilgrims from all others, and which are well worthy of continued remembrance. In founding their colony they sought neither wealth nor conquest, but only peace and freedom. They asked but for a region where they could make their own laws, and worship God according to the dictates of their own consciences. From the moment they touched the shore, they labored, with orderly, systematic, and persevering industry. They cultivated, without a murmur, a poor and ungrateful soil, which even now yields but a stubborn obedience to the dominion of the plough. They made no search for gold, nor tortured the miserable savages to wring from them the discovery of imaginary mines. Though landed by a treacherous pilot upon a barren and inhospitable coast, they sought neither richer fields nor a more genial climate. They found liberty, and for the rest it mattered little. For more than eleven years they had meditated upon their enterprise, and it was no small matter could turn them from its completion. On the spot where first they rested from their wanderings, with stern and high resolve, they built their little city and founded their young republic. There honesty, industry, knowledge and piety grew up together in happy union. There, in patriarchal simplicity and republican equality, the Pilgrim Fathers and Mothers passed their honorable days, leaving to their posterity the invaluable legacy of their principles and example.

How proudly can we compare their conduct with that of the adventurers of other nations who preceded them. How did the Spaniard colonize? Let Mexico, Peru and Hispaniola answer. He followed in the train of the great Discoverer, like a devouring pestilence. His cry was gold! gold!! gold!!! Never in the history of the world had the *sacra fames auri* exhibited itself with such fearful intensity. His imagination maddened with visions of sudden and boundless wealth, clad in mail, he leaped upon the New World, an armed robber. In greedy haste he grasped the sparkling sand, then cast it down with curses, when he found the glittering grains were not of gold.

Pitiless as the blood-hound by his side, he plunged into the primeval forests, crossed rivers, lakes, and mountains, and penetrated to the very heart of the continent. No region, however rich in soil, delicious in climate, or luxuriant in production, could tempt his stay. In vain the soft breeze of the tropics, laden with aromatic fragrance, wooed him to rest; in vain the smiling valleys, covered with spontaneous fruits and flowers, invited him to peaceful quiet. His search was still for gold: the accursed hunger could not be appeased. The simple natives

worshipped him as a god; and he proved to them a god, but an infernal one—terrible, cruel and remorseless. With bloody hands he tore the ornaments from their persons, and the shrines from their altars: he tortured them to discover hidden treasure, and slew them that he might search, even in their wretched throats, for concealed gold. Well might the miserable Indians imagine that a race of evil deities had come among them, more bloody and relentless than those who presided over their own sanguinary rites.

Now let us turn to the pilgrims. They, too, were tempted; and had they yielded to the temptation how different might have been the destinies of this continent—how different must have been our own! Previous to their undertaking, the old world was filled with strange and wonderful accounts of the new. The unbounded wealth, drawn by the Spaniards from Mexico and South America, seemed to afford rational support for the wildest assertions. Each succeeding adventurer, returning from his voyage, added to the Arabian tales a still more extravagant story. At length Sir Walter Raleigh, the most accomplished and distinguished of all those bold voyagers, announced to the world his discovery of the province of Guiana, and its magnificent capital, the far-famed city of El Dorado. We smile now at his account of the "great and golden city," and "the mighty, rich, and beautiful empire." We can hardly imagine that any one could have believed, for a moment, in their existence. At that day, however, the whole matter was received with the most implicit faith. Sir Walter professed to have explored the country, and thus glowingly describes it from his own observation:

"I never saw a more beautiful country, nor more lively prospects; hills so raised here and there over the valleys—the river winding into divers branches—the plains adjoining, without bush or stubble—all fair green grass—the deer crossing in every path—the birds, towards the evening, singing on every tree with a thousand several tunes—the air fresh, with a gentle easterly wind: and every stone that we stopped to take up promised either gold or silver by its complexion. For health, good air, pleasure, and riches, I am resolved it cannot be equalled by any region either in the east or west."

The pilgrims were urged, in leaving Holland, to seek this charming country, and plant their colony among its Arcadian bowers. Well might the poor wanderers cast a longing glance towards its happy valleys, which seemed to invite to pious contemplation and peaceful labor. Well might the green grass, the pleasant groves, the tame deer, and the singing birds allure them to that smiling land beneath the equinoctial line. But while they doubted not the existence of this wondrous region, they resisted its tempting charms. They had resolved to vindicate, at the same time, their patriotism and their land, and to demonstrate to the world the practicability of civil and religious liberty. After full discussion and mature deliberation, they determined that their great objects could be best accomplished by a settlement on some portion of the northern continent, which would hold out no temptation to cupidity—no inducement to persecution. Putting aside, then, all considerations of wealth and ease, they addressed themselves with high resolution to the accomplishment of their noble purpose. In the language of the historian, "trusting to God and themselves," they embarked upon their perilous enterprise.

As I said before, I shall not accompany them on their adventurous voyage. On the 22d day of December, 1620, according to our present computation, their footsteps pressed the famous rock which has ever since remained sacred to their venerated memory. Poets, painters, and orators have tasked their powers to do justice to this great scene. Indeed, it is full of moral grandeur; nothing can be more beautiful, more pathetic, or more sublime. Behold the pilgrims, as they stood on that cold December day—stern men, gentle women, and feeble children—all uniting in singing a hymn of cheerful thanksgiving to the good God, who had conducted them safely across the mighty deep, and permitted them to land upon that sterile shore. See how their upturned faces glow with a pious confidence which the sharp winter winds cannot chill, nor the gloomy forest shadows darken:

> "Not as the conqueror comes,
> They, the true-hearted came;
> Not with the roll of the stirring drum,
> Nor the trumpet, that sings of fame;
> Nor as the flying come,
> In silence and in fear—
> They shook the depths of the desert gloom
> With their hymns of lofty cheer."

Noble and pious band! your holy confidence was not in vain: your "hymns of lofty cheer" find echo still in the hearts of grateful millions. Your descendants, when pressed by adversity, or when addressing themselves to some high action, turn to the "Landing of the pilgrims," and find heart for any fate—strength for any enterprise.

How simple, yet how instructive, are the annals of this little settlement. In the cabin of the Mayflower they settled a general form of government, upon the principles of a pure democracy. In 1636, they published a declaration of rights, and established a body of laws. The first fundamental article was in these words: "That no act, imposition, law, or ordinance be made, or imposed upon us, at present or to come, but such as has been or shall be enacted by the consent of the body of freemen or associates, or their representatives legally assembled," &c.

Here we find advanced the whole principle of the Revolution—the whole doctrine of our

years before the Revolution, tested successfully, as far as they were concerned, the principle of self-government, and solved the problem, whether law and order can co-exist with liberty. But let us not forget that they were wise and good men who made the noble experiment, and that it may yet fail in our hands, unless we imitate their patriotism and virtues.

There are some who find fault with the character of the pilgrims—who love not the simplicity of their manners, nor the austerity of their lives. They were men, and of course imperfect; but the world may well be challenged to point out in the whole course of history, men of purer purpose or braver action—men who have exercised a more beneficial influence upon the destinies of the human race, or left behind them more enduring memorials of their existence.

At all events, it is not for the sons of New England to search for the faults of their ancestors. We gaze with profound veneration upon their awful shades; we feel a grateful pride in the country they colonized, in the institutions they founded, in the example they bequeathed. We exult in our birth-place and in our lineage.

Who would not rather be of the pilgrim stock than claim descent from the proudest Norman that ever planted his robber blood in the halls of the Saxon, or the noblest paladin that quaffed wine at the table of Charlemagne? Well may we be proud of our native land, and turn with fond affection to its rocky shores. The spirit of the pilgrims still pervades it, and directs its fortunes. Behold the thousand temples of the Most High, that nestle in its happy valleys and crown its swelling hills. See how their glittering spires pierce the blue sky, and seem like so many celestial conductors, ready to avert the lightning of an angry heaven. The piety of the pilgrim patriarchs is not yet extinct, nor have the sons forgotten the God of their fathers.

Behold yon simple building near the crossing of the village road! It is small and of rude construction, but stands in a pleasant and quiet spot. A magnificent old elm spreads its broad arms above and seems to lean towards it, as a strong man bends to shelter and protect a child. A brook runs through the meadow near, and hard by there is an orchard—but the trees have suffered much and bear no fruit, except upon the most remote and inaccessible branches. From within its walls comes a busy hum, such as you may hear in a disturbed bee-hive. Now peep through yonder window and you will see a hundred children, with rosy cheeks, mischievous eyes and demure faces, all engaged, or pretending to be so, in their little lessons. It is the public school—the free, the common school—provided by law: open to all: claimed from the community as a right, not accepted as a bounty. Here the children of the rich and poor, high and low, meet upon perfect equality, and commence under the same auspices the race of life, to all alike, as the Spartans served their food upon the public table. Here young Ambition climbs his little ladder, and boyish Genius plumes his half-fledged wing. From among these laughing children will go forth the men who are to control the destinies of their age and country; the statesman whose wisdom is to guide the Senate—the poet who will take captive the hearts of the people and bind them together with immortal song—the philosopher who, boldly seizing upon the elements themselves, will compel them to his wishes, and, through new combinations of their primal laws, by some great discovery, revolutionize both art and science.

The common village school is New England's fairest boast—the brightest jewel that adorns her brow. The principle that society is bound to provide for its members' education as well as protection, so that none need be ignorant except from choice, is the most important that belongs to modern philosophy. It is essential to a republican government. Universal education is not only the best and surest, but the only sure foundation for free institutions. True liberty is the child of knowledge; she pines away and dies in the arms of ignorance.

Honor, then, to the early fathers of New England, from whom came the spirit which has built a schoolhouse by every sparkling fountain, and bids all come as freely to the one as to the other. All honor, too, to this noble city, who has not disdained to follow the example of her northern sisters, but has wisely determined that the intellectual thirst of her children deserves as much attention as their physical, and that it is as much her duty to provide the means of assuaging the one as of quenching the other.

But the spirit of the pilgrims survives, not only in the knowledge and piety of their sons, but, most of all, in their indefatigable enterprise and indomitable perseverance.

They have wrestled with nature till they have prevailed against her, and compelled her reluctantly to reverse her own laws. The sterile soil has become productive under their sagacious culture, and the barren rock, astonished, finds itself covered with luxuriant and unaccustomed verdure.

Upon the banks of every river they build temples to industry, and stop the squanderings of the spendthrift waters. They bind the naïades of the brawling stream. They drive the dryades from their accustomed haunts, and force them to desert each favorite grove; for upon river, creek and bay they are busy transforming the crude forest into stanch and gallant vessels. From every inlet or indenture along the rocky shore swim forth these ocean birds—born in the wild wood, fledged upon the wave. Behold how they spread their white pinions to the favoring breeze, and wing their flight to every quarter of the globe—the carrier pigeons of the world! It is upon the unstable element the sons of New England have achieved their

vex the waters of every sea. Bold and restless as the old Northern Vikings, they go forth to seek their fortunes in the mighty deep. The ocean is their pasture, and over its wide prairies they follow the monstrous herds that feed upon its azure fields. As the hunter casts his lasso upon the wild horse, so they throw their lines upon the tumbling whale. They "draw out Leviathan with a hook." They "fill his skin with barbed irons," and in spite of his terrible strength they "part him among the merchants." To them there are no pillars of Hercules. They seek with avidity new regions, and fear not to be "the first that ever burst" into unknown seas. Had they been the companions of Columbus, the great mariner would not have been urged to return, though he had sailed westward to his dying day.

Glorious New England! thou art still true to thy ancient fame and worthy of thy ancestral honors. We, thy children, have assembled in this far-distant land to celebrate thy birth-day. A thousand fond associations throng upon us, roused by the spirit of the hour. On thy pleasant valleys rest, like sweet dews of morning, the gentle recollections of our early life; around thy hills and mountains cling, like gathering mists, the mighty memories of the Revolution; and far away in the horizon of thy past gleam, like thine own Northern Lights, the awful virtues of our Pilgrim Sires! But while we devote this day to the remembrance of our native land, we forget not that in which our happy lot is cast. We exult in the reflection that though we count by thousands the miles which separate us from our birth-place, still our country is the same. We are no exiles meeting upon the banks of a foreign river, to swell its waters with our home-sick tears. Here floats the same banner which rustled above our boyish heads, except that its mighty folds are wider and its glittering stars increased in number.

The sons of New England are found in every State of the broad Republic. In the East, the South, and the unbounded West, their blood mingles freely with every kindred current. We have but changed our chamber in the paternal mansion; in all its rooms we are at home, and all who inhabit it are our brothers. To us the Union has but one domestic hearth; its household gods are all the same. Upon us, then, peculiarly devolves the duty of feeding the fires upon that kindly hearth; of guarding with pious care those sacred household gods.

We cannot do with less than the whole Union; to us it admits of no division. In the veins of our children flows northern and southern blood; how shall it be separated; who shall put asunder the best affections of the heart, the noblest instincts of our nature? We love the land of our adoption, so do we that of our birth. Let us ever be true to both; and always exert ourselves in maintaining the unity of our country, the integrity of the Republic.

Accursed, then, be the hand put forth to loosen the golden cord of Union; thrice accursed the traitorous lips, whether of northern fanatic or southern demagogue, which shall propose its severance. But no! the Union cannot be dissolved; its fortunes are too brilliant to be marred; its destinies too powerful to be resisted. Here will be their greatest triumph, their most mighty development. And when, a century hence, this Crescent City shall have filled her golden horns; when, within her broad-armed port shall be gathered the products of the industry of a hundred millions of freemen; when galleries of art and halls of learning shall have made classic this mart of trade; then may the sons of the Pilgrims, still wandering from the bleak hills of the north, stand upon the banks of the great river, and exclaim with mingled pride and wonder, Lo! this is our country: when did the world ever witness so rich and magnificent a city—so great and glorious a Republic!

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ith et Hyoscyami (in mass) .
Do. 5 grs. .
s Co. 3 grs. (Guy's pills) .
Acid and opium . . .
rgyri in mass . . .
o. 5 grs. . . .
rg. Subchlor Co. in mass .
et Opii . . . .
et Scilla in mass . .
Capsicum camphor pepper
asafetida ($\frac{1}{2}$ gr. of each) .
i cum Opio in mass . .
Do. 5 grs. . .
i Permanganas, 2 grs. (Enteric
. . . . .
o. in mass . . . .
Co. 5 grs. . . . .
in mass . . . .

Tablets Medicinal.

h Boricum, 5 grs. . .
Acetylsalicylicum, 5 grs.

Do. cum Caffein, 5 grs. .
*Plumbi Acetas, 18 grs. (Vety.) .
Potassii Bromidum, 10 grs. . .
Do. Chloras, 5 grs. . .
Do. Permanganas, 1 gr. . .
Do. do. 2 grs. . .
Do. do. 2 grs. K. C. .
Pulvis Cretæ Aromatic cum Opio, 5 grs. . . . .
Do. Ipecacuanhæ, 5 grs. . .
Do. Ipecacuanhæ Co., 5 grs. .
Do. do. 10 grs. .
Do. Rhei Co., 5 grs. . .
Do. Santonine comp., 5 grs. .
Saline Compound, $36\frac{3}{4}$ grs. (in tubes of 12) . . . . .
Sodii Bicarbonas, 5 grs. . .
Do. Carbonas, 22 grs. . .
Do. Chloridum, $15\frac{3}{4}$ grs. in bot. .
Do. do. 40 grs. in tubes of 12

Belladonna Folia E
" Radix
Butyl Chloral Hyd
Camphorodyne
Cantharidin
Cerii Oxalas
Chloral Hydras
Chloroform Anæsth
" "
Cocainæ Hydrochl
Codeina .
Creosotum .
Diamorphine (Heroin) .
Ext. Belladonna L
" " S
" Cannabis Ind
" Ergotæ
" Nucis Vomica
" " "
" Opii Liqd.
" Stramonii
Hydrargyrum
" Am
Hydrargyri Iodidu
" Oxycy
" Oxidu
" Perchl